

COUNTY OF SUFFOLK
DISTRICT ATTORNEY'S OFFICE



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**Grand Jury report critical of Smithtown town government's
supervision
of commercial property demolition**

A 40 page report issued by a Suffolk Grand Jury is critical of the manner in which the demolition of a commercial parcel in Smithtown occurred, concluding that certain Town employees pressured the parcel's owner to raze the site in violation of state and local law. The report determined that a number of legitimate safety issues were created by the unlawful demolition.

The report is critical of the actions of Town Employees "A" and "C", each of whom was found to have pressured the developer to unlawfully demolish the site. The Grand Jury determined that both Employee "A" and Employee "C" were aware that the prospective demolition lacked lawful permits and had also been issued a Building Department Stop Work Order.

Among the consequences of these actions was the Grand Jury's determination that the unsupervised demolition "constituted an utter disregard for the well-being of local citizens", noting that residents living adjacent to the parcel were given no advance notice of the action. Equally troubling were findings that the commercial site was demolished with asbestos within its structures. The Grand Jury found that asbestos abatement documentation previously furnished to the Town "was insufficient in all respects", and that the Town's failure to recognize significant issues with this documentation was a contributing factor to problems that arose as a result of the demolition.

The Grand Jury also determined that Employee "C" championed a property tax assessment reduction of approximately \$40,000 for the unlawful demolition, but ultimately demurred when it became apparent the District Attorney's Office was investigating. Employee "C" was found to have issued misleading internal Town correspondences in a subsequent attempt to disavow personal involvement with the demolition. The Town eventually granted the developer a more modest tax adjustment of \$4,000.

The report concluded that summonses issued to the developer post-demolition resulted in a fine of \$3,500.

Among the other conclusions published in its report, the Grand Jury found that the Smithtown Code of Ethics fails to mandate that town employees report activities known to violate the town code to an appropriate town department or authority and that the ethics code does not adequately provide for the removal of its public servants, currently addressing the removal of “a limited category of appointed officials” upon violation of the code, “a provision that fails to cover all public servants”.

The legislative actions recommended by the grand jury in its report include:

Smithtown must increase fines to, at a minimum, at least double a site plan application fee, to discourage developers and builders who fail to obtain site plan approval,

Smithtown must amend and increase the town’s fine schedule for demolition or construction occurring in the town without proper building department permits,

Smithtown must enact legislation establishing an independent Board of Site Plan Review to ensure “that the legal mandates of site plan review are enforced”. Currently town board members serve in this capacity.

Smithtown must amend the town code requiring property owners adjacent to a construction or demolition project be notified to allow them to be heard.

Smithtown must amend the town’s Code of Ethics to mandate any public servant with personal knowledge of the violation of town code “has an affirmative obligation” to report it the appropriate town department.

Smithtown must adopt a statute authorizing the removal of any public servant “who engages in misconduct” consistent with the provisions of New York State’s Public Officers Law.

Administrative changes recommended by grand jurors include requiring town building inspectors and clerical staff to receive training in asbestos inspection and abatement and establishing protocols for the building department’s notification to town officials when a Stop Work order is issued. The report also calls on Smithtown to identify and sanction commercial demolition and construction contractors who proceed on projects without verifying the proper permits have been issued.

Calling on town officials to refrain from interceding in commercial projects “in a manner that undermines the town code”, the Grand Jury recommended the town obtain an “independent review” by the state of the Office of Town Assessor to insure all properties are assessed “on a uniform and equitable basis” and that Smithtown “audit the practices and procedures administer by the town Assessor “particularly...the assessment of commercial properties”.

One of the roles of the grand jury, District Attorney Thomas Spota observed, “is to investigate and propose recommendations for legislative, executive or administrative action in the public interest. These findings and recommendations are based upon the credible evidence grand jurors reviewed during their six month investigation.”

The grand jury may submit to the court by which it was impaneled a report proposing recommendations for legislative, executive or administrative action in the public interest based upon stated findings. This grand jury report and the minutes of grand jury proceedings were submitted to the court for examination. The court issued an order accepting and filing the report as a public record in accordance with New York State Law.

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A criminal charge is an accusation. A defendant is presumed innocent until and unless proven guilty in a court of law.