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PLANNING BOARD COUNTY OF ALBANY  
TOWN OF COLONIE

\*\*\*\*\*  
WOLF'S 1-11, LOCATED AT 111 WOLF ROAD  
REVIEW AND ACTION ON PROPOSED GREEN SPACE WAIVER  
\*\*\*\*\*

THE TAPED AND TRANSCRIBED MINUTES of the above  
entitled proceeding BY NANCY STRANG-VANDEBOGART  
commencing on May 11, 2010 at 7:52 p.m. at the  
Public Operations Center 347 Old Niskayuna Road,  
Latham, New York 12110

BOARD MEMBERS:

CHARLES J. O'ROURKE, CHAIRMAN  
THOMAS NARDACCI  
TIMOTHY LANE  
MICHAEL SULLIVAN  
ELENA VAIDA  
PETER GANNON  
PAUL ROSANO  
PETER STUTO, Jr. Esq., Attorney for the Planning  
Board

Also present:

Joe LaCivita, Director, Planning and Economic  
Development  
  
Dennis Rigosu, RA, Syvertsen Architects  
  
Michael Dirrado, Wolf's 1-11

1                   CHAIRMAN O'ROURKE: Joe, you want to give  
2 us an update?

3                   MR. LACIVITA: This is a minor  
4 application being reviewed by our department  
5 as an administrative action as designed by the  
6 Land Use Law. It's been reviewed by Mike  
7 Tengeler in my office. It is actually a patio  
8 extension for the existing site. It's  
9 792 square feet of patio addition in the front  
10 of the building. I believe that in your packet  
11 it shows the proposed use. If in fact the  
12 approval is set forth, there are potential  
13 waivers that I think are being asked by the  
14 engineer and the building operator.

15                   You have the written findings before you  
16 that have been reviewed by Peter Stuto and  
17 Mike Tengeler that drafted them. I guess I'll  
18 turn it over to the engineer at this point.

19                   MR. RIGOSU: I'm Dennis Rigosu from  
20 Syvertsen Architects. I'm here tonight with  
21 Mike Dirrado who is the owner and operator of  
22 Wolfs 1-11 and Peter Grimm who is the owner of  
23 the building.

24                   Like Joe mentioned we are in front of you  
25 today as the demand for outdoor dining has

1 increased in other areas. Wolf's 1-11 is  
2 looking to provide that function here. What  
3 we're looking to do is provide 792 square feet  
4 of patio with 36 seats. That will increase the  
5 greenspace by 792 square feet and add the  
6 impact of parking.

7 Presently, we do have a variance for  
8 eight parking spots. So, when we look at the  
9 additional seating that we're doing, we  
10 increase the parking up to 191 parking spots  
11 with a variance of eight. We're down to 183  
12 parking spots, which is required with the 191.  
13 So, we're short seven parking spots.

14 One thing that Wolf's 1-11 does do is  
15 provide valet parking on the weekends. With  
16 their creative parking, they're able to  
17 increase the parking spots to approximately  
18 192. So, they're a little over what is  
19 required. We know that we're asking for a  
20 variance for parking as well as greenspace.

21 For parking, we ask the board to look at  
22 the summer months. Those are the times that  
23 most of the dining would be outside. We don't  
24 see an increase in patrons. We see that they  
25 are now coming and dining on the outside. So,

1 we don't see that the increase in parking  
2 would impact us that much.

3 We can look at the rendering that we  
4 provided here (Indicating). We're looking to  
5 use brick piers topped with pedestrian  
6 lighting and we would have planters. Because  
7 of the limited amount of space to add  
8 vegetation, we'd have planter boxes along the  
9 railings.

10 At this time, I would ask for any  
11 questions.

12 CHAIRMAN O'ROURKE: Tom?

13 MR. NARDACCI: When the original plans  
14 were approved, there was a waiver granted of 8  
15 places, right?

16 MR. RIGOSU: Yes.

17 MR. NARDACCI: So, now with the new patio  
18 design -

19 MR. RIGOSU: We needed 192 in the summer  
20 months. In the winter, spring and fall - most  
21 of the time the patio would not be used. So,  
22 just in the summer the variance would be in  
23 place.

24 MR. NARDACCI: The waiver that we need to  
25 grant - is it in addition to what has already

1           been granted?

2           MR. RIGOSU:   Correct.

3           MR. NARDACCI:   So seven plus eight would  
4           be 15 total.

5           MR. RIGOSU:   Right.

6           MR. NARDACCI:   Okay, I just wasn't clear  
7           on that.

8           The other question that I had was: What  
9           are the hours of operation that you expect the  
10          patio -- I mean there are other businesses  
11          that have patios on Wolf Road and they don't  
12          abut any residential so it's not an issue.

13          MR. DIRRADO:   It's the same operation  
14          that we have inside. It wouldn't be any later.  
15          It would be midnight during the week, Sunday  
16          to Thursday and then 2:00 a.m. on Friday and  
17          Saturday.

18          MR. NARDACCI:   Okay, that's all I had.

19          CHAIRMAN O'ROURKE:   Paul?

20          MR. ROSANO:   What are your staffing  
21          levels at peak?

22          MR. DIRRADO:   For the patio or - ?

23          MR. ROSANO:   For the peak season, what  
24          would be your best guess at this point?

25          MR. DIRRADO:   About 35 in total on the

1 clock at the time. We have 65 employees,  
2 though.

3 CHAIRMAN O'ROURKE: What is the  
4 additional just on the patio?

5 MR. DIRRADO: That would be 36 seats. It  
6 would be the same servers that are on the  
7 inside that would move to the patio.

8 CHAIRMAN O'ROURKE: So there is no  
9 increase in employment.

10 MR. DIRRADO: Correct.

11 CHAIRMAN O'ROURKE: Thank you.

12 Elena?

13 MS. VAIDA: In considering this waiver, I  
14 guess there has been what's been  
15 proposed -- and what's in place right now is a  
16 verbal agreement with Tri-Star for the use of  
17 their parking lot?

18 MR. DIRRADO: That's correct. They let us  
19 use their parking lot on Friday and Saturday  
20 nights for the employee's cars. We have a  
21 verbal agreement.

22 MS. VAIDA: I'm not sure where it is in  
23 our documents, but because of that agreement  
24 apparently there has been a 10 to 15% increase  
25 in your parking efficiency and availability.

1 MR. RIGOSU: That's with the valet  
2 parking. They get creative with the parking.

3 MS. VAIDA: So the valet parkers use  
4 Tri-Star?

5 MR. RIGOSU: On the drawing that we have  
6 provided, you'll see that they take some  
7 parallel parking and manipulate that. The cars  
8 that we show in red are the creative methods  
9 of increased parking on-site.

10 MS. VAIDA: So what if you didn't have  
11 the agreement with Tri-Star?

12 MR. DIRRADO: There wouldn't be an  
13 impact. Already we see that even the valet is  
14 limited to cars in the last few weeks on  
15 Friday and Saturday.

16 MS. VAIDA: Joe, was this something that  
17 you had discussed or was it  
18 factoring - talking about this parking waiver?

19 MR. LACIVITA: Yes. Actually we had met  
20 with Michael and Dennis regarding it. We  
21 talked actually through both waivers; one  
22 being the greenspace waiver and maybe even  
23 asking for additional parking waiver to offset  
24 the greenspace allowance. We also talked about  
25 the agreements that they had currently in

1 place. Again, knowing their hours of operation  
2 and how they are planning on using it, the  
3 department didn't see that that was going to  
4 be an impact for additional waivers.

5 MS. VAIDA: So the agreement with  
6 Tri-Star really shouldn't factor into our  
7 decision.

8 MR. LACIVITA: We didn't see that to be  
9 of any concern, Elena.

10 MS. VAIDA: I just thought that it was  
11 mentioned in the proposed findings and I  
12 wouldn't be comfortable having that included  
13 as part of the reason that we're granting the  
14 waiver if it's not something that's actually  
15 in writing.

16 MR. STUTO: Do you want to strike that  
17 from the findings?

18 MS. VAIDA: Yes, if we get that far.  
19 I didn't have anything further.

20 CHAIRMAN O'ROURKE: Tim?

21 MR. LANE: What I had was pretty much  
22 along the same lines. The greenspace, although  
23 I like to see it, it's not too much of an  
24 issue. I like the concept. I like the outdoor  
25 dining of being up to the road and that tends



1 to actually bring people in because it draws  
2 them in. It's a great idea. As far as the  
3 verbal agreement, at least having a hold  
4 harmless or something to that effect would  
5 seem reasonable. This being said, it would be  
6 better left out all together and I understand  
7 that you can manage this with the parking  
8 system that you have in place. So overall I  
9 think that it's a great, great concept and a  
10 good idea.

11 CHAIRMAN O'ROURKE: Thanks, Tim.

12 Mike?

13 MR. SULLIVAN: I just had one question on  
14 the distance from the patio to the curb of the  
15 roadway. Do you know what that is or what that  
16 dimension is?

17 MR. RIGOSU: I do not have that off the  
18 top of my head. It's got to be at least  
19 25 feet to the curb of Wolf Road.

20 MR. SULLIVAN: I just had a big concern  
21 about the proximity being a distraction to  
22 drivers. It might be a question for  
23 Mr. LaCivita or other members of the board.

24 Have we approved projects similar to this  
25 with open dining so close to the roadway?

1           MR. LACIVITA: Well, Mike, we see them  
2 actually being approved at various locations  
3 throughout the town now. We have seen Pasaen's  
4 on Route 9 and they put a patio out in front  
5 of that deck. I think that it's called  
6 Nottingham's on Wolf Road that also has it.  
7 Again, that was prior practice. There are  
8 several restaurants that have outside dining.

9           MR. SULLIVAN: Yes, I've seen that Maxi's  
10 has it and I believe that Reel Seafood has it,  
11 but they seem to be much farther off the road.  
12 I just wondered if there was anything that was  
13 in such a close proximity - just for my own  
14 information.

15           MR. LACIVITA: The only thing that I can  
16 tell you is that I met with the developer  
17 yesterday regarding the redesign of the Burger  
18 King plaza, which actually is right next to  
19 Red Lobster and the Olive Garden. They  
20 actually have the closest outside dining based  
21 on the setbacks of the town. So, I think that  
22 you're starting to see that more and more.

23           MR. SULLIVAN: I like the concept. I'm  
24 just a little bit concerned about it being a  
25 distraction.

1           MR. LACIVITA: The other thing is that I  
2 think that I would have a little bit of a  
3 concern if in fact this was closer to a corner  
4 where you're having traffic coming in. This is  
5 set in a couple of buildings from that corner.  
6 I think that your distraction wouldn't be from  
7 that turn radius.

8           MR. SULLIVAN: Thank you. That's all I  
9 had.

10          CHAIRMAN O'ROURKE: Peter?

11          MR. GANNON: I guess that I have some  
12 concerns about the hours. We were provided  
13 meeting minutes from February 13, 2007 when  
14 your predecessors, Olde Chicago, were in and  
15 there were a number of residents who attended  
16 that meeting and raised some concerns about  
17 noise and the reliability of sound study. From  
18 my experience working in the Supervisor's  
19 office, I also know that there were a number  
20 of problems with Olde Chicago and the way that  
21 the property was kept up with trash and  
22 dumpsters and noise and other things of that  
23 nature.

24                 In your establishment if you want to have  
25 a cigarette, where do you have your cigarette?

1           MR. RIGOSU: It would be outside the main  
2 entrance.

3           MR. GANNON: So are you proposing to  
4 restrict -- I think that you do by the clean  
5 indoor air act - to restrict smoking because  
6 you're serving food there. Are you going to  
7 restrict smoking on the deck?

8           MR. DIRRADO: You can smoke out on the  
9 deck.

10          MR. GANNON: There are a couple of  
11 concerns there. At 2:00 in the morning, I'm  
12 sure that everyone has the best of intentions  
13 at your place, but if they've been there for a  
14 few hours, we've seen situations escalate. To  
15 echo Mike's concern about the closeness to the  
16 road, I just see a potential for a lot of  
17 unintended consequences, to put it mildly.

18           I also have a concern about the cigarette  
19 butts lining Wolf Road and stuff like that. If  
20 you can't restrict that activity off the deck,  
21 I think that it's best to keep it to the side  
22 of building or in the rear of the building.  
23 It's a double-edged sword because it becomes  
24 more of a problem for the neighbors at 1:00 in  
25 the morning, but to my knowledge there hasn't

1           been a problem at your site.

2           MR. DIRRADO: The neighbors are in the  
3 back of the building. On one side of the  
4 building is Tri-State.

5           MR. GANNON: Are you going to maintain  
6 that there are no external speakers?

7           MR. DIRRADO: Yes.

8           MR. GANNON: That's good. What time do  
9 you serve food until? Is it the same as your  
10 hours of operation?

11          MR. DIRRADO: On the weekends, we have a  
12 late night menu that's limited to serve to  
13 1:30.

14          MR. GANNON: So people will be dining out  
15 there and not just drinking.

16          MR. DIRRADO: That's correct.

17          MR. GANNON: I think that's all I have.  
18 My concern and I don't know if there's anyone  
19 that's here from the neighborhood tonight, but  
20 I'd be interested to hear their concerns. I  
21 don't know because this is a minor  
22 application. Are the notices as rigorous as a  
23 major application, Joe?

24          MR. LACIVITA: Mike Tengeler has actually  
25 gone out to look at the site and everything

1 else and I think he determined it at that  
2 point in time.

3 CHAIRMAN O'ROURKE: So nobody was  
4 notified?

5 MR. LACIVITA: There was not a  
6 notification with the minor application  
7 process.

8 CHAIRMAN O'ROURKE: I'm a little bothered  
9 by that. I think that this board in its tenure  
10 has operated under the strict guidelines of  
11 transparency. Whether it's minor or  
12 major -- if it's major enough to come before  
13 this board, the taxpaying citizens in this  
14 town should be notified. That's plain and  
15 simple.

16 MR. LACIVITA: I think that once again,  
17 we're looking at the waiver for parking.

18 CHAIRMAN O'ROURKE: I don't dispute that.  
19 I'm just saying that if an action rises to the  
20 level to come before this board, we have a  
21 responsibility to those citizens that pay  
22 taxes in this town to be notified.

23 MR. LACIVITA: And before we go off on  
24 that area, I misspoke. I looked here and I see  
25 that there was a public meeting notice done on

1 May 11, 2010. It went to Anderson Building and  
2 it went to Tri-State. So notices did go out  
3 and actually Michael certified that this was  
4 done. I apologize.

5 CHAIRMAN O'ROURKE: No problem. Again,  
6 this is one of the areas that again, we're  
7 notifying businesses because it's within  
8 200 feet and we're not notifying the people  
9 that live directly behind him because the  
10 parking lot is over 200 feet so those  
11 people -- right?

12 MR. LACIVITA: That would be a change in  
13 the Land Use Law, then, if that's the case,  
14 C.J.

15 CHAIRMAN O'ROURKE: Maybe I'm just  
16 speaking from a bully pulpit. I just feel that  
17 if it rises to a level to come to this board  
18 and we have notes in the packages that  
19 residents have shown up for this, it's only  
20 fair -- we treat everyone fair. We treat the  
21 applicants fair. I'm just saying that we  
22 should be treating the people that live behind  
23 this establishment - if you put yourself in  
24 their house, you'd want to be notified. I  
25 would.

1           MR. LACIVITA: I guess I'm confused. The  
2           200 foot notification that we use for both  
3           minor and major have been set by that.

4           CHAIRMAN O'ROURKE: Again, we have gone  
5           outside of that, haven't we, Tom?

6           MR. NARDACCI: I don't want to pile it  
7           on, but when it comes to specific projects, we  
8           certainly have gone out of our way to make  
9           sure that the neighborhood associations were  
10          notified and that's not required by the Land  
11          Use Law. It's a matter of consistency.

12          CHAIRMAN O'ROURKE: And reasonableness.  
13          We know that Tri-Star is not going to object  
14          to it. They're not working on Saturday night.

15          MR. NARDACCI: I think that when you read  
16          the minutes and you see that there was a  
17          fairly heavy residential participation in the  
18          past, it's reasonable to assume that they  
19          should be notified.

20          CHAIRMAN O'ROURKE: I agree.

21          One of my issues is certainly the  
22          proximity to Wolf Road. Again, I really don't  
23          have a problem with the parking waiver. I have  
24          been to the site and I saw that it's a huge  
25          parking lot. If you're filling that parking



1 lot, you're doing all right; especially in  
2 this economy. In my opinion, the Land Use Law  
3 makes developers and establishments like this  
4 over park. We're building parking lots for one  
5 night a week on the busiest week of the year.  
6 In my opinion, that's probably not the parking  
7 levels that should be done. The parking is  
8 there and I don't have a problem personally  
9 with the parking waiver. I tend to have more  
10 of an issue with the greenspace waiver. I know  
11 that, sir, you're paying for it, but one of my  
12 questions as were other people's on the board  
13 is you have to tell the board how close to the  
14 road that you are. I think that's an important  
15 point in this. Although the renderings are  
16 very good and I think that it would be  
17 successful, it's going to be important for  
18 this board to know is it eight feet? It is  
19 11 feet? You, sir, as an engineer should be  
20 able to answer that.

21 MR. RIGOSU: The drawing that we're  
22 providing you - the patio is coming out from  
23 the building nine feet. The property line is  
24 9.8 off the building base.

25 CHAIRMAN O'ROURKE: That's eight inches

1 to the ROW of the sidewalk?

2 MR. RIGOSU: To the property line.

3 CHAIRMAN O'ROURKE: Which is to the right  
4 of way. Because there was a sidewalk in front.

5 MR. RIGOSU: Greenspace and sidewalk.

6 CHAIRMAN O'ROURKE: Again, I also would  
7 tend to agree with Ms. Vaida that anything in  
8 these findings of fact that is verbal, I would  
9 want to see in a written form. If there is a  
10 verbal agreement, it probably would be easy to  
11 get them to just write something or we could  
12 just not include it. Then you're going to be  
13 asking for a bigger parking waiver, correct?

14 MR. DIRRADO: No.

15 CHAIRMAN O'ROURKE: So you have  
16 eight inches from your fence line to the  
17 property line.

18 My last question is regarding these  
19 renderings. Who is the landscape engineer? Do  
20 you have a landscape engineer?

21 MR. DIRRADO: We don't have one.

22 CHAIRMAN O'ROURKE: Are you telling this  
23 board that this rendering is exactly what is  
24 going to be there?

25 MR. RIGOSU: With the planter boxes, yes.

1 The vegetation and the planter boxes will be  
2 seasonal.

3 CHAIRMAN O'ROURKE: So, the seasonal  
4 planters, you're going to ensure that there  
5 are plants in them. What do we do in the  
6 winter?

7 MR. RIGOSU: The planter boxes would be  
8 pulled in.

9 CHAIRMAN O'ROURKE: No, I mean the façade  
10 of it isn't going to just be left there. The  
11 planters will be taken out so that they'll be  
12 snow removal.

13 MR. RIGOSU: Right.

14 CHAIRMAN O'ROURKE: The town does clear  
15 that sidewalk, right?

16 MR. RIGOSU: Right.

17 CHAIRMAN O'ROURKE: Joe, you've checked  
18 to make sure that the eight inches to the ROW  
19 is not going to effect -

20 MR. LACIVITA: Mike went out to the site  
21 specifically in looking at the setbacks and  
22 everything for it.

23 CHAIRMAN O'ROURKE: Okay, I just want to  
24 make sure that we don't have any issues, come  
25 winter, when we're trying to remove the snow

1 off the sidewalk and their fence gets damaged  
2 and they try and go after the town, the trucks  
3 hit into the fence -

4 MR. LACIVITA: In between the sidewalk  
5 and the fencing there is a green strip as  
6 well. So we do have space.

7 CHAIRMAN O'ROURKE: That's true. There is  
8 grass there.

9 That's all I had.

10 Elena?

11 MS. VAIDA: Just to follow back up on the  
12 oral agreement. I'm just a little troubled if  
13 it's not important and wasn't a factor, why is  
14 it even in here? Basically it was something  
15 that was discussed and considered.

16 MR. LACIVITA: Peter, can you shed any  
17 light?

18 MR. STUTO: Michael drafted it. I didn't  
19 object to it, and I understand Elena's point.  
20 I'm sure that the applicant made the argument.

21 MS. VAIDA: Was that an argument to help  
22 get the parking waiver? I wasn't there at  
23 those meetings.

24 MR. RIGOSU: We noted the verbal  
25 agreement because there are commercial parking

1 spots and we wanted to show that we were doing  
2 everything possible to increase the parking at  
3 peak time.

4 MR. LANE: But that's just the employees'  
5 parking.

6 MR. RIGOSU: Right, the employee parking.  
7 The valet parking has great ways to increase  
8 parking in the back portion of the lot. I'm  
9 just noting that for the board.

10 CHAIRMAN O'ROURKE: Let me just ask you  
11 this so that factually we're correct. The  
12 present code in the town, seating wise - how  
13 many parking spaces are you required to have  
14 with the additional seating that you're at?

15 MR. RIGOSU: 191.

16 CHAIRMAN O'ROURKE: Okay. And you  
17 presently have on the site?

18 MR. RIGOSU: 176.

19 CHAIRMAN O'ROURKE: Okay, so that's 15.  
20 You also have an eight space waiver from the  
21 prior board, correct?

22 MR. RIGOSU: Correct.

23 CHAIRMAN O'ROURKE: So you're looking for  
24 an additional seven spaces which is way below  
25 what you would be able to ask for. You could

1 ask for up to 10%, correct, Joe?

2 MR. LACIVITA: Yes.

3 CHAIRMAN O'ROURKE: So, you're well  
4 within it but factually I just wanted to get  
5 that on the record. So you're looking for an  
6 additional seven spaces.

7 Does any body on the board have issue  
8 with the seven spaces?

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

10 CHAIRMAN O'ROURKE: I think, then, if  
11 we're able to remove the language, Joe?

12 MR. LACIVITA: With Tri-State?

13 CHAIRMAN O'ROURKE: Right, because the  
14 verbal agreement is with the owner and we can  
15 keep it right out of our paperwork.

16 MS. VAIDA: Also we're being told that  
17 it's not even relevant to the issue here on  
18 the parking wavier.

19 CHAIRMAN O'ROURKE: The last question  
20 that I have is in terms of the \$13,000 due to  
21 the reduction in greenspace.

22 Joe, what arrangement is in place for the  
23 payment of those funds?

24 MR. LACIVITA: Upon any approval or any  
25 approvals being granted to Wolf's 1-11, there

1 would be a payment that would be needed to the  
2 department. We talked to them as well to see  
3 if possibly they would go for the maximum  
4 allowed parking space waiver to try to offset  
5 by making some of those parking spaces  
6 on-site. I think that by the time they ended  
7 up going through construction and so on, it  
8 apparently flows anyway. So they decided to  
9 stay with the greenspace. So before any  
10 improvement could be granted to them, there  
11 would be a check for \$13,000.

12 CHAIRMAN O'ROURKE: We've asked this in  
13 the past. Where do those funds go?

14 MR. LACIVITA: They actually get  
15 deposited into an account for future land  
16 acquisition within the town. It goes to the  
17 Comptroller's office and it's held in a  
18 separate account with the town.

19 CHAIRMAN O'ROURKE: It's held in escrow?

20 MR. LACIVITA: It's not really escrow.  
21 It's really held in an account for anything -

22 CHAIRMAN O'ROURKE: For acquisition by  
23 the town?

24 MR. LACIVITA: Correct.

25 MR. NARDACCI: For open space?

1 MR. LACIVITA: For open space or anything  
2 like that; exactly, Tom.

3 CHAIRMAN O'ROURKE: Does anybody else  
4 have anything?

5 MR. NARDACCI: I just have a comment. I  
6 know that it's a big building. It's a big  
7 retail space. I want to see you do well.  
8 Chicago was there for a short time so  
9 hopefully we can work together to get you  
10 going and you can get this going. It's a big  
11 project.

12 CHAIRMAN O'ROURKE: So they are looking  
13 for a waiver. Do I have a motion from the  
14 board?

15 MS. VAIDA: I'll make a motion. It's a  
16 waiver for both.

17 CHAIRMAN O'ROURKE: It's a waiver for the  
18 parking and the greenspace waiver.

19 MR. GANNON: C.J., before we take the  
20 vote, I have to re-express this concern about  
21 the lack of notification for the public. I  
22 think that we should open it up to the public  
23 to see if there is anybody that would like to  
24 speak about it. I can envision a scenario that  
25 starts on this patio in a week and it won't be



1 us, but likely the Supervisor or the Town  
2 Attorney has some of these folks that spoke  
3 out in 2007 knocking at their door to say,  
4 what's going on here? I never got a chance to  
5 weigh in.

6 CHAIRMAN O'ROURKE: Pete, I tend to  
7 agree, but the Land Use Law presently is the  
8 Land Use Law and I don't think that we can  
9 hold this gentleman who is trying to run a  
10 business and get a patio in for the summer up  
11 for something that's not included in the Land  
12 Use Law. My biggest point was the transparency  
13 and I wanted to bring out in a public forum  
14 that I don't believe that the notification  
15 process the town has done -- and I've been on  
16 the record on several occasions that in my  
17 opinion, it's not handled appropriately within  
18 the town. So, more than anything I want to go  
19 on the record again in regard to that, which  
20 we have on several occasions. I know that Tom  
21 has brought it up in the past with certain  
22 projects and whether it's changing the Land  
23 Use Law or having a reasonable expectation of  
24 projects within the town, within the Planning  
25 Department at some point if Mike Tengler is

1 out on the site, I really think that it should  
2 fall on the Planning Department to say, hey,  
3 should we be notifying these people?

4 MR. LACIVITA: In response to that, if  
5 it's hand delivered or mailed, it did go to  
6 the Anderson Building, it did go to Tri-State.  
7 There are also placards placed on each side of  
8 Wolf's 1-11, so it's through the area as well.

9 CHAIRMAN O'ROURKE: Do we have anybody in  
10 the audience that is from this area or anybody  
11 that wants to comment on this before we do  
12 take a motion from the board?

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

14 MR. NARDACCI: I understand where you're  
15 coming from and I think that you're right to  
16 bring up this concern, especially knowing that  
17 there is a history of neighborhood  
18 involvement. I think that as a board we've  
19 been pretty consistent about notification and  
20 ensuring that we take the extra step. I  
21 wouldn't want to see this held up tonight  
22 because of that. That's my personal opinion.  
23 It's a minor site application. If this was a  
24 major site application and this is the first  
25 time that we'd ever seen this site plan, I

1 would defiantly ask that we halt the  
2 proceedings and wait. We have done that in the  
3 past on other applications. Because this is a  
4 minor site plan, the neighbors, where they are  
5 located aren't as directly effected. If we  
6 were doing construction, I think that it's a  
7 different scenario.

8 CHAIRMAN O'ROURKE: It's not like it's a  
9 Borders book store going into a bar. It's been  
10 a bar. I just think that there should have  
11 been notification for those people.

12 MR. NARDACCI: I think that the lesson  
13 out of this is in the future, when it's  
14 staff - when they look at the minutes and  
15 review it and the minutes say that the  
16 neighbors expressed concerns about this or  
17 that, that we take that extra step. It's not  
18 required in the Land Use Law. There are  
19 members of the Town Board here tonight.  
20 Perhaps that part should be looked at in the  
21 Land Use Law - notification and that it's  
22 codified. If there is a neighborhood  
23 association that's effected, they should be  
24 notified. Overall, the staff has done a good  
25 job trying to take the extra step. Developers

1           have taken the extra step since this board has  
2           been together. They are meeting with  
3           neighbors, meeting at Panera, reviewing plans  
4           and all things outside that aren't required.  
5           Everyone is trying to be more transparent and  
6           I think that C.J. and Pete had a good point. I  
7           think that if this was a major plan or major  
8           change of use like you just mentioned, C.J.,  
9           it's a different story.

10           MR. LACIVITA: I'll bring this concern to  
11           the Land Use Law Committee and see what the  
12           recommendations are that they bring back as to  
13           maybe expanding that notification. I don't  
14           want to leave it on a project by project basis  
15           because I think that can allow for decisions  
16           being made.

17           CHAIRMAN O'ROURKE: Again, Joe, I would  
18           actually bring to that committee that it  
19           should be the town notifying. That's the way  
20           that the notification process should be made  
21           is from the town end and not from the  
22           developer's end. I've said that and that's my  
23           opinion. If we rely on developers to do  
24           that - again, there are great developers,  
25           there are good developers - just like in

1 everything. If the town were to make the  
2 notifications, we would have a much better  
3 sense that it's being done fairly and in terms  
4 of what the town government wants the  
5 notification process to be.

6 MS. VAIDA: Going to your comment, Pete,  
7 about the concerns - from the minutes back in  
8 2007, it seems like the concerns were the  
9 hours of operation and the noise. A lot of  
10 things obviously were worked out. I'm not  
11 sure, but I'm assuming that having these  
12 additional tables isn't going to have an  
13 effect on the hours of operation. It might  
14 have some effect on the noise level, although  
15 I'm not sure about that either. You're not  
16 having outdoor speakers.

17 MR. RIGOSU: No speakers. The road is  
18 going to give off more noise.

19 MR. DIRRADO: About the neighbors - there  
20 is one neighbor that lives behind me and I  
21 can't remember their name. It's an elderly  
22 gentleman and I did inform him about this  
23 meeting personally because he said that we've  
24 been doing a great job with the noise levels  
25 and everything else. That first house right

1 behind me - I did personally notify him.

2 CHAIRMAN O'ROURKE: We commend you for  
3 that.

4 Again, Pete, if you feel that strongly  
5 you certainly have a vote on the board.

6 Do I have a motion from the board?

7 MS. VAIDA: Are we moving on the  
8 findings?

9 CHAIRMAN O'ROURKE: We're moving on the  
10 parking waiver and the greenspace waiver and  
11 to remove from the findings the reference to  
12 the verbal agreement and the parking with  
13 Tri-State.

14 MR. LACIVITA: The only thing that I will  
15 leave on here when we send it to you is the  
16 last sentence says:

17 The Planning Board finds that the parking  
18 waiver is justified.

19 We're going to take everything out from  
20 the agreement from Wolf's 1-11 and Tri-State  
21 through the Planning Board.

22 CHAIRMAN O'ROURKE: I don't want to  
23 include that it's seasonal business. We're  
24 granting the parking waiver, plain and simple.

25 MR. LANE: Would you be leaving in a

1 sentence about the valet service?

2 CHAIRMAN O'ROURKE: What did you take  
3 out, Pete?

4 MR. STUTO: I only took out the other  
5 one.

6 CHAIRMAN O'ROURKE: Take out the valet.  
7 This gentleman could decide that he doesn't  
8 want to pay for the valet and it could go  
9 away. I appreciate that the valet does some  
10 creative parking for you, but we're going to  
11 allow you the seven spaces. Whether you pay  
12 for the valet service or you don't, if you  
13 sell the business and somebody else comes in,  
14 I don't want to have to hold them to valet  
15 service.

16 Do you agree, Elena?

17 MS. VAIDA: I'm not sure. The findings  
18 talk about the increase in the parking  
19 efficiency and availability due to the valet  
20 parking.

21 CHAIRMAN O'ROURKE: Right, but we can  
22 only go by number of parking spots in the  
23 parking lot. So if they want to park cars on  
24 top of each other and get 400 in there and  
25 they only have 191 spots, it doesn't matter.

1 We can only go by the parking spots that they  
2 have.

3 MR. LANE: Then you should state that  
4 it's within the 10% threshold. Does it say  
5 that?

6 CHAIRMAN O'ROURKE: It doesn't say that.

7 MR. LANE: Then that's the one thing that  
8 it should say, then.

9 CHAIRMAN O'ROURKE: Pete, if you want to  
10 work with Mr. Tengeler and get these drafted  
11 appropriately? The parking spaces that are  
12 required from the site - the actual number  
13 that is on the site falls within the 10%  
14 allowable - and take all the extraneous  
15 wordage out of this and make it as simple for  
16 these gentlemen as possible.

17 MR. LANE: With that, I'll second the  
18 motion.

19 CHAIRMAN O'ROURKE: All those in favor?

20 MR. NARDACCI: Aye.

21 MR. ROSANO: Aye.

22 CHAIRMAN O'ROURKE: Aye.

23 MS. VAIDA: Aye.

24 MR. LANE: Aye.

25 CHAIRMAN O'ROURKE: All those opposed?



1                   MR. GANNON:  Nay.  And again, I'm not  
2                   opposed to the waivers.  I'm opposed to the  
3                   lack of notification.  If we came back a week  
4                   from tonight and got to hear from the  
5                   neighbors, I'd be on board 100%.  I think that  
6                   it's a great project.  I just think that those  
7                   folks should be able to voice their concerns  
8                   in public.

9                   CHAIRMAN O'ROURKE:  Okay, you have your  
10                  parking waiver and your greenspace waiver and  
11                  we'll just be waiting for your check for  
12                  \$13,000.

13                  Have a great night and good luck.

14

15                  *(Whereas the proceeding concerning the above*

16                  *entitled matter was adjourned at*

17                  *8:29 p.m.)*

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**CERTIFICATION**

1  
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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  
12  
13  
14 **NANCY STRANG-VANDEBOGART**

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17 **Dated June 1, 2010**

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**Legal Transcription**

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