

1 PLANNING BOARD COUNTY OF ALBANY
2 TOWN OF COLONIE

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4 *****
5 INFORMATIONAL MEETING REGARDING THE REZONING IN THE
6 CORDELL, MORRIS, AND KINGS ROADS AREA AS REQUESTED
7 BY MS. SUZANNE PERRY-POTTS
8 *****

9 THE TAPED AND TRANSCRIBED MINUTES of the above
10 entitled meeting BY NANCY STRANG-VANDEBOGART
11 commencing on May 11, 2010 at 8:30 p.m. at the
12 Public Operations Center 347 Old Niskayuna Road,
13 Latham, New York 12110

14

15 BOARD MEMBERS:

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

25

Also present:

Joe LaCivita, Director, Planning and Economic
Development

Victor Caponera, Esq.
Shawn Martin, Esq.

Ralph Schimmel

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1 CHAIRMAN O'ROURKE: Last on our agenda is
2 the informational meeting rezoning in the
3 Cordell, Morris, and King Road areas requested
4 by Ms. Perry-Potts.

5 At this point I would like to call a
6 public hearing on this project to be set for
7 June 15th at 7:00 p.m. at the Town Hall. We
8 would like additional seating and additional
9 availability.

10 In regard to this informational hearing
11 this evening, we are going to let
12 Ms. Perry-Potts present her information. This
13 has already been before the Town Board who
14 referred it back to the Planning Board to
15 hear. We're going to allow Ms. Perry-Potts to
16 go through her presentation and we are not at
17 this point going to open it to the public for
18 comment. That public hearing will be on the
19 15th of June, 7:00 at Town Hall.

20 Again, there may be questions from the
21 board so the board will chime in some things
22 and Mr. LaCivita may as well, but we are not
23 going to open it to the floor this evening on
24 this project.

25 MR. CAPONERA: As a point of information,

1 may I speak to the board? I represent property
2 owners within this area, too.

3 CHAIRMAN O'ROURKE: Do you have
4 applications in?

5 MR. CAPONERA: I have requests that
6 Ms. Potts' application involves the same
7 properties which include my clients' property.
8 We have discussed this with Joe and I felt
9 that there was no need to duplicate, but I
10 have made this request to the Town Board.

11 CHAIRMAN O'ROURKE: Where is he at with
12 the Town Board?

13 MR. LACIVITA: There has not been a
14 resolution put on for Mr. Caponera's request
15 at this time.

16 CHAIRMAN O'ROURKE: And I'm sorry, sir,
17 you have residents -?

18 MR. MARTIN: I have Schwan's at
19 2886 Curry Road.

20 CHAIRMAN O'ROURKE: And your name, sir?

21 MR. MARTIN: Shawn Martin.

22 CHAIRMAN O'ROURKE: And you're an
23 attorney representing them?

24 MR. MARTIN: Yes, I am.

25 MR. LACIVITA: There has not been a

1 letter of request for this property, as well,
2 to the Town Board to make resolution over to
3 the Planning Department for that property, to
4 my knowledge.

5 CHAIRMAN O'ROURKE: Mr. Caponera, were
6 you led to believe that you could speak
7 tonight from Mr. LaCivita?

8 MR. CAPONERA: Well, we didn't
9 specifically talk about it but I did talk with
10 Joe about the fact that I wasn't going to
11 pursue that application given the fact that my
12 clients' properties were already on this
13 particular application.

14 CHAIRMAN O'ROURKE: I think that we'll
15 reserve that decision after we see the
16 presentation that Ms. Potts has.

17 MR. LACIVITA: C.J., there are probably
18 about 108 parcels out in this area that have
19 been rezoned over the course of time.
20 Ms. Perry-Potts will take you through the
21 process at that point. I think that there have
22 been about 88 residents that have signed onto
23 her petition for rezoning.

24 Mr. Caponera has talked a couple of times
25 about four particular members which, again,

1 have hired him to represent their parcel, but
2 they have been included in Ms. Perry Potts'
3 petition.

4 CHAIRMAN O'ROURKE: You and I had a
5 meeting with Mr. Caponera and five of his
6 clients well over a year ago - no, it was in
7 January. So I really think that an additional
8 application to the board is probably
9 warranted, but I'll have to defer to counsel.

10 MR. STUTO: I think that the matter
11 before us is Ms. Perry-Potts.

12 CHAIRMAN O'ROURKE: But she is speaking
13 about property that belongs to those
14 gentlemen's clients.

15 MR. STUTO: It's obviously going to
16 effect them as well. It's your public
17 information hearing. If you want to call other
18 people, that's your decision.

19 CHAIRMAN O'ROURKE: Okay, we'll reserve.

20 MR. NARDACCI: C.J., I have just one
21 comment.

22 There are how many parcels, Joe?

23 MR. LACIVITA: I think that there are 108
24 parcels.

25 MR. NARDACCI: Okay, 108. If we allow one

1 or two folks to speak who, even if they are
2 attorneys and represent people, how do we not
3 offer that same opportunity tonight to
4 everyone else?

5 CHAIRMAN O'ROURKE: I tend to agree with
6 that, but I'm going to reserve that right.

7 Actually what I'm going to have Joe do is
8 go through the rezoning procedure that is in
9 place in the Town of Colonie before you start
10 just so that the residents in the audience
11 understand what this entails and why the
12 informational meetings are needed.

13 MR. LACIVITA: Before we get into that,
14 the packet of information that I gave you this
15 evening shows you a rezoning procedure. That
16 is actually highlighted on a couple of
17 variations when we have the ability for
18 residents of the town to offer comment. The
19 rezoning process, as it stands under the Land
20 Use Law, has to be a formal request to the
21 Town Supervisor's office. Then a resolution is
22 passed to forward that request to the Planning
23 Department and Planning Board for review and
24 submission of findings back to the Town Board
25 for approval.

1 Through the course of that review the
2 Planning Board and the Planning Department
3 conducts an investigation process and holds
4 one or several informational meetings on the
5 rezoning request. There are a couple of paths
6 that rezoning can take. If the impacts are
7 nonsignificant, that carries its own path. If
8 it's a significant impact based on the SEQRA
9 review, then that carries several other added
10 meetings as well. Again, this board has to
11 develop a findings statement and then forward
12 that to the Town Board for approval and
13 recommendation.

14 CHAIRMAN O'ROURKE: I was just confirming
15 with counsel to make sure that even though
16 SEQRA was done as a process for the rezone, a
17 new SEQRA has to be done for this new
18 application - because of the resolution.

19 MR. LACIVITA: That's absolutely correct
20 because also under this resolution that I did
21 not get the opportunity to speak about was the
22 fact that there was a request for the removal
23 of the conservation overlay. That would have
24 environmental impacts on that, if in fact, it
25 was done.

1 The information that I also supplied to
2 you this evening are your maps. You'll see
3 over to your right a side by side rendering of
4 the zoning districts. Those were once, prior
5 to the 2007 rezone and based on the
6 Comprehensive Plan, adopted in 2005. One of
7 the immediate actions within that
8 Comprehensive Plan was that rezoning was done
9 throughout the town. So, I mirrored those two
10 areas in the zoning districts that we're
11 talking about so you could see that this is
12 pre-2007 (Indicating), this is the current
13 Land Use Law (Indicating) and the changes that
14 were there. So, that is for your information
15 that you can actually take back with you.

16 Also over here in this mapping here
17 (Indicating) is your constrained lands based
18 on your federal waterways. As you know and as
19 we heard earlier this evening, there was a
20 conservation overlay district. We have 40%
21 constrained lands, so you can see that any
22 type of zoning or any type of parcel in that
23 area has some significant impacts. So, SEQRA
24 is going to be important during the course of
25 this review.

1 CHAIRMAN O'ROURKE: And just so the
2 public knows, I've actually talked with Joe
3 about this process going forward. This is a
4 very difficult process. Not everybody will
5 probably be happy or sad with the eventual
6 outcome of what does happen. One thing that I
7 think is important is that we look at the
8 property in question. We need to find out
9 since the Land Use Law changed what properties
10 were owned prior to, and now, versus those
11 that have been sold - or what properties have
12 been bought in this process after the zoning
13 and which properties have been sold. We're
14 looking into that and we're going to get some
15 answers as to those properties - somebody who
16 bought and thinking that they were buying
17 residential, we certainly have to be careful
18 to make changes to industrial. This is a very
19 difficult process going forward; as I'm sure
20 you residents will attest to.

21 Now that it's been given back to this
22 board by the Town Board, our investigation
23 will begin and we'll start with you Ms. Potts.

24 MS. PERRY-POTTS: As you know this is an
25 application for the rezoning for certain

1 properties that are located on Kings Road,
2 Curry Road, Cordell and Morris.

3 This is the old zoning from 2007
4 (Indicating) and that is the new zoning
5 (indicating). If you look down here, the
6 proposed rezoning that we're asking for all
7 stayed within what the old zoning was. We're
8 not asking for any industrial or business E to
9 be changed back that wasn't already industrial
10 or business E; except for a small section on
11 Morris Road. The front of this property
12 (Indicating), like maybe one-fourth or
13 one-third was residential and the rest of it
14 was industrial. He uses it as industrial. So,
15 we're not asking for anything that we didn't
16 have three years ago. We're also asking for
17 the removal of that conservation development
18 overlay.

19 There is also a property at 8 Lupe Way.
20 He has said that he would be willing to
21 provide a 101 foot buffer around the
22 residential area in the northern section of
23 that property for any future commercial or
24 industrial development as long as that buffer
25 goes towards his fulfilling his greenspace

1 requirements. If in the future he proposes to
2 use that 8 Lupe Way for residential
3 development, that buffer doesn't apply.

4 This rezoning back in January of 2007 has
5 greatly diminished our previous property
6 rights and values. What has resulted is
7 approximately 50 businesses that are now
8 nonconforming. The intent behind allowing
9 nonconforming use is that these businesses
10 will be phased out over time.

11 Many of the businesses that were formally
12 industrial are now operating in a commercial
13 office designation and they're nonconforming.
14 There is Unicell, Louis Petraccione, Wade
15 Lupe, JDJ Comfort, Rhino, Northern Nurseries,
16 King Road Materials, Fusco, Capital
17 Refrigerated Transport, Paul Luskin Paving,
18 Gale Luskin, Camelot Associates - they might
19 actually be the only one that is allowed in a
20 commercial office. They're basically an
21 office. Allen Potts Construction, Adirondack
22 Tire, TNT, Clark Moving, Robert Miller, Hudson
23 River Industries, Pendleton Landscaping,
24 Rockwell's Auto Shop, Waterblock Roofing and
25 Moonlight Horticultural Services.

1 Several businesses that were previously
2 industrial and business E are not located in a
3 single family residential designation and they
4 are all nonconforming. Allen Potts
5 Construction, Blay's Landscaping, JK Kenpo
6 Marshall Arts, Allied Craftsmen, Callanan
7 Industries, Wozniack Construction, Insurance
8 Auto Auctions, CATV Communications, Adirondack
9 Motoring, BBL Construction Services, Regent
10 Communications, Paragon Comics, Alternative
11 Storage, First Prize Paintball, Zebra
12 Environmental, Don's Repair Shop, Northeast
13 Petroleum Technologies, McLeod Systems,
14 Schwan's, Millivac, Tri-Valley, Liftech,
15 Underwriters Rating Board, Weatherguard,
16 Saccocio's Paving Service and Hysen Towing
17 Company.

18 These properties need an industrial or an
19 airport business area which is comparable to
20 the old Business E zoning in order to stay
21 competitive, productive, to grow their viable
22 businesses, which employ several hundred
23 people and to keep their market value intact.

24 The construction warehousing and trucking
25 industry provide employees with good paying

1 jobs that are well above the minimum wage.

2 Some people want to know how this zoning
3 adversely affects these properties. If it's a
4 rental property, every time the owners had a
5 tenant change, they had to seek a use variance
6 which takes time and money. First you have to
7 identify the tenant and then you have to get
8 them on the agenda for the Zoning Board of
9 Appeals. That takes time and sometimes the
10 tenant doesn't want to wait and they leave.

11 If you need a building permit, you have
12 to apply for a variance. Usually the reason
13 behind rezoning an area where the businesses
14 become nonconforming is to phase them out over
15 time, or to get rid of certain uses such as
16 adult businesses. It's extremely difficult or
17 impossible to receive variances. You are
18 totally at the mercy of the Zoning Board of
19 Appeals.

20 With the current zoning, if these
21 property owners want to sell their property,
22 they have to sell it to someone who is going
23 to use it exactly as the previous owner, or
24 the new owner has to conform to the current
25 zoning.

1 For example, properties that are on
2 Kings Road and Curry that are now in single
3 family residential, such as Schwan's Frozen
4 Food and Millivac, Liftec Equipment and Zebra
5 Environmental - it would be very hard to find
6 someone who would do the exact same kind of
7 business. Those owners face the risk of
8 walking away from their properties in the
9 future.

10 I can't see anyone buying one of those
11 properties to build a house. It would cost
12 them a lot of money to demolish those large
13 warehouses and construction office buildings
14 only to build a nice home next to another soon
15 to be abandoned warehouse. The money to buy
16 the land and remove those current buildings
17 alone would be cost prohibitive.

18 The reason that I recommended the airport
19 business area for the area that was previously
20 business E is that in order for all of those
21 previous businesses to be a legally conforming
22 business as they were before the town adopted
23 this new law, they need a zoning designation
24 to allow for warehouse storage, distribution
25 and light industrial for manufacturing use

1 that is conducted indoors. The only two
2 categories that include those things is
3 industrial and airport business area.

4 Concerning the public notice and the lack
5 of individual notification - we were never
6 directly notified that our properties were
7 going to be rezoned. Kelly Mateja, formally of
8 the Planning Department told me that since it
9 was town wide rezoning that they didn't have
10 to do individual notification.

11 The 14th amendment of the U.S.
12 Constitution states that no state shall
13 deprive any person of life, liberty or
14 property without the due process of law.

15 The Planning Department should certainly
16 have contacted all of those property owners
17 whose property would become nonconforming. At
18 least at the very minimum they should have
19 contacted the people in this area. It was
20 obvious that there was a change in their
21 property rights. They violated our 14th
22 amendment rights.

23 The town claims that they used the town
24 newsletter, known as the Town Times, to inform
25 the residents of the meetings for the Comp

1 Plan. This is not distributed to businesses
2 and the majority of these business owners
3 don't live in the town. That does not mean
4 that they forfeit their property rights like
5 some of the residents think that they should.

6 Also, this area has a Schenectady Zip
7 Code, 12303. In 1997, Planning Director
8 Pearson eliminated advertising in the 12303
9 Schenectady Zone of the Times Union. He also
10 stated that the agenda is currently sent to
11 several contacts in the area who have been
12 distributing the information to residents.
13 That statement makes me question if the
14 notification policy in this area has been
15 jeopardized all these years and if there might
16 have been selective notification.

17 Back in July of '05, one month before
18 they approved the Comp Plan, I started a
19 process to get a building permit to double the
20 size of my construction garage. In October of
21 '06 I received my certificate of occupancy. I
22 took care of this myself. I went to the
23 Building Department and the Planning
24 Department. I spoke to Mike Lyons personally
25 about it. No one in any department said

1 anything to me about a Comp Plan, or about
2 changing the zoning. Three months after I get
3 my certificate of occupancy, I'm now a
4 nonconforming business.

5 Mr. Hogan of the Planning Department said
6 several times about all the CPAK meetings to
7 form the Comp Plan. I have the sign-in sheets.
8 The only people in this area who attended them
9 were the Romanos who live up the road, and
10 they were not affected by the zoning - and two
11 people on Lupe Way and they're not affected by
12 the zoning. There was no one else in this area
13 that was on that sign-in sheet.

14 And for the business meeting, there were
15 no businesses in that area that attended that
16 business meeting. I have the sign-in sheets to
17 prove that.

18 I do have something that I want to pass
19 out. It's an environmental law. Do you mind?

20 CHAIRMAN O'ROURKE: No, absolutely.

21 MS. LACIVITA: Suzanne, could you also
22 get a copy of your statement today so that I
23 can pass it out for their review.

24 MS. PERRY-POTTS: Yes.

25 CHAIRMAN O'ROURKE: For a proper

1 notification, Joe, it has to be in the
2 Spotlight, correct?

3 MR. LACIVITA: The Colonie Spotlight.

4 CHAIRMAN O'ROURKE: That's the paper of
5 record?

6 MR. LACIVITA: Right, and I also put this
7 public information meeting in the Spotlight as
8 well as the Times Union to try to address that
9 concern that it didn't get up to that area as
10 well. We tried to take that extra step, at
11 least for this meeting.

12 CHAIRMAN O'ROURKE: No, I mean what
13 Ms. Potts was referring to - the Town Times?

14 MR. LACIVITA: Yes.

15 CHAIRMAN O'ROURKE: In terms of
16 notification.

17 MS. PERRY-POTTS: That wasn't actual
18 notification. That was just letting people
19 know what was going on. I just wanted you to
20 know that these businesses don't get that. I
21 didn't receive it either and I live in that
22 area. I received maybe two of these Town Times
23 before Mary Brizzell was not voted back in. I
24 distinctly remember saying, wow, that's what
25 she looks like.

1 I also remember there was a date for the
2 hazardous drop-off because I used it. I got
3 maybe two of these before she left. That was
4 probably within the last year or two. So in
5 2006 and 2007 I received two, possibly. I
6 don't recall anything that had to do with
7 zoning. I read just about everything that
8 comes in.

9 One of the questions that I had when I
10 first was looking into this was why did they
11 zone our land like this? I received two
12 answers. For the first public hearing for the
13 new law which was on November 2, 2006,
14 Mr. Pearson made a statement and I'm going to
15 read it to you. He says:

16 Probably one of the most significant
17 areas of rezoning - and I'm sure that you
18 can't see clearly the maps that we have in
19 front of the existing zoning and the proposed
20 zoning - is clearly the largest area of
21 rezoning proposed in the western part of the
22 town, out near the tracks, out near Kings Road
23 and Albany Street which has been zoned
24 industrial for the last 50 years. We think
25 that is not a very logical use for that piece

1 of property for a variety of reasons; lack of
2 infrastructure and the sensitivity of the Pine
3 Bush area. You will notice on the proposed
4 land use that there is a lot of green areas
5 and those are presently owned by the Land
6 Conservancy, the Town of Colonie or the
7 quasigovernmental agencies.

8 I also sent a FOIL release in asking why
9 they changed it and I received a letter back
10 from the Planning Department. It was a
11 statement about the Pine Bush area and how the
12 preserve is located there. Well, in my
13 opinion, the Town of Colonie is rezoning our
14 land and violated the ENCON law,
15 Article 45-0117, paragraph 5. When they
16 rezoned that land in the Pine Bush, that law
17 concerns various lands in New York State that
18 are dedicated and preserved. Lands that are
19 dedicated to the Albany Pine Bush Preserve are
20 included in it. I gave you that complete law.
21 There is a list there and the Pine Bush is
22 towards the end of the list.

23 The very last paragraph of that law
24 reads:

25 Nothing in this article shall be

1 construed to diminish an existing property
2 right held by any person who owns any interest
3 in a real property that is located adjacent to
4 any real property dedicated to the preserve.

5 They used the fact that we are located
6 next to the preserve to diminish our property
7 rights. They can't do that. That statement is
8 to protect us from exactly what they have done
9 to us. They cannot reduce our existing
10 property rights because we are located next to
11 the preserve.

12 MR. STUTO: Can you tell me where you're
13 reading from?

14 MR. LACIVITA: It's the last page. It's
15 number five.

16 MS. PERRY-POTTS: So that was the first
17 reason because we're located near the Pine
18 Bush Preserve property.

19 The second reason that Mr. Pearson said
20 was a lack of infrastructure. Well, that's
21 just plain nuts. This town has allowed all of
22 those businesses to be built over the last
23 60 years using the existing infrastructure and
24 then the town says, gee whiz maybe that wasn't
25 very logical. You can't take away our zoning

1 and make us nonconforming when the town
2 approved these businesses knowing full-well
3 what the infrastructure was in place. If
4 anything, we even denied the same
5 infrastructure that has been made available to
6 other property owners because of our location
7 to preserve properties. That is another
8 violation of that previously mentioned law.
9 You cannot take away our property rights
10 because we are located next to the preserve
11 properties. That is why they did it.

12 I have two statements. One in the form of
13 a request and one in the public hearing that
14 says that was the reason that they did it.

15 The same thing with the conservation
16 development overlay. You can't put that over
17 us. It has reduced our previous property
18 rights. You cannot do that just because we are
19 located next to these state preserved
20 properties. That's the reason that they did
21 it.

22 Any questions about that before I go any
23 further?

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

25 I know that you have to think about it

1 and I didn't give you that law before, but to
2 be honest with you, I was going at another
3 angle and this just came up on Friday, okay?

4 CHAIRMAN O'ROURKE: That's fine, go
5 ahead.

6 MR. GANNON: I don't know if I missed it,
7 but could you give us what your interest is in
8 the area. Do you own a business?

9 MS. PERRY-POTTS: I own five properties.
10 I have a construction business. I have a
11 garage and behind that I have a business that
12 has a garage that I lease out that is quite
13 large. They're a pretty decent business. It
14 used to be a garbage company and believe me,
15 it's an improvement. And then over on
16 Morris Road I have an area where I process top
17 soil. I do not do any excavation. We haul in
18 material and I run it through my machine and
19 break up the dirt, remove the sticks and I
20 sell it. I do not do any excavations. It's not
21 a mining operation. That's pretty much it.

22 Let's talk about the SEQRA violations.
23 The SEQRA documents for that local Land Use
24 Law 1 of 2007 were never signed or dated.
25 Therefore, the SEQRA procedure was never

1 completed. According to ENCON this means that
2 since the procedure was not completed, the law
3 can be challenged and declared invalid. I have
4 proof of that.

5 The negative declaration for the Local
6 Land Use Law that Mary Brizzell signed with a
7 date that was not handwritten - that was not
8 filed until June 28, 2007; six months later.
9 That declaration has to be filed in the DEC's
10 environmental notice bulletin before you vote
11 on it. It was six months later. Usually when
12 someone wants to challenge a zoning change,
13 they have four months. They filed this six
14 months later and the four months is already
15 gone.

16 The negative declaration that they did
17 file - the action description does not state
18 that zoning district boundaries will be
19 deleted and new ones created. It doesn't
20 mention that there is going to be new names
21 for zoning districts. This just kind of makes
22 it sound like there is maybe going to be some
23 wording in the law that's changed. It does not
24 state that the boundaries and the names of the
25 districts are going to change.

1 Also, notice of a negative declaration
2 has to be incorporated once into any other
3 subsequent notice by law. Usually you can do
4 that when you have a notice for a public
5 hearing because this is a type 1 and it's a
6 negative declaration or whatever. They didn't
7 do that either.

8 The last thing has to do with taking a
9 hard look at the environmental forms there.
10 Not only did the town not take a hard look at
11 environmental impacts, the Town Board had
12 already agreed to pass this law before they
13 even received the environmental assessment
14 form. I'll explain that to you.

15 Norlite which is not on this map - it's
16 totally on the other side and I don't have a
17 problem with Norlite. I'm not saying that
18 Norlite did anything wrong. Norlite was in the
19 middle and had public hearings concerning a
20 zoning change that they had been working on
21 for about four years. The Town Board on
22 December 7, 2006 had a resolution to adjourn
23 the next public hearing for the Norlite
24 rezoning. On December 21, 2006 they had a
25 resolution to not adopt the Norlite rezoning.

1 Both of these were unanimously adopted. You
2 see the Town Board had already agreed to
3 change Norlite's property to industrial. It
4 was already industrial on the proposed new
5 zoning map that the town displayed a month
6 earlier on November 2, 2006 for the first
7 public hearing for the Local Land Use Law.
8 Apparently these Town Board members had agreed
9 that no matter what, they were going to pass
10 that new Local Land Use Law. Otherwise, why
11 would they end the Norlite zoning application?

12 I know that if I had my application
13 before you and you were going to change the
14 zoning for some other reason, and you said
15 we're just going to give this to you,
16 Mrs. Potts and We're going to terminate
17 this - if you did that to me and then the new
18 zoning didn't go through and then I have to
19 start my whole application again, I'd be
20 pretty ticked.

21 The Town Board can't vote on a resolution
22 unless it's been distributed to all members a
23 few days in advance. I'm not sure how many
24 days in advance it is, but it's got to be at
25 least one day in advance, right?

1 CHAIRMAN O'ROURKE: I believe that they
2 get the resolutions on Monday; don't they,
3 Joe?

4 MR. LACIVITA: I honestly don't know.

5 MS. PERRY-POTTS: We'll say three days, I
6 don't care.

7 MR. LACIVITA: Yes, it's at least three
8 days.

9 MS. PERRY-POTTS: On December 7, 2006
10 when they had that first resolution to begin
11 termination of Norlite's application, that was
12 the same day that Supervisor Brizzell received
13 the SEQRA document from the Planning
14 Department. The Supervisor and the rest of the
15 Town Board had already made up their mind that
16 they were going to pass that law without even
17 looking at the SEQRA documents. I have proof
18 of that. I have a memo from Kevin DeLaughter
19 saying, here you go, Mary Brizzell. We're all
20 done. Here is it. It's on the very same day
21 that she held that first proposal to end the
22 Norlite termination. They never even looked at
23 the environmental forms.

24 Also when they did the Comp Plan, the
25 recommendation for the Comp Plan was -- any

1 rezoning was to be less intensive and not
2 more. Norlite went more.

3 Business E went to industrial. It was
4 more there. There was no area in the landfill,
5 but that went to industrial also. They have a
6 legitimate reason. They needed to put it in
7 bogus environmental assessment form that she
8 never signed.

9 Do you have any questions about that?

10 CHAIRMAN O'ROURKE: Who is the lead
11 agency? Was the Town Board the lead agency?

12 MS. PERRY-POTTS: The Town of Colonie
13 was; the Town Board.

14 CHAIRMAN O'ROURKE: The Town Board was
15 lead agency on this SEQRA document? Can I see
16 that, if you don't mind?

17 MS. PERRY-POTTS: Yes, they were. You'll
18 have to give me one second please.

19 There is a note there - an e-mail that
20 says that the Town Board does not have a
21 signed SEQRA form.

22 The first one is an e-mail from the town
23 saying that so far as of today, there is no
24 signed and dated EAF form.

25 I copied when I first found that out, I

1 copied the -- I don't know what you call that
2 book that they have at the Town Clerk's office
3 with all the Town Board's minutes. In the
4 front it says what SEQRAS are on file. I
5 copied that because it said that there was no
6 EAF on file. I'm a pessimist so that they
7 didn't change it and stick it in there later.
8 That's the way I am. What can I say?

9 The third one is a copy of the full
10 environmental assessment form. It says, Town
11 of Colonie Land Use Law, Town of Colonie Town
12 Board as the Lead agency. It's got her name on
13 there, but she never signed or dated it.

14 The next one is a copy of the negative
15 declaration and I printed that date on there
16 7/11/07. You can go on there and check it
17 yourself. That was the date that was on there.
18 This is supposed to be before they vote,
19 otherwise it wouldn't say proposed Town of
20 Colonie Land Use Law. It would have said the
21 Land Use Law that we passed six months ago.

22 MR. NARDACCI: Where was that posted?

23 MS. PERRY-POTTS: It's on the DEC's
24 environmental notice bulletin. Whenever you
25 make a decision, usually for SEQRA, not all of

1 them but most of them are listed on that
2 website. Someone from the Planning Department
3 usually handles it.

4 MR. STUTO: Can I ask you a question?

5 MS. PERRY-POTTS: Yup.

6 MR. STUTO: Are you making the argument
7 that they published this in the EMB, post
8 acting on -

9 MS. PERRY-POTTS: Yes. Six months later,
10 yes.

11 MR. STUTO: Did they take a vote on
12 SEQRA? Did you ever check the minutes of the
13 Town Board?

14 MS. PERRY-POTTS: Yes, they did. They
15 voted and said everything was just fine and
16 dandy.

17 MR. STUTO: So there is a record of them
18 voting on a negative declaration?

19 MS. PERRY-POTTS: Yes. Did you want me to
20 find that?

21 MR. STUTO: Yes.

22 MS. PERRY-POTTS: Okay. The last page is
23 the front page for the EAF that Kevin
24 DeLaughter sent over to Mary Brizzell. You can
25 see the date December 7, 2006. It's the day

1 that they started the termination of Norlite.

2 CHAIRMAN O'ROURKE: What date did the
3 board vote on the neg dec?

4 MS. PERRY-POTTS: Hold on one second and
5 I'll find it.

6 I don't have copies with me.

7 CHAIRMAN O'ROURKE: If I could just look
8 at it?

9 MS. PERRY-POTTS: This is a note that
10 says no significance and then this is a
11 resolution pertaining to the Town of Colonie
12 Land Use Law and compliance for the provisions
13 of the New York State Environmental Quality
14 Review Act. It said that the Town Board was
15 familiar with the Land Use Law.

16 CHAIRMAN O'ROURKE: So it is signed.

17 MS. PERRY-POTTS: No. The resolution was
18 approved and that SEQRA was taken care of. No,
19 the EAF form had never been signed.

20 CHAIRMAN O'ROURKE: You're talking about
21 two different things. The neg dec is signed.

22 MS. PERRY-POTTS: Is there a date on
23 there? We don't know when it actually was
24 signed. She could have signed this when they
25 posted this six months later. You just don't

1 know. We don't know when she actually signed
2 this. She could have signed this six months
3 later.

4 MR. LACIVITA: What is the filing stamp
5 on it?

6 CHAIRMAN O'ROURKE: It's June 25th.

7 MS. PERRY-POTTS: That's when they had to
8 amend it and when they sent it in with the
9 amendment. They sent them in together.

10 MR. STUTO: If I could just summarize:
11 There is a board resolution neg decking it and
12 then there is a neg dec that's executed and
13 filed, but the EAF is not signed. That's the
14 record that's before us right now.

15 CHAIRMAN O'ROURKE: The EAF doesn't
16 exist.

17 MR. STUTO: We don't know of a signed
18 EAF.

19 CHAIRMAN O'ROURKE: You have just the
20 first page there of the EAF there. It's
21 unsigned. And it had to be a full EAF.

22 MS. PERRY-POTTS: Yes, it was.

23 CHAIRMAN O'ROURKE: Do you have the full
24 EAF?

25 MS. PERRY-POTTS: Yes, I do. It said that

1 there were no aquifers. That's what Kevin
2 DeLaughter said. You just brought that up with
3 the last guy.

4 MR. LACIVITA: C.J., I think also with
5 the e-mail that you see from the Town
6 Attorney's office, it also says that the date
7 it's signed and dated for Local Law 1 of 2007
8 has not been located.

9 CHAIRMAN O'ROURKE: Yes, I saw that.

10 MS. PERRY-POTTS: Also in either part two
11 or part three where they should mitigate any
12 zoning that's more intensive like the
13 landfill, they couldn't explain. They didn't
14 mention Norlite at all.

15 CHAIRMAN O'ROURKE: Again, there are a
16 couple of issues here, too, Peter. I know that
17 as talented as Ms. Brizzell was, I don't think
18 that she filled this out and usually Kevin
19 signs off on these and there is nothing on
20 there. Many of these questions aren't even
21 answered.

22 If you could copy any documents that you
23 have brought before this board for us?

24 Joe, if we can distribute these maybe at
25 next week's meeting?

1 MS. PERRY-POTTS: So as you can see there
2 are some SEQRA problems. I think that there is
3 a problem with the law. I need you guys to
4 take a look at that a little more closely
5 because I know you don't have enough time.

6 CHAIRMAN O'ROURKE: If I could just
7 interrupt briefly just so that you understand.
8 If the board were to find issues with SEQRA,
9 then ultimately a law couldn't have gone
10 through.

11 MS. PERRY-POTTS: Correct. That's what
12 I'm saying.

13 CHAIRMAN O'ROURKE: That's the position
14 that the board would have to take. It's not a
15 legal conclusion. I'm just saying that if
16 SEQRA wasn't done -

17 Peter, am I out on a limb?

18 MS. PERRY-POTTS: You make projects redo
19 it all the time.

20 MR. STUTO: There are issues of statutes
21 and limitations. There is generally a four
22 month statute of limitations for Article 78.
23 That's where you challenge the action of a
24 government entity which would be the rezone.
25 If you attack that within the four month

1 period - things like that are often attacked
2 for SEQRA not having been completed or being
3 completed incorrectly. In this case, it seems
4 to be a mixed bag of facts. One of the key
5 questions is: Is that statute of limitations
6 extended? What I mean is extended beyond the
7 four month period for the action of the
8 rezone. That's something that would have to be
9 researched.

10 MS. PERRY-POTTS: I think that there is
11 also a six-year statute of limitations of when
12 there is a deficit in a procedural process of
13 the zoning amendment. There is also a six-year
14 New York State statute of limitations, I
15 believe.

16 MR. STUTO: Okay, I'm not sure what
17 you're referring to, but that's why we're
18 having these hearings and gathering our
19 information.

20 MS. PERRY-POTTS: Okay, I'll continue.

21 In further support of this west side
22 rezoning, the Comprehensive Plan has several
23 misleading and defective comments concerning
24 the Pine Bush and the Albany Pine Bush
25 Preserve.

1 I have read that plan that the town had
2 adopted on August 25, 2005 several times and
3 this document has at least five misleading,
4 defective, and confusing statements about the
5 Pine Bush and the Albany Pine Bush Preserve
6 making one think that they are the same. They
7 are not. It also makes one think that the
8 Albany Pine Bush Preserve Commission has a
9 right to control and manage a person's private
10 property which is located in the Pine Bush.

11 There is a recommendation map that was in
12 the Comp Plan. The map that was put in the
13 Comp Plan was May of 2005. It shows that green
14 area there (indicating) as the Albany Pine
15 Bush Preserve. A few months earlier they had
16 the same recommendation map they called the
17 Pine Bush area. They took it out and exchanged
18 it for one named the preserve. I think that
19 they did that just to confuse people when we
20 realized that our zoning was changed. People
21 woke up and said, oh guess what? I live in the
22 preserve. They had a map and they substituted
23 a different one with a different name.

24 Page 39 of the Comprehensive Plan states
25 the fact that the Albany Pine Bush Preserve

1 Commission has an opportunity to review
2 development in the preserve. In actuality,
3 there is to be no development in the preserve
4 except an environmental education center,
5 trails, and park on no more than 5% of the
6 preserve. They're trying to make people think
7 that you live in a preserve and we've got a
8 say over your property.

9 Page 48 of the Comp Plan states that the
10 Kings Road area is located in the Albany Pine
11 Bush Preserve. It's not targeted for
12 significant development, therefore investing
13 in infrastructure such as sewers are not
14 necessary.

15 In 2005 only about one-third of Kings
16 Road had preserve property abutting it. Kings
17 Road is not located within the preserve. Parts
18 of the preserve do abut Kings Road, which was
19 here long before they created the preserve.

20 Page 55 of the Comp Plan states that the
21 Albany Pine Bush Preserves Commission was
22 established in 1988 by the New York State
23 Legislature, recognizing the Pine Bush as a
24 rare and endangered natural community. The
25 commission was charged to protect and manage

1 the Albany Pine Bush. Now if you look in that
2 law, it continues.

3 It says: establishing an Albany Pine Bush
4 Preserve consisting of dedicated public and
5 dedicated private lands and a commission made
6 up of representatives of state and local
7 government and private citizens to manage the
8 preserve for the purposes of its protection
9 and control and appropriate recreation and
10 education purposes.

11 The commission is in charge of protecting
12 the preserve, not our private property located
13 next to it, which is what they are implying.
14 It's misinformation and it's confusing. I
15 believe that they did this on purpose.

16 Here is the last one. Lynne Jackson and
17 Helen Romano even made a comment about it and
18 they still ignored it and kept it in there.

19 Page 59 of the Comp Plan states that
20 Albany Pine Bush Preserve - this area is a
21 critical habitat for the Karner Blue
22 Butterfly. This is a location where
23 acquisition by the town or a local land
24 conservancy would be appropriate.

25 The Albany Pine Bush Preserve is already

1 owned by the Nature Conservancy, State of New
2 York, City of Albany and the towns of Colonie
3 and Guilderland. That area on a planned
4 recreation map listed as the Albany Pine Bush
5 preserve is not the preserve. Part of the
6 preserve is located in it.

7 Lynne Jackson and Helen Romano both sent
8 letters to the town and said, what are you
9 guys crazy? Or -- it was about the
10 development, I'm sorry. There is to be no
11 development in the preserve. They sent letters
12 complaining about that and they totally
13 ignored it. These statements are misleading
14 and confusing and I believe that the town's
15 Planning Department, Kevin DeLaughter and
16 Saratoga Associates did this on purpose.

17 Saratoga Associates is in the business of
18 creating Comprehensive Plans. They should know
19 the difference between the Pine Bush and the
20 preserve, even if they aren't familiar with
21 the environmental law. The preserve members
22 who went to these meetings and these public
23 hearings also made absolutely no attempt to
24 prevent any misleading information.

25 At the second public hearing for the

1 Local Land Use Law, December 7th, on page 48,
2 Mr. DeLaughter makes a statement. They're
3 discussing the fact that a restaurant could be
4 in a commercial office area and that
5 commercial office areas are really like
6 Corporate Woods, Century Hill Drive and
7 British American Boulevard.

8 Kelly Mateja states, well, you know that
9 there is a commercial office out here by the
10 railroad tracks and she's interrupted by
11 Supervisor Brizzell. By the railroad tracks?
12 Mr. DeLaughter states, by Cordell Road. It was
13 put in that area primarily to accommodate the
14 existing commercial and industrial.

15 Mr. DeLaughter has just stated that there
16 is existing industrial in there and he is a
17 senior member of the Planning Department. He
18 should know that commercial office zoning
19 designation does not accommodate for
20 industrial.

21 Now I'm going to comment about this
22 little area right here (Indicating). It's
23 business E that went to industrial with the
24 land zone change. First of all, the unsigned
25 and the undated full EAF for that Land Use Law

1 failed to mitigate any possible environmental
2 impacts of 4278 Albany Street where
3 approximately 190 acres of mostly business E
4 and some industrial was changed to all
5 industrial. This is in the study area of the
6 Pine Bush Preserve Commission. The only Pine
7 Bush Preserve Director, Mr. Gifford, attended
8 these meetings and all he had to do is worry
9 about this side (Indicating). He doesn't have
10 to worry about the whole town. He's concerned
11 about this part and that's it. He failed to
12 comment on the fact that in this area the
13 rezoning became more intensive.

14 That makes me wonder if that director
15 allowed this property, which part of it was
16 owned by Town Board member Ulderic Boisvert,
17 to be zoned to industrial in exchange for down
18 zoning the rest of the Pine Bush. This was
19 against the Comp Plan recommendations. Also,
20 Mr. Boisvert should have abstained from voting
21 since his property stood to gain in value.

22 They didn't make one comment. There is no
23 letter sent in and he didn't make a statement
24 or comment during the public hearing.

25 Don't you think that kind of goes against

1 the way that he usually acts?

2 The conservation development
3 overlay - the zoning law is supposed to follow
4 the Comp Plan recommendation. I've got that
5 Comp Plan all printed out. I took it to Kevin
6 DeLaughter, plopped it down in front of him
7 and said, if you show me in there where it
8 recommends the conservation development
9 overlay, I'll shut up. He wouldn't even open
10 up the book and look. I said I made it easy
11 for you. I bookmarked all the places where it
12 said about the Pine Bush. He still wouldn't
13 look it up. He said, let me think about it and
14 I'll call you back. He called me back and he
15 goes, well, it's not in there but they
16 interpreted it.

17 So, the Zoning Law is supposed to follow
18 the Comp Plan recommendation. There is no
19 mention of a conservation development overlay
20 in the Comp Plan. It did recommend a
21 conservation subdivision design, which does
22 not force the landowner to set aside a
23 permanent conservation easement in order to
24 develop their property. The Comp Plan stated
25 that conservation easements were one method of

1 preserving open space, which was voluntary
2 with willing land owners. The CDO is not
3 voluntary and it forces unwilling landowners
4 to conserve land in order to develop. The CDO
5 also reduces the density. A conservation
6 subdivision design does not.

7 The director of the Albany Pine Bush
8 Preserve - he wrote the special standards for
9 areas influenced by the Albany Pine Bush
10 Preserve which is in our Zoning Law, Chapter
11 190-30, paragraph H. I think that writing part
12 of the Zoning Law is definitely control which
13 they are not allowed to do. You're not allowed
14 to write part of the Zoning Law.

15 An unofficial Pine Bush Committee which
16 was set up by Mary Brizzell made most of the
17 decisions of what was included in the Comp
18 Plan and how the land would be zoned in the
19 Pine Bush area. The members included Helen and
20 Tom Romano who live outside of the zoning;
21 Judy Houser and Chris Revere who live outside
22 of that zoning also; Neil Gifford and Chris
23 Hawver from the Pine Bush Preserve Commission
24 and there was a man from the fire department.
25 Lynne Jackson and John Wolcott from Save the

1 Pine Bush, Kevin DeLaughter and Phil Pearson
2 from the Planning Department were on it. Also,
3 the Town Attorney Arnis Zilgme and two Town
4 Board members, Tom With and Kevin Bronner were
5 on it. These people met May 8, 9, or 10 times
6 and they were the ones that made the decision
7 of what would happen here. No one got any
8 input from any business members. They were the
9 only ones that suggested the conservation
10 development overlay. This was an extremely
11 biased group and they conspired to defraud
12 these commercial landowners out of their
13 property rights and property values.

14 Also another comment about the
15 conservation development overlay where it
16 reduces the density. Dan Wojcik of Saratoga
17 Associates who did the Comp Plan and worked on
18 the law - when he was writing the Comp Plan he
19 was also writing a Comp Plan for the Town of
20 Bethlehem at the very same time. Kevin Bronner
21 sent in some notes and so did some other
22 people that said, do you think that you can
23 change the Town of Bethlehem to the Town of
24 Colonie? He was getting it confused.

25 Also, in the Bethlehem plan, the

1 conservation subdivision does calculate the
2 density against the unconstrained land. It
3 doesn't say that in our Comp Plan. It does in
4 theirs. I think that he may have confused this
5 as he was doing it at the very same time. He
6 may have confused it when he put in into law.

7 Equal protection violation - the 14th
8 amendment also prohibits states from denying
9 any person of the equal protection of the law.
10 No one person or group should be denied the
11 protection under the law that is enjoyed by
12 similar persons or groups. In other words,
13 persons in similarly situations must be
14 similarly treated.

15 In September of 2008 I sent in some FOIL
16 requests and Kelly Mateja called me and I
17 asked her why the town did not send out
18 individual notifications. Her reply was that
19 it was town wide rezoning and they were
20 simplifying the districts. There was too many.
21 There was like six businesses and eight
22 residential and they just wanted to narrow it
23 down. She said also that they published the
24 required public notice. If it was truly a
25 simplification and all the properties were

1 treated equally, then I couldn't complain. But
2 all properties weren't treated equally.

3 For instance all business E was not
4 changed to airport business area. Once again
5 if all properties were still conforming then I
6 couldn't complain, but they're not and the
7 nonconforming properties should have received
8 due process. The property owners in this town
9 were not treated equally when that law was
10 passed.

11 Defective notices - most of the notices
12 were not official notices, they were notices
13 that were in the Town Times. All of the
14 notices that were sent out -- I found five of
15 them in going through the town's records. I
16 found five and none of them mention or have
17 the word zoning or rezoning. There was one
18 mention of a reminder to send back those
19 surveys and it said zoning recommendation.
20 There was only one in all of these blue notes
21 that they put in there. The residents and the
22 property owners of Colonie probably didn't
23 realize that their property interests could be
24 at stake. If they did, maybe they would have
25 participated more.

1 Concerning the residential and the
2 business survey cover letters that were sent
3 out - they were almost identical except on the
4 cover letter it states that public
5 participation work shops and opportunities
6 will be held in the future. On the residential
7 it adds: advertised on the town's website and
8 in the Spotlight newspapers. They didn't put
9 that on the business survey cover letters.
10 They were not treated equally. They did not
11 want any more business input.

12 The Town of Colonie should not have used
13 Saratoga Associates to consult on the Comp
14 Plan and the Land Use Law. Their principal,
15 Dan Bush attended almost all of those
16 meetings. He lived in Latham in the Town of
17 Colonie for at least 15 years. He was on the
18 Conservation Advisory Council for 10 years and
19 he was a Planning Board member for five years
20 until he resigned because he moved to Saratoga
21 Lake. He was also on the LUMAC, the Land Use
22 Management Advisory Council along with Mary
23 Brizzell back in the late 80's and early 90's
24 when they attempted to restrict our zoning
25 back then also.

1 In a Times Union article there is a
2 comment that Daniel Wojcik says that he's
3 helping to develop a master plan that he hopes
4 will leave town residents with space to roam.
5 He's not supposed to prepare that plan for how
6 he feels. It should be for how the town people
7 feel and not him personally. They should not
8 hire somebody that lives in the town that
9 obviously has strong views about open space or
10 he wouldn't be on the Conservation Advisory
11 Council for 10 years. He was not unbiased or
12 impartial.

13 That's all I got right at the moment.

14 CHAIRMAN O'ROURKE: Again, there is a lot
15 of information that you certainly went through
16 and we'll be looking for a transcript from
17 Nancy as soon as she can get one done. Again,
18 there is a lot of information.

19 Since I've been on this board, I have had
20 serious issues with the Land Use Law in many
21 different facets; the rezoning being one of
22 them. With this resolution that was handed to
23 us, it's going to be a long drawn out process,
24 I'm afraid. There are a lot of legal
25 implications that counsel will have to take

1 into account.

2 There will have to be a lot of meetings
3 in regard to this. We will be doing the public
4 hearings and notifying and just having that
5 item on. Certainly that will be in a bigger
6 venue to accommodate those who want to speak.

7 I think as we go forward during those
8 sessions, we will probably have to have a time
9 limit and again, that will be taken under
10 counsel. People at each meeting will only get
11 to speak one time. During that particular
12 meeting and in terms of time - we don't want
13 to leave anybody out so we'll have to decide
14 how many people and whether it's three minutes
15 or four minutes allotted as they have done for
16 Town Board meetings in the past. I certainly
17 don't mind staying until midnight, but I know
18 Ms. Vaida doesn't like staying until midnight.

19 These are issues that don't effect just
20 this area. Although, this area was impacted
21 much greater than other areas in terms of that
22 Land Use Law and some of the zoning changes
23 that were made. As we go forward there is
24 going to be a lot of issues that do come up.

25 Ms. Potts, you are representing how many

1 people?

2 MS. PERRY-POTTS: I don't technically
3 represent them. I'm not their attorney.

4 CHAIRMAN O'ROURKE: I understand that,
5 but within your group?

6 MS. PERRY-POTTS: I'd have to look. I
7 think that there are may be 60. I didn't
8 actually count them.

9 CHAIRMAN O'ROURKE: I've decided that we
10 are limiting tonight just to you. I'm not
11 going to allow Mr. Caponera or the other
12 attorney to speak this evening. So, what I do
13 want is your list of people to be submitted.

14 MR. LACIVITA: Actually, C.J., in the
15 packet supplied to you last time -

16 CHAIRMAN O'ROURKE: Is that what the
17 signatures are?

18 MR. LACIVITA: All the signatures and the
19 letters supporting Ms. Potts' application and
20 everything else -

21 CHAIRMAN O'ROURKE: I wasn't clear if it
22 was just the signed petition

23 MR. LACIVITA: All the properties in
24 question in the zoning -

25 MS. PERRY-POTTS: They all signed

1 individual letters and they want it zoned
2 back. The people that did not want it zoned
3 back - there's no letter from them.

4 MR. SCHIMMEL: There is right here.

5 MS. PERRY-POTTS: Is that for the zoning?

6 MR. SCHIMMEL: Yes.

7 MR. LACIVITA: These were double-sided
8 pages when we made copies of Ms. Potts'
9 application.

10 CHAIRMAN O'ROURKE: Can you have Tori
11 simplify that Joe and get everybody onto a
12 spreadsheet?

13 MR. LACIVITA: We actually have that.
14 That was all there, too.

15 CHAIRMAN O'ROURKE: Oh okay, I didn't see
16 that.

17 MS. PERRY-POTTS: Did you just want names
18 or did you want phone numbers?

19 MR. LACIVITA: Parcel addresses.

20 MR. SCHIMMEL: I just want to ask one
21 question on the process. It doesn't have to do
22 with the merits of what the argument is. It's
23 my understanding that this board will take
24 this information and do fact finding and
25 present it to the Town Board.

1 CHAIRMAN O'ROURKE: That's correct.

2 MR. SCHIMMEL: Than how can you take one
3 side of the issue without hearing the other
4 side of the issue?

5 CHAIRMAN O'ROURKE: Because, sir, there
6 was a resolution passed by the Town Board.

7 MR. SCHIMMEL: You said reasonableness.

8 CHAIRMAN O'ROURKE: Absolutely, sir.

9 MR. SCHIMMEL: Well, this is my letter
10 and I'd like to present it to you.

11 CHAIRMAN O'ROURKE: Right, and you can at
12 the public haring that I told you would be on
13 the 15th of June. I would be more than happy to
14 have that happen.

15 MR. SCHIMMEL: Why does she have an
16 opportunity to speak and nobody else? Just
17 answer that question. Is it because you say
18 so?

19 CHAIRMAN O'ROURKE: Sir, can I have your
20 name for the record please?

21 MR. SCHIMMEL: Yes, my name is Ralph
22 Schimmel. I live at 5 Lupe Way. That is a
23 property that is contiguous to 8 Lupe Way.

24 CHAIRMAN O'ROURKE: What we'll do is on
25 the 15th of June, you'll be able to sign in and

1 speak at that time. If I'm not going to allow
2 Mr. Caponera to speak, I'm not going to allow
3 you to speak either.

4 MR. SCHIMMEL: I didn't expect you.

5 MR. NARDACCI: The answer to your
6 question is that she is the applicant.

7 MR. SCHIMMEL: Right.

8 CHAIRMAN O'ROURKE: And she's already
9 been through due process.

10 MR. SCHIMMEL: I just want for the record
11 to indicate that there is an issue with the
12 way that you're conducting it, okay?

13 CHAIRMAN O'ROURKE: Duly noted; thank
14 you.

15 MR. STUTO: I have to jump in here and
16 comment.

17 This is an extended process. There is
18 nothing intended to limit or eliminate any
19 public input by you, or anybody else in this
20 room, or anybody else in the town. You have to
21 follow the process. June 15th is the date at
22 which all will be able to make their comments.

23 MR. SCHIMMEL: Here is what my issue is -

24 CHAIRMAN O'ROURKE: Sir -

25 MR. NARDACCI: Let me jump in C.J.

1 We want to hear what you have to say. We
2 100% want to hear what anyone who has a
3 comment has to say. However, in
4 fairness - which is why I was in favor of just
5 allowing Ms. Potts to speak tonight and not
6 open up to anyone else - she is the applicant.
7 It's her right tonight. However, I want to
8 hear exactly what you have to say at the
9 proper time. I think that all of us on the
10 board will be all ears. We want to hear this
11 complicated issue. We're going to hear
12 everyone out and we'll stay until however long
13 it takes to hear it. We'll get the
14 information. If you have other documentation
15 that you want to submit to the Planning
16 Department for us to review prior to that
17 meeting - if you feel like you're going to be
18 limited, what I would suggest is that you
19 present that information and he will pass that
20 to us and we all will review it.

21 I'm sorry C.J.

22 CHAIRMAN O'ROURKE: No, that's fine.

23 MS. VAIDA: That's what I was going to
24 suggest is that you put your comments in
25 writing.

1 FROM THE FLOOR: Last time we never got
2 home until 1:00 in the morning. We'd like to
3 be number one on the agenda or number two but
4 not the last one.

5 MR. LACIVITA: You'll be the only one on
6 the 15th.

7 MR. CAPONERA: C.J., just a point for
8 clarification: Let me understand the
9 procedure. Even though I've sat down with Joe
10 and discussed this and compared my clients' 10
11 properties which are part of this application
12 that's been presented tonight - am I to hear
13 you tell me now that I now have to go through
14 the whole process, make sure that the
15 recommendation referral comes into the Town
16 Board, make a full application and come back
17 in front of this board and make another
18 presentation on the same property?

19 MR. STUTO: That's a matter for the Town
20 Board.

21 MR. MARTIN: This encompasses properties
22 on various streets. It's not limited to one
23 person.

24 MR. STUTO: You'll get your chance to
25 speak on the 15th as well and we'll accept

1 anything that you have in writing and review
2 that as well.

3 MR. CAPONERA: I understand that but my
4 point is that this is duplicating. I'm going
5 to duplicate exactly what's already been done.

6 C.J. and I and Joe talked about it a
7 couple of months ago so we might as well try
8 to do it all at one time so it's not that
9 we're spinning our wheels. I'm just saying.

10 MR. LACIVITA: To be quite honest with
11 you, he's already included in Mrs. Potts'
12 documentation that's applied. I don't know why
13 they have gone to Mr. Caponera. It's already
14 been done by Suzanne Perry-Potts. I mean,
15 she's already included the letters in this
16 application. It has been a blanket resolution.

17 MS. PERRY-POTTS: Can I make a comment?
18 Through the whole nine months that I was
19 talking to you and to the attorney, I did make
20 a comment that we were not going to have one
21 unified attorney, but some property owners
22 would have an attorney represent them. That
23 wasn't in writing or anything, but I did
24 mention that some people would want to have an
25 attorney.

1 CHAIRMAN O'ROURKE: That's going to have
2 to be decided outside of this board. This
3 board will listen to whoever comes before it,
4 but the Town Board passed a resolution and I
5 don't have that resolution directly in front
6 of me.

7 Have you reviewed that resolution?

8 MR. STUTO: No, I haven't.

9 CHAIRMAN O'ROURKE: I'm sure if the
10 resolution in its content - and counsel says
11 that it includes the properties that you're
12 representing, then I don't know how we could
13 not include you. But again, until counsel sees
14 it and makes that determination on the
15 resolution, this board can only act on the
16 resolutions that it was passed from the Town
17 Board.

18 MR. CAPONERA: And that's why I don't
19 want to duplicate the efforts, that's all. I
20 think that it would be silly.

21 CHAIRMAN O'ROURKE: I don't dispute what
22 you're saying, Mr. Caponera. I think that in
23 the interest so we don't have this for the
24 next 15 years when my kids get out of college,
25 that if these continued to come in different

1 resolutions, it will help no one. So I think
2 that at this point in knowing that, if we
3 compile the list and have the counsel for this
4 board contact the counsel for the Town Board
5 and they come to the bottom of how they want
6 to proceed with all the property in this
7 rezoning, if at issue, that's for them to
8 decide. But this board can only act upon the
9 resolution that was passed by the Town Board,
10 handed to us to act upon.

11 MR. CAPONERA: Which includes my clients'
12 property.

13 CHAIRMAN O'ROURKE: Right, but until I
14 know that for a fact, that's for counsel to
15 decide.

16 MR. STUTO: Are you not satisfied that
17 you're included?

18 MR. CAPONERA: I know that because I
19 checked it out with Joe. We went over it line
20 by line, property by property, SBL by SBL,
21 because we wanted to make sure just so that I
22 didn't have to duplicate efforts and just so
23 that I didn't have to waste a lot of people's
24 time.

25 MR. STUTO: You and I can verify that in

1 the next couple of days, if you want.

2 MR. CAPONERA: Absolutely.

3 MS. VAIDA: And the purpose tonight is
4 just an informational meeting.

5 CHAIRMAN O'ROURKE: Ms. Potts has a lot
6 of information that certainly is bothersome to
7 this board. Again, it's fact finding so
8 anybody can say anything, but it's going to be
9 the job of this board to come to facts and
10 present a finding of facts back to the Town
11 Board so that's why we need these
12 informational meetings.

13 MR. CAPONERA: Which is why I wanted to
14 make the board's decision all that much more
15 easy. I understand.

16 MS. VAIDA: If you have something that
17 would be helpful, maybe you could submit it in
18 writing to us for our review.

19 CHAIRMAN O'ROURKE: Beforehand for the
20 15th.

21 MR. CAPONERA: Well, I have aerial
22 photographs and I have a professional
23 engineer, Mr. Bianchine, who has already
24 warmed up the board tonight on a previous
25 application.

1 MR. NARDACCI: You can submit that to Joe
2 prior to the public hearing to make sure that
3 they are provided to the board. Tonight is an
4 informational meeting to give Ms. Potts a
5 chance to make her presentation. We're
6 sticking by the fact that we're just going to
7 have her present what she wanted to present
8 for quite some time. There is going to be a
9 public hearing that everyone and anyone that's
10 interested will have a chance to make a
11 presentation. But if there's documentation
12 that you don't think that you can fit to three
13 or four minutes, I would submit that
14 information in writing. I know that myself,
15 I'll read every page of it. I'm sure everyone
16 else will, too. So submit that information to
17 Joe prior to that meeting. To go on and on
18 tonight just doesn't make any sense.

19 CHAIRMAN O'ROURKE: I agree.

20 FROM THE FLOOR: But we sat here for an
21 hour and a half -

22 MS. PERRY-POTTS: But you knew that this
23 wasn't a public hearing.

24 CHAIRMAN O'ROURKE: I understand that,
25 ma'am but again, she spent the time and went

1 to the Town Board, she followed the procedure
2 that the Town of Colonie has and that's why
3 it's her opportunity to speak tonight. Yours
4 will be avail to you on the 15th of June, if
5 you so choose.

6 Sir, I'm not taking any more comments.

7 FROM THE FLOOR: My name was mentioned
8 specifically at this public hearing -

9 CHAIRMAN O'ROURKE: This is not a public
10 hearing. This is an informational meeting. The
11 15th of June, sir, you'll have the opportunity
12 to speak. I apologize.

13 MR. LACIVITA: The information that I
14 provided this evening to the board - you're
15 also going to see a side by side comparison of
16 the prior land use regulations prior to the
17 change to the current so you can get to see
18 the usages.

19 MR. LANE: That's something that we
20 haven't been given?

21 MR. LACIVITA: That's something that you
22 do have this evening. It's all part of this
23 packet here that shows you the rezoning.

24 CHAIRMAN O'ROURKE: Anybody on the board?

25 MR. ROSANO: I want to know what process

1 we are going to use for notification of this
2 public hearing.

3 MR. LACIVITA: If it's a public hearing
4 process, what we'll do is put it in the Times
5 Union and we'll also put it into the Colonie
6 Spotlight and then I will notify Ms. Suzanne
7 Perry-Potts who then has a fax process that
8 hits all people that have been within it.
9 I'll also contact one of the other ones who
10 spoke out against the process and she can
11 contact all her people that she has on her
12 petition.

13 CHAIRMAN O'ROURKE: And I think that it
14 should be placarded; all the major roads and
15 the major intersections. Placard that for the
16 15th.

17 MR. GANNON: C.J., I think that someone
18 should be posted here or have somebody here on
19 the night of the 15th to make sure that anybody
20 that shows up here is directed to Town Hall.

21 CHAIRMAN O'ROURKE: That is a good idea,
22 as well.

23 Joe can we make sure that it gets on the
24 website?

25 MR. LACIVITA: I'll make sure that it's

1 on tomorrow.

2 CHAIRMAN O'ROURKE: Anybody else on the
3 board?

4 That's a good idea, Peter.

5 Joe, we need to have some coverage here
6 that night about a half hour before to ten
7 minutes after the start. Maybe we can have a
8 note on the door.

9 Sir, I'm not taking anything from the
10 floor.

11 FROM THE FLOOR: I have a question on the
12 process. Are you saying that it's the Town
13 Board decision to run these simultaneously
14 with ours? I'm a land owner on
15 151 Cordell Road and I'm behind Suzanne Potts
16 and we hired Victor Caponera to represent us.
17 Who has to make that decision to run this
18 simultaneously so we can present these both
19 together?

20 CHAIRMAN O'ROURKE: What do you mean
21 simultaneously?

22 FROM THE FLOOR: So we don't have to
23 duplicate this. Suzanne can speak and our
24 attorney can speak regarding the same
25 property.

1 CHAIRMAN O'ROURKE: You're paying
2 Mr. Caponera. I would let him handle it. We've
3 already had a discussion.

4 MR. CAPONERA: Peter, you and I will work
5 it out.

6 MR. NARDACCI: Motion to adjourn?

7 MS. VAIDA: Second.

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11 *(Whereas the proceeding concerning the above*
12 *entitled matter was adjourned at*
13 *9:47 p.m.)*

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CERTIFICATION

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3
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
12
13
14 _____
15 ***NANCY STRANG-VANDEBOGART***

16
17 ***Dated May 13, 2010***