

1 PLANNING BOARD COUNTY OF ALBANY  
2 TOWN OF COLONIE

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4 \*\*\*\*\*  
5 AN UPDATE REGARDING THE PROPOSED WALMART  
6 SUPERCENTER LOCATED AT 2, 4, AND 6 AUTOPARK DRIVE  
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8 THE TAPED AND TRANSCRIBED MINUTES of the above  
9 entitled proceeding BY NANCY STRANG-VANDEBOGART  
10 commencing on March 30, 2010 at 7:33 p.m. at the  
11 Public Operations Center  
12 347 Old Niskayuna Road, Latham, New York 12110

13 BOARD MEMBERS:

- 14 CHARLES J. O'ROURKE, Chairman
- 15 MICHAEL SULLIVAN
- 16 ELENA VAIDA
- 17 PAUL ROSANO
- 18 TIMOTHY LANE
- 19 PETER GANNON
- 20 THOMAS NARDACCI
- 21 PETER STUTO, Jr. Esq., Attorney for the  
22 Planning Board

23 Also present:

24 Joseph LaCivita, Director, Planning and Economic  
25 Development

- 26 Bob Sweeney, Esq.
- 27 Peter Giovenco, Bergmann & Associates
- 28 Victor Caponera, Esq.
- 29 Joe Grasso, Clough Harbour & Associates
- 30 Lindsey Zefting, Bergmann & Associates
- 31 Thomas C. Baird, Barton & Loguidice
- 32 Michael Magguilli, Esq., Town Attorney
- 33 Gloria Knorr
- 34 Tim Nichols
- 35 Barbara Numrich

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1                   CHAIRMAN O'ROURKE: Our next project is  
2 Walmart, 2, 4 and 6 Autopark Drive and this is  
3 a project update.

4                   Joe?

5                   MR. LACIVITA: I think you pretty much  
6 summed it up right there.

7                   CHAIRMAN O'ROURKE: Just didn't know if  
8 you had anything in your notes that you wanted  
9 to add.

10                  MR. LACIVITA: Not at this point.

11                  CHAIRMAN O'ROURKE: Gentlemen, take it  
12 away.

13                  MR. SWEENEY: Thank you, Mr. Chairman. My  
14 name is Bob Sweeney and I'm an attorney and  
15 I'm here on behalf of Walmart. I thank you  
16 very much for the opportunity to be here again  
17 and speak about this.

18                  What we have on our agenda tonight is a  
19 presentation of some traffic issues. We're on  
20 our third comment letter from your town  
21 designated engineer, Barton and Loguidice, and  
22 we have responses to those comments. I believe  
23 that the board should have copies of those.  
24 Our goal here is once we come to a consensus  
25 with the town and your consultants on our

1 traffic report and our proposed mitigation, we  
2 can start talking to DOT officially on the  
3 project. That's where we'd like to be on this.  
4 We'd like to be working with DOT on this.

5 As you know the current policy is that  
6 they like to see the municipality and the  
7 applicant come to them with their projects.  
8 That's what we're trying to get with the  
9 traffic information at this point.

10 Let me start by doing a few introductions  
11 of folks with us tonight on our team.

12 Our project engineers - actually we have  
13 two sets. Bergmann and Associates, Pete  
14 Giovenko is here. Doing traffic from Bergmann  
15 is Lindsey Zefting right next to Pete. Our  
16 site engineer is John Brodeur, and he is right  
17 here. You guys know Victor Caponera, I'm sure.  
18 And last but not least, our site development  
19 coordinator, from WP2DC.

20 With that, I think we'll turn it over to  
21 Lindsey. She has a few slides to bring up and  
22 highlights in the responses to comments.

23 MS. ZEFTING: First we'll do an overview.  
24 A lot of the issues we have discussed before  
25 and we have reached a concurrence on with

1 B & L.

2 The existing pressure conditions - we  
3 have reached concurrence on that.

4 The background roads, we have included  
5 those in our project and I'll briefly  
6 summarize that.

7 Trip generation and assignment - we've  
8 reached concurrence on that as well. The  
9 analysis and methodology -- the way we went  
10 about confirming the study on the methods that  
11 we used and the overall impacts to the study  
12 area. So, we're in agreement on all those  
13 items.

14 The items left for discussion are the  
15 recommended mitigation measures at Route 9 and  
16 Latham Autopark Drive.

17 The background growth - we're in  
18 concurrence with B & L on this and also  
19 confirm with CME's Boght Road study that  
20 they're performing for the town. We used the  
21 1.9% growth per year. That's for 2009 and  
22 2010; bringing us to the project opening in  
23 the year 2011. In addition to that general  
24 growth that we applied to the background  
25 traffic, we also included other developments

1 that are before the board which may or may not  
2 be fully developed by the time that the  
3 Walmart opens.

4 All in all, that included 801 new  
5 residential units and 398,000 square feet of  
6 office commercial space. We phased it over a  
7 number of years, but we assumed that this  
8 would all be developed by 2011.

9 Shelter Cove, which you just discussed,  
10 Canterbury Crossings; all of the Century Hill  
11 commercial business park phases one and two;  
12 Mohawk River Estates and Parkside Estates. The  
13 addition of all of these developments, as it  
14 relates to Route 9, and this is without the  
15 Walmart traffic.

16 Another issue that has come up frequently  
17 is the Old Loudon Road neighborhood traffic. I  
18 believe that we reached concurrence with B & L  
19 that it won't be negatively impacting or  
20 having a direct impact on neighborhood  
21 traffic, based on looking at some surrounding  
22 intersections. We have always maintained a  
23 recommendation that Old Loudon should remain  
24 one way.

25 This is just a brief overview of the site

1 location again. The right off of Autopark  
2 Drive as a primary access to be conservative  
3 on our analysis, and we're assuming that all  
4 of the traffic coming to and from the site  
5 would be at the Autopark entrance. However,  
6 there will be a secondary full access to the  
7 south of the site onto the driveway off of  
8 Route 9 and then a possible connection to  
9 Century Hill Drive.

10 The signalized intersection at Autopark  
11 Drive - with the no build condition, it's  
12 mostly Century Hill office park development  
13 that would be coming on Autopark Drive in the  
14 no build condition without the Walmart. Under  
15 those conditions and with those volumes, a  
16 signal is justified. In adding the Walmart  
17 traffic in the build condition, the signal is  
18 still justified.

19 Under a no build condition, the  
20 development as identified in the background  
21 road will trigger the need for a signal.  
22 Additional development accessing Autopark  
23 Drive such as a fast food restaurant, or  
24 medical office, or even a car dealership would  
25 also justify a signal at that intersection.

1           What we have put forth in our revised  
2 traffic impact study that we did at the end of  
3 last year - we recommended a full signalized  
4 intersection. Based on concerns about stopping  
5 northbound traffic and creating increased  
6 delays on northbound Route 9, we proposed a  
7 half signal concept.

8           What you're looking at right now is an  
9 example of the intersection. We've actually  
10 discovered that given the conditions that are  
11 really common in South Carolina, Florida and  
12 other southern states - we haven't done an  
13 exact example of this yet in New York.

14           You can get an idea as far as how this  
15 would relate to Route 9. Actually the corner  
16 of this to the upper left hand corner  
17 (Indicating) is in the north direction. So,  
18 the mainline instead of our north/south  
19 mainline is here. You can see that the traffic  
20 on the side street is coming from a large  
21 retail development and is able to turn left  
22 into an acceleration lane that allows them to  
23 then get up to speed and then merge into the  
24 free flowing traffic.

25           So the signal only applies to the right

1 part of the intersection so that traffic would  
2 still be free flowing. The left can come in  
3 and out of the intersection.

4 This is a picture that was taken by one  
5 of our engineers. This gives you an idea of  
6 what the raised median looks like and how  
7 drivers interact with that.

8 The speeds, as far as I'm aware, are  
9 between 45 and 50 miles an hour on that  
10 roadway.

11 This is a conceptual plan as it would  
12 apply to the intersection of Old Loudon Road,  
13 Latham Autopark Drive and Route 9. You can see  
14 the traffic coming off of Autopark Drive and  
15 merging. It would be crossing southbound  
16 traffic and going into the turn lane.

17 We would mark the pavement to actually  
18 delineate that for the drivers to follow. We  
19 would put in a raised median just between  
20 those turn lanes and the northbound traffic.  
21 Safety measures would be clearly designed to  
22 design that storage lane so there would be  
23 enough space for drivers to merge with the  
24 traffic. There would be a signal for  
25 northbound traffic.

1           As far as how it would operate, you're  
2 looking at the p.m. peak hour in the worst  
3 condition. The eastbound approach would  
4 operate at level of service D with 40 and 50  
5 seconds of delay.

6           The westbound approach would stay as it  
7 is right now. That delay would not change. The  
8 northbound left would operate at level of  
9 service D. Northbound through - obviously has  
10 no delay. Southbound conditions are a level of  
11 service D.

12           All of the intersections have an adequate  
13 level of service based on our mitigation.

14           We also looked at a full signal that we  
15 originally proposed. The northbound through  
16 traffic actually had a fairly minimal delay.  
17 There would be delays only expected of a few  
18 seconds and very small queuing and giving  
19 priority to Route 9 through movement. Overall,  
20 the eastbound through and westbound through  
21 movements are about the same.

22           The other intersections would operate  
23 roughly at the same level of service and same  
24 delay under those scenarios. We don't expect  
25 really any change plus or minus a couple of

1 seconds here and there on other movement based  
2 on coordinating the signals.

3 Based on B & L's comment letter, there  
4 were concerns about the half signal concept.  
5 It doesn't accommodate pedestrians.

6 At our engineer's meeting a couple of  
7 months back we had discussed the need for  
8 pedestrian accommodations at this  
9 intersection. We don't feel that this  
10 intersection would need pedestrian  
11 accommodations at this time under this  
12 scenario.

13 Right now there is no pedestrian access  
14 onto Route 9. What we propose is using this  
15 concept and then if a connector road is built  
16 or pedestrian connection is created on Route 9  
17 at that time, we could provide pedestrian  
18 accommodations at that time.

19 The other issue is the space on Route 9.  
20 Like I explained before we will design to  
21 allow sufficient space and the ability for the  
22 vehicles to get up to the speed. Other safety  
23 measures as far as clear signage and extra run  
24 out space will positively affect this area.

25 To just briefly go over all the proposed

1 mitigations that we recommended in our study:  
2 We proposed a partial traffic signal or a full  
3 traffic signal at the intersection of Route 9  
4 and Latham Autopark Drive. This would include  
5 restriping a two way left turn lane for an  
6 exclusive northbound left turn lane onto  
7 Latham Autopark Drive. Retiming to 100 second  
8 cycling - all of the signals within our study  
9 area between Route 9 and Route 9R, Route 9 and  
10 Latham Autopark Drive, Route 9 and Century  
11 Hill and Route 9R and Old Loudon Road. So,  
12 these will all be retimed to 100 second  
13 cycling as well as coordinated so that the  
14 traffic can flow smoothly.

15 In addition to that, restriping existing  
16 Route 9, south - an exclusive left turn lane  
17 at the intersection of Route 9R. Just to  
18 extend that an additional 100 feet. Right now  
19 it's currently at 200 feet for that southbound  
20 left turn movement. We would change that to  
21 300 feet.

22 As an additional Route 9R westbound  
23 through lane and a westbound exclusive right  
24 turn lane at the intersection of Route 9,  
25 there an additional through lane that was

1 recommended. We're recommending a through lane  
2 as well as a right turn lane.

3 In addition, adding an exclusive  
4 northbound and southbound left turn movement  
5 at the intersection of Route 9R and New Loudon  
6 Road.

7 The last comment was just allowing  
8 connections from Latham Autopark Drive to  
9 Century Hill Drive necessary for secondary  
10 access.

11 Our findings are consistent with current  
12 studies in the corridor. The installation of a  
13 traffic signal would not only be necessary for  
14 Walmart, but also would be necessary for the  
15 Century Hill office park.

16 Route 9 can operate satisfactory with a  
17 level of service with this development and the  
18 mitigation that we have proposed. Traffic with  
19 the Walmart will operate with an adequate  
20 level of service with the proposed mitigation.  
21 We hope that this will also help the town  
22 solve some of the corridor issues identified  
23 in the Boght Road GEIS study.

24 In conclusion, as far as DEC goes, we'll  
25 need the town to come to a consensus with the

1 impact study and the proposed recommendations  
2 in order to begin reviewing the whole process.

3 CHAIRMAN O'ROURKE: Thank you.

4 MR. GANNON: Lindsey, do you have copies  
5 of your slides for us?

6 MS. ZEFTING: I don't today, but I can  
7 get copies to you.

8 MR. GANNON: Yes, and if you could get  
9 them to Joe so that he can send them out.

10 MR. BAIRD: First I want to say that we  
11 have been working with the applicant and  
12 Creighton Manning as well to try to come to a  
13 resolution of these traffic issues that we  
14 have. In the comment letter, we have  
15 acknowledged that the impacts to secondary  
16 intersections will be satisfactorily addressed  
17 by the addition of two lanes on 9R approaching  
18 9. The additional lane on Old Loudon Road, as  
19 you're approaching 9R as well -- the added  
20 capacity on 9R right along side of the Eckard  
21 store will allow more vehicles to get through  
22 the Route 9 intersection a lot faster than  
23 they are right now. Therefore they will allow  
24 more green time to be available to Route 9; we  
25 agree.

1           Also in our comments, we haven't  
2           concluded that we agree with the half signal,  
3           also known as the continuous flow intersection  
4           as yet. We reserve judgment on that right now.  
5           We are looking for additional informational  
6           and safety statistics and accident histories  
7           on similar facilities throughout the country.  
8           So, the impact study amendment looked at it  
9           from an operational standpoint and we do agree  
10          that operationally it will work as far as  
11          traffic volumes and delays are concerned.  
12          However, there are some other impacts with  
13          that as well.

14                 If DOT does not go for this intersection  
15                 and they want a traffic signal, the impacts  
16                 may start backing up again because you don't  
17                 have that continuous northbound flow. You're  
18                 kind of chasing your tail on this. If the  
19                 analysis showed a certain set of circumstances  
20                 that come up when you have this particular  
21                 intersection here and how that impacts the  
22                 other secondary roads -- you compare that to  
23                 the traffic signal analysis which we agree  
24                 that it works on Route 9, but we don't know  
25                 the secondary impacts and how it trails back

1 into the rest of the network. That analysis  
2 wasn't done. It wasn't done for a reason. The  
3 applicant is trying to come up with a solution  
4 that will work and why do extra work? Part of  
5 that is the reason that we reserve judgment on  
6 that intersection in general and the safety  
7 aspect of it. I'm not sure if people are ready  
8 for something like that here.

9 There's an issue of when it's covered  
10 with snow that also comes up.

11 These are things that I know DOT will  
12 look at. So, I understand that DOT likes to  
13 have the town's consensus on the traffic  
14 impact study before they officially review it,  
15 but I see us chasing our tail here without  
16 getting DOT and a concurrent review of this.  
17 If they're going to flat out say no, not on  
18 our road, then there is no reason for us to go  
19 into the impacts to reduce access for the  
20 businesses between Century Hill and Autopark  
21 Drive.

22 Can you make a left into the new  
23 dealership now? I don't recall what it is now.  
24 It used to be Dodge.

25 The Hess station - the turn lane does

1 back up and gets rid of the two way left turn  
2 lane in front of Hess. That's going to be a  
3 hardship for Hess. They're going to have a  
4 problem with that. So, those are the things  
5 that we have to look at and try to mitigate if  
6 DOT is agreeable to this type of intersection.

7 It puts us in a difficult position where  
8 to be the most productive that we can be for  
9 the applicant's sake and for the town and  
10 everybody else, we need to get DOT involved  
11 concurrently with this review. I'm not trying  
12 to say that we're going to put off and do  
13 whatever DOT does, but I think that it's  
14 important because we could waste a lot of time  
15 here unless we get DOT involved.

16 Mark Kennedy and the DOT traffic  
17 department are very firm and they have their  
18 beliefs, rules and regulations. They usually  
19 don't back down when they feel very strongly  
20 about something.

21 Being a new type of intersection for this  
22 area, it certainly does have great merit and I  
23 applaud the applicant for coming up with  
24 something that works operationally. They did a  
25 very good job with that.

1           But in the big scheme of things we really  
2           have to look at who owns the road and what  
3           they're going to say about it before we spend  
4           two or three more weeks and more escrow money  
5           going through all of these scenarios and  
6           possibilities for them just to say no at the  
7           end when we're done with this process in June.

8           That's my strong feeling about it, C.J.,  
9           and the board.

10           CHAIRMAN O'ROURKE: Initially, when you  
11           sent me the e-mail, you know what I sent you  
12           back.

13           MR. BAIRD: Yes.

14           CHAIRMAN O'ROURKE: Mark Kennedy likes  
15           his road the way that he wants his road.

16           MR. BAIRD: Correct.

17           CHAIRMAN O'ROURKE: I've seen them in  
18           Florida and South Carolina. I wrote on my  
19           notes: Snow. Mark Kennedy is going to say I  
20           don't want my plows being damaged. I can  
21           already see him sitting there saying it.

22           MR. BAIRD: If they do decide that they  
23           go for it, then we'll look for a little bit  
24           more information on the safety aspects and  
25           some real hard statistics and accident studies

1 from these intersections that they just  
2 showed.

3 I believe that there is one in Long  
4 Island. I couldn't find a photograph of it,  
5 but I can give you where it might be in New  
6 York. That might be helpful for your case.  
7 We're here to work together. We're trying to  
8 share information as much as possible.

9 MS. VAIDA: How high are these concrete  
10 medians?

11 MS. ZEFTING: These are a fairly typical  
12 barriers. They would be about six to eight  
13 inches.

14 CHAIRMAN O'ROURKE: Those aren't Jersey  
15 barriers.

16 MS. ZEFTING: No. There are a lot of  
17 options for those.

18 MR. BAIRD: I agree with the possibility  
19 of transforming this into a traffic signal  
20 with ped accommodations, if the connector road  
21 that's being discussed in the DGEIS is  
22 something that comes to fruition. That is  
23 something that we have talked about since we  
24 submitted the comment letter. It wasn't  
25 mentioned in the study, but it's a good way to

1 address that.

2 CHAIRMAN O'ROURKE: Tom, the cycle times  
3 for those pedestrian crossings?

4 MR. BAIRD: They're very big.

5 CHAIRMAN O'ROURKE: They're very big and  
6 I want that figured into the traffic. You know  
7 what I mean? That's 84 feet across, or close?

8 MR. BAIRD: At least all of that. That  
9 was not calculated into any of the analysis  
10 that we reviewed and I think that Lindsey  
11 would agree with me that it hasn't been looked  
12 at - cycle lengths for pedestrian crossings.

13 CHAIRMAN O'ROURKE: That was one of the  
14 state mandates with the Walmart, right?

15 MR. BAIRD: Right.

16 CHAIRMAN O'ROURKE: I want the ped  
17 crossings to be for my mom. We don't want to  
18 be like a bolt across the road.

19 MR. BAIRD: That was it. There were other  
20 minor things here. We talked about clearance  
21 times, just to be consistent with the signal  
22 design once it gets designed.

23 All the other ones that we've had with  
24 the minor changes in the analysis and the  
25 numbers - they really didn't have any kind of

1 effect on the overall concept with the overall  
2 delays and traffic studies. So, we have worked  
3 through all of those. That's why your comment  
4 is much shorter than it was the last time.

5 It's been very good working with the  
6 applicant as well.

7 MR. NARDACCI: Just a brief comment. I  
8 appreciate you choosing a new concept and  
9 trying to figure out how we make the  
10 intersection work and we look forward to the  
11 review of this signal.

12 Maybe it's part of the process that our  
13 engineers, Creighton Manning, have come up  
14 with several different types of solutions and  
15 pretty much each one Bergmann has said, well,  
16 we don't need that.

17 Making Old Loudon two way - we talked  
18 about that for a few months and then someone  
19 else said that's not needed and we didn't want  
20 it.

21 Now this idea of a connector road pops up  
22 recently, which I don't agree with. I couldn't  
23 see what it would do besides allow a four way  
24 intersection. Now you're saying that's not  
25 needed. So it just seems like you're working

1           together, but it just seems like we're  
2           throwing as many patches in the quilt to see  
3           what kind of fits together and this is our  
4           third potential solution. It just seems like  
5           to me, just as someone who has been paying  
6           attention here and reading up on traffic and  
7           worrying a lot about traffic - maybe that's  
8           the process. Maybe we just keep trying to come  
9           up with a solution until everyone says, oh,  
10          that's the one that works. It doesn't seem  
11          like a good way to do things, to me. It's a  
12          concept and we'll have to see what you say.

13                 Let's take a look at it and let's see  
14          what DOT has to say. Until DOT gives us some  
15          indication of where they're at, to my  
16          knowledge they haven't changed their opinion  
17          to the initial comments when this was first  
18          proposed, correct?

19                 MR. BAIRD: Correct.

20                 MR. NARDACCI: I just would like to get  
21          some new feedback. I haven't heard anything  
22          from DOT since then.

23                 MR. BAIRD: Their stance generally is to  
24          make official comments. It could be officially  
25          requested by the applicant to review the study

1 and fill out the paperwork for highway work  
2 permit types of evaluation and submit the fees  
3 for DOT to review. That process has not been  
4 started yet.

5 If I could clear up a little bit with the  
6 connector road and all that?

7 Originally, if you just had the traffic  
8 signal and left everything as it is, there is  
9 a very long amount of time that it will take  
10 the left turners southbound to get onto 9R.  
11 What that does is it takes away a lot of green  
12 time because they're the only ones going.

13 MR. NARDACCI: Right. There are 144  
14 diversions.

15 MR. BAIRD: That takes up a lot of green  
16 time on Route 9. When you put in the connector  
17 road, you put a good portion of those lefts  
18 north. You get them out of the system between  
19 Autopark and 9 and 9R. That frees up green  
20 time on Route 9. The traffic moves quicker.

21 DOT's concern is the average speed  
22 through the corridor being reduced and the  
23 willingness of going forward with that  
24 significant delay?

25 One of the items that I brought up at the

1 last meeting was that we have a large amount  
2 of delay. We have 64 seconds and I believe it  
3 was 33 seconds. When you accumulate that to  
4 all the vehicles, it was significant enough  
5 for DOT to be very concerned about travel time  
6 through the corridor. So, by putting a  
7 connector road in that Creighton Manning has  
8 talked about, it takes away a lot of lefts and  
9 allows more green time to Route 9. So we work  
10 better.

11 They don't have the connector road in the  
12 scenario, but they do have an extra lane now  
13 on 9R that's not in Creighton Manning's  
14 scenario. That's coming towards the Northway.  
15 They have one through lane and one right lane.  
16 This scenario has two through lanes to the  
17 Northway and a right turn lane. That's double  
18 the amount of vehicles that could be stored  
19 there and double the amount moving through in  
20 almost half the time. That frees up more green  
21 time for Route 9.

22 They have vehicles going northbound in  
23 this scenario that don't have to stop. That  
24 increases your average overall speed through  
25 the corridor addressing DOT's concern about

1 slowing time through this section.

2 MR. NARDACCI: I've listened and I hear  
3 words. You said concurrent review. That's a  
4 word that you used in regard to DOT. Now it's  
5 well, they can't look at it and officially  
6 comment until all these other things happen. I  
7 guess I would just like to know where the  
8 state is. They're the major player here.  
9 What's new and when will we have some new  
10 information from them?

11 MR. BAIRD: From what I understand of the  
12 process, they're looking for a concurrence  
13 from the town first. They will review if the  
14 applicant submits to them before the town  
15 comes to a decision. That is the information  
16 that I have from DOT. We need to have the  
17 applicant apply if they do want to do this. We  
18 can go through and back and forth with  
19 comments and different aspects of reviews on  
20 this type of intersection and then see what  
21 DOT says, but I just don't think that's wise  
22 with the timing that's going to involve.

23 MS. ZEFTING: We've had a couple of  
24 conversations with Mark Kennedy based on the  
25 board's asking for a review and comments.

1           Basically what we were told is that until  
2           we're in general overall agreement, at that  
3           point he will step in. A lot of things change  
4           between the town and the applicant and that  
5           wastes a lot of DOT time reviewing amendments.  
6           If we're in basic agreement and basic  
7           concurrence on the recommendations that we're  
8           proposing, then they'll start reviewing the  
9           traffic impact study. I assumed that the town  
10          will be copied on any comments that DOT has.  
11          We certainly have copied the town with any  
12          responses that we've had with DOT.

13                 MR. NARDACCI: I think that it's helpful  
14          to understand. We talk a lot about DOT and  
15          what we think they think, but they're not at  
16          the table. It's us trying to interpret what  
17          they may or may not think. At least  
18          understanding that until we get to that point,  
19          we're not going to look to DOT to be making  
20          any determinations. We have to work between  
21          the town's engineers, Bergmann and the  
22          applicant to come up with what seems like the  
23          best proposal.

24                 MR. GIOVENCO: I'd like to add that both  
25          options are on the table. That's something

1           that's really at the board's discretion. There  
2           was the first report that we submitted and  
3           then this one that has the half signal in it.  
4           We can show now that we have a signal model  
5           that we can work off of that is in sync with  
6           everything else that is going on. We can  
7           easily plug these elements in and assess those  
8           situations fairly quickly now and come to a  
9           conclusion that the board can feel comfortable  
10          with and then move forward with the DOT  
11          process.

12                   CHAIRMAN O'ROURKE: But again, I think  
13          that it's important - and I don't mean to  
14          interrupt, but DOT has explicitly stated that  
15          without a traffic signal, they don't want the  
16          Walmart in. So, is this considered to them a  
17          traffic signal because it mediates the  
18          traffic?

19                   MR. GIOVENCO: That's something that we  
20          haven't yet gotten to that level of discussion  
21          with them. They could be okay with this  
22          concept, but I'm sure that because it is  
23          foreign that they may feel uncomfortable with  
24          it. The snow conditions may be an issue with  
25          them. If the board is so inclined and feels

1           that maybe it is too radical of a change for  
2           intersections that you're comfortable  
3           with - we can go ahead and insert a full  
4           signal option into the traffic study and  
5           submit that to DOT and let them -

6           MR. BAIRD: I need to see that first,  
7           though. I haven't seen that. That's what I'm  
8           trying to understand here. We've added some  
9           mitigation on 9R and that's great. But I  
10          haven't seen what that has done to Route 9  
11          with a signal at Autopark. My guess or my  
12          professional opinion is that it might be  
13          favorable to them. I do need to see it and I  
14          haven't had that yet. That's why I can't  
15          render a decision on a lot of the things that  
16          are here because I don't have that information  
17          back. If it works with the signal, we can move  
18          forward with the analysis.

19          MR. SWEENEY: Mr. Chairman, may I just  
20          make some clarification from something that  
21          Tom said?

22          CHAIRMAN O'ROURKE: You may.

23          MR. SWEENEY: I want to make clear that  
24          some of the recommended improvements that the  
25          connector road -- we're responding saying

1 that's not needed. We're not saying that at  
2 all. I think that we're paying very close  
3 attention to the progress of that.

4 Our analysis is not intended to be seen  
5 that we don't believe that the connector road  
6 is needed. We're showing you what it looks  
7 like with Walmart traffic before that  
8 connector road is built. That is a four way  
9 intersection and it's a half intersection  
10 that's converted to a four. But we're not  
11 saying in any sense that we disagree or feel  
12 that the recommendations by CME as to the one  
13 way Old Loudon or the connector road would not  
14 work. We're saying that it would work  
15 perfectly with our plan and if that's the  
16 direction that the town wants to go, it  
17 doesn't affect the Walmart analysis other than  
18 we'd have to include it. We're not saying that  
19 in any sense and don't want it to be seen that  
20 we're saying that we don't think that they're  
21 right or we don't think that we have to do  
22 what's consistent with them. We're trying to  
23 be consistent.

24 MR. NARDACCI: Go back to your conclusion  
25 slides, if you would. Just to be somewhat

1 clear on what I meant.

2 There was one that said it still worked  
3 without that.

4 MS. ZEFTING: Correct. In fact it says  
5 that the Walmart will operate at an adequate  
6 level of service -

7 MR. NARDACCI: Whether or not the  
8 connector road is built. I was trying to  
9 reiterate what the slide said. I wasn't trying  
10 to put thoughts and beliefs in your mind. I  
11 was just trying to reiterate what the bullet  
12 said. That was that traffic with the Walmart  
13 will operate with an adequate level of service  
14 with the proposed recommendations, whether or  
15 not the connector road is built. I was just  
16 trying to recite that.

17 MR. SWEENEY: We're not taking the  
18 position that the connector road is necessary.

19 MR. NARDACCI: I appreciate that.

20 CHAIRMAN O'ROURKE: Elena?

21 MS. VAIDA: I need a little more  
22 clarification on how this barrier in the  
23 middle - this proposal works. You're proposing  
24 a concrete barrier. My question is: Why is it  
25 only going to be six inches high? It almost

1           seems like that makes it more confusing or  
2           dangerous than having it higher?

3           MS. ZEFTING: At this point I would say  
4           that it would probably be only six inches  
5           high. I haven't actually gone through the  
6           design standards on what that might be. I  
7           believe that it would be non-mountable to  
8           somebody -

9           MS. VAIDA: I can just see somebody  
10          trying to drive over six inches, especially  
11          with the traffic and the impatience that gets  
12          created on Route 9.

13          MS. ZEFTING: It would be six inches or  
14          higher. Whatever would be deemed acceptable to  
15          use.

16          MR. BAIRD: I can answer this. If you go  
17          higher than that six inches, you're in a fixed  
18          object territory where you certainly won't  
19          want to put a barrier down Route 9. You'd end  
20          up with one of those end sections or sand  
21          barrels at the end. You can't have that in the  
22          middle there any higher than that. It could  
23          then become a hazard.

24          MR. ROSANO: Would that be similar to  
25          Everett Road?

1                   CHAIRMAN O'ROURKE: Further up the Albany  
2 side.

3                   MR. ROSANO: Where it changed to Central.

4                   MR. BAIRD: Where the traffic signal is  
5 there?

6                   MR. ROSANO: Yes.

7                   MR. BAIRD: With the low speed, that's  
8 okay. It would really be a significant hazard  
9 and they wouldn't allow that.

10                  MR. ROSANO: I was just using that as a  
11 reference because we're talking height.

12                  MR. BAIRD: Oh, yeah.

13                  MR. ROSANO: Nothing is going over those,  
14 not the way that the cars are built now.

15                  MR. BAIRD: No, they will.

16                  MR. ROSANO: Not on Everett road, though.

17                  MR. BAIRD: No, not on Everett. But you'd  
18 have a different speed situation there. That's  
19 probably why that's allowed.

20                  I can look into it a little bit more if  
21 you'd like an answer.

22                  MR. ROSANO: Yes.

23                  MS. VAIDA: The purpose of the concrete  
24 barrier is -- what is that?

25                  MS. ZEFTING: Basically, it advises a

1 turn lane for the northbound traffic.

2 MS. VAIDA: Where does it start and where  
3 does it end?

4 MS. ZEFTING: It would start basically at  
5 the beginning of the storage lane to the left  
6 turn lane. The northbound left turn  
7 lane - right when that turning lane starts is  
8 where that raised median would start. If you  
9 follow the northbound left lane all the way up  
10 until the left out is merging with the  
11 northbound traffic - you would follow that  
12 higher approach.

13 MS. VAIDA: As you're driving north, if  
14 you wanted to turn into Walmart to make the  
15 left hand turn, you're going to at some point  
16 approach the short -

17 MS. ZEFTING: The median, yeah.

18 MS. VAIDA: How will you know, then, to  
19 stay left of it when you're going to see  
20 traffic coming? You're going to feel like  
21 you're in the southbound lane.

22 MR. GIOVENCO: There will be arrows and  
23 signage. It is going to be a little bit  
24 uncomfortable. There is no doubt. But with  
25 those things, you can have adequate -- just

1           like it's shown. You can see the pavement  
2           markings very clearly into the side street.  
3           It's going to be striped very similar to a  
4           left turn, but it will be on the wrong side of  
5           the island instead of the right side of the  
6           island.

7                   MS. VAIDA: I don't have anything  
8           further. Thank you.

9                   CHAIRMAN O'ROURKE: Tim?

10                   MR. LANE: I commend the out of the box  
11           thinking. It's similar to the diamond  
12           interchange which is something that DOT is  
13           doing just a half mile away. That is something  
14           that they transposed from Virginia where they  
15           had the primary idea. As much as I'd like to  
16           see this work, I'd have to agree with C.J.  
17           You're not going to see the striping and  
18           you're not going to see - there will be times  
19           when you will not see it. It's not that it  
20           would just be uncomfortable but it would be  
21           invisible.

22                   I thought about the fact that maybe you  
23           could have more of a beveled edge, kind of a  
24           granite edge like a curb, but then you pointed  
25           out that you don't want people driving over

1 the top of it. I'd like to say anyway that you  
2 slice and dice it you can present it to DOT  
3 and see what they say but one of the things  
4 that you'll have to do again is add another  
5 lane, is this correct?

6 MR. GIOVENCO: No, you can use the two  
7 way left turn lane.

8 MR. LANE: I like to imagine a way for it  
9 to be made to work, but when you look at the  
10 safety factors -- you said that somebody  
11 photographed this and it's down south. Do you  
12 have any idea of traffic or accident studies  
13 or issues?

14 MS. ZEFTING: Between the response and  
15 comments, the numbers were very similar. We  
16 can try to contact South Carolina DOT or that  
17 county's DOT -

18 MR. LANE: But the traffic rates are in  
19 the range, so you would get a similar pattern.  
20 I think that would be important in your  
21 conversation. I would still like to see it  
22 presented and all things fair to be on the  
23 table presented to DOT to see what they would  
24 say. They could say, well, we're supposed to  
25 be in agreement, but to some extent I don't

1 think that's fair. We could agree on a lot of  
2 things and they will be the ultimate prevailer  
3 and say that's not going to work for us.

4 Like I said, I'd like to see this work,  
5 but I agree with C.J. I'm seeing that they're  
6 going to get this and say no. That doesn't  
7 mean that it shouldn't be presented.

8 MR. GIOVENCO: The person that took the  
9 picture and analyzed this for us was Tom  
10 Warner who used to be one of the directors at  
11 New York State DOT, so he knows the traffic.  
12 He knows it very well. So he must think that  
13 there is a possibility that it can work there.  
14 That's why we presented it as an option.

15 MR. LANE: I would certainly like to see  
16 it presented to them. Like I said, they're  
17 supposed to be open to new ideas and try  
18 different ideas.

19 The diamond interchange is one example  
20 that I can think of that's in proximity. I  
21 wouldn't dismiss it.

22 MR. GIOVENCO: They're proposing another  
23 concept called a diverging diamond which was  
24 developed in the Rochester area. It's a very  
25 similar study. So they are experimenting quite

1 a bit to keep crossing the line with  
2 mitigation.

3 MR. LANE: What was the name of that  
4 again?

5 MR. GIOVENCO: Diverging diamond.

6 MR. LANE: That's all I had.

7 CHAIRMAN O'ROURKE: Mike?

8 MR. SULLIVAN: I, too, commend you for  
9 thinking outside the box. I admit that I've  
10 never seen something like this, however I do  
11 have serious reservations about it and mainly  
12 due to this picture right here (Indicating).  
13 You can see that there is a buffer zone  
14 between the -- for example it would be the  
15 southbound traffic and those accelerating  
16 northbound. We will not have that. We will  
17 have people in what's now the turning lane  
18 accelerating up to 50 miles an hour. I know of  
19 southbound traffic coming right at them at 50  
20 miles an hour. I just think that's a bad idea  
21 especially with the small bit of a hill and  
22 you're heading southbound. It's not a crest  
23 hill, but you are above - up like above  
24 Kimberly's and Century House and when you drop  
25 down you have a car coming right at you trying

1 to merge into the northbound traffic. Without  
2 any sort of buffer zone there, I think that  
3 the odds of an accident are increased because  
4 you're going to be literally passing right by  
5 each other at fairly high speeds. I would have  
6 serious reservations about it because here you  
7 can see that there is no buffer area between  
8 the two movements.

9 The person trying to go northbound is  
10 going to be looking to see if they can merge  
11 into traffic. I just worry about them drifting  
12 or the person heading southbound being  
13 surprised by a car in the middle of what they  
14 thought was a turning lane up at the Century  
15 House and turns into a travel lane for  
16 northbound. I'm really concerned about that.

17 In addition, I also echo the same  
18 concerns over snow and incimate weather or  
19 nighttime. The confusion would be increased.

20 That's all I had.

21 CHAIRMAN O'ROURKE: Thanks, Mike.

22 Peter?

23 MR. GANNON: Could you put your overhead  
24 picture of that half signal back up? Would  
25 this be used for tractor trailer access

1 as well?

2 MS. ZEFTING: Yes.

3 MR. GANNON: I think that it would be  
4 equally as grim a scenario as Mike just  
5 painted for us. I don't see how a tractor  
6 trailer accelerates there, but it would make  
7 me leery and I would imagine that it would  
8 make drivers leery. I think I would like to  
9 see some information on tractor trailers and  
10 the difficulty of having access to the site.

11 My other concern is just a general  
12 comment about the project, as a whole.

13 I've only been on the board since  
14 January. I had a bit of familiarity with the  
15 project from my former life at the town hall  
16 working for the Supervisor. I guess this kind  
17 of feeds off of Tom Nardacci's comment that  
18 we've heard proposal after proposal and I've  
19 heard them when I was at town hall and now I'm  
20 hearing them on the Planning Board. At some  
21 point maybe it occurs to the group that  
22 Route 9, without these gimmicks - maybe it  
23 just doesn't work. I know that's a hard pill  
24 to swallow. It's a big project. It's a project  
25 that I think a lot of residents want. I'm a

1 Walmart shopper myself. I've never heard  
2 anybody in the time talk about coming in from  
3 87. I don't know if that's something that DOT  
4 has ruled out right from the beginning -

5 CHAIRMAN O'ROURKE: The feds. The feds  
6 aren't letting them do that.

7 MR. GANNON: Maybe so, but it might be  
8 worth just the conversation.

9 The thing that pops into my mind is I  
10 spent two months in Suffolk County, Long  
11 Island, where you can't access any retail at  
12 an intersection like this.

13 Walmart is in front of Latham Farms now  
14 and it's all by service road. It's not ideal  
15 for business. You want people to be able to  
16 see your sign and make a turn right there. I  
17 understand that, but it works for dealing with  
18 severe traffic issues. The bottom line is that  
19 if you want to shop, you can find the store. I  
20 would imagine that is a much more  
21 significantly expensive alternative, but when  
22 I think about this part of the town on a  
23 Saturday morning in December, I won't go  
24 there. You can show me all the studies that  
25 you want, but there's not going to be a study

1           that reflects the Saturday before Christmas  
2           day in front of this Walmart or near this  
3           Walmart. The whole Exit 6 and 7 area - you're  
4           not going to move a car from 8:00 in the  
5           morning until 3:00 in the afternoon. So, I  
6           think as long as we're thinking outside the  
7           box let's have everything on the table. If the  
8           federal government has an opposition to a  
9           service road off of 87, I think that the  
10          business owners that have frontage on Route 9  
11          are the same fellows who are trying to develop  
12          the parcel with the Walmart on it. Maybe he  
13          gives up frontage for some type of access  
14          road.

15                 Let's really think out of the box. A half  
16          signal is great. We've never seen one in New  
17          York. I get that. A half signal, or a full  
18          signal, or no signal; it's going to be a  
19          nightmare for a month and probably much longer  
20          than that. That's just my experience from  
21          living it every day.

22                 MR. GIOVENCO: Can I make a comment?

23                 MR. GANNON: Sure.

24                 MR. GIOVENCO: This is really not a  
25          Walmart issue. I mean as Lindsey showed you,

1           any development that's going to go in  
2           there - if Walmart went away tomorrow, any  
3           phase II of any project is going to require a  
4           signal there. A 5,000 square foot restaurant  
5           on Nemith's property is going to require a  
6           signal. So, it's really a function of whether  
7           or not the town can live with a signal there  
8           or pretty much put a stop to all development  
9           on that side of Route 9. You're at that point.

10           Now you have an applicant that's here  
11           that's willing to pay a significant amount of  
12           money to make all these improvements, not only  
13           for the benefit of their own store but the 500  
14           trips that is being distributed by five other  
15           developments. You need to take that into  
16           consideration. We're not only mitigating our  
17           traffic, but we're also helping and  
18           contributing to the mitigation of several  
19           other projects as well as paying an impact fee  
20           that will be very substantial. That will start  
21           a fund that will help mitigate and solve some  
22           of the overall transportation and corridor  
23           issues, which is being defined in the CME  
24           study.

25           MR. GANNON: I have taken that into

1 consideration.

2 CHAIRMAN O'ROURKE: I 100% disagree with  
3 you, sir. In terms of retail, what's the  
4 busiest day? I mean seven days a week?

5 MR. ROSANO: Saturday.

6 CHAIRMAN O'ROURKE: Saturday is day one,  
7 Sunday is day two and Friday is a close day  
8 three. Actually, Thursday is just as close as  
9 Friday. So that's in terms of retail.

10 People in this area understand traffic on  
11 Route 9 on Friday at 5:00 and not to go near  
12 there.

13 What people are going to have a big hard  
14 time with is Saturday at 1:00 in the  
15 afternoon. That's the issue and that's the  
16 difference, sir, when you're talking about the  
17 type of development that you're talking about  
18 in terms of traffic and different types of  
19 development, in my opinion.

20 That being said, I have a little  
21 difficulty and I'd like to set the record  
22 straight. Questions have been asked to you by  
23 this board that have been answered. Maybe you  
24 guys didn't do your due diligence, but I would  
25 imagine that Mr. Sweeney, Mr. Caponera

1 and yourself being very competent, high-end  
2 attorneys that due diligence was done. It  
3 would then lead me to believe that maybe  
4 information that was given this board wasn't  
5 in fact true.

6 So if I can step away from traffic for a  
7 minute and go back to some of our initial  
8 meetings in regard to comments that were made  
9 about the existing store.

10 Many people on the board including the  
11 previous Chairman had asked questions and I'd  
12 just like to read into the record a couple of  
13 quotes.

14 This first one is page six from a  
15 transcript June 23, 2009. This is verbatim.  
16 Mr. Caponera says:

17 The problem is that in these malls there  
18 are restrictions and guidelines and this mall  
19 happens to have a Hannaford grocery market.  
20 Our proposal calls for a Walmart to have a  
21 grocery market in it. There are limitations to  
22 that. I indicated the reasons why we can't  
23 expand it.

24 Meaning expand within the existing area.  
25 He goes on to say:

1           Our existing locations - and we do have  
2 site constraints.

3           In that same meeting, the former Chairman  
4 asked what the difference between the  
5 Hannaford and the Sam's Club was. This is on  
6 page 24.

7           Mr. Giovenco, this is your response:

8           I believe that when the center was  
9 developed, Walmart and Sam's Club were  
10 developed simultaneously. So any of those  
11 pre-existing uses were part of the plan. The  
12 restriction says specifically grocery and  
13 therefore that is what is the restriction.  
14 Sam's Club is considered a club where only  
15 members can join. Members can shop there and  
16 therefore it's not a grocery, it's a club. As  
17 far as the language in the lease and the fact  
18 that Sam's and Walmart were constructed very  
19 close to the same time, I believe that  
20 Hannaford came in afterwards and they accepted  
21 the Sam's being there for what it was.

22           The last quote that I'd like to read into  
23 the record before I clarify these things was  
24 from Mr. Sweeney and this is also on page 24.

25           The language of the restricted covenant

1 specifically accepts Sam's. They are allowed  
2 to do that. They are not allowed to bring in  
3 any other grocery into the Walmart.

4 I've had an opportunity and I'm sure that  
5 you folks know Jimco who now actually owns  
6 that development. I've had many different  
7 conversations. It's gone through their legal  
8 department and their leasing department.

9 I've been told that there is absolutely  
10 no restriction on grocery in that mall. As a  
11 matter of fact, the expandability in that  
12 store, which is about 116,000 square feet  
13 right now - the actual footprint when that  
14 mall was put in had that store at 150,000  
15 square feet. So, within the existing footprint  
16 that store could be expanded to about 162,000  
17 square feet, including the garden center  
18 that's there right now.

19 I've been here for every meeting of the  
20 Walmart project, and we as a board have other  
21 jobs. We have other responsibilities. We have  
22 to rely on certain things; town designated  
23 engineers and Planning and Economic  
24 Development to give us information that we  
25 take as factual. So, when members of this

1 board ask an applicant a question to get an  
2 answer, we only expect to be given a response  
3 like: I'm not sure, I'll check, I'll get back  
4 to you. We hear that quite often. One of two  
5 things has happened. Either the people at  
6 Jimco have not told me the truth, or there has  
7 been misrepresentation by the applicant to  
8 this board.

9 Yes, Mr. Sweeney?

10 MR. SWEENEY: The folks that you're  
11 speaking to at Jimco - you have in your  
12 record that I was reading from it on page  
13 24 - a recorded easement. It says exactly what  
14 I said. The big book that we gave you in  
15 response last fall -- it's the last document  
16 in there. I handed copies to counsel. It gets  
17 recorded in the Albany County Clerk's office.

18 What we told you is absolute fact. There  
19 is no basis for misrepresentation or lack of  
20 due diligence. It's right on the document.  
21 Sam's is accepted. No other grocery. I did the  
22 approvals for Latham Farms.

23 CHAIRMAN O'ROURKE: I know that you did.

24 MR. SWEENEY: There is no room there to  
25 put a super center.

1                   CHAIRMAN O'ROURKE: That wasn't our  
2 question, sir.

3                   MR. SWEENEY: I don't know who you are  
4 talking to at Jimco. I know that they weren't  
5 involved at that time. I handed that document  
6 to the board and I gave it to them again in  
7 the book. What we said was absolutely  
8 accurate. Believe me; every time that we've  
9 been here we've put forth a 110% effort to be  
10 candid and accurate. We can't afford to be  
11 anything other than that. So everything that  
12 you get from us will have our best efforts to  
13 be straight with you.

14                  CHAIRMAN O'ROURKE: So to your knowledge,  
15 there is not expandability within that site?

16                  MR. SWEENEY: That's a different  
17 question. There is a tenant next door to that  
18 site -

19                  CHAIRMAN O'ROURKE: No, that's not my  
20 question. Is there expandability within that  
21 site?

22                  MR. SWEENEY: For a grocery store, no. Is  
23 there greenspace on that site where you could  
24 change building configurations? I don't know.

25                  CHAIRMAN O'ROURKE: Again, these were

1 questions that were asked.

2 MR. SWEENEY: The question stopped at:  
3 Could you put a grocery there?

4 We gave you an absolutely truthful answer  
5 documented a couple of times in your record.  
6 I'll read it into the record.

7 CHAIRMAN O'ROURKE: You may.

8 MR. SWEENEY: This is on Book 249-3  
9 Page 235 in the document memorandum of lease  
10 recorded in the Albany County Clerk's office  
11 on June 7, 1990.

12 The landlord agrees that it will not  
13 directly or indirectly lease, use,  
14 allow -- and then there are a lot of lawyer's  
15 words here -- within the shopping center  
16 accepting any department store or so called  
17 whole sale club operated by Walmart stores.

18 That's the exception to the prohibition.  
19 That's Sam's.

20 For any of the following purposes:  
21 Operation of a supermarket or combination.

22 I've read to you into the record before  
23 and that's what I've read into the record  
24 tonight. It's not a misrepresentation. It's an  
25 absolutely accurate fact.

1 MS. VAIDA: What are you reading from?

2 MR. SWEENEY: This is a memorandum of  
3 lease.

4 MS. VAIDA: That's on the very last  
5 proclamation -

6 MR. SWEENEY: It's between Latham Farms  
7 Limited Partnership -

8 MS. VAIDA: That's in this book, right?

9 MR. SWEENEY: Right.

10 And Hannaford Brothers - Hannaford  
11 getting from the landlord concession that they  
12 won't put competing groceries into that  
13 shopping center except for -

14 MR. ROSANO: Is there a time frame built  
15 into that?

16 MR. SWEENEY: A time limitation?

17 MR. ROSANO: Yes.

18 MS. VAIDA: It says 20 years.

19 MR. ROSANO: The reason why is that I  
20 want all the facts to come out if we're going  
21 to read facts. There is a 20 year limitation  
22 on that. So that building opened up in 1994 so  
23 we're saying that in four years time, you  
24 could put a grocery store in Latham Farms.

25 MR. SWEENEY: The lease term is 20 years.

1 We can check now to see if that's been  
2 extended or if it gets extended; the  
3 limitation would still apply.

4 MR. ROSANO: Why isn't that in your  
5 documents? We're asking to have all the facts.  
6 I want to know going forward, was there ever a  
7 chance at any point in time that they could  
8 have expanded that super center?

9 As you recall Home Quarters was in there  
10 and when they were ready to move out Walmart  
11 had a shot at that and didn't take it.

12 MR. SWEENEY: They can't put grocery in  
13 that space. This lease is still in existence  
14 as you said for another four years. I don't  
15 know what I'm supposed to bring you as to what  
16 will happen four years from now. We don't have  
17 that.

18 MR. ROSANO: It seems like you cut short  
19 on what you put in front of us.

20 MR. SWEENEY: I believe that I put the  
21 whole document in for the record. I can read  
22 the whole thing -

23 MR. ROSANO: No. I just want to know if  
24 you could find out for us if after 20 years  
25 Walmart could have expanded into a super

1 center, if there was room. They have done it  
2 before. They did it up in Queensbury. They did  
3 it up in Wilton. They build on or into another  
4 building. I do know. Could you find that out  
5 for me?

6 MR. SWEENEY: Sure.

7 MS. VAIDA: This lease is between Latham  
8 Farms Limited Partnership. Are they still in  
9 existence?

10 MR. SWEENEY: I believe - I'm not saying  
11 this because I was involved, but a pension  
12 fund from Atlanta is the actual title owner of  
13 Latham Farms and Jimco is probably a manager.

14 CHAIRMAN O'ROURKE: That is correct.

15 MS. VAIDA: So Jimco is -

16 MR. SWEENEY: The property manager for  
17 the fund that owns it.

18 MS. VAIDA: And the fund is actually the  
19 Latham Farms Limited Partnership?

20 MR. SWEENEY: No. I would say that the  
21 Latham Farms Limited Partnership is the entity  
22 that owned it at the time.

23 MR. STUTO: And the follow-up on that is  
24 that they assigned the leases to the pension  
25 fund; is that right, Bob?

1 MR. SWEENEY: Yes.

2 MR. STUTO: The presumption, anyway.

3 MR. SWEENEY: Yes.

4 MR. STUTO: So the pension fund stands in  
5 the shoes of that landlord, is what the  
6 assumption is.

7 MS. VAIDA: Is that an assumption or is  
8 that a fact?

9 MR. STUTO: It's a reasonable assumption.  
10 I don't have the document in front of me.

11 I don't know if you want to address her  
12 question, Bob.

13 MS. VAIDA: I'd like to know, was it  
14 assigned or wasn't it?

15 MR. SWEENEY: We can do a record search  
16 for assignments.

17 MS. VAIDA: Nobody might be bound by this  
18 lease anymore.

19 MR. SWEENEY: I'll do a search of the  
20 records.

21 MR. GANNON: To bring it back to my  
22 original question, it kind of took a turn down  
23 another path. That's okay. I'd just like to  
24 bring it back to the notion of a service road.

25 I don't know the resources it takes for

1           that. I just think that there maybe a bigger  
2           more expensive solution where this site might  
3           work and it would be a benefit to the town.  
4           Let's exhaust all options. That was the point  
5           that I was trying to make.

6                     MR. SWEENEY: I can tell you that earlier  
7           this year I was in a meeting in East Greenbush  
8           and the same discussion came up about a  
9           sizable development there. Because of the  
10          fed's involvement, Mark Kennedy's response to  
11          the suggestion was: I couldn't get an approval  
12          for that.

13                    It doesn't mean that we won't put it out  
14          there.

15                    MR. NARDACCI: I think to Pete's  
16          point - it's not specific to a service road  
17          but just talking ideas and just trying to come  
18          up with solutions and there are a lot of  
19          things that are non starters. Maybe it's worth  
20          at least a discussion, if you haven't had a  
21          discussion.

22                    I remember a conversation that I had with  
23          our own town designated engineer. I said,  
24          look, here is the three million dollar  
25          solution. What is the 50 million dollar

1 solution? Just talk about it and then say well  
2 that's not feasible. At least have it out  
3 there.

4 Just like with DOT - we don't know what  
5 they're going to say. We can't predict what  
6 federal highway is going to say.

7 I presume that the Fed Ex project over  
8 there was looking at direct access.

9 At least it's worth a discussion. I don't  
10 know if that's our discussion to have with our  
11 town designated engineers. At least get to the  
12 point where you say, okay, impassable road  
13 block. Next idea?

14 It's similar to what we're doing now.  
15 Between me and our designated engineers, I've  
16 said this in our meetings. I haven't been  
17 satisfied with the improvements that have been  
18 recommended by Creighton Manning; the two way  
19 and the connector road, the cost versus the  
20 benefit of it and some of those other  
21 mitigations. I think that it's at least worth  
22 talking about big projects or impacts. I said,  
23 look, let's not talk about the next 10 years.  
24 It's the next 100 year solution. When you get  
25 to that point and you say, well, it's

1           50 million dollars and the federal government  
2           will never give you an okay; fine. But it's at  
3           least worth discussing.

4           MR. LACIVITA: I think that those impacts  
5           are even closer. Look at who is traveling to  
6           the north of us with Global Foundries. Look at  
7           the open space that's theirs. We have a road  
8           that's controlled by DOT. We don't even know  
9           what's going to be coming five years down the  
10          road with Global Foundries. That scares the  
11          living daylights out of me because we don't  
12          even have control of the corridor and we're  
13          just going to see traffic back and forth.

14          MR. NARDACCI: Joe, it's similar with  
15          Global Foundries. It's similar in the sense if  
16          anyone ever sat down and said, hey, let's plan  
17          out a connector road through Malta, past the  
18          Round Lake bypass - I'm sure that the first  
19          conversation went like this: It will never  
20          happen because there are so many approvals and  
21          there are so many things that have to happen  
22          so let's not talk about it.

23          The reality of the impacts on Round Lake  
24          and on that community started bubbling to the  
25          surface. I wasn't involved, but I'm sure

1           that's similar to the conversations that are  
2           at least worth talking about. We're in the  
3           middle of all this discussion and I think that  
4           it's at least worth talking about.

5           MR. SWEENEY: The full build out of  
6           Global Foundries of Exit 11A is on the table.  
7           I was involved in that early process. That is  
8           along the lines of what you're thinking.

9           MR. NARDACCI: It's not apples to apples.  
10          Like Joe said, it's not just Walmart. We're  
11          lucky to have had Anjio Dynamics came in from  
12          Queensbury. Who is the next downstream, you  
13          know, corporate headquarters that has to be  
14          near an AMD? In between CNSE and Global  
15          Foundries is Exit 7. That's part of doing  
16          smart planning.

17          MR. BAIRD: I don't know the timeline or  
18          the history, but there is an example of a 5A  
19          in the Town of Colonie - at least that feeds  
20          into the Town of Colonie off of  
21          I90 - Picottes' property there - Corporate  
22          Woods had no other suitable purpose other than  
23          to feed into that park.

24          MR. STUTO: Bob, can I make a point?

25          MR. SWEENEY: Sure.

1           MR. STUTO: The memorandum of lease that  
2 we have here - the two pager at the end of the  
3 document purports to be between the Latham  
4 Farms Limited Partnership and Hannaford; is  
5 that correct?

6           MR. SWEENEY: Yes.

7           MR. STUTO: I don't want to say anything  
8 unfair. You have it there if you need to look  
9 at it. It's a promise to Hannaford that they  
10 will not lease to anyone else for a  
11 supermarket. If that conflicts with the  
12 Walmart lease, if the Walmart's lease permits  
13 them to engage in the grocery business on  
14 their premises, Walmart may still have that  
15 permission even though it does contradict  
16 their promise to Hannaford. That's the point  
17 that the Chair wanted me to make.

18           CHAIRMAN O'ROURKE: And I also want to  
19 clarify that those comments had nothing to do  
20 with the project at hand. It just had to do  
21 with misrepresentation that I thought that  
22 Mr. Giovenco might have been doing and that's  
23 why I interrupted.

24           MR. SWEENEY: Believe me, that's the last  
25 thing that we want to do. Our talking to this

1 board depends on our being -

2 CHAIRMAN O'ROURKE: And I thought that,  
3 Bob - but all three people are answering  
4 questions that the board had. Then I came to  
5 find out that people from this company  
6 unequivocally told me that Walmart has the  
7 right to sell groceries, period. You guys are  
8 the attorneys so you guys need to figure it  
9 out.

10 MR. SWEENEY: I think that we did and I  
11 think that we have answered things absolutely  
12 accurately with these documents.

13 CHAIRMAN O'ROURKE: Okay, does anybody  
14 have anything else?

15 MR. NARDACCI: What are we looking at  
16 next?

17 CHAIRMAN O'ROURKE: We have a small  
18 traffic portion with the signal, to tie in,  
19 right?

20 MR. SWEENEY: Right. The Syncro Model is  
21 universally acceptable to run the traffic  
22 signal scenario back up levels of service  
23 changes on 9R/Old Loudon. That's really going  
24 to be important. I think that the proposed  
25 improvements will work. I also have a caveat

1 in there to get the land to put those two  
2 lanes in.

3 CHAIRMAN O'ROURKE: I think that DOT owns  
4 it - 9R.

5 MR. SWEENEY: Not enough.

6 CHAIRMAN O'ROURKE: I know it's pretty  
7 close.

8 MR. SWEENEY: There is a lot of work  
9 there to be done.

10 MS. VAIDA: What about Pete's idea about  
11 the access to the highway? I had asked about  
12 that many moons ago, also. Is that just  
13 totally out of the question - the access  
14 either exiting or entering from 87 for some  
15 sort of access road?

16 MR. SWEENEY: As I said, we won't discard  
17 anything. When we get a chance to actually  
18 engage DOT, we'll put that on the table.

19 MS. VAIDA: There is a lot of land right  
20 back there that could accommodate an access  
21 road.

22 MR. SWEENEY: A big part of it is  
23 stormwater management over the whole corridor  
24 there. Again, we can see what we have there  
25 right now. We'd have to talk to the region and

1 ask them if that's a possibility.

2 MS. VAIDA: It seems like that would be a  
3 great solution to this problem.

4 MR. BAIRD: After that, I have to ask  
5 economically would Walmart survive over there?

6 MR. SWEENEY: It's fiscally impossible  
7 for anyone - and you know about the service  
8 road -

9 MR. BAIRD: No, I mean the business  
10 sense. If they could get a connection like  
11 that; would they like that? It would be easy  
12 and easy off the Northway.

13 MR. SWEENEY: I'm sure that would be  
14 attractive to everybody up and down the board.

15 MR. GANNON: That's the whole reason that  
16 they want to be there.

17 MR. BAIRD: That's what I mean. If  
18 there's a way, they'll find it.

19 MR. SWEENEY: It's probably a hard time  
20 to go to the state and the feds.

21 CHAIRMAN O'ROURKE: Probably in excess of  
22 50.

23 Anyone else from the floor?

24 MR. MAGGUILLI: I have just a question.

25 On the half signal concept, has anything

1           like this been contemplated in the New York  
2           State Uniform Manual of traffic control  
3           devices? I've never seen anything like it in  
4           New York.

5                     It's my understanding that we're bound by  
6           the New York State Uniform Manual of Traffic  
7           Control Devices. If it's not in there and you  
8           wanted to do something like that, it would  
9           require a new regulation or legislation. Does  
10          anybody know the answer to that?

11                    MR. BAIRD: No, it's not in there. But it  
12          wouldn't be that difficult to get it through.  
13          The manual covers the regulations on striping  
14          and signage, but you could get approvals such  
15          as the signal point of an interchange that's  
16          going in there right now. It's not in there.  
17          This type of single point urban interchange  
18          was originally proposed in Malta where there  
19          is now five roundabouts back in 1998. It  
20          wasn't in the manual at the time either, but  
21          now it's found its way into it. It can happen.

22                    MR. MAGGUILLI: It would have to happen  
23          before you could do something like this,  
24          correct?

25                    MR. BAIRD: That's correct.

1 MR. MAGGUILLI: And any indication of  
2 time frame on the state's approval? I would  
3 just think that with the administrative  
4 regulation review process, it would be easier  
5 to have.

6 MR. BAIRD: And when someone retires,  
7 they don't replace them. It's just going to  
8 take that much longer. I couldn't answer that.

9 CHAIRMAN O'ROURKE: Anyone else?

10 Yes, ma'am.

11 MS. KNORR: I believe that this traffic  
12 will hurt people in Cohoes and Price Chopper.  
13 There is a Walmart there at Latham Farms. They  
14 do have a Sam's Club and I think that just  
15 down the road in Clifton park there's a big  
16 Walmart super center. I think it's about  
17 8 miles away from Colonie. I don't know how  
18 many Walmarts we need, but this is a troubled  
19 area, as you're pointing out. I agree with  
20 many of your questions.

21 I would like to see something else more  
22 useful. We're having Fresh Market come in. We  
23 have a Price Chopper and a Hannaford. I  
24 believe in cooperation and not so much  
25 competition. We want to keep the business that

1 we have happy and there are other Walmart  
2 super centers. I think that this would be  
3 horrible for Cohoes.

4 I like going to Cohoes. I like doing  
5 business in Cohoes. I also know that there is  
6 a senior center there next to the Eddy and I  
7 just think that it's horrible.

8 I appreciate all of the questions that  
9 you've asked because you have a lot of  
10 knowledge. I feel that the questions you're  
11 asking make me feel better that I don't have  
12 to come to all of these meetings.

13 CHAIRMAN O'ROURKE: Thank you, ma'am.  
14 Anyone else from the floor?

15 ***(There was no response.)***

16 CHAIRMAN O'ROURKE: So to get them back  
17 on?

18 MR. BAIRD: All that I think that we  
19 really need is to hear from DOT, or I can  
20 address some of the analysis of the traffic  
21 signal with the other business of the tenant  
22 here. We can do that as well.

23 CHAIRMAN O'ROURKE: I'm sure that the  
24 applicant is looking to get this moved. I  
25 mean, unless you're interested in spending

1 more time on traffic -

2 MR. GIOVENCO: I would propose that if we  
3 could satisfy Barton and Loguidice that the  
4 full signal option works to their satisfaction  
5 and maintains the level of service, that we  
6 would propose both options to DOT. As long as  
7 we satisfy them first and we submit the  
8 traffic study to them and hope we get some  
9 feedback -- as long as if DOT asks the board  
10 whether they're in concurrence with this,  
11 you're response would be yes. We're waiting  
12 for your response to finalize our response, so  
13 you're not in total disagreement with what  
14 we're proposing. That's what Mark Kennedy is  
15 looking for. He's looking for some kind of  
16 general consensus that we're all heading in  
17 the right direction. If you're okay with that  
18 strategy, we'd like to proceed.

19 CHAIRMAN O'ROURKE: Yes, Tim?

20 MR. NICHOLS: I don't mean to speak out  
21 of turn but if you don't mind, I think that's  
22 a little bit of a dangerous road to head down.  
23 I think that if this board acknowledges any  
24 kind of consensus or concurring of this  
25 proposal or anything else to DOT, I think that

1 it sends a message that you're on board, at  
2 least in part, with this. Based on many of the  
3 questions that you guys raised tonight, I  
4 don't think that you're anywhere near that.

5           Somebody said that these guys are going  
6 to get DOT's comments without your input. Let  
7 them do that and then they can come back and  
8 take it from there. Let's look at it and see  
9 what comes back. I'm someone who is very much  
10 opposed to this project. I don't think that  
11 it's safe. I don't know how many times you  
12 need to look at it from every different angle.  
13 It just doesn't fit here.

14           I just worry and I would caution the  
15 board that taking a vote in any content or any  
16 sort of endorsement of this proposal sends a  
17 wrong message to DOT. They can do it on their  
18 own and they should do it on their own.

19           CHAIRMAN O'ROURKE: Again, what DOT has  
20 said is that the project can't go forward  
21 without a traffic signal. Now, with the  
22 traffic signal, these pedestrian  
23 crossings -- what were the other things, Tom?  
24 There was a multitude of conditions.

25           MR. BAIRD: There would be no reduction

1 in the left turn lane on southbound 9R and  
2 there would not be a substantial reduction of  
3 all travel speed through the corridor  
4 which -- loosely at Sparrowbush Road to the  
5 Boght Road intersection where the fire house  
6 is through that corridor there. That's one of  
7 their main concerns is the overall speed  
8 through the corridor. I think that some of the  
9 calculations that were done -- and these are  
10 previous comments was that the increase in  
11 travel time would be three minutes and 46  
12 seconds to five minutes and 28 seconds through  
13 the corridor. When you add that onto every  
14 vehicle going through, that's a substantial  
15 amount of delay in lost time in the corridor  
16 that would have an overall impact. Again, this  
17 gets into all kinds of statistics but that was  
18 their overall concern.

19 The applicant came up with an operational  
20 solution as far as traffic numbers and times  
21 and delays that would elevate a lot of that  
22 delay in travel time with an intersection that  
23 has signals or continuous flow. That's what we  
24 look at from an operational standpoint that  
25 does work.

1                   They have also proposed other  
2                   improvements in the secondary network; 9R and  
3                   Old Loudon Road. We brought that up and a few  
4                   of the other comments at those meetings that  
5                   we haven't looked at and we need to address  
6                   that now.

7                   The part that's missing here is the  
8                   feeling that this intersection that was  
9                   presented is not something that the town is  
10                  either willing to accept or whoever would  
11                  accept. What happens is that you go back to a  
12                  traffic signal on Autopark Drive combined with  
13                  the other improvements that address the  
14                  offline impacts. That's what we need to look  
15                  at. That does work and we'll report that  
16                  information to the board and discuss it  
17                  further.

18                  If we go and do all of that work, it  
19                  maybe for naught because DOT might say no way  
20                  to the intersection that they have.

21                  MR. NARDACCI: Tom, you only analyze  
22                  their data and crimp their numbers based on  
23                  the information that they give you on these  
24                  options. Give us a written analysis as we have  
25                  had on every option that has come forward.

1 That will be basically the next step.

2 MR. BAIRD: The thing is that this  
3 continuous flow or half signal addresses DOT's  
4 concern about travel time through the  
5 corridor. I'm not speaking of them, but it  
6 does reduce it a lot closer to existing  
7 levels. You also have level of service A with  
8 0 seconds of delay in the northbound  
9 direction. That means less delay and less  
10 travel time. Will they accept that  
11 intersection? I don't know.

12 MR. NARDACCI: We can expect those.

13 There is a memo from Barton and Loguidice  
14 analyzing the information that this is just a  
15 snap shot. They're going provide you with a  
16 report. You're going to analyze the report.  
17 Give us some comments on not really this but  
18 that - plus some of the other things that we  
19 talked about.

20 MR. BAIRD: We've analyzed what they have  
21 presented here and operationally, it works  
22 based on the numbers. Primarily, it's because  
23 of the extra time that we get by not having  
24 those delays southbound and having those extra  
25 lanes on 9R that will afford more green time

1 on Route 9 so that works operationally.

2 The other fundamental issues about safety  
3 and snow and all of those other things are  
4 aside from that. We want to look at if we go  
5 to a conventional traffic signal, what did  
6 that do to the other areas that we say are  
7 okay now with this type of intersection. We  
8 have to make sure that they're okay with a  
9 conventional signal as well. We'll report to  
10 you on that.

11 MR. STUTO: During the interlude - Bob,  
12 as a point of clarification are you going to  
13 provide us with something from the Walmart  
14 lease on that point?

15 MR. SWEENEY: We're looking for recorded  
16 assignment of leases from whatever the  
17 ownership's succession has been. We're looking  
18 for whatever the current expiration date is.  
19 It sounds like it's 2014 or 2013. We'll search  
20 the County Clerk records to see if there are  
21 any updates on that.

22 MR. STUTO: The other point is that if  
23 there is a prohibition in the Walmart's lease  
24 from selling groceries.

25 CHAIRMAN O'ROURKE: Yes, ma'am.

1 MS. NUMRICH: My name is Barbara Numrich  
2 and I live on Old Loudon Road. I just want to  
3 clarify something. Are you going to come back  
4 to us after DOT to make sure that the board is  
5 okay with that?

6 CHAIRMAN O'ROURKE: This is one piece of  
7 the overall big project. For them to even get  
8 further into their project, they have to be  
9 able to fix this traffic. DOT has told them  
10 that at first they wanted no red light and  
11 then DOT said, all right, you find out a way  
12 to mitigate and we'll let you put a red light  
13 there.

14 Without those things, they can't build  
15 what they're looking to build. That's why we  
16 focus as much time and energy that we have on  
17 the traffic portion because the rest doesn't  
18 mean anything until we're able to rectify the  
19 traffic issue.

20 MS. NUMRICH: They can go to DOT without  
21 your approval. They don't need your approval.  
22 So, I don't think that you should be giving  
23 your approval yet either.

24 CHAIRMAN O'ROURKE: DOT is going to be  
25 reluctant to work with a developer, as Tom

1           stated, unless the town that their road  
2           travels through - if the town isn't okay, it's  
3           wasting the developer's money to go talk to an  
4           organization that hasn't cleared it with the  
5           town. Does that make sense to you?

6           MS. NUMRICH: Yes, but if you're saying  
7           that it's okay with you -

8           CHAIRMAN O'ROURKE: No, we're not  
9           agreeing to anything, ma'am.

10          I take issue with what Tim said because  
11          the traffic end of it has to be mitigated for  
12          their project to go forward. They have to  
13          present to this board proof that traffic is  
14          mitigated and they haven't done that. So,  
15          we're not voting on anything.

16          In the meantime, if I were them, I  
17          certainly would communicate with DOT.

18          Tom is involved as our traffic engineer  
19          and he represents the town, just incase you  
20          didn't know that. He represents the town and  
21          he's in the town's interest reviewing and  
22          working with these folks in terms of their  
23          development. Until the traffic piece is done,  
24          they can't move on anything else.

25          MS. NUMRICH: As long as you're not

1 saying that this is acceptable -

2 CHAIRMAN O'ROURKE: No. DOT is never  
3 going to accept that in a hundred million  
4 years. Mark Kennedy will never accept that  
5 even in the ice age.

6 MR. NARDACCI: They have Tom Warner on  
7 staff. He was the Regional Director, wasn't  
8 he?

9 CHAIRMAN O'ROURKE: He won't let us  
10 reduce the left turn lane build up on 9R. He's  
11 not going to allow that.

12 I laughed, didn't I, Tom? I thought it  
13 was Victor saying, here's Jersey barriers down  
14 the middle of 9R. I said, are you kidding me?  
15 Don't get me wrong. I think it's a good idea  
16 for other places but that's why you see it  
17 down south, in my opinion. Knowing these guys  
18 on DOT, sometimes they're difficult.

19 Anyone else on the floor?

20 ***(There was no response.)***

21 CHAIRMAN O'ROURKE: About how long, Tom?  
22 I guess it's in Bergmann's hands now.

23 MS. ZEFTING: It will take us about one  
24 week.

25 MR. SWEENEY: We can tentatively try to

1 be back here in a month.

2 MR. LACIVITA: We don't have the space.  
3 April is gone.

4 CHAIRMAN O'ROURKE: The first in May?

5 MR. LACIVITA: We just set the rezoning  
6 on May 11<sup>th</sup> and that's going to be a big one. I  
7 can give you a couple of proposed dates  
8 tomorrow and see if we can do that.

9 CHAIRMAN O'ROURKE: If we have to do an  
10 extra meeting - I don't want to, but for  
11 Mr. Caponera I will.

12 MR. LACIVITA: I'll show you some  
13 proposal dates that might work.

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17 ***(Whereas the proceeding concerning the above***  
18 ***entitled matter was adjourned at 10:38 p.m.)***

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**CERTIFICATION**

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4           ***I, NANCY STRANG-VANDEBOGART, Notary***  
5           ***Public in and for the State of New York,***  
6           ***hereby CERTIFY that the record taped and***  
7           ***transcribed by me at the time and place noted***  
8           ***in the heading hereof is a true and accurate***  
9           ***transcript of same, to the best of my ability***  
10           ***and belief.***  
11  
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14           -----  
15           ***NANCY STRANG-VANDEBOGART***  
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18           ***Dated April 8, 2010***  
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