

**SUFFOLK COUNTY SUPREME COURT**

**SPECIAL GRAND JURY 1F**

**JANUARY 3, 2011**

**TERM I**

**GRAND JURY REPORT**

**CPL 190.85(1)(C)**

**Dated: June 17, 2011**

**SUPREME COURT SPECIAL GRAND JURY 1F  
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**JANUARY 3, 2011 TO JUNE 17, 2011**

**GRAND JURY REPORT, CPL 190.85 (1)(C)**

**PRELIMINARY STATEMENT**

The Suffolk County Supreme Court Special Grand Jury 1F, Term I, was empanelled on January 3, 2011, to investigate a course of conduct related to the unlawful demolition of a commercial parcel in Smithtown in early 2009.

As a result of this investigation, the following report has been adopted pursuant to New York State Criminal Procedure Law Section 190.85(1)(C), and is respectfully submitted to the Court.

## **TABLE OF CONTENTS**

- I. Introduction**
- II. Town Employee A wanted to expedite demolition at Commercial Parcel A.**
- III. Town Code required an approved site plan prior to issuing a demolition permit.**
- IV. Developer A failed to submit a site plan application in a timely manner.**
- V. Town Employee A offered Developer A a number of incentives to encourage demolition.**
- VI. Town Employee A and Town Employee C advocated the unlawful demolition of the site.**
- VII. The absence of Site Plan Review deprived the Town, County, and State of an opportunity to Review and make recommendations and changes to the proposed demolition at Commercial Parcel A.**
- VIII. The absence of a demolition permit deprived the Town Building Department of the opportunity to ensure that the demolition was conducted in a safe and proper manner.**
- IX. The unlawful demolition secured an immediate financial advantage for Developer A, to the disadvantage of the Town and others.**
- X. The ensuing investigation caused Town Employee C to change his intended course of action, in an attempt to mask his involvement with the demolition of Commercial Parcel A.**
- XI. Structures at Commercial Parcel B were also demolished under similar circumstances.**
- XII. A lack of proper asbestos protocols and training in the Town Building Department contributed to post-demolition issues at Commercial Parcel A.**
- XIII. The Office of the Town Assessor employs a standard of review with residential properties that it does not mandate for commercial properties.**
- XIV. The Town Code of Ethics does not allow for the removal of public servants who deliberately violate the Town Code.**
- XV. Conclusions**
- XVI. Recommendations**

## I. INTRODUCTION

The Town of Smithtown is located in the north central section of Long Island, and is about 45 miles east of New York City. The Town has a land area of approximately 54 square miles, and is made up of three incorporated villages (The Branch; Head of the Harbor; and Nissequogue), a number of larger unincorporated communities (including Smithtown; Kings Park; St. James; and Nesconset), as well as sections of both Commack and Hauppauge. The Town has an estimated population of over 117,000.<sup>1</sup>

The legislative power of the Town is vested in the Town Board, which consists of five members, including the Supervisor, who also serves as the chief executive officer and chief fiscal officer of the Town. Each of the members are elected to four year terms; they are elected at large, with no limitation on the number of terms they may serve. The terms of the Town Board members are staggered, such that two board members are elected every two years. A number of positions with the Town are Board-appointed, including the Assessor and Town Attorney.<sup>2</sup>

Commercial Parcel A, located in Smithtown, Suffolk County, New York, became the focus of law enforcement attention during the second week of March, 2009. For many, Commercial Parcel A had been envisioned as the centerpiece of an ambitious project that would deliver new commercial construction as well as residential units to the area. At the close of the final week of February, 2009, demolition in furtherance of this project commenced at Commercial Parcel A. No demolition permit had been issued by the Smithtown Building Department, as required by Town Code. Though the demolition was promptly halted by a Town Building Department Official's Stop Work Order, it would resume days later and be completed by the close of business on Monday, March 2, 2009. No permit was ever issued

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<sup>1</sup> Grand Jury Exhibit 62

<sup>2</sup> Grand Jury Exhibit 62

to allow for the demolition to continue. A number of summonses were subsequently issued by the Town Building Department to the property's owner, Developer A.

Despite both the lack of permit and the Stop Work Order, certain Town Officials directed Developer A to continue the demolition of structures at the site. This action violated a host of provisions under the Town Code. As an inducement to follow through with this action, Town Officials made specific representations to Developer A as to the immediate tax benefit that would be realized as a result of the demolition. This information was not accurate. As a result, the tax savings generated by the demolition was substantially less than represented.

The unlawful demolition occurred without the process of review mandated by local and state law. The circumvention of the rules and procedures deprived a number of entities of the opportunity to review and comment with respect to potential issues involving the demolition. It also deprived the Town Building Department of an opportunity to ensure that the proposed demolition be done in a safe and proper manner. The most immediate impact of this was felt by residential homeowners living next door to Commercial Parcel A, who, based on the abrupt and unsafe manner in which the demolition was conducted, were put at risk.

The unlawful demolition occurred when asbestos was present within the structures located at Commercial Parcel A. As a result, the New York State Department of Labor also issued a host of summonses to Developer A. The Department thereafter assumed a prominent role in supervising the mandatory remediation of the site.

The Grand Jury heard from twenty-one witnesses and received sixty-seven exhibits, collectively totaling over one thousand pages, with respect to the aforementioned incidents.

## **II. Town Employee A wanted to expedite demolition at Commercial Parcel A.**

The Grand Jury received evidence and heard testimony that Town Employee A aggressively pursued the demolition of Commercial Parcel A.

Town Employee B testified that he received a substantial number of calls from Town Employee A, who wanted to know when the structures located on Commercial Parcel A would be coming down. Town Employee A frequently complained in the calls that Commercial Parcel A was an “eyesore”.

The Grand Jury finds that these calls were placed to Town Employee B for a reason. Chapter 322 of the Smithtown Town Code governs Zoning, and is the province of the Town Planning Department. This Chapter mandates that before the Town Building Department can issue a demolition permit, a site plan application must be submitted by the developer to the Town Planning Department. The site plan must receive final approval from the Town’s Board of Site Plan Review (which is comprised of the members of the Town Board) before a permit can be issued.<sup>3</sup> Town Employee B testified that in the case of Commercial Parcel A, everyone involved, including Town Employee A, was explicitly reminded of this requirement.<sup>4</sup> As a result, the Town Planning Department came to be viewed as an obstacle to the demolition.

A written statement from Town Employee C provided to Suffolk County Police Department Detectives assigned to the Suffolk County District Attorney’s Office, in February 2011, advised that “[Town Employee A] wanted the buildings down because he thought it was an eyesore”.<sup>5</sup>

Town Employee D testified that in August 2008, Developer A submitted what the Town Building Department deemed was a sufficient application for a demolition permit.<sup>6</sup> After being formally advised

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<sup>3</sup> Grand Jury Exhibit 53(d)

<sup>4</sup> Grand Jury Exhibit 34

<sup>5</sup> Grand Jury Exhibit 50

by the Town Planning Department that an approved site plan would be required as well, Town Employee D sent written correspondence to Town Employee A, advising him of this issue.<sup>7</sup> After this, though the Town Building Department no longer had an immediate role in determining whether Developer A could be issued a permit, Town Employee D continued to receive calls from Town Employee A, who wanted to be updated about when Town Employee D thought demolition of the site could be expected.

Town Employee D testified that on at least one occasion, Town Employee A questioned whether the structures at Commercial Parcel A could be considered “unsafe.” Section 112-25 of the Smithtown Town Code, pursuant to an emergency determination, grants the Town Building Department the unique and exclusive authority to issue demolition permits for structures that are deemed “structurally unsafe” or “otherwise dangerous to human life”. No site plan is required in these instances.<sup>8</sup> Town Employee D advised Town Employee A that these conditions did not exist at Commercial Parcel A.

Town Employee B testified that, on at least two occasions, Town Employee A questioned whether, pursuant to some sort of “blight” determination, the Town would be able to act on its own to remove the structures. Town Employee B advised Town Employee A that such a determination could only be made after successfully employing a lengthy and complex legal process. After that, Town Employee A did not express any further desire to pursue this process.

Both Town Employee B and Town Employee D testified that Developer A’s proposed project would be a significant addition to Smithtown. Each also testified that the project was particularly important due to the location’s absence of modern commercial development.

Developer A testified that he too was periodically questioned by Town Employee A about when the structures would be demolished. Developer A told the Grand Jury that during a January 2009 lunch

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<sup>6</sup> Grand Jury Exhibit 33

<sup>7</sup> Grand Jury Exhibit 34

<sup>8</sup> Grand Jury Exhibit 53(c)

Town Employee A declared that he needed the buildings down because he was “running for re-election.” Developer A also testified that at least two meetings concerning the proposed project had been held in Town Employee A’s office, and were attended by various Town officials. At one of these meetings, Town Employee A voiced an interest in prominently displaying artistic renderings of the project at the site, featuring a “Coming Soon” advertisement.

Developer A was not immediately inclined to commence demolition at the site. Developer A testified that until such a time as his proposed construction had all formal Town approvals, he was not motivated to remove the structures on site.

Town Employee E testified that he was present for one of the aforementioned meetings in Town Employee A’s Office. Town Employee E testified that during the course of this meeting, Town Employee A voiced an interest in displaying artistic renderings of the proposed development at the site for the community to see. Town Employee A also expressed an interest in seeing Developer A “clean up” Commercial Parcel A at this time. Although no one at the table sought to clarify this statement, Town Employee E was of the opinion that Town Employee A was talking about commencing demolition. Town Employee E testified that at the close of the meeting, he privately advised Attorney for Developer A *not* to pursue demolition of the structures at the time. Although Town Employee E also felt that Commercial Parcel A looked like an “eyesore”, it was his opinion that Town Officials would be more motivated to accomplish all necessary approvals for the project if the site was maintained in an offensive condition.

Attorney for Developer A explained to the Grand Jury that he received approximately six or seven calls from Town Employee A, asking when Developer A was going to begin demolition at Commercial Parcel A. Attorney for Developer A advised that Town Employee A demonstrated a certain degree of agitation when discussing this subject, and referred to the site as an “eyesore.” Attorney for

Developer A further testified that in his personal experience Town Employee, A usually did not “get involved” in pursuing significant commercial development for the Town. Town Employee A did however take “a more active role” in Developer A’s proposed project.

Town Employee A lacked the power and authority to ultimately approve the demolition of Commercial Parcel A.<sup>9</sup> Rather, the Smithtown Town Code grants these powers to the Town Building Department alone.<sup>10</sup>

### **III. Town Code required an approved site plan prior to issuing a demolition permit.**

In August 2008, Developer A applied for a demolition permit from the Town Building Department for Commercial Parcel A. As previously explained, this application triggered the intervention of the Town Planning Department. Smithtown Town Code Section 322-85(B) mandates that with few exceptions, a site plan application must be filed and approved prior to the issuance of a demolition permit.<sup>11</sup> Commercial Parcel A met none of the exceptions; therefore, an approved site plan was required as a condition of securing the demolition permit.

Town Employee B testified that the filing of a site plan application in support of demolition projects ensures that Town departments other than the Building Department have input into what will happen at the site. A proper site plan application, though initially filed with the Town Planning Department, is also distributed to those Town departments that have an interest in ensuring that proposed work on a site is done safely, properly, and according to code.<sup>12</sup> These specific interests could

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<sup>9</sup> Grand Jury Exhibits 53, 66

<sup>10</sup> Grand Jury Exhibit 53(a)

<sup>11</sup> Grand Jury Exhibit 53(d)

<sup>12</sup> Grand Jury Exhibit 58

include ensuring that old septic systems, fuel tanks, and potentially hazardous chemicals are properly removed or abated. Town Employee B also explained that one of the specific interests the Town Planning Department has in the process is to ensure that a demolished site is not left in an aesthetically unacceptable condition. In demolition projects where a property owner has no immediate approvals for new construction, the property is required to be cleaned up.

As discussed further herein, site plan applications are also customarily forwarded to agencies outside of the Town, such as the Suffolk County Department of Planning, for their input. In addition, final approval of a site plan is required from the Town Board of Site Plan Review, which reviews the collective findings of the plan as presented to them.<sup>13</sup> In the Town of Smithtown, the Town Board serves as the Board of Site Plan Review. Town Employee B testified that because of the total number of reviewing bodies involved, it is common for the process to take months before a plan's approval is secured.

Smithtown Town Code Section 322-88 establishes a formula for computing the fees that must be paid by an applicant when submitting a site plan application. Town Employee B testified that because the number of square feet involved is a central component of this calculation, the application for a site plan for proposed construction can be relatively expensive.<sup>14</sup> Town Employee B testified that these fees are predicated on the amount of time and effort each department must dedicate to reviewing an applicant's submission; as such, the fees themselves do not actually raise revenue for the Town. In a proposed plan for demolition, the fees are not as onerous (as there are no new proposed structures to evaluate) but can still prove to be in the thousands of dollars.

Both Town Employee B and Developer A testified that the fees required for a site plan application for demolition at Commercial Parcel A were between \$10,000 – \$11,000. Furthermore,

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<sup>13</sup> Grand Jury Exhibit 53(d)

<sup>14</sup> Grand Jury Exhibit 53(d)

because Developer A would at a future time submit a second site plan in support of proposed construction, another, more expensive site plan fee would be required. As discussed further herein, this additional expense was another reason Developer A was not prepared to proceed with demolition.

Town Employee B testified that because the Town Code imposed fees twice in cases where an applicant submits separate plans for demolition and construction, the submission of site plan applications specific to demolition are uncommon. Town Employee B explained that the Town Code does not provide for any offset or reduction where an applicant submits twice, but offered his opinion that the Town Board could waive these fees if it chose to do so.

#### **IV. Developer A failed to submit a site plan application in a timely manner.**

Both Town Employee B and Developer A testified about numerous meetings regarding the issues with the proposed development at Commercial Parcel A. These meetings were held to determine the scope of the project that would ultimately meet the Town's approval. Until such a time as an apparent consensus on the project was reached, Developer A was not prepared to submit a site plan application. Developer A testified that, in light of the additional site plan fees he would incur, his intention was to incorporate both demolition and construction into a single site plan application.

Developer A testified that while he did submit an application to the Town Building Department for a demolition permit (the cost was a nominal \$250),<sup>15</sup> he did so in part as a demonstration of good faith to Town Employee A, who had already vocalized an interest in seeing the site demolished. Developer A testified that even if he secured the permit, he had no intention of immediately acting on it

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<sup>15</sup> Grand Jury Exhibit 33

(a permit would be good for one year, and could be renewed beyond that).<sup>16</sup> In fact, knowing that Town Employee A wanted the demolition to proceed, Developer A believed that by actually keeping the buildings intact he had leverage when negotiating with the Town over potential approvals.

Developer A testified that subsequent to filing this application, he was advised about the additional requirement of submitting a site plan. Developer A learned that because he had no definitive construction to incorporate into the plan, securing a demolition permit required the submission of two site plans (one in support of the proposed demolition, and one later for proposed construction) as well as the payment of the fees associated with each. Since the site plan fees dedicated to demolition alone would cost between \$10,000 - \$11,000, Developer A balked and did not formally submit any additional documents in support of the application immediately thereafter.

**V. Town Employee A offered Developer A a number of incentives to encourage demolition.**

Developer A testified that in the fall of 2008, he received a handwritten, unsolicited tax map chart from Town Employee C. The chart illustrated the potential tax savings Developer A would realize from removing the structures at Commercial Parcel A. The chart demonstrated that the act of rendering Commercial Parcel A vacant land would reduce taxes on the parcel by over \$40,000. The chart came with the proviso that “Building must be removed by Taxable Status Date, March 1, 2009”; it was signed as being prepared by Town Employee C.<sup>17</sup> Developer A testified that Town Employee C also advised him that the act of placing equipment and starting demolition on the site would represent a “good faith” action entitling Developer A to some or all of this tax relief. Developer A told the Grand Jury that in a

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<sup>16</sup> Grand Jury Exhibit 53(b)

<sup>17</sup> Grand Jury Exhibit 57

phone call Town Employee A demonstrated knowledge of this chart by asking if Developer A had received it.

Developer A testified that although he was advised he would realize a substantial benefit by removing all of the structures on site, the true value of the savings was actually less. Developer A explained that Commercial Parcel A's taxes represented a significant tax write-off for his corporation, and that the upfront costs of site-plan fees, demolition and removal of debris represented expenses he wasn't prepared to pay.

Town Employee C confirmed to the Grand Jury that Town Employee A called upon him to explain the potential tax savings from the demolition of Commercial Parcel A to Developer A. Town Employee C confirmed that he had prepared the tax chart. Town Employee C testified that he advised Developer A about the potential of tax relief based on a good faith effort to demolish the structures at Commercial Parcel A.

As discussed further herein, the Grand Jury received evidence and testimony which established that Developer A was later misinformed that he would realize tax benefits for demolition if he concluded it by Monday, March 2, 2009, one day after the actual tax assessment date of March 1, 2009.

Developer A testified that during this same time period he specifically voiced his displeasure about paying the site plan fees for demolition to Town Employee A. In response, Town Employee A indicated that would support an application to the Town Board to offset the fees paid with the initial (demolition) site plan against those of an eventual second site plan.

Developer A testified that at the lunch meeting in January 2009, Town Employee A reiterated his desire to see the structures at Commercial Parcel A demolished. Developer A told him that he didn't have the money to commit to it. Town Employee A later called Developer A and offered an additional

incentive for commencing demolition. Specifically, Town Employee A indicated that, per Town Employee D, Developer A would be permitted to temporarily stack the debris from the demolition at the back of the site. Developer A testified that this concession would be helpful, in that it would give him a greater period of time to deal with the expense of carting and disposing of the debris.

Town Employee D testified that he recalled being asked by Attorney for Developer A to make a temporary concession to Developer A, allowing him to stack materials at the back of the site if a demolition permit were secured.

Demolition Contractor A, a heavy equipment operator by trade, was the primary participant in the demolition at Commercial Parcel A. Demolition Contractor A testified that he was surprised by the directive to pile the demolition debris at the site. Demolition Contractor A testified that there were no dumpsters on site in which to deposit the debris, a circumstance he found unusual.

#### **VI. Town Employee A and Town Employee C advocated the unlawful demolition of the site.**

On February 25, 2009, a complete site plan application for demolition of Commercial Parcel A and the requisite fees were filed with the Town Planning Department. Town Employee B testified to being aware that the application was forthcoming; in fact, an incomplete application had been filed by Attorney for Developer A in the previous month. A sense of urgency had been repeatedly communicated to Town Employee B and other Town officials with respect to expediting the review of the application. Town Employee B testified about having conversations regarding the expedited review with Attorney for Developer A and Town Employee A. In these conversations, a deadline of March 1, 2009 was emphasized. Why this date was significant was not immediately explained, but the concept of

deadlines with commercial projects was not unusual per se; according to Town Employee B, it was not uncommon for such projects to be tied to certain events and deadlines in both contracts and financing.

Town Employee B testified that because the process of Site Plan Review is so complex, there was no way all the necessary parties could review and weigh in on the application prior to March 1. Town Employee B testified that because of this, Developer A's site plan fees were not immediately deposited. Town Employee B testified that he called Town Employee A and advised him that Site Plan Review and approval could not be accomplished by March 1. As a result, Town Employee A was aware that no permit for demolition was forthcoming.

Developer A testified that continuous pressure from Town Employee A, along with Developer A's desire to maintain a good relationship with Town Employee A, was his primary motivation for filing the materials and fees needed to secure the permit. Developer A testified he believed that the filing of the site plan application successfully secured the demolition permit. As a result, demolition at Commercial Parcel A commenced on site by week's end, but was interrupted shortly thereafter as a result of a Stop Work Order from a Building Department Official. Developer A, who was out of state during this time period, was advised of the work stoppage shortly thereafter. Developer A testified he was "relieved" by this development, as he did not wholeheartedly want to commence demolition at this time. In his mind he could now offer the excuse that it was the Town, and not his own reluctance, which stood in the way of continued demolition. Developer A testified that he subsequently instructed Attorney for Developer A to retrieve the fees he had submitted in support of the site plan application.

Developer A testified he received a phone call from Town Employee A sometime after the issuance of the Stop Work Order. Developer A testified that what followed during the weekend of February 28 through March 1, 2009 was a series of phone calls wherein he and Town Employee A played telephone tag but did not speak. Ultimately on Sunday, March 1, he was able to successfully reach

Town Employee A. Developer A testified that Town Employee A wanted to discuss the state of demolition at Commercial Parcel A. Specifically, Town Employee A indicated that he and “[Town Employee C]” had been by Commercial Parcel A on the previous day, and that “you barely put a dent in it.” Town Employee A advised Developer A that he had until the next day (Monday, March 2) to render the buildings “untenantable” if he wanted his tax relief. Developer A questioned “what am I supposed to do? I have a Stop Work Order and a summons. I have no permit.” In response, Town Employee A suggested, “well, the machine went back and made a left instead of a right.” When Developer A replied “do you know what you are asking me?” Town Employee A answered “yeah, what’s the big deal? You get a summons.” Despite the urging of Town Employee A to violate the Town Code, no further demolition occurred at the site on this date.

Town Employee C testified before the Grand Jury that he was “sure” he had advised Town Employee A that regardless of the lack of permit, Developer A would realize a tax benefit from the demolition of structures at Commercial Parcel A.

Developer A testified that on the morning of Monday, March 2, 2009, he contacted Attorney for Developer A, and asked him to contact Town Employee C to follow up on the tax issues. Town Employee C had initially communicated to Developer A that a “good faith” showing of equipment and commencement of demolition on site at Commercial Parcel A would be enough to secure tax relief. Developer A believed that he had in fact met these requirements. Nevertheless, Attorney for Developer A communicated to him that he had until 5 o’clock to resume and complete the demolition in order to realize tax relief. Receipt of credit based on Developer A’s “good faith” showing was not mentioned as a possibility.

As a result, Developer A instructed that Demolition Contractor A immediately return to the site and collapse the structures at Commercial Parcel A. Upon learning later that afternoon that this had

been done, Developer A called Town Employee C to make sure he was aware the demolition was complete. According to Developer A, Town Employee C advised him that he had witnessed some of the demolition and was heading over to take photos to corroborate the event.

On Saturday morning, February 28, 2009, Town Employee C and Town Employee A stopped by Commercial Parcel A en route to breakfast. Town Employee C stated that both he and Town Employee A were aware that Developer A had been unable to secure a demolition permit for the site. Despite this, Town Employee C recalled that both he and Town Employee A were surprised that the buildings on site were still standing. Town Employee C stated that he had in fact stopped by the site the following day, Sunday, March 1, and again saw no change in the condition of the site.<sup>18</sup>

Town Employee C could not recall why he was surprised when he saw the condition of the structures at Commercial Parcel A that Saturday. Town Employee C acknowledged to the Grand Jury that on Monday, March 2, he advised Attorney for Developer A that he (Town Employee C) was *now* interpreting the taxable status date to be Monday, March 2, and as such Developer A had until the end of the day to complete demolition. Town Employee C confirmed he later witnessed this demolition and had pictures taken. Town Employee C also confirmed advising Town Employee A about this development.

The Grand Jury received into evidence telephone subscriber information and call activity logs for the cellular telephone number utilized by Developer A, and the home telephone number subscribed to Town Employee A, for the period inclusive of Saturday, February 28, 2009 and Sunday, March 1, 2009. These records confirm a series of five calls between Developer A's cellular telephone number and Town Employee A's home telephone number for Saturday, February 28, 2009 and Sunday, March 1, 2009. These records confirm that the first four of the calls lasted less than a minute, and the fifth and final call

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<sup>18</sup> Grand Jury Exhibit 50

occurred on Sunday March 1 and was approximately seven minutes long<sup>19</sup>, corroborating Developer A's recollection of his contact with Town Employee A.

The Grand Jury also received into telephone evidence subscriber information and call activity logs for the home telephone number of Town Employee C. These records establish six calls of varying duration between his number and the home telephone number of Town Employee A, on February 28 and March 1, 2009.<sup>20</sup> A summary chart demonstrating the phone activity was received into evidence.<sup>21</sup>

Town Employee C testified that the phone calls in question were between him and Town Employee A. Town Employee C further testified being "confident" that Town Employee A had indicated having spoken with Developer A during that same time period. Town Employee C did not recall the specifics of the conversations he shared with Town Employee A during this time period.

The Grand Jury received evidence establishing that Developer A was issued nineteen summonses for his unlawful demolition of Commercial Parcel A. The summonses included one for Developer A's failure to obtain a building permit for demolition, his failure to comply with the Stop Work Order, and for the creation of unsafe conditions as a result of the demolition.<sup>22</sup>

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<sup>19</sup> Grand Jury Exhibits 38(b), 56, 60

<sup>20</sup> Grand Jury Exhibits 38(a), 38(b)

<sup>21</sup> Grand Jury Exhibit 60

<sup>22</sup> Grand Jury Exhibit 63

**VII. The absence of Site Plan Review deprived the Town, County, and State of an opportunity to review and make recommendations and changes to the proposed demolition at Commercial Parcel A.**

The process of Site Plan Review is specifically set forth in Section 322-84 of the Smithtown Town Code. In pertinent part, as a matter of public policy, it reads:

**The Town Board hereby finds that all forms of private and public developments within the Town, exclusive of the incorporated villages, should proceed along the lines of good order and with due regard for the public interest, including but not limited to the public health, safety, and welfare. The quality of a site's design can have a significant effect on the value of the surrounding properties and, subsequently, municipal tax revenues.<sup>23</sup>**

Section 322-85(A) sets forth the General Provisions of Site Plan Review. Among the stated purposes of the process are to:

**(5) Secure safety from fire, panic and other dangers, and to provide accurate light, air and convenience of access.**

**(6) Promote the health, safety, morals and general welfare of the community in which said proposed sites are located.<sup>24</sup>**

The Town of Smithtown is not the only body that maintains a legal interest in the process of Site Plan Review. The Grand Jury received into evidence New York State General Municipal Law Sections 239(f) and 239(m).<sup>25</sup> Together, these Sections mandate that when certain County, State, and/or Federal interests are at issue, a municipality must notify these entities about prospective site plan and permit applications. When notified, these respective entities have a period of time in which to respond.

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<sup>23</sup> Grand Jury Exhibit 53(d)

<sup>24</sup> Grand Jury Exhibit 53(d)

<sup>25</sup> Grand Jury Exhibits 64, 65

Town Employee B testified that any Site Plan Review for Commercial Parcel A would have necessarily included both the Suffolk County Department of Planning and the New York State Department of Transportation. Town Employee B testified that each Department's interest, at a minimum, would have been to ensure that the proposed demolition would not impact roadways, drains, and other interests that they are legally and financially responsible for.

Suffolk County Employee A testified before the Grand Jury that in addition to New York State General Municipal Law, the Suffolk County Charter mandates that all municipalities in the County notify the Suffolk County Department of Planning about site plan applications subject to certain conditions. Suffolk County Employee A testified that any application concerning Commercial Parcel A would meet these conditions. Suffolk County Employee A stated that demolition applications typically provide the County with an opportunity to offer the municipality a written series of recommendations that should be considered and/or followed with respect to the project. This notification also gives the County Department of Planning an opportunity to determine if this application should be shared or referred to other potential County departments of interest, such as the Suffolk County Department of Health. Suffolk County Employee A testified that his Department received no site plan application or correspondence about the proposed demolition at Commercial Parcel A.

Town Employee D testified that as a result of the unlawful demolition, a significant safety issue at Commercial Parcel A was created. Because of this, the Town Building Department had no choice but to issue a limited, emergency demolition permit for the affected structures. The use of this emergency provision eliminated the requirement for Site Plan Review.

**VIII. The absence of a demolition permit deprived the Town Building Department of the opportunity to ensure that the demolition was conducted in a safe and proper manner.**

Town Employee F testified before the Grand Jury that, acting on a complaint, he responded to the site of Commercial Parcel A on Friday, February 27, 2009. The complaint alleged that demolition was being done at the site without a permit. Prior to visiting the location, Town Employee F checked Department records for the parcel, and confirmed that no demolition permit existed. Town Employee F went to the site, where he observed demolition in progress on one of the location's structures. Town Employee F promptly issued a Stop Work Order, and ensured that the individuals present at Commercial Parcel A left the site and locked the parcel's fence. Town Employee F testified that at the time of this intervention, the amount of demolition was not substantial.

When Town Employee F went back to Commercial Parcel A in the late afternoon of March 2, 2009, he was astonished to find that it "looked like a war zone." Town Employee F testified that all but one of the structures had been severely damaged, but not completely demolished. As a result, the entire site constituted an unsafe condition. Town Employee F, who had substantial experience with demolition, told the Grand Jury that demolition at Commercial Parcel A "was nothing like" proper demolition. The Grand Jury received into evidence multiple photographs depicting the conditions at Commercial Parcel A.<sup>26</sup>

Homeowner A testified before the Grand Jury that he and other homeowners lived next to Commercial Parcel A. Homeowner A testified that he had witnessed some of the demolition, and noticed that it had partially compromised the integrity of a structure immediately adjacent to the backyards of he and his neighbors. Concerned that the structure might collapse, Homeowner A took

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<sup>26</sup> Grand Jury Exhibits 3-10; 14-17; 25-30; 49

photos of the damage,<sup>27</sup> and alerted his neighbors they should not let their children out into their backyards. Homeowner A also moved a vehicle stored near the structure out of harm's way and used yellow tape to mark off both he and his neighbor's backyards as a cautionary reminder. Homeowner A testified that he had no advance notice as to the demolition.

Town Employee F testified that at a minimum the proper practice would have been to use tape and fencing to act as some form of notice and to safeguard any prospective demolition.

Town Employee D testified that in the normal course of business upon issuing a demolition permit, the Building Department would send an inspector to the site for a "job meet." This allows the inspector a dialogue with the contractor and property owner regarding the inspector's expectations as to how the demolition should proceed. Town Employee D stated that "we have inspections, he (the inspector) writes a notice, hands it and usually the person signs it." At a minimum, these steps offer the Town Building Department some input into the demolition process.

Town Employee D testified that he inspected the site of Commercial Parcel A after the unlawful demolition had been completed. In his opinion, the demolition was "done in a manner of doing the most demo or destruction in the quickest amount of time."

Demolition Contractor A testified that on Monday, March 2, 2009, he was asked to immediately return to Commercial Parcel A and collapse the structures. Demolition Contractor A testified he was told to just "knock the roofs and cave them in." Demolition Contractor A had a 5 o'clock p.m. deadline for completing the task; as such the job had to be completed in a "hurry." To that end, Demolition Contractor A testified that he did as requested, and finished the demolition "in a couple of hours", primarily by way of "crushing" and "smashing the roofs." Demolition Contractor A conceded that he

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<sup>27</sup> Grand Jury Exhibit 13

essentially “destroyed” the site and that this was not the proper way to effectively conduct a demolition.

Demolition Contractor A testified that prior to the issuance of the Town Building Department’s Stop Work Order, he did not know whether Developer A had a demolition permit. He said that he “probably thought [Developer A] did, but I didn’t really care, you know, because he owned the property. I’m not responsible for it.” Demolition Contractor A simply “wanted to start working.”

Engineer A testified before the Grand Jury that as a professional structural engineer, her services were enlisted by Developer A after the demolition of March 2, 2009 was complete. Engineer A was solicited to inspect and provide a written professional statement as to the condition of the damaged structures located at Commercial Parcel A.<sup>28</sup> Engineer A had an understanding that Developer A would furnish this letter to the Town Building Department. Engineer A testified that because “the buildings were partially demolished and they were in close proximity of [a] residential” area, she advocated that the site “be cleaned up as soon as possible because it presented a danger to the public.”

Both Town Employee D and Town Employee F testified that because Commercial Parcel A had been rendered unsafe, it was necessary to use the emergency provision in the Town Code to grant Developer A a limited, emergency demolition permit that allowed for a complete removal of the compromised structures and debris on site. Again, no site plan was needed based on the use of this emergency provision.

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<sup>28</sup> Grand Jury Exhibit 31

**IX. The unlawful demolition secured an immediate financial advantage for Developer A, to the disadvantage of the Town and others.**

By virtue of the unlawful demolition and subsequent grant of a limited, emergency demolition permit, Developer A was able to remove all comprised structures and debris from Commercial Parcel A without ever having to secure site plan approval. Town Employee B testified that the fees associated with a site plan application are predicated upon the estimated number of hours all involved Town officials would have to collectively dedicate to the review of the application. As reported, the fees do not directly profit the Town. However, the absence of the fees constituted a significant benefit to Developer A of between \$10,000 - \$11,000.

The elimination of the Site Plan Review in this instance obviously deprived the Town, County and State of an opportunity to review the prospective demolition plans of Developer A and submit recommendations and changes. This process of review is mandated by Smithtown Town Code, the Suffolk County Charter, and the New York State General Municipal Law, and is predicated on vital government interests, which includes the safety and welfare of its citizens.

Town Employee C testified that the limited scope of the unlawful demolition completed at Commercial Parcel A before March 1, 2009 secured Developer A a favorable tax adjustment of approximately \$4,000. This adjustment proved to be significantly more modest than the approximate \$40,000 windfall Town Employee C was initially prepared to grant. Town Employee C conceded that upon adjusting these taxes, "the town, county, and schools" were the entities deprived of this additional tax income.

Town Employee G testified before the Grand Jury that as a result of the demolition at Commercial Parcel A, Developer A was issued nineteen summonses by the Town Building Department. These summonses were returnable to Suffolk County Fourth District Court and were prosecuted by the

Town Attorney's Office. Town Employee G testified that these summonses were adjudicated and resulted in Developer A paying a \$3,500 fine.<sup>29</sup>

**X. The ensuing investigation caused Town Employee C to change his intended course of action, in an attempt to mask his involvement with the demolition of Commercial Parcel A.**

The Grand Jury heard the testimony of Detective A, a Suffolk County Police Department Detective who testified that he first interviewed Town Employee C about the demolition at Commercial Parcel A on March 10, 2009. Town Employee C was specifically questioned as to the circumstances regarding the demolition. Town Employee C admitted he was aware that because Developer A had failed to secure site plan approval, he also failed to secure a demolition permit. Detective A testified that Town Employee C told him that the lack of permit was irrelevant in assessing Commercial Parcel A's taxable status. Rather, Town Employee C asserted that the Office of the Town Assessor was obligated to assess the parcel based on its condition as of the taxable status date. Town Employee C told investigators it was his belief that because the taxable status date of March 1 fell on a Sunday, Developer A had until the next business day, Monday, March 2 to complete demolition. Because of this interpretation, it was Town Employee C's belief that the demolition entitled Developer A to a tax reduction of over \$40,000. Detective A testified that when pressed further on this interpretation, Town Employee C appeared concerned. Town Employee C did not indicate having any personal knowledge as to when the demolition occurred during this interview.

The Grand Jury received into evidence a March 12, 2009, correspondence from Town Employee C to the New York State Office of Real Property Services.<sup>30</sup> The purpose of this correspondence was to

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<sup>29</sup> Grand Jury Exhibit 63

solicit an advisory opinion as to which date, March 1 or March 2, the Office of the Town Assessor was required to use as the taxable status date. On March 18, 2009, the State Office responded with a one page, written opinion declaring that March 1, regardless of the day of the week it fell on, was always the deadline for assessing a parcel's taxable status. The opinion further offered that an accurate assessment of a parcel's condition was required as of March 1, regardless of the cause of the condition. Town Employee C later faxed this opinion to Detective A.<sup>31</sup>

The Grand Jury also received into evidence Town Employee C's personal work folder for Commercial Parcel A.<sup>32</sup> This folder contained a two-page opinion from the website of the New York State Office of Real Property Services, printed on March 12, 2009. The opinion, which also concerned the March 1 versus March 2 date at issue, clearly and unequivocally opined that March 1 was **always** the date to be utilized in assessing a parcel's value, regardless of what day of the week March 1 fell on.

Town Employee C testified that he had in fact researched, printed, and reviewed this opinion immediately before sending his letter to the State Office of Real Property Services.<sup>33</sup> Town Employee C conceded that his letter repeated the exact question the opinion had answered.<sup>34</sup> Town Employee C testified that he was merely "doubling my effort" to be sure of the right answer.

Town Employee C's work folder also contained a memo he sent to Town Employee G, dated March 27, 2009. In the memo, Town Employee C advised that, per a March 18, 2009 letter he received from the State Office of Real Property Services, March 1 was the date to be used in assessing the taxable status of a parcel. Despite this, Town Employee C advised in this memo that he continued to be interested in utilizing the date of March 2 for assessment purposes, because "there may have been

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<sup>30</sup> Grand Jury Exhibit 44

<sup>31</sup> Grand Jury Exhibit 45

<sup>32</sup> Grand Jury Exhibit 40(e)

<sup>33</sup> Grand Jury Exhibit 40(e)(1)

<sup>34</sup> Grand Jury Exhibit 44

demolition work on the [Commercial Parcel A] site on Monday, March 2<sup>nd</sup>.<sup>35</sup> There is no indication that Town Employee G ever responded to this inquiry.

The Grand Jury received into evidence another, later memo dated April 28, 2009, which Town Employee C sent to Town Employee G. In this memo, Town Employee C advised that he decided to use March 1 as the date of assessment for Commercial Parcel A. As such, a more conservative tax adjustment was granted to Developer A, based solely on the demolition Town Employee C could corroborate as having occurred *prior* to that date. Town Employee C wrote that “I am aware that other structures were demolished, but I have no information as to when this occurred.”<sup>36</sup>

Town Employee C testified before the Grand Jury that in fact he witnessed the demolition that occurred at Commercial Parcel A on Monday, March 2, 2009. Town Employee C reluctantly admitted that his correspondences to Town Employee G concerning this demolition were “probably less [honest] than I should have been.”

Town Employee H testified to learning that despite the lack of permit and issuance of a Stop Work Order, Developer A was receiving a prompt re-assessment of Commercial Parcel A. Town Employee H testified that upon questioning Town Employee C as to these circumstances, Town Employee C chalked up the re-assessment to his chance observation that as of the morning of Monday, March 2, structures at Commercial Parcel A had been demolished. Town Employee H testified that Town Employee C denied receiving any calls asking him to re-assess Commercial Parcel A. Town Employee C never told Town Employee H that he had anticipated the potential re-assessment for some time, or that he was a personal witness to the demolition.

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<sup>35</sup> Grand Jury Exhibit 40(e)(2)

<sup>36</sup> Grand Jury Exhibits 48, 40(e)(3)

Developer A called Town Employee C on Monday, March 2, 2009 to put him on notice that he was resuming demolition at Commercial Parcel A. According to Developer A, Town Employee C advised him that he had witnessed some of this demolition, and was heading over to photograph it.<sup>37</sup>

Town Employee C testified that he knew Developer A lacked a demolition permit from the Town Building Department. Town Employee C was asked why, knowing this, he did not call a responding authority upon witnessing the unlawful demolition resume on Monday, March 2. Town Employee C merely offered that “whether or not it’s my particular task, you know, I didn’t think it was my task to do it at the time.”

**XI. Structures at Commercial Parcel B were also demolished under similar circumstances.**

In 2002, Commercial Parcel B was purchased by Developer A. Developer A testified that he acquired this parcel knowing it would have greater commercial value if he secured a change in zoning. To that end, Developer A filed the appropriate applications with the Town to achieve this. Developer A testified that as with Commercial Parcel A, he had no immediate plans to demolish the structures on the site.

Town Employee B testified that he recalled first meeting Developer A in Town Employee A’s office during this time period. Town Employee B was introduced to Developer A and asked his opinion about the prospective change in zoning for Commercial Parcel B. Town Employee B made nine recommendations to the Town Board in a memorandum supporting Developer A’s application. None of these recommendations involved the demolition of structures on the site.<sup>38</sup>

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<sup>37</sup> Grand Jury Exhibit 49

<sup>38</sup> Grand Jury Exhibit 21

In 2006, by way of Resolution, the Town Board officially granted Developer A's application for a zoning change. The resolution was granted on ten conditions. The first nine conditions were identical to the recommendations set forth in the memorandum to the Town Board from Town Employee B. The tenth condition mandated the demolition of all structures at Commercial Parcel B within sixty days.<sup>39</sup>

Developer A testified that he was blindsided by the tenth condition, and that he was not at all prepared to follow through with the Town Board's mandate. Developer A testified that he complained to Town Employee A about this new condition. Town Employee A told Developer A he could petition the Town for additional time to comply with the directive. To that end, Developer A secured an amended resolution which permitted him extensions of time in which to comply.<sup>40</sup> Ultimately, Developer A commenced demolition of the site in early 2007.

Town Employee B testified that on at least one occasion prior to this resolution, Town Employee A voiced his opinion that the site of Commercial Parcel B was an "eyesore" and that he wanted it demolished. Town Employee B testified he was advised by Town Employee A in advance that this tenth condition was going to be inserted into the body of the resolution.

Although in this case Developer A properly secured a demolition permit from the Town Building Department prior to demolition, no Site Plan Review process was conducted. Developer A testified that he was unaware that Site Plan Review for demolition even existed (this would explain his surprise at the necessity of Site Plan Review for Commercial Parcel A), and as such he did not submit a site plan application.

Town Employee B testified that even after the Town Board resolution, he remained in touch with Developer A and Attorney for Developer A, regarding various State permits Developer A needed to

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<sup>39</sup> Grand Jury Exhibit 22

<sup>40</sup> Grand Jury Exhibit 24

obtain before he could proceed to demolition. To that end, Town Employee B expected that a site plan application would be submitted at a later point, though he had no recollection of discussing this requirement with either Developer A or Attorney for Developer A. Ultimately, Town Employee B learned of the demolition permit sometime after it was actually issued.

As with Commercial Parcel A, the failure to secure the process of Site Plan Review for Commercial Parcel B deprived Town, County, and State officials of the ability to review and provide input regarding the demolition application.

Town Employee B testified that had a site plan application been properly submitted to the Town, the appropriate fees associated with it would have been approximately \$22,000. Town Employee B and Town Employee D both acknowledged before the Grand Jury that Commercial Parcel B, post-demolition, continues to look unsightly - exactly the situation the Town Code sought to preclude by requiring a site plan for demolition projects.<sup>41</sup> Town Employee B testified that this experience, in part, motivated him to be more assertive regarding the Code's requirements for Site Plan Review when it came time to evaluate Developer A's project involving Commercial Parcel A.

**XII. A lack of proper asbestos protocols and training in the Town Building Department contributed to post-demolition issues at Commercial Parcel A.**

New York State Employee A testified before the Grand Jury that the New York State Department of Labor inspected Commercial Parcel A after the unlawful demolition was completed. Subsequent sampling and testing of demolition debris on the site confirmed the presence of asbestos.<sup>42</sup> As a result, the New York State Department of Labor issued a host of summonses to Developer A. The

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<sup>41</sup> Grand Jury Exhibits 18-19

<sup>42</sup> Grand Jury Exhibit 41

discovery of asbestos at the site triggered the intervention and involvement of the State with respect to the cleanup of Commercial Parcel A. The Department of Labor thereafter ensured that appropriate, state-certified abatement companies were retained by Developer A to properly remove and dispose of the debris at the site.

New York State Employee A was charged with sampling, and subsequently supervising the remediation of Commercial Parcel A. New York State Employee A testified that only those corporations duly licensed by the Department of Labor are authorized to furnish legitimate asbestos surveys of a property to its owner. New York State Employee A explained that this information is easily accessible through a database on the Department's official website.

New York State Employee A explained to the Grand Jury that the purpose of requiring a corporation to be duly licensed is to assist the Department in monitoring the activities of these corporations. New York State Employee A testified that because the handling and disposal of asbestos can be very expensive, it is not uncommon for developers and those involved in the profession of dealing with asbestos to take shortcuts. As such, the supervision of this industry can be problematic.

Developer A furnished an asbestos survey conducted by Survey Corporation A to the Town Building Department, as a pre-requisite for satisfying the conditions of the Building Department demolition application. The Grand Jury received this survey into evidence.<sup>43</sup> The Grand Jury also learned from New York State Employee A that although the proprietor of Survey Corporation A held a license as an individual to conduct asbestos surveys, Survey Corporation A did not.

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<sup>43</sup> Grand Jury Exhibit 12(a)

Survey Corporation A submitted a total of thirteen samples from Commercial Parcel A to a laboratory for asbestos analysis. Each sample was negative for the presence of asbestos.<sup>44</sup> New York State Employee A testified that the number of samples taken from the site was grossly insufficient.

Town Employee D testified that the Town Building Department requires sufficient documentation about asbestos issues at a property prior to issuing a demolition permit. The asbestos survey of Survey Corporation A had been submitted on behalf of Developer A and deemed acceptable by the Town Building Department.

New York State Employee A testified that municipal building departments lack the proper training as to recognizing and addressing materials suspected of containing asbestos. New York State Employee A posited that because there is a lack of binding regulations from the State mandating asbestos education and training for these departments, municipalities are left to their own devices to determine appropriate skill levels.

**XIII. The Office of the Town Assessor employs a standard of review with residential properties that it does not mandate for commercial properties.**

Town Employee C was questioned in the Grand Jury about the Office of Town Assessor's use of Certificate of Assessment forms. The Grand Jury received a copy of this form into evidence. Town Employee C testified that the form is utilized by the Office to process requests for reassessments on properties within the Town. This form requires a property owner to furnish the Office of the Town Assessor with information including his address, phone number, and permit number before the Office

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<sup>44</sup> Grand Jury Exhibit 12(a)

will schedule an inspection date to take stock in the proposed reassessment. The form also definitively states at the bottom “PLEASE DO NOT TAKE WORK ORDER IF PERMIT # HAS NOT BEEN ISSUED!!!!”<sup>45</sup>

Town Employee C was questioned as to why, given the explicit declaration and requirements of this form, he took action to promptly reassess Commercial Parcel A. Town Employee C explained that this form is only required for requested reassessments of residential homes, and that it is not required in commercial applications. Town Employee C agreed that as such the Office employs two different standards for reassessment purposes: one for residential, and one for commercial.

**XIV. The Town Code of Ethics does not allow for the removal of public servants who deliberately violate the Town Code.**

The Grand Jury received into evidence the Smithtown Code of Ethics, which is encapsulated in the Town Code. A plain reading of the Code of Ethics reveals that it fails to provide for the removal of all public servants who deliberately disregard the laws set forth in the Town Code. While the Code of Ethics does subject appointed members of boards and commissions who violate this chapter to immediate removal, provisions for removal are not established for all of the Town’s public servants.<sup>46</sup>

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<sup>45</sup> Grand Jury Exhibit 51

<sup>46</sup> Grand Jury Exhibit 53(e)

## **XV. CONCLUSIONS**

The Grand Jury finds that Town Employee A aggressively pursued the demolition of structures at Commercial Parcel A. Town Employee A was aware of the requirement of Site Plan Review as a predicate to receiving any demolition permit. Town Employee A was also aware of the amount of time the process of Site Plan Review required. As a result, Town Employee A solicited other Town Officials about legal alternatives that would allow for the removal of these structures without the necessity of Site Plan Review.

The Grand Jury finds that Town Employee A, in an attempt to expedite demolition through the process of Site Plan Review, offered Developer A three incentives to motivate Developer A to submit a site plan application. Town Employee A directed Town Employee C to furnish Developer A with a tax chart depicting the potential tax savings demolition would realize at Commercial Parcel A. Town Employee A orchestrated an arrangement whereby Developer A would be temporarily permitted to store demolition debris on site at Commercial Parcel A, thus allowing Developer A additional time to deal with the costs of carting and disposal of this debris. Finally, Town Employee A communicated to Developer A that he would support an application with the Town Board to help offset some of the site plan fees Developer A would incur as a result of his project.

The Grand Jury finds that Town Employee A was advised during the final week of February 2009 that Developer A would not be successful in securing Site Plan Review and approval prior to the taxable status date of March 1, 2009. Town Employee A knew as a result that Developer A would receive no demolition permit in that same time period. Town Employee A was also aware that Developer A received a Stop Work Order after a limited amount of demolition occurred at Commercial Parcel A during this time period. Regardless, Town Employee A advised Developer A to proceed with the demolition anyway.

The Grand Jury finds that Town Employee C played a substantial role in propelling Developer A's demolition of structures of Commercial Parcel A on March 2, 2009. Town Employee C was aware that Developer A could not lawfully proceed with demolition at Commercial Parcel A. The Grand Jury finds that Town Employee C, upon determining that Developer A did not in fact complete demolition by the taxable status date of March 1, 2009, incorrectly advised that Developer A had an additional day to complete the demolition. After the completion of this March 2, 2009 demolition, Town Employee C was prepared to reward this demolition with a tax benefit of approximately \$40,000.

The Grand Jury finds that Town Employee C became aware of an investigation by the Suffolk County District Attorney's Office into the unlawful demolition at Commercial Parcel A, only eight days after the demolition of March 2, 2009. At this time, Town Employee C became specifically aware that his interpretation of the taxable status date, and the motives behind it, were being called into question. As a result, Town Employee C took great pains to solicit a legal opinion which would allow him to use March 2 as the taxable status date, a measure which would allow him to grant Developer A the approximate \$40,000 tax break. At the same time, Town Employee C made material misrepresentations to Town Employee G in an attempt to disavow any personal knowledge of the circumstances of this demolition. Town Employee C utilized March 1 as the taxable status date for Commercial Parcel A only after being unable to secure a legal opinion that would allow him to do otherwise. As a result, Town Employee C was forced to grant Developer A the more modest tax savings of approximately \$4,000 based upon the unlawful demolition.

The Grand Jury finds that the favorable tax adjustment for Developer A consequently deprived the Town, County, and school districts of these additional revenues.

The Grand Jury finds that Developer A benefited from the unlawful demolition of Commercial Parcel A. Though Developer A did not secure the initial tax benefit proposed by Town Employee C, a tax

savings of approximately \$4,000 was realized. Developer A also avoided approximately \$10,000 - \$11,000 in site plan fees as a result of the unlawful demolition. Though Developer A was issued a series of summonses by the Town Building Department for this transgression, Developer A's penalty was only \$3,500 in fines.

The Grand Jury finds that the actions of Town Employee A and Town Employee C produced a sequence of events that ultimately eliminated the process of Site Plan Review at Commercial Parcel A. The Grand Jury finds that the review of a demolition proposal at Commercial Parcel A was mandated by Town Code, and that notification of the County and State was also required by State and local law. The elimination of this review and notification resulted in a loss of input and control that necessarily impacted how demolition was conducted at Commercial Parcel A.

The Grand Jury finds that the failure to employ Site Plan Review at Commercial Parcel A initially precluded the Town Building Department from issuing a demolition permit. As a result, the Town Building Department was deprived of an opportunity to provide input and control into the demolition at Commercial Parcel A.

The Grand Jury finds that the unlawful demolition conducted at Commercial Parcel A occurred in a dangerous and unacceptable manner. This demolition constituted an utter disregard for the well-being of local citizens, in particular those residents living next to Commercial Parcel A. The Grand Jury finds that the homeowners who resided adjacent to Commercial Parcel A were afforded no advance notice of the demolition, and had to live with legitimate concerns about the safety of their property until the site was effectively cleaned up under an emergency demolition permit.

The Grand Jury finds that the Town Building Department failed to subject the asbestos documentation furnished by Developer A to a rigid level of scrutiny. The Grand Jury finds that the Town Building Department accepted the documents as sufficient and communicated that same sentiment to

the Township. The Grand Jury finds that this documentation, prepared by Survey Corporation A, was insufficient in all respects. It is impossible to know whether the Building Department's recognition of these insufficiencies would have had any impact on the sequence of events that resulted in the unlawful demolition at Commercial Parcel A.

The Grand Jury finds that the demolition of Commercial Parcel B was also pursued by Town Employee A. The Grand Jury finds that while demolition was realized through the lawful issuance of a Town Building Department permit, the process of Site Plan Review was once again inexplicably and unacceptably avoided. The Grand Jury finds that at a minimum, the cost of failing to employ this process at Commercial Parcel B was allowing it to fall into an aesthetically offensive site condition.

The Grand Jury finds that the Office of the Town Assessor requires residential property owners to provide proof that they possess permits before acting on a formal request to reassess the property. The Grand Jury finds that the Office of the Town Assessor does not require commercial property owners to satisfy this same burden before a request for reassessment is entertained.

The Grand Jury finds that the Town Code of Ethics does not include an affirmative action provision which mandates that public servants report activities known to violate the Town Code to an appropriate Town Department or authority.

The Grand Jury finds that the Town Code of Ethics does not adequately provide for the removal of its public servants. While the Code of Ethics allows for the removal of a limited category of appointed officials pursuant to a violation of the Ethics Code, this provision fails to cover all public servants.

## **XVI. RECOMMENDATIONS**

Based upon the stated findings of fact and all of the evidence heretofore had before this Grand Jury and in order to protect the laws of, and required of the Town of Smithtown and the best interests of its citizens; NOW THEREFORE, by the authority vested in this Grand Jury by Criminal Procedure Law; Section 190.85(1)(c); the following legislative, executive, and administrative actions are recommended in the public interest:

### **LEGISLATIVE**

1. The Town of Smithtown must amend the fine schedule established in the Smithtown Town Code for violations based upon the failure to obtain site plan approval. At a minimum the fine imposed for such a violation should be double the amount of money a site plan application would have cost an applicant, had they properly submitted a site plan application to the Town, to discourage these types of violations. In no way should this fine be considered payment of fees for the site plan application itself; the applicant must duly pay these fees independent of any fine assessed.
2. The Town of Smithtown must amend and enhance its fine schedule with respect to demolition or construction that occurs in the Town without a Town Building Department permit, bearing in mind the public policy reasons for establishing permitting requirements.

3. The Town of Smithtown must enact legislation which allows for the appointment of an independent Board of Site Plan Review. Town Board members must no longer be allowed to serve in this additional capacity. The presence of an appointed Board of Site Plan Review will introduce new individuals to the process whose singular roles as public servants will be to ensure that the legal mandates of Site Plan Review are enforced. These members should be selected in the same manner in which members of other Town boards and commissions are appointed.
4. The Town of Smithtown must amend the Town Code so that the process of Site Plan Review requires notice and an opportunity to be heard for property owners situated next to the property of the applicant. This notice will not only provide these homeowners an opportunity to voice their concerns as to the application, but may also afford the Town knowledge of conditions and issues that might be unknown. This provision must establish a minimum time period for providing notice, and also allow for an appropriate period of time for response.
5. The Town of Smithtown must amend the Code of Ethics to mandate that any public servant who has personal knowledge concerning an activity known to be in violation of Town Code, has an affirmative obligation to immediately report that violation to the appropriate Town Department.
6. The Town of Smithtown must adopt a statute that authorizes the removal of any public servant who engages in misconduct, malfeasance or nonfeasance in public office, consistent with the provisions of New York State Public Officers Law Section 36.

## **ADMINISTRATIVE**

1. The Town Building Department must require certain levels of asbestos education for all of its employees, including both inspecting officials and clerical staff. At a minimum, these requirements should mandate that Department members be familiar with the State's licensing issues for asbestos handling entities, and seek to establish a level of familiarity with the practices of inspecting and abating asbestos. These requirements will help Department officials who are charged with reviewing purported asbestos documentation furnished by a property owner. In addition, the educational requirements must provide Department inspectors with the ability to recognize structures and conditions at a site that feature obvious signs as to the presence of suspected asbestos containing materials.
2. The Town Building Department must establish a mechanism for immediate notification of all Town Departments and Town Officials as to the issuance of any Stop Work Order in any commercial demolition or construction setting.
3. Pursuant to the issuance of a Stop Work Order, the Town of Smithtown must preclude by way of suspension order or similar device, the property owner from pursuing any other commercial construction or demolition in the Town, regardless of whether the activity is otherwise lawfully permitted on another parcel. This suspension must remain in effect until such a time as the owner has resolved all outstanding issues with the Town concerning the Stop Work Order.
4. The Town of Smithtown must make efforts to identify those contractors who engage in commercial demolition or construction without verifying that a property owner has the

necessary permits in place. Those contractors found to engage in this conduct should be barred from the receipt of municipal contracts by law.

5. The Town must petition Suffolk County to suspend or revoke a contractor's license in the event a contractor engages in commercial demolition or construction without permits from the Town Building Department.
6. The Town Planning Department must establish protocols to ensure that the Town Attorney is notified of all commercial projects, to ensure compliance with the Town Code as well as state and local law.
7. Town of Smithtown Departments affected by the changes of the legislative recommendations must be given the necessary authority to adopt administrative rules and regulations necessary for the effective implementation and execution of the legislative recommendations.

## **EXECUTIVE**

1. The Town of Smithtown must audit the practices and procedures administered by the Office of the Town Assessor, particularly when it comes to the assessment of commercial properties.
2. The Office of the Town Assessor must inspect commercial properties for reassessment only after verification of permits.

3. The Town of Smithtown must obtain an independent review of the Office of the Town Assessor from the New York State Office of Real Property Services or other appropriate state body, to ensure that all properties in the Town are assessed on a uniform and equitable basis of review.
  
4. Town Officials should refrain from interceding in commercial projects in a manner that undermines the Town Code as well as state and local law.