

1 PLANNING BOARD COUNTY OF ALBANY  
2 TOWN OF COLONIE

3 \*\*\*\*\*

4 PAPA JOHN'S PIZZA  
5 402 ALBANY-SHAKER ROAD  
6 REVIEW AND ACTION ON PAVEMENT SETBACK WAIVERS,  
7 SEQRA AND FINAL SITE PLAN APPROVAL  
8 \*\*\*\*\*

9 THE TAPED AND TRANSCRIBED MINUTES of the above  
10 entitled proceeding BY NANCY STRANG-VANDEBOGART  
11 commencing on April 12, 2011 at 7:07 p.m. at the  
12 Public Operations Center 347 Old Niskayuna Road,  
13 Latham, New York 12110

14 BOARD MEMBERS:

- 15 PETER STUTO, CHAIRMAN
- 16 MICHAEL SULLIVAN
- 17 THOMAS NARDACCI
- 18 LOUIS MION
- 19 TIMOTHY LANE
- 20 KATHLEEN DALTON
- 21 PAUL ROSANO
- 22 ELENA VAIDA, Esq., Attorney for the Planning Board

23 Also present:

- 24 Tom Andres, ABD Engineering
- 25 Joe LaCivita, Director, Planning and Economic Development
- Christian King, Property Owner
- Mary Alice Morgan
- Stephen Kircher
- Tina Connell
- Jim Kitts
- Chuck Fitzsimmons
- Kelly Farrell
- Margaret Binsse
- Jeff Baker, Esq., Green Meadows Civic Association
- Douglas Cichon
- Mary Fitzsimmons
- Judith Tate

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1                   CHAIRMAN STUTO: We are ready to talk  
2 about the Papa John's project and I know that  
3 there are some complexities with that with the  
4 variance that was granted.

5                   If you could give us an introduction, we  
6 would appreciate it.

7                   MR. LACIVITA: Before us this evening is  
8 Papa John's located at 402 Albany-Shaker Road.  
9 It's before the Board this evening as it was  
10 referred to us under a variance that was  
11 granted by the Zoning Board of Appeals.

12                   The variance was signed by James  
13 Campbell, the Chairman on February 9, 2011.  
14 The granted stipulation was that they granted  
15 the use conditionally and it was granted with  
16 the stipulation that there be a protected berm  
17 placed along the abutting property lines of  
18 402 Albany-Shaker Road and 445 Everett Road,  
19 as well as 400 Albany-Shaker Road; that the  
20 hours of operations be determined by the Town  
21 of Colonie Planning Board; that stormwater  
22 management must be reviewed for the project,  
23 that there be a traffic study done to address  
24 traffic concerns and that Christian King must  
25 enter into discussions with the owner of

1 145 Everett Road to discuss concerns.

2 Those were the five components of a  
3 variance that was approved, again, by the  
4 Zoning Board of Appeals and conditionally set.

5 MR. STUTO: Joe, there is obviously  
6 great public interest in this project. Can you  
7 read the paragraph on the top of the variance  
8 which shows what variances were granted? In  
9 other words, what were the standard uses and  
10 what deviations are permitted by this  
11 variance?

12 MR. LACIVITA: The proposed change of use  
13 from a motor vehicle repair minor to a fast  
14 food establishment in a commercial office  
15 residential (COR) zone with a 32-foot setback  
16 with a single family residential SFR zone  
17 including additional parking with a 20-foot  
18 setback and a proposed 10 foot by 16 foot  
19 cooler addition with a 41-foot setback does  
20 not comply with the minimum 200-foot setback  
21 for a building in a 50-foot setback for  
22 parking, and is prohibited in use within the  
23 said setbacks from an SFR zone as stated in  
24 Sections 190-20(c)(1) and 190-20(c)(2) of the  
25 Town of Colonie Land Use Law. Also, the

1 proposed 10 by 16 cooler addition with a  
2 six-foot side yard setback and a six-foot  
3 setback from existing single family use does  
4 not comply with the minimum 10-foot side yard  
5 setback in a 25-foot setback from a single  
6 family use as stated in Sections 190  
7 attachment two, the dimensional table,  
8 including note number 5 of the Town of Colonie  
9 Land Use Law and did on the basis of  
10 allegations made in and said appeal -

11 CHAIRMAN STUTO: Okay, that shows what  
12 the variance is.

13 MR. LACIVITA: That's what it was granted  
14 under.

15 CHAIRMAN STUTO: Do you want to talk  
16 about the project, or do you want to turn it  
17 over to the developer? Members of the public  
18 will have an opportunity to be heard, as well.  
19 If you want to be heard, please sign in and  
20 sign the sheet on that table over there.

21 Do you want to talk more about the  
22 project, or turn it over to them?

23 MR. LACIVITA: We can turn it right over  
24 to Christina King, the developer, and Tom  
25 Andres and Victor Caponera.

1                   MR. CAPONERA: Thank you, Mr. Chairman,  
2 members of the Board.

3                   With me tonight is the contract purchaser  
4 of the project, Christian King. Of course,  
5 it's under an LLC. Also, with us is ABD  
6 Engineers, Tom Andres and Mr. Scadino is here.  
7 He is a broker that has been involved in this  
8 deal. For the sake of the Board who has not  
9 been involved with this project as long as I  
10 have, I'm going to give a little history of  
11 the property and the use.

12                  I think that everybody knows where the  
13 project is. On the foam board in front of me  
14 and in front of you is an aerial that was  
15 taken by ABD Engineers. We can see that this  
16 is Albany-Shaker Road and of course this is  
17 Everett Road (Indicating). The property that  
18 we're talking about is at the corner, which is  
19 currently vacant. Directly across the street  
20 is a Stewarts, and right next to the property  
21 is a church. I believe that it's the Jehovah  
22 Witnesses. Across the street this shows the  
23 old development which was a - we'll call it a  
24 fence company. It has presently been changed  
25 to a two story office building built by

1 Mr. Crisafulli.

2 This is according to Zoning Appeals Board  
3 Member Sheehan when we were at the last  
4 meeting from the zoning Board - About 60 years  
5 ago, the property was used for a gas station.  
6 Your normal two-bay repair facility where they  
7 repair automobiles and trucks, sold gasoline,  
8 changed oil and repaired vehicles.

9 In 1986 the owner of the property came  
10 before the Zoning Board of Appeals of the Town  
11 and received a variance. It was variance  
12 number 86-118 that the Zoning Board of Appeals  
13 granted, which allowed a modification of this  
14 previous gasoline and repair facility into a  
15 Valvoline facility. I think back then it was a  
16 Rapid Oil Change where they allowed automobile  
17 oil changing fluids and draining of your  
18 various fluids in your car and radiator.

19 Then again, in 1994, the applicant came  
20 back in front of the Zoning Board and asked  
21 for a modification where they wanted to tear  
22 down the building that is currently there,  
23 rebuild the building and basically use it for  
24 the same purpose - for a fast oil change and  
25 lube facility. That included reconfiguring the

1 building.

2 The application went in front of this  
3 Board. I don't believe that any members were  
4 on the Board back in 1994, but at that time  
5 the Board granted the site plan approval for  
6 that project. It was never built. Anyone that  
7 drives by the property will see that it looks  
8 about like this right now (Indicating). This  
9 is another photo of what the property  
10 currently looks like. So, obviously the 1994  
11 approval was not acted on. So ever since 1996  
12 the property reviews for this automotive  
13 repair facility -- that's what this is defined  
14 as in the code - not only the old code, but  
15 also the new Colonie Land Use Law. The current  
16 owner of the property has entered into a  
17 contract with my client, which is actually  
18 K & C Touch Free Carwash Inc., whereby he  
19 would purchase the property, provided he gets  
20 all necessary approvals to develop it into a  
21 Papa John's establishment.

22 As everyone should know, the property is  
23 in a commercial office residential zone. That  
24 zone is shown on this aerial (Indicating) and  
25 it is shown on the dotted line. I'm sure that

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1 everybody has got a plan showing this, but  
2 it's kind of an unusually marked commercial  
3 office residential zone. It kind of borders  
4 the Crisafulli Development, borders my  
5 client's property and then runs down on both  
6 sides of Everett Road and goes approximately  
7 200 feet on the other side of where Stewarts  
8 is.

9 When we developed this project and did  
10 this aerial, we did a 200-foot buffer from the  
11 property line. It's been kind of circled here  
12 as you can see.

13 In the COR zone, it allows for  
14 restaurants such as the one that we're  
15 proposing, and it also allows for motor  
16 vehicle repair shops such as the one that was  
17 there, so long as it's 200 feet setback from a  
18 residential zone. As you can see, this  
19 encroaches in this area in here where the  
20 Jehovah's Witnesses building is. You can see  
21 where the encroachment is. However over here  
22 it doesn't. It's all in the COR zone and it  
23 encroaches a slight bit on this single  
24 property owner right over here, which is on  
25 the corner of Green Meadows and Albany-Shaker



1 Road (Indicating).

2 I came before the Zoning Board and on  
3 February 9, 2011 and they granted all of the  
4 variances that were referred to when Joe read  
5 the decision of the Board to allow the  
6 elimination of the automotive repair facility  
7 that is currently there. Those are allowed by  
8 the variances that I referred to in 86 and 94.  
9 It further allowed us to change the existing  
10 site into a Papa John's establishment.

11 Now, I will note that the building is not  
12 going to be torn down. It's not going to be  
13 rebuilt. The building essentially stays, but  
14 it's going to be completely renovated; much  
15 the same as Mr. King did recently on the  
16 corner of Route 2 and Old Loudon Road. If  
17 you're familiar with what I'm talking  
18 about - I'm sure the Board is because you  
19 approved this - there was a preexisting  
20 structure at Route 9 and Old Loudon Road as  
21 well as a single story structure that believe  
22 it or not I got a variance on many years ago  
23 for a pizza establishment in this structure to  
24 the right (Indicating). Obviously, that never  
25 happened.

1           Mr. King came and got all the approvals  
2 necessary and has constructed a Papa John's on  
3 that corner and this is the way that it looks  
4 today (Indicating). In my opinion, this is a  
5 far better aesthetically pleasing operation  
6 than what was there. This is similar to what  
7 Mr. King is proposing on this project. This  
8 was all presented to the Zoning Board back in  
9 the February meeting.

10           As Joe had indicated, one of the  
11 requirements was that we meet with the  
12 adjacent land owner who owns the property at  
13 145 and who is here tonight and we have indeed  
14 met with him. I haven't, but my client and Mr.  
15 Andres has. They have gone on the property and  
16 reviewed the berming issue. The plants have  
17 been modified to include a berm; not only on  
18 the side of this property, but also on the  
19 side where the Jehovah's Witness property is.  
20 There has also been the addition of a six foot  
21 vinyl fence that is going to be placed on the  
22 property along and between the two properties,  
23 and it was extended out further after they met  
24 on the site. That six-foot fence is going to  
25 be on top of a two-foot berm. So, technically

1 speaking it's going to be approximately eight  
2 feet high.

3 CHAIRMAN STUTO: Would you mind waving to  
4 the Board? I don't mean to embarrass you, but  
5 thank you for coming tonight.

6 MR. CAPONERA: There is also some  
7 arborvitaes that are planted here. The  
8 decision between the neighbor and my client  
9 was to move those and replace it with new,  
10 fresh, better looking landscaping, together  
11 with a split-rail fence that is going to be  
12 put up along my client's property to  
13 differentiate the properties. Tom can get into  
14 exactly what is going to go there.

15 One of the other requirements was the  
16 berm on the Jehovah Witness side, which as you  
17 can see on the site plan has been replaced  
18 with planting trees on top of the berm.

19 The other requirement was stormwater  
20 management review. This was reviewed by the  
21 Town of Colonie. In your packet is a comment  
22 made by the Town Planning Department with an  
23 indication that's been done to the  
24 satisfaction of the Town's water management  
25 review.

1           The hours to be determined by the  
2           Planning Board - that was discussed at the  
3           Zoning Board meeting. The normal hours that is  
4           required by the Papa John's franchise is 10:30  
5           in the morning until 11:00 at night. That's  
6           pretty much standard. That's what we are  
7           requesting tonight.

8           I will note that the Stewarts across the  
9           street has steeper hours than that. They're  
10          open earlier in the morning, and I'm not sure  
11          how late they are at night. Let's assume it's  
12          about 11:00.

13          The other issue was the traffic and on  
14          page 88 of the transcript - this is the  
15          transcript from the Zoning Board of Appeals  
16          meeting - I will read what was stated:

17          "Mr. King entered into discussions with  
18          the land owner on the Everett Road side of the  
19          property to satisfy his needs and concerned."

20          We just addressed that. I've just  
21          indicated that we've done that.

22          "We refer to the Planning Board that we  
23          feel that there are some traffic concerns that  
24          have been voiced by the residents tonight and  
25          they should be addressed."

1 I'll have Tom Andres discuss the traffic.  
2 We'll note to the Board that the proposal here  
3 would add zero cars to AM peak traffic. Why?  
4 Because we're not going to open until 10:30 in  
5 the morning. Peak traffic is obviously earlier  
6 than that. There is going to be approximately  
7 22 trips per hour in the PM peak traffic. You  
8 will hear from Mr. Andres, who will tell you  
9 that this is not one that is going to require  
10 a full traffic study. There is also a comment  
11 made by Mr. Jukins in his review of this  
12 property and he mentions that in his comments  
13 that he has reviewed.

14 So that proposal was acted on and  
15 approved by the Board. Of course, Joe read you  
16 the salient parts of the decision that was  
17 signed and filed on February 9<sup>th</sup> of this year.

18 One of the other things of great  
19 importance is that Papa John's does not have  
20 any fryers or any such cooking devices in  
21 this. They use the conveyor ovens. So, that  
22 eliminates any grease and any frying. There  
23 would be only two conveyor ovens with this  
24 project.

25 Now after the decision of the Zoning

1 Board, which was filed in the Clerk's office  
2 in the town on February 9<sup>th</sup>, ABD Engineers set  
3 out to answer and to work on the requirements  
4 of the Zoning Board's decision. He'll talk  
5 about what he and Mr. Kirchner - who just  
6 raised his hand - who lives right here on the  
7 adjacent property discussed.

8 Since this type of a proposal is a change  
9 in use and is allowable in the COR zone, the  
10 scope of work falls under what we consider to  
11 be the Planning and Economic Development  
12 Department's review. It's classified as a  
13 minor site plan. Under the conditions granted  
14 by the Board, the Planning Board has to review  
15 and act on what the hours of operation should  
16 be as required by the Zoning Board and be  
17 satisfied with stormwater and the other two  
18 issues I mentioned.

19 I'm not 100 percent sure on this, but I  
20 don't believe based on the type of operation  
21 that grease traps are even required by this  
22 service. Joe, maybe I'm wrong. Am I correct?

23 MR. LACIVITA: That's a department  
24 review, but typically on operations like this,  
25 I don't believe that there was one required.

1 MR. CAPONERA: Mr. Andres is indicating  
2 to me that it's not required.

3 Now, also, there is no seating in this  
4 operation. It's strictly for take-out and  
5 delivery. I'm going to submit to you with all  
6 due respect that should this property not be  
7 operated as Papa John's, anyone that is going  
8 to come and want to use this property is  
9 probably going to be using it for more intense  
10 use. I'm going to submit that. I also suspect  
11 that their hours won't be from 10:30 in the  
12 morning to 11:00 at night.

13 The fact of the matter is that it's fast  
14 food without a drive-thru window. That's what  
15 it's determined to be. Therefore, the parking  
16 spaces are minimal at this point because there  
17 is no sit-down. You either go in and pick it  
18 up or it's delivered to site; requiring a less  
19 intense operation on this property. There is  
20 also going to be a small three-percent  
21 increase in greenspace, which will obviously  
22 add to the aesthetics and the drainage. We  
23 have, at the request and suggestion of the  
24 Planning Department, move the storage that's  
25 going to be on the north side, as indicated on

1 the site plan. That will be away from this  
2 gentleman's property. So, it won't have any  
3 problems with the downgrade in property.

4 Also, as mentioned, after the stormwater  
5 management was reviewed, it was found to be  
6 acceptable by the Town; the Stormwater  
7 Management Office.

8 As mentioned before, the proposed hours  
9 of operation will be 10:30 AM to 11:00 and  
10 that's consistent with the other operations  
11 that are ongoing in the area. It's less than  
12 what's going on across the street and very  
13 consistent with other similar type operations  
14 in this area.

15 We feel that this proposal will obviously  
16 improve the aesthetics of the area for the  
17 whole outside rendering, as you can see here  
18 (Indicating). It will substantially increase  
19 the aesthetics of this area when compared to  
20 the existing operation that is presently  
21 there. Everyone has obviously seen and driven  
22 by this many times. I feel that the existing  
23 site is unsightly. Pictures clearly show what  
24 it looks like and what we're proposing to do  
25 on the site. Again, we're not constructing the



1 building. We're just upgrading it.

2 The other thing that we've done, which in  
3 my opinion is very important to the Town and  
4 to the surrounding neighbors, is that we did  
5 not only a Phase I environmental, but a Phase  
6 II environmental. We found that there is an  
7 existing tank in the front of the property,  
8 which has the waste oil. Then there is also an  
9 existing oil tank buried in the back of the  
10 building. Mr. King is committed to removing  
11 those tanks, but we've also found that for the  
12 most part, the property is clean. There is one  
13 small area that they have determined probably  
14 from the preexisting tanks that has some  
15 contamination. Mr. King is committed to  
16 cleaning it up as a result of this proposal.

17 So, other than the setback variance that  
18 was granted by the Zoning Board on the  
19 February 9<sup>th</sup> decision, this site meets all  
20 other criteria, based upon the Town of Colonie  
21 Land Use Law. In fact, but not for the fact  
22 that the Zoning Board instructed us to come in  
23 front of this Board for the hours of operation  
24 and the other items, I'm submitting to you  
25 that we wouldn't even be here if it was minor.

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1           Essentially, that's where we are,  
2           Mr. Chairman, and members of the Board. We'd  
3           be happy to answer any questions.

4           CHAIRMAN STUTO: You've given a fair and  
5           good presentation in terms of educating us  
6           about a little bit of the history and what  
7           your intensions are for the property. I  
8           appreciate that.

9           You pointed out something that in some  
10          ways it's the elephant in the middle of the  
11          room, for me. That's a condition of the  
12          variance which says "there shall be a traffic  
13          study done to address traffic concerns."  
14          You've read a portion of the transcript and I  
15          don't want to make the point for you. What was  
16          the point of reading the transcript? I'm not  
17          laying a trap for you. I just want to get the  
18          facts out.

19          MR. CAPONERA: I was a bit confused by  
20          that because when we discussed it at the  
21          Zoning Board, there was never a true request  
22          for a traffic study. Instead, it said - and  
23          I'm going to read it again "We refer to the  
24          Planning Board that we feel that there are  
25          some traffic concerns that have been voiced by

1 the residents tonight and they should be  
2 addressed."

3 That's basically what they talk about. I  
4 want to have Tom talk about that because I  
5 think that's important enough for the Zoning  
6 Board to give you guys the luxury of looking  
7 at this, and I would like time to talk about  
8 this, if you wouldn't mind.

9 CHAIRMAN STUTO: Are you saying that  
10 there is an inconsistency?

11 MR. CAPONERA: It seems to be  
12 inconsistent because the minutes don't talk  
13 about an actual traffic study, but the  
14 decision does. When you look at the ITE that's  
15 done by the nation's Institute of Traffic  
16 Engineers, when you're dealing with 22 trips  
17 in the peak PM, there is no requirement for a  
18 traffic study. This does not create a  
19 situation where a traffic study would be  
20 required and I'm not an engineer, but I think  
21 that Mr. Andres would agree with that.

22 Is that correct, Tom?

23 MR. ANDRES: That's correct.

24 CHAIRMAN STUTO: I've spent more time  
25 probably focusing on this issue than the rest

1 of the Board. I have talked to Tom and I have  
2 talked to Joe and Elena about it. The bottom  
3 of the decision of the Zoning Board of Appeals  
4 is certified by the Chair who says:

5 "I, Jim Campbell, Chairman of the Zoning  
6 Board of Appeals of the Town of Colonie do  
7 hereby certify that the foregoing is a true  
8 copy of a decision of the Zoning Board of  
9 Appeals made at a meeting hereof, called and  
10 held on the third day of February 2011."

11 One of the conditions is clearly that  
12 there be a traffic study done. There has not  
13 been a traffic study done, correct?

14 MR. ANDRAS: The answer is simply yes,  
15 there hasn't been a traffic study. It's been  
16 presented to this Board as part of the  
17 narrative statement that came in as part of  
18 the minor.

19 CHAIRMAN STUTO: Okay, let's go to your  
20 narrative. Is this the document that says  
21 narrative on top?

22 MR. ANDRES: I believe that is correct.

23 CHAIRMAN STUTO: ABD Engineering on the  
24 bottom?

25 MR. ANDRES: Yes. On the first page there

1 is the discussion in reference to traffic,  
2 which is the third paragraph down. It  
3 discusses drainage and it discusses traffic  
4 generated by Papa John's. There is not any  
5 traffic in the AM hour. It goes on to discuss  
6 the difference being generated by the Quick  
7 Lube versus the fast food restaurant with a  
8 drive-thru window. Those are two of the  
9 Institute of Traffic Engineers definitions for  
10 uses, and it fits the closes to the existing  
11 use and the proposed use is a Papa John's.

12 It notes that there are 22 vehicle  
13 additional trips being generated by this  
14 business. Not in this report, but the report  
15 that was done - there was a full traffic  
16 report done which this Board had the  
17 opportunity to review. There was the  
18 Crisafulli development across the street which  
19 resulted in improvements near Albany-Shaker  
20 and Everett Road. That actually was part of  
21 the determination of the peak PM hour. It was  
22 from 4:30 to 5:30. There is a two-hour window.  
23 We looked at that and said that between 4:30  
24 and 5:30 in the evening people are either  
25 coming or ordering out at 5:30. The activity

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1 usually starts here at 5:30 and goes to 6:00.  
2 So that was something that wasn't added into  
3 this report. Our activity is slightly passed  
4 the PM hour.

5 We then speak about the use of the  
6 facility as Papa John's and that as a pizza  
7 facility there are other pizza facilities in  
8 the area and that a lot of the traffic that  
9 will be generated from this could be existing  
10 traffic that would be potentially going to  
11 another pizza use that might come to this one  
12 instead. There is drive by traffic that would  
13 reduce the number of trips on the road.

14 The third page basically resummarizes the  
15 traffic in number four under the conditions of  
16 the Zoning Board of Appeals. We have mentioned  
17 in there, again, of the statement of  
18 22 vehicle trips. We go through the study from  
19 the standpoint of a full study and there was  
20 no definition in the Zoning Board of Appeals  
21 on what the traffic study is. There is no  
22 definition to my professional knowledge that a  
23 traffic study has to be done. It's determined  
24 by the individual doing the study for the site  
25 or the municipality. This is not a DOT road.

1 This is an Albany County road. Albany County  
2 maintains the same standards, pretty much, as  
3 DOT. DOT does not require a traffic study  
4 unless there are more than 100 vehicle trips  
5 in the PM peak hour. So, a full-blown traffic  
6 study would not be warranted. We did a very  
7 concise study. Then, it also discusses the  
8 items of drive by traffic that could  
9 potentially reduce that number of 22.

10 CHAIRMAN STUTO: Okay, you're saying that  
11 this constitutes a traffic study.

12 MR. ANDRES: Yes.

13 CHAIRMAN STUTO: Do you have any  
14 questions, Counsel? I just think that it's an  
15 important technical issue, unfortunately.

16 MS. VAIDA: I was actually thinking that  
17 we were thinking along the same lines as -

18 CHAIRMAN STUTO: I don't want you to draw  
19 any conclusions. But if you ask any questions,  
20 that might help us.

21 MS. VAIDA: It's not really a question,  
22 but it's more of a statement. The Albany  
23 County Planning Board - this project was  
24 referred to them, to my understanding. They  
25 issued a recommendation. In their

1 recommendation is there any mention of a  
2 needed traffic study? As you pointed out, it  
3 was an Albany County road. Is that correct?

4 MR. ANDRES: That's is correct. We had  
5 the opportunity also to speak with Albany  
6 County in reference to this specific site to  
7 find out if they had any concerns about  
8 previous operations or any operations that  
9 would be occurring with this. They didn't see  
10 any issue with this. I think that the Board is  
11 well aware of all the improvements that have  
12 been done. I think that there has been pretty  
13 significant improvements in how that whole  
14 intersection works. It is also a note that  
15 there will be some type of view of the traffic  
16 in a certain number of years, based upon the  
17 improvements of Crisafulli. That might be just  
18 a review of the timing, but there will be  
19 something at that intersection to see whether  
20 it needs to be tweaked and more than likely it  
21 will be signal timing.

22 In addition to that, I think that you had  
23 in the packet by Planning and Economic  
24 Development - a statement from CDTA, in fact,  
25 not only agreeing with our traffic study but



1 saying that we were probably overestimating  
2 the number of vehicles.

3 CHAIRMAN STUTO: Was that CDTA or CDTC?

4 MR. ANDRES: CDTC. They didn't see any  
5 problem with this intersection.

6 CHAIRMAN STUTO: Okay, I want to keep the  
7 questions on traffic for just a moment.

8 MS. VAIDA: Is it also your opinion that  
9 the use of the word traffic study - that's not  
10 a term of engineering and it doesn't mean  
11 anything in particular?

12 MR. ANDRES: It's a generalized term.

13 CHAIRMAN STUTO: Mike, do you have any  
14 questions?

15 I'm going to go through the Board. Just  
16 stick to traffic for the moment.

17 Do you have any questions on traffic?

18 MR. SULLIVAN: Yes. The one question that  
19 I had does deal with the memo from Mr. Jukins.  
20 He said that I don't think that you need a  
21 full traffic impact study. However, a formal  
22 driveway location and potential conflict with  
23 traffic at the intersection would be  
24 appropriate. Access control at the  
25 intersection would be a huge issue.

1           The concern that raises with me is I  
2 understand that you'll be able to get into the  
3 site because there are two entrances. You can  
4 take a right turn in. However, if you wanted  
5 to make a left turn out at the PM peak  
6 hour - has any study been done there to see if  
7 you'd be able to physically get out or will  
8 there be a queuing problem where traffic is  
9 blocking you in, basically?

10           MR. ANDRES: That is specifically what we  
11 looked at. That was one of the points that we  
12 made to the Zoning Board of Appeals regarding  
13 how well this site works. Stewarts is a little  
14 more difficult to get in and out of because  
15 it's on the other side to the west to get into  
16 the site and to get out of the site. You  
17 really don't have to make a left hand turn. If  
18 this site didn't have an entrance from  
19 Albany-Shaker Road, you would be coming  
20 eastbound on Albany-Shaker, you'd have to turn  
21 southbound on Everett and try to cross those  
22 three lanes to get into here (Indicating). It  
23 would be a very difficult left hand turn and  
24 you'd end up stacking a lot of it behind you  
25 and creating a significant issue for the

1 traffic flow. Luckily, all you have to do is  
2 go through the intersection to make a right  
3 turn in. Everyone coming from Everett Road of  
4 course, coming to the facility just has to  
5 make a right turn in. People traveling  
6 westbound on Albany-Shaker do have to make a  
7 left turn in. However, there is a dedicated  
8 left turn lane to allow them to make that left  
9 turn in and not blocking traffic; the same way  
10 in exiting the site. You can honestly get out  
11 onto Everett Road to make a right turn to  
12 either go to west or east. You can exit out  
13 Albany-Shaker to make a right turn to go east,  
14 because you do have that gap there at the  
15 light and you do have a left turn lane and the  
16 stacking isn't necessarily a problem on that  
17 side as much as it is stacking up on Osborne.  
18 The issue there is that you can still make a  
19 left turn out there so that you would be able  
20 to go west on Albany-Shaker.

21 To come out of the lower entrance onto  
22 Everett and make a left turn would be  
23 difficult. But you do have the ability because  
24 you're going to be crossing three lanes. You  
25 do have the ability to go out Albany-Shaker,

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1 take a left and be in that left turn lane, and  
2 then you would realize the defined left turn  
3 from Albany-Shaker to go onto Everett. So, it  
4 has a lot of opportunities. They may not  
5 realize it the first time, but they certainly  
6 will learn that they can. This is not a sit  
7 down restaurant.

8 Chris, you say that 50 percent is take  
9 out?

10 MR. KING: It's 60 percent delivery and  
11 40 percent take out.

12 MR. ANDRES: Okay, so you have 60 percent  
13 of the traffic is employees delivering. I  
14 think from that statement, that addresses  
15 that. Again, my discussion with Albany  
16 County - they didn't see any issues with this  
17 project.

18 MR. SULLIVAN: I appreciate your  
19 explanation. My concern is that there is no  
20 gap available when you're trying to exit  
21 westbound on Albany-Shaker to either go  
22 westbound on Albany-Shaker or then get a left  
23 turn and head south on Everett. That's my  
24 concern. Will there be a gap there at peak  
25 hour?

1           MR. ANDRES: I guess the question comes  
2 back to this Board - this Board is charged  
3 with the site plan approval for a use that's  
4 allowed in the zone. Any other uses that are  
5 allowed there, including the existing use,  
6 would have the exact same issue, or  
7 potentially worse with the generation of  
8 traffic that they would have. So, yes, I mean  
9 if all of these things work against you, it  
10 would be more difficult and you'd have to  
11 spend more time. In fact, because of the  
12 lighting, it does have a certain amount of  
13 gaps.

14           MR. KING: I just wanted to make a point.  
15 Albany County looked at the inclusions as well  
16 as CDTC. If there were really impact issues  
17 with the existing uses that were there, they  
18 would have said so and we would have gotten  
19 clean bills of health from both of those  
20 agencies, because they look at the traffic  
21 access and functionality of the intersection.  
22 The fact that they have already signed off on  
23 it, if you will, I think speaks to a lot of  
24 the functionality of the site, and the  
25 entering and exiting.

1                   MR. NARDACCI: As Mike mentioned, though,  
2                   in Dave Jukins' letter that you're  
3                   referencing, he says

4                   "However, a formal look at driveway  
5                   location and potential conflict with traffic  
6                   at the intersection would be appropriate."

7                   That doesn't equate a sign-off.

8                   MR. SULLIVAN: I have one other point. If  
9                   the traffic study that is due to come out in  
10                  2012 - if there should be a problem in the  
11                  future, could you limit the left turns out of  
12                  the location? They would have to take a right  
13                  turn out or at least until 6:00 pm or  
14                  something like that, if it does become an  
15                  issue?

16                  MR. ANDRES: I think that we would be  
17                  willing to work with whatever that traffic  
18                  study comes out with. I'm not going to say at  
19                  this time that we're willing to eliminate that  
20                  left turn because that's a what if. They may  
21                  never request that of us. If there is a  
22                  significant study that shows that there is a  
23                  significant problem, then we would certainly  
24                  want to work with that study.

25                  MR. KING: Mike, you're talking more

1 concern about the left out?

2 MR. SULLIVAN: Yes, my main concern is  
3 people that come out that left.

4 MR. KING: I would be fine with that  
5 because like I said, the two year study is  
6 from September of 2010, correct, Joe?

7 MR. LACIVITA: The recommendation was  
8 that build-out.

9 MR. KING: Mike, I think that you're  
10 asking, hey, what if that comes out and there  
11 are impact issues with egress and ingress?  
12 Would we be willing to work with that study?  
13 The answer, from being a developer, would be  
14 yes.

15 MR. SULLIVAN: My concern is - and not to  
16 stereotype anybody but pizza delivery guys are  
17 usually young and it would be quicker to get  
18 out if you were willing to take a risk. My  
19 concern is people trying to take a left turn  
20 out of there when they really shouldn't be.  
21 That's my concern. If it were a problem or  
22 there were a higher incident with accidents or  
23 whatever, perhaps we could limit the left  
24 turns out of there.

25 MR. ANDRES: Again, going back to my

1 point earlier - say this was developed as an  
2 office site. Even though it's very small,  
3 something might go in here that was a little  
4 larger and different. You might have the peak  
5 of that use corresponding to the fact that the  
6 adjoining roads would really cause an issue.  
7 The main use of the generator is significantly  
8 different. There is always traffic on Everett  
9 and always traffic on Albany-Shaker, but it's  
10 much less once you get out of that peak  
11 period.

12 MR. SULLIVAN: I thought that there would  
13 be a bit of an overlap there say between 5:30  
14 and 6:00. You would still have that overlap of  
15 pizza and peak traffic.

16 MR. ANDRES: You will have an overlap.  
17 However, the specific study that was done for  
18 the Crisafulli project determined that the  
19 peak time of traffic is 4:30 to 5:30. You  
20 could do a study of 15 minute increments  
21 through that 4:00 to 6:00 period and then you  
22 take the highest four increments that are  
23 together. That determines the peak. It's the  
24 time when the peak of PM traffic occurs; that  
25 was 4:30to 5:30. We were not the traffic



1 engineers for the project. That was Creighton  
2 Manning.

3 MR. SULLIVAN: How close were the  
4 numbers? I have to believe that the  
5 numbers - they're not going to change that  
6 much in 15 minutes. There is still a lot of  
7 traffic there at 6:00.

8 MR. ANDRES: They're not, but there is a  
9 standard that's done when you're looking at  
10 that. That standard determines when that peak  
11 PM hour is. The statement in that report is  
12 that the PM hour is 4:30 to 5:30, so the  
13 traffic from 5:30 to 6:00 is less.

14 MR. SULLIVAN: Do you have any sense of  
15 some numbers? I think that we're splitting  
16 hairs here. I think that we're still going to  
17 have a traffic problem.

18 MR. ANDRES: I don't have the specific  
19 numbers here with me. The point was that it's  
20 off a little bit.

21 MR. SULLIVAN: That's 15 minutes off.

22 MR. ANDRES: Well, 15 to 30 minutes, but  
23 if you had someone come in here that was pure  
24 office, they most likely would have the  
25 corresponding hours to the high peak.

1 CHAIRMAN STUTO: Tim any comments?

2 MR. LANE: Has anybody looked at the  
3 accident rate in that intersection? Is there  
4 an accident report that anybody has reviewed,  
5 especially since the new office building has  
6 been built?

7 MR. ANDRES: There hasn't been any study  
8 since -

9 MR. LANE: Wouldn't Public Safety have  
10 that information?

11 CHAIRMAN STUTO: Joe, would Public Safety  
12 have an accident history for that location?

13 MR. LACIVITA: Traffic Safety would, yes.

14 MR. LANE: That might be something that  
15 we might want to see.

16 MR. LACIVITA: If it's something that  
17 this Board determines to get an accident  
18 count, yes. That is something that you could  
19 look for. We could very easily find out if  
20 there is any generation of numbers moving  
21 forward. If there is any history, we should  
22 know right away.

23 MR. LANE: In reference to the exits in  
24 and out, the width - is it wide enough for two  
25 cars to go through? Is there going to be a

1 conflict there where it's going to be wide  
2 enough? What is the width of these entrances?

3 MR. ANDRES: They will be at least the  
4 24 feet.

5 MR. LANE: Will they be signed or  
6 arrowed?

7 MR. ANDRES: There won't be any signs  
8 because both entrances and exits are both  
9 ways.

10 MR. LANE: What about arrows just to keep  
11 people directed?

12 MR. ANDRES: There isn't any proposed,  
13 but we certainly can.

14 MR. LANE: When you're dealing with a  
15 narrow space, it's kind of an odd intersection  
16 and on the Everett side there is a slope to  
17 it.

18 MR. ANDRES: There is a slope across the  
19 whole thing. We would have no problem of any  
20 condition of painting arrows, or any other  
21 signage for that matter. That's fine.

22 CHAIRMAN STUTO: Paul?

23 MR. ROSANO: When I look at this project,  
24 I see two things. I see the corner of Osborne  
25 and Albany-Shaker Mobil gas station - no

1 different from the issues that you have here.  
2 I see Fresh Market on 9 and 155 where there is  
3 a lot more traffic and I still have not heard  
4 any problems. Has anybody come up with  
5 anything that shows me that there is a  
6 difference between the two? I see the same  
7 situation and I don't see a problem.

8 MR. ANRES: I think that you'd have a  
9 much more significant situation across the  
10 street at Stewarts. It works. It's not  
11 perfect, but it works. You're cutting across  
12 lanes when you're going into the Fresh Market.  
13 You're traveling northbound on Route 9.

14 CHAIRMAN STUTO: Tom?

15 MR. NARDACCI: To come back to an initial  
16 point that Peter made: I'm a little concerned  
17 just by the language in the ZBA decision and  
18 the fact that they say that a traffic study  
19 should be performed. An internal question that  
20 I would have is: I looked quickly through the  
21 Land Use Law and I didn't see the ZBA's  
22 authority to refer something like this to us.  
23 I think that's a question that we answer  
24 ourselves. What is their authority to refer it  
25 to us?

1           On the traffic study itself, I'm just  
2 going to respectfully disagree that this is  
3 not a traffic study. This is my fourth year  
4 here, and we spent a lot of time with traffic  
5 issues all over town. The one thing that I  
6 know is that the 250 words dedicated  
7 here - this is not a formal look at traffic.  
8 Now, I'm not saying that you need a traffic  
9 study or not. That was something that was in  
10 the Zoning Board, but if you're representing  
11 to us that this is a traffic study, I deem  
12 that as incomplete. I think that we don't have  
13 stacking information provided, queuing - I  
14 think that's information that we would need to  
15 make a determination whether there is a  
16 traffic issue. I think that you reference the  
17 study for the other project. You should have  
18 included references to the information that's  
19 already available. If you're representing that  
20 this is a traffic study, I think that it's  
21 inadequate.

22           MR. ANDRES: We represent a traffic study  
23 that meets the conditions of the Zoning Board  
24 of Appeals. I believe and I think that we  
25 would have to check - I don't know how the

1           Zoning Board of Appeals works, but I believe  
2           that decision came out quickly. I don't have  
3           the transcript. I don't know if that was fully  
4           reviewed in the minutes of that transcript and  
5           if the decision was written. I'm just  
6           wondering if the decision was made without the  
7           benefit of actually looking to see what was  
8           said.

9           MR. NARDACCI: Here is my comment. We are  
10          left to interpret it - what the meaning was.  
11          You quoted a transcript - I have a signed  
12          document from the Chairman. That's black and  
13          white, and I'm not a lawyer but it seems  
14          conflicting. I would rather have a clear  
15          understanding of what the ZBA's intension was  
16          here.

17          MR. ANDRES: I don't think that there is  
18          any question about intension. The transcript  
19          is the ZBA's official document.

20          MR. NARDACCI: I'm going to disagree. The  
21          signed ZBA decision is the official document.

22          CHAIRMAN STUTO: It's a true copy of  
23          their decision.

24          MS. VAIDA: Victor, Did you make any  
25          attempt to contact the Board to clarify the

1 decision?

2 MR. CAPONERA: Yes. Nothing happened.  
3 They didn't formally go back and review the  
4 minutes compared to what the decision said. I  
5 did informally discuss it with the attorney  
6 for the Zoning Board, Mike Garry.

7 MS. VAIDA: You didn't have the minutes?

8 MR. CAPONERA: No, the minutes weren't  
9 even available, so it was pretty tough to do.  
10 I know that Mr. King wanted to advance the  
11 project because he's on a time constraint  
12 here. Under ordinary circumstances - and I  
13 must disagree with Mr. Nardacci - this is not  
14 a case where you do a full traffic study.

15 MS. VAIDA: I don't think that's what  
16 he's saying.

17 MR. NARDACCI: That's not what I said.

18 MS. VAIDA: The decision seems to be  
19 ordering us to have a traffic study.

20 MR. CAPONERA: I understand and again,  
21 it's a question of: Was it a full-blown  
22 Creighton Manning 98 page study?

23 CHAIRMAN STUTO: You could have at least  
24 put it in a blue back binder with traffic  
25 study on the top.

1           MR. CAPONERA: I understand. This is a  
2 tough scenario. I've been doing this a few  
3 years and I've never seen a Zoning Board in  
4 any municipality require this. It is what it  
5 is. This is what we're dealing with.

6           MR. NARDACCI: The Zoning Board provided  
7 us with their exact intent. We're up here  
8 trying to interpret it -- and that's what I'm  
9 trying to say. Obviously we've reviewed a lot  
10 of different projects with different scales.  
11 There are different scales. I'm looking at  
12 what it says - that there be a traffic study  
13 performed and that's my opinion.

14           CHAIRMAN STUTO: I agree.

15           Lou?

16           MR. MION: None, right now.

17           CHAIRMAN STUTO: Kathy any questions or  
18 comments on the project?

19           MS. DALTON: No, actually.

20           Sixty percent of their volume is going to  
21 be taken care of by delivery. You're really  
22 talking about a limited use facility that you  
23 might get from another situation. The fact of  
24 the Zoning Board of Appeals asking to do  
25 something -- I think that we got an atypical



1 response to an atypical question. I'm not  
2 really as concerned about that. Unless I'm  
3 missing something, it looks like you covered  
4 the bases to me.

5 CHAIRMAN STUTO: Lou, any general  
6 comments?

7 MR. MION: No.

8 CHAIRMAN STUTO: Tom?

9 MR. NARDACCI: Can the applicant run us  
10 through the architecture and the materials  
11 that you plan to use?

12 MR. KING: This front wall will, for the  
13 most part, be taken down with the windows in  
14 it. This is the side of the two bay doors so  
15 depending on what kind of condition - we may  
16 just take this out and put big windows in  
17 (Indicating). This will be aluminum with  
18 windows. This is going to be either a hardy  
19 board or stucco (Indicating). We're still  
20 trying to decide between those.

21 MR. NARDACCI: Not vinyl, though.

22 MR. KING: No, it would be hardy board,  
23 but we're just trying to figure out if it's  
24 appropriate. The back side would be similar  
25 and wrap right around, but not on all sides.

1 The side of the building would stay the same.  
2 We're just trying to elevate it. Really, this  
3 is only going to end up being about a foot and  
4 a half to two feet higher. This will just make  
5 it look like it's a little bigger. This is a  
6 small building. It's only 1,268 square feet.  
7 So, we're just trying to make it look a little  
8 nicer.

9 The standing seam metal roof is your  
10 typical metal roof. You can see that the  
11 solar panels slide off. The flat roof - all the  
12 mechanics will be on top, covered, and inside  
13 the parapet of the cupola.

14 MS. LANE: So, there won't be any  
15 visibility of those rooftop mechanicals?

16 MR. KING: No. So, we're trying to do the  
17 best that we can with the 1,268 square foot  
18 building. That's the best that we could come  
19 up with without tearing it down like we did  
20 over on 471 Troy-Schenectady Road.

21 MR. NARDACCI: In addition to the  
22 landscaping to screen with the  
23 neighbor -- what other landscaping elements do  
24 you have?

25 MR. KING: First of all, it's going to be

1 sodded and sprinklered, so you'll have that as  
2 an aesthetic standpoint. This will be all  
3 sodded in here. This will be all ripped down  
4 and sodded with the plantings and the flower  
5 beds and all sprinklered with water. It's the  
6 same thing here.

7 We talked with Steve and Stephanie, our  
8 next door neighbors here. We had originally a  
9 two-foot berm and a six-foot fence. We were  
10 sitting in their kitchen trying to make them  
11 happy. We decided to extend that all the way  
12 down to here (Indicating). Steve and Stephanie  
13 didn't like what was here now, so we agreed to  
14 remove all those and put eight smaller shrubs  
15 in and two crabapple-type flowering trees.  
16 It's like more of an ornamental fence that  
17 we've agreed to put all along through here  
18 (Indicating). The berm that was discussed in  
19 the Zoning Board is a two-foot berm with pines  
20 on top for the screening on the backside of  
21 the Jehovah's Witnesses. Again, out front is a  
22 small planting area with flowers and some  
23 small shrubs and sod.

24 MR. NARDACCI: So, the sod is grass.

25 MR. KING: Right. Just like we did at

1 471, we'd do the same type of landscape.

2 MR. ANDRES: One point that Mr. King  
3 didn't bring up is that the existing site is  
4 33.5 percent green. With these improvements it  
5 will be 36.9 percent. That brings it above the  
6 percentage that the Town requires. We're  
7 trying to redevelop this into a different type  
8 of use and to have someone else here, you'd  
9 have to have someone put a lot of work into  
10 this. This project is actually bringing the  
11 site into conformance.

12 MR. NARDACCI: That's all I have.

13 CHAIRMAN STUTO: Paul, do you have any  
14 general comments or questions?

15 MR. ROSANO: No, I'm all set.

16 CHAIRMAN STUTO: Tim?

17 MR. LANE: No.

18 CHAIRMAN STUTO: Mike?

19 MR. SULLIVAN: You had mentioned that the  
20 fuel storage tanks were located there, and  
21 there is a slight bit of contamination, but it  
22 will be addressed?

23 MR. ANDRES: Yes. There is actually a  
24 waste oil tank that was utilized for the Jiffy  
25 Lube that's in the front that's going to be

1 removed. There is an oil tank in the rear that  
2 has been used for heating oil for heating the  
3 building. That's going to be removed. The area  
4 that's in the middle here, where there were  
5 fuel tanks before with the use of the gas  
6 station - that area has all been cleaned up,  
7 but there was a small area there that had a  
8 small amount of contamination and that will be  
9 taken out as part of the project.

10 CHAIRMAN STUTO: Okay, we're going to  
11 hear from the public. I'm going to read a note  
12 from someone from the public. I just want to  
13 be sure that we know that we've seen it. It  
14 was circulated electronically to the Board  
15 Members and it will be made part of the  
16 record.

17 When you speak, please go up to that  
18 microphone and say your name.

19 Kathy Ordway is President of the Green  
20 Meadows Civic Association.

21 MR. NARDACCI: The Green Meadows Civic  
22 Association wishes to express their strong  
23 opposition to the approval of Papa John's  
24 Pizza at the corner of Albany-Shaker Road and  
25 Everett Road; the property currently occupied

1 by Valvoline. The Green Meadows residents have  
2 the same reasons for this opposition that they  
3 had for the restaurant occupying the Loudon  
4 Square development. Food service so close to  
5 our neighborhood will affect the value of our  
6 homes and quality of our lifestyle, due to the  
7 everyday conditions brought by a food service  
8 operation. Those conditions are: noise, heavy  
9 equipment, delivery, garbage pick up trucks,  
10 cars, vermin, small animals attracted to a  
11 food operation, neighboring property, odor  
12 from the pizza oven and dumpsters.  
13 Traffic - especially customers leaving the  
14 restaurant that make left hand turns out to  
15 Albany-Shaker Road and Everett Road and  
16 increase that peak rush hour traffic times,  
17 and remaining open until 11:00 PM every night.  
18 These conditions prevailing until hours which  
19 are very late for residential neighborhoods.  
20 In addition to these conditions occurring  
21 every day, the number of parking spaces, only  
22 13 spaces with eight being used by employees  
23 and one handicapped space will leave only four  
24 spaces for customers. Overflow cars waiting to  
25 park will back up on Albany-Shaker and Everett

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1 Roads and cause worse traffic problems. This  
2 property is in as close proximity to the Green  
3 Meadows neighborhood as Loudon Square is and  
4 in fact, sits within the 200 feet setback  
5 required for food service operations stated in  
6 the Town of Colonie Land Use Law. We feel that  
7 a precedent was set by the Town Planning Board  
8 when it agreed that a food establishment would  
9 not be appropriate bordering the residency of  
10 Green Meadows at its June 9, 2009 approval of  
11 Loudon Square development. As President of the  
12 Green Meadows Civic Association, I ask that  
13 the Planning Board adhere to this policy at  
14 its April 12<sup>th</sup> meeting and deny approval to  
15 Papa John's. Kathy Ordway, President, Green  
16 Meadows Civic Association.

17 CHAIRMAN STUTO: Thank you.

18 Just in fairness, I'm going to call the  
19 names in the order that they were signed in.

20 Mary Alice Morgan.

21 MS. MORGAN: MY name is Mary Alice  
22 Morgan. I live within 57 feet of Albany-Shaker  
23 Road called the upper entrance to Green  
24 Meadows Lane. I respectfully disagree with the  
25 experts tonight talking about the traffic and

1 the impact on our neighborhood. The  
2 intersection right there at Everett Road - the  
3 road widens. It is much wider at the top and  
4 it is quite wide at the end of our end of  
5 Green Meadows opposite Wedgwood Road. There  
6 are accidents there that are not reported to  
7 the police. I've seen them, too.

8 There are people that run that traffic  
9 light on the Albany side coming very fast.  
10 They want to get into that second lane. I've  
11 seen those cars get to the end of Green  
12 Meadows and screech. Nobody is hurt and it's  
13 usually at the rush hour of traffic between  
14 4:00 and 6:00. I saw one Sunday that it took  
15 45 minutes for police to come. At that hour,  
16 you don't get policemen so quickly because a  
17 pile up can occur and it's hard for them to  
18 get there, too. I've seen those things occur.  
19 I would like to respectfully say that this is  
20 not going to be easy for people to get pizza.  
21 If you're coming from Albany going west and  
22 turn left into the Papa John's, to get out,  
23 they're either going to have to go out and  
24 make a left briefly, go right, or else go  
25 right down Shaker. I'm afraid that they're

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1 going to turn right onto Shaker, cut across  
2 the lanes of traffic that are stacked up  
3 between 4 and 6:00 and really start zooming at  
4 a quarter to four. It's constant gridlock for  
5 people who live there. I think that they will  
6 shortcut and go around to lower Green Meadows  
7 and go through and around upper Green Meadows,  
8 across Cloverfield and down our Green Meadows  
9 upper area.

10 I don't think that the pizza parlors that  
11 I've seen in our neighborhood are especially  
12 careful with other people's concerns. They are  
13 just in a hurry to get that pizza there on  
14 time and get paid and then on to the next  
15 delivery. I really think that it's going to be  
16 very difficult for people to do that and to  
17 survive there and doing anything during those  
18 hours. You have to turn right and go up  
19 Shaker, heading toward Osborne and then try to  
20 make a left.

21 I stopped an exercise class because I  
22 couldn't get out of there in those particular  
23 hours. You're taking your life in your hands.  
24 You have approximately three seconds where the  
25 right hand lane might be stopped and between

1 the light and two traffic lanes coming up  
2 shaker, up Everett, bringing them down to  
3 Shaker and it's very difficult. I really think  
4 that the Board should consider the impact that  
5 this will have on us.

6 I also think that Valvoline didn't have  
7 anything at night. The hours at night - they  
8 only had daytime hours. I have been there  
9 since '77 and when there was a garage there,  
10 they closed. They weren't open on Sunday. They  
11 were opened a little while on Saturday  
12 afternoon. It wasn't all day and all night.  
13 This is 10:30 until 11:00 at night. I think  
14 that it's going to be difficult for customers  
15 to get in and out. I think that it's going to  
16 be very difficult. It's going to make our  
17 lives much harder to bear. When I hear about  
18 traffic study, I don't think that it's right.  
19 I think that the people in the county don't  
20 understand. They don't see how bad this  
21 gridlock is.

22 I don't know anything about traffic  
23 engineers. I don't know about where the 22  
24 trips comes from. I'm just a citizen and not  
25 an engineer. I don't know about the 22 trips

1 that we're talking about at the peak times.  
2 Does that mean 22 cars go in and then out  
3 again, or is that 11 cars going in and out  
4 again?

5 CHAIRMAN STUTO: Can you answer that  
6 question? I don't want to have a back and  
7 forth. The 22 cars?

8 MR. ANDRES: That 22 is the total vehicle  
9 count that in most instances, the counts are  
10 equal in and out.

11 CHAIRMAN STUTO: Would that be half or  
12 would that be one?

13 MR. ANDRES: That would be one car. When  
14 that car pulls out, that's another trip.

15 MS. MORGAN: I travel down into the city  
16 by way of Everett Road and I've noticed in my  
17 travels that there are empty spaces that are  
18 certainly better suited and I wondered if they  
19 have been considered for this operation.

20 There is a plaza where there are lawyers  
21 and a flower shop and there is one place that  
22 has been empty for the last few months. That  
23 was big enough and the parking lot there and  
24 two exits could get you out onto Everett Road.  
25 I wonder if Papa John's has checked those

1 other areas. If you needed another pizza  
2 place, it seems like you could have looked at  
3 some other options.

4 Thank you, very much. I just think that  
5 it's difficult to get in and out of where we  
6 live. There are times when I just don't go out  
7 because it's too difficult and I take my life  
8 into my hands to make a left hand turn out of  
9 Green Meadows. Regardless of what they say, or  
10 what traffic studies you're saying, it's very  
11 dangerous.

12 CHAIRMAN STUTO: Thank you.

13 Stephen Kircher?

14 MR. KIRCHER: The only thing that I'm  
15 concerned about right now is how will they  
16 oversee what's going on with the berm. Right  
17 now, with the driveway that they have and a  
18 parking lot, the water lays there and it  
19 drains there. I'm concerned about my driveway  
20 and my basement from where I live at  
21 145 Everett. That's my concern.

22 CHAIRMAN STUTO: I think that it's  
23 reasonable to address the drainage issue right  
24 now.

25 MR. ANDRES: We did have an opportunity

1 to meet with Mr. Kircher, but we also had an  
2 opportunity to meet with the stormwater people  
3 over at the Town. They actually went out to  
4 the site to take a look at the situation,  
5 also. There was a response back from them. We  
6 actually made changes to the plan. When we  
7 met, the Town had referenced that they looked  
8 at it and were satisfied with the changes.

9 What we're proposing to do on the first  
10 sheet and also the second sheet is by creating  
11 this berm, they had asked us to extend the  
12 berm not only from a visual standpoint, but to  
13 help the drainage that's coming off this  
14 corner of the building that is going onto the  
15 adjoining property. So, it would run out to  
16 the curb line. There is a curb line along the  
17 south side of the property. The curb will  
18 remain and we'll have asphalt put in there and  
19 that will actually divert the water and bring  
20 it out onto Everett Road.

21 CHAIRMAN STUTO: Any other questions from  
22 the Board?

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

24 MR. KIRCHER: As long as somebody  
25 oversees it, right?

1 MR. ANDRES: Yes.

2 CHAIRMAN STUTO: Joe?

3 MR. LACIVITA: It is part of the process  
4 during construction, Peter, that stormwater is  
5 out there weekly visiting the site during the  
6 course of construction until the point of CO.

7 CHAIRMAN STUTO: And you keep an eye on  
8 it yourself.

9 Thank you.

10 Tina Connell.

11 MS. CONNELL: Thank you for allowing me  
12 to speak. I found it interesting that this  
13 establishment was characterized as fast food.  
14 Not that I'm against this, but fast food is  
15 based on volume and speed. That section there  
16 is a nightmare and with all due respect, these  
17 people that have addressed these issues don't  
18 live there.

19 I bought my house about 10 months ago. I  
20 love it there. It's a great Town to bring up  
21 your kids. We have great neighbors. I'm not  
22 conservative. I need to get to work. I have to  
23 be to work on time, and getting out of that  
24 intersection is dangerous. I can tell you that  
25 from someone that drives it every day with two

1 kids in the car, it's significant. Let's say  
2 you had an office building of 62 or so. Those  
3 62 people go in and they park there at one  
4 time and then they leave at one time. They  
5 don't need to be coming in and out and  
6 crossing lanes of traffic in a certain amount  
7 of time so that somebody can get their pizza.

8 Another thing that I didn't think of, but  
9 I also believe would be significant would be a  
10 that pizza delivery places can be busy and  
11 there are a lot of kids in that neighborhood  
12 that ride their bikes. The residents do keep  
13 an eye on things because it's an awesome place  
14 to raise kids. A business is going to go  
15 there. It's a great location. It should go  
16 there.

17 Thank you.

18 CHAIRMAN STUTO: Jim Kitts.

19 MR. KITTS: Mr. Chairman, members of the  
20 board, I'm Jim Kitts and I live at  
21 5 Thistledown Court. I have several concerns  
22 with this project. First is that it's food  
23 close to a residential area. There are odors  
24 from pizza ovens. They do smell. There are  
25 odors from a dumpster. There has to be a

1            dumpster there. Such a small piece of  
2            property. In the dumpster there there is going  
3            to be vermin. They will migrate to nearby  
4            neighbors.

5            Traffic has been talked about and I have  
6            a lot of comments about that. The normal rush  
7            hour in the morning, there might not be any  
8            change. Valvoline had one or two cars in there  
9            before 9:00 - if they did, that was a lot.  
10          Stewarts - there are accidents there every  
11          week when they are making those left hand  
12          turns out of the property. Add Papa John's to  
13          it and you've got them coming at you from both  
14          directions. They're all over the place on  
15          Everett and on Shaker.

16          The narrative on page 3 from ABD  
17          Engineers, under comment number four says

18          "Because of the entrances off of  
19          Albany-Shaker and Everett Road, the site  
20          allows access without the need for left hand  
21          turns from the roads into the site. Left turn  
22          motions cause the principal back ups on the  
23          major roads."

24          Traffic backs up all the way out to  
25          Crumitie and many times I've sat coming off of



1 Crumitie. If you're coming up there and you  
2 want to stop and get a pizza on the way home,  
3 how do you get into the place? There is only  
4 one way. It's a left in turn into Papa John's.  
5 It's left hand turn back out, too, onto  
6 Albany-Shaker. So, I question some comments in  
7 that.

8 Parking spaces - there are 13 parking  
9 spaces. They said that was for up to eight  
10 employees and one handicapped. That leaves  
11 four for customers. I know that Papa John's is  
12 not going to make any profit with only four  
13 parking spots for four people at a time there.  
14 They're going to be backed up onto Everett,  
15 and Albany-Shaker waiting to get in. I  
16 question that.

17 What if six of these 22 customers an hour  
18 preordered and come at the same time? What's  
19 going to happen to traffic at that point?  
20 There isn't going to be room to go in and  
21 park.

22 As I talked to the Albany County Planning  
23 Department and they said that this project is  
24 on the Planning Board for April 21<sup>st</sup>. That's  
25 after tonight. I don't know how this works,

1 but I would think that the County would have  
2 to react to this before the Town. I was  
3 surprised that Albany County has it on the  
4 agenda for April 21<sup>st</sup>.

5 CHAIRMAN STUTO: Do you know the answer  
6 to that, Joe?

7 MR. LACIVITA: Yes, actually when  
8 speaking to Leslie Lombardo on that, they had  
9 reviewed the exact same site plan that they  
10 offered the comments for in January. I don't  
11 have the exact date right now, but it was the  
12 same site plan and the same narrative went  
13 down to the Albany County Planning Board for  
14 the zoning variance. I just note that the  
15 three components that they looked at - that  
16 none offered any recommendation to address  
17 traffic at this time. That was a conversation  
18 that I had with Leslie, but currently based on  
19 our internal processing's for minor  
20 applications on a road that addresses an  
21 Albany County road, we send it down there for  
22 their review anyway.

23 CHAIRMAN STUTO: Do they have to have a  
24 meeting before we act?

25 MR. LACIVITA: Based on the conversation

1           that I had with Leslie, I know that one of the  
2           things that she says the recommendations that  
3           we would probably see come out of this was the  
4           DEC issue - the concern that they had. In  
5           fact, I had forwarded her some comment in the  
6           study that Mr. King had provided to me. That  
7           was the only thing that they were leaning  
8           towards, based on comments that they had from  
9           CDTC's review and other things that they had  
10          before them. That was the only anticipated  
11          comment that I was going to be looking for  
12          from Albany County.

13                   CHAIRMAN STUTO: Does the applicant have  
14                   any answers to that or any knowledge about  
15                   that process?

16                   MR. CAPONERA: I would agree with what  
17                   Joe had to say. It's already been submitted to  
18                   Albany County and they have already given  
19                   their report and their recommendation. They  
20                   didn't say anything about traffic. In my  
21                   opinion, there isn't any need to respond  
22                   again. Remember, this is a minor application  
23                   that typically we wouldn't even do before this  
24                   Board if not for the Zoning Board's decision.

25                   CHAIRMAN STUTO: I don't know if that's a

1 full answer or not.

2 MR. KITTS: But there will be a full  
3 hearing at Albany County on the 21<sup>st</sup>.

4 My last comment is that the existing  
5 building will stay as is, but two walls will  
6 be replaced. Thank you.

7 CHAIRMAN STUTO: Thank you.

8 Chuck Fitzsimmons?

9 MR. FITZSIMMONS: I'm Chuck Fitzsimmons  
10 and I live at 7 Green Meadow Lane. I've been a  
11 resident there for about 30 years.

12 Tonight before coming here, the traffic  
13 was backed up on Osborne Road. On the east  
14 side of Everett it was backed up, also.

15 Most people order pizza at dinner time.  
16 Most of the cars for pizza delivery will be  
17 going east on Albany-Shaker Road. I think that  
18 it's curious that a variance was granted.

19 I think that it would be fair for the  
20 Board to suggest that there would be a further  
21 search to see where this business might be  
22 more appropriate so that there would be less  
23 of an impact.

24 Can you make a decision to mitigate the  
25 decision of the Zoning Board?

1                   CHAIRMAN STUTO: I'm not sure how that  
2                   concept would even apply to the Zoning Board  
3                   except to say that we can mitigate impacts on  
4                   the outside neighborhood - the outside  
5                   environment. That includes things like how we  
6                   would do the screening, visual impact,  
7                   drainage, traffic and those types of things.  
8                   That's what we do have the power to mitigate.

9                   Do we have the power to overturn the ZBA?  
10                  I think that I can categorically say no.  
11                  That's where we are. Their variance that was  
12                  delivered to us, we have to take as the force  
13                  of law.

14                 Would you agree with that Elena? We can't  
15                 overturn that decision, can we?

16                 MS. VAIDA: No, of course not.

17                 CHAIRMAN STUTO: That's the best that I  
18                 can do for you on that.

19                 MR. FITZSIMMONS: Why have the zoning  
20                 when they're not going to adhere to it?

21                 CHAIRMAN STUTO: Margaret Binsse?

22                 MS. FARRELL: I'm actually going to speak  
23                 first. I spoke with Joe earlier.

24                 I'm going to talk realistic and then you  
25                 can hear my mother. I'm going to admit that

1 the Valvoline is an eyesore. Do I want Papa  
2 John's? No. Do I want the hours? No. I'm going  
3 realistic right now because I'm still in  
4 vacation mode.

5 The view on Albany-Shaker Road is not  
6 aesthetically pleasing to me. I live on  
7 Albany-Shaker Road. I'm going to suggest a  
8 redesign of less glass. I don't want to see  
9 this all lit up. It's in view of my front  
10 yard, my living room/dining room window and at  
11 11:00 I don't want to see office lights or any  
12 kind of light like that.

13 Right now my only concern is that if this  
14 project does go through if we can make it look  
15 more residential looking. I don't know if  
16 that's an option - if it's possible to make it  
17 more residential looking. Crisafulli worked  
18 with us. We asked that he go a little bit more  
19 residential and he did that. I think that this  
20 might be a little bit too much of an eyesore  
21 and be commercial. That's my comment.

22 CHAIRMAN STUTO: I think that question is  
23 important enough to have the developer address  
24 it. I think that I get the point that they're  
25 making. Most of people like a good quality

1 brick. Stewarts doesn't have that much glitz  
2 and glare to it and everything else is  
3 residential. There is a church next door, I  
4 know.

5 MS. FARRELL: I live down further and I  
6 don't want their office or their facility lit  
7 up until 11:00 at night. I think that it would  
8 draw attention to it at 11:00 at night. I'm  
9 thinking that if it does go through, I would  
10 just like it to be a little bit more  
11 residential, if that's possible.

12 CHAIRMAN STUTO: Do you want to react to  
13 that?

14 MR. KING: I suppose that I could look at  
15 anything.

16 MS. FARRELL: When you have over  
17 60 percent delivery -

18 MR. KING: I don't want to get into the  
19 business aspects of why I want to be on the  
20 corner.

21 MS. FARRELL: Right now all we see are  
22 these two windows from Valvoline and we see  
23 them lit up with their lights on and it  
24 attracts attention to it.

25 MS. BINESSE: Toward the end they were

1 leaving their lights on all night long. That  
2 shines into our living room and dining room.

3 MS. FARRELL: That's why I was just  
4 thinking a little bit more residential.

5 MR. KING: One of the things that I was  
6 thinking about is put some of the tinting in  
7 the window to address some of that concern  
8 towards the east. The tint on the windows  
9 could reduce some of the glare that was a  
10 concern.

11 MS. FARRELL: I do understand that it is  
12 small there. I don't know how you guys feel,  
13 but the commercial mixed in with the  
14 residential doesn't fit the neighborhood. I'm  
15 trying to be realistic.

16 MS. BINSSE: Mr. Crisafulli was perfect  
17 with us.

18 MS. FARRELL: I just don't think that it  
19 fits in. Crisafulli's project - there is still  
20 supposed to be another building built there.

21 CHAIRMAN STUTO: Okay, point well taken.

22 MS. BINSSE: I also think that this is  
23 an aspect for Mr. Crisafulli because he still  
24 has a building to build. On top of that, there  
25 is still two more acres for sale there that



1 will bring in more traffic. When  
2 Mr. Crisafulli builds his second building that  
3 will bring in even more traffic.

4 CHAIRMAN STUTO: Joe, do you have a  
5 proposal for the second building.

6 MR. LACIVITA: There is an improved pad  
7 site, but there hasn't been a bank put forth  
8 yet.

9 MS. BINSSE: I'd like to pass these out.  
10 We took these today, except for the snow one.  
11 I wanted to show that traffic is an issue even  
12 with Stewarts because you've got cars piled up  
13 now more. One car couldn't even get out  
14 because they had so many people there. That  
15 was at 3:30. So traffic is a problem.

16 MS. FARRELL: We're concerned about the  
17 noise from the cars with the pick up and the  
18 delivery.

19 I also have a question about the current  
20 Valvoline sign that's now down, but the whole  
21 length of the sign - is that still going to be  
22 utilized as a Papa John's sign, or are you  
23 taking that down completely and just having  
24 the sign on the façade?

25 MR. KING: We haven't been before the

1 Sign Review Board.

2 CHAIRMAN STUTO: I don't want to get into  
3 a debate, but I think that's a good question.

4 Joe, do you know anything about the sign?

5 MR. LACIVITA: As Mr. King said, the sign  
6 wasn't part of this review. He can go to the  
7 Sign Review Board and it has not been acted on  
8 yet.

9 MR. KING: Peter, just from the project  
10 we completed, we're allowed one free-standing  
11 sign and one building sign. On the site that  
12 we did over at 471 Troy Schenectady Road we  
13 opted to build a sign. We've shown just the  
14 one. We would not reuse the pole sign. It just  
15 doesn't look good. Right now it's in the  
16 middle of our parking. If the Sign Review  
17 Board worked with us, we'd reposition that  
18 free-standing sign and we haven't gotten to  
19 that stage yet. I've talked with Dave Jojo in  
20 the Building Department briefly about it just  
21 because we're trying to get through this  
22 process first.

23 What I can say for sure is that we would  
24 not be utilizing the pole sign that's in the  
25 middle of the parking lot. That much I know. I

1 just don't know where I would reposition  
2 another free-standing sign.

3 MS. BINSSE: If you could make that here,  
4 and just have that as your glass -

5 MS. FARRELL: It would make it more  
6 residential. Our concern is more residential.

7 CHAIRMAN STUTO: Thank you.

8 Jeff Baker.

9 MR. BAKER: My name is Jeff Baker and I'm  
10 an attorney with Young Sommer representing the  
11 Green Meadow Civic Association. I'd like to  
12 get in a few primary points, but let me first  
13 get into a few legal and technical points that  
14 many of these are covered in this letter. I'll  
15 just summarize what they are.

16 The first question is the position of the  
17 traffic study. The ZBA made it clear that it  
18 is a condition of their approval that there  
19 has to be a traffic study. As several of the  
20 Board Members pointed out, you don't have a  
21 traffic study. A traffic study is, to a large  
22 degree, a broad term. It's not one size fits  
23 all. We are not talking about the same level  
24 of detail and scope of a traffic study that  
25 for instance is being done for the Boght area

1 GEIS. It's not a traffic study that's being  
2 necessitated, per se, by the traffic  
3 generation of this project of 22 cars an hour.  
4 As you can see, a good chunk of the traffic  
5 that was generated from this project would be  
6 bypass traffic. People who normally would be  
7 passing there anyway might stop to get a  
8 pizza. That's one.

9 The difference is the turning directions;  
10 queuing, stacking and the safety issues and  
11 the geometrics of the entrance to the light to  
12 get into the property. It is a condition of  
13 the ZBA approval. I think that the ZBA  
14 approval, in and of itself, is fatally flawed  
15 legally on a number of issues. They did not go  
16 through the steps that articulate the reasons  
17 that are required for the zoning use variance.  
18 My clients only came to me about three weeks  
19 after the statute of limitations passed on  
20 that determination, so it's too late to  
21 challenge it. But similarly the ZBA imposed  
22 that condition on the approval or probably  
23 they found to balance the impacts of the  
24 project, they were going to require that a  
25 traffic study be done before this Board

1           undertook a site plan review. If the applicant  
2           was not satisfied or disagreed with that  
3           condition, it was the obligation of the  
4           applicant to bring a challenge to that  
5           determination. They didn't do so. It is a  
6           section of the law. The case is binding on you  
7           and if it's not complied with, the zoning  
8           variance is void. I cited some authority for  
9           that in my letter.

10                   The fact is and as far as I can read it,  
11           it's relatively silent on the question of a  
12           formal referral to this Board, but that isn't  
13           necessary because I agree with Mr. Caponera;  
14           this is a minor site plan approval. It could  
15           have been determined by the PEDD on their own,  
16           but under the Town Law, the PEDD can determine  
17           when it is appropriate to refer it to this  
18           Board for a full review, which he  
19           appropriately did in this case.

20                   It is incumbent upon you to even decide  
21           the ZBA conditions that you normally look at  
22           under the site plan conditions - you look at  
23           the traffic flows. It is the same turning in  
24           there. How does the traffic pattern work?  
25           You've got so many inherent problems here. How

1 do you take a left turn out of this project to  
2 go south onto Everett Road? How do you go  
3 west? How does someone who is approaching the  
4 property westbound on Albany-Shaker Road enter  
5 the property? They then have to take a left  
6 turn on Everett and another left turn right  
7 into the Papa John's.

8 My office is off of their road. I just  
9 came up by there on the way here. I drive by  
10 there all the time. The stop light with the  
11 left hand turn leaving Everett Road to take a  
12 left hand turn onto Albany-Shaker - that stop  
13 light is right where the entrance to the Papa  
14 John's would be. Unless you're not going to  
15 have any cars there at all, by definition,  
16 there is going to be a queuing and a blockage  
17 there, and there has to be some kind of  
18 analysis of stacking, queuing and geometrics  
19 of all the issues. You don't have a traffic  
20 study and it's something that you should  
21 require.

22 This Board, when they reviewed the Loudon  
23 Square project with Mr. Crisafulli, made a  
24 determination that a restaurant in this area  
25 is not appropriate. Mr. Crisafulli agreed to

1           that as a condition, but it was also a  
2           condition of you conceptual site plan approval  
3           in April of 2008 and then the subsequent site  
4           plan approval which specifically incorporated  
5           conditions of the conceptual approval in June  
6           of 2009 and it was a recognition that a  
7           restaurant in that area was really not  
8           appropriate, responding to the comments of the  
9           Green Meadows Civic Association. There is  
10          nothing different here now. The distance is  
11          immaterially different. The level of  
12          operations - you're still having the issues of  
13          noise and odors and vermin that can occur and  
14          again, it's not appropriate for this area.

15                 On the issue of hours, I want to make it  
16          clear that we are saying that we do not think  
17          that the project should be approved. But  
18          should it be approved, we believe that the  
19          hours should be limited to far less than 11:00  
20          at night.

21                 I did a survey of the pizza restaurants  
22          in the area. With the exception of Inferno  
23          Pizza, none of them are open to 11:00 at  
24          night. Inferno Pizza is open until 11:00 on  
25          weekdays and 12:00 on weekends. As you know

1           where that is - it's west of Osborne Road.  
2           It's directly across from Kimberly Square.  
3           It's adjacent to 24 hour businesses and it's  
4           appropriate in that area.

5                     At this location, Stewarts is open until  
6           11:00 but if you're going to put another  
7           significant business directly across the  
8           street, that is also going to be open until  
9           11:00, you're doubling the relative impact of  
10          the change in that area. If you look at the  
11          other pizza places around there - Anthony's  
12          Pizza place which is at 115 Everett Road,  
13          which is one of the closer ones, is only open  
14          until 8:00 at night. Primo Pizza at  
15          462 Albany-Shaker Road, when you get to  
16          Osborne, is open until 9:00 at night and 10:00  
17          on weekends. Finally, Abate's Pizza which is  
18          down on Sand Creek Road is only open until  
19          9:00 at night. Now I understand that this is  
20          Papa John's preferred business mode to be open  
21          at 11:00, but that is not the usual  
22          requirement of a local Planning Board. You  
23          have to look at the circumstances that are  
24          appropriate here and part of the purposes and  
25          the standards that you look at under the Town

**Legal Transcription**



1           Zoning Law is - is this harmonious with the  
2           community? Will it have an adverse impact? It  
3           doesn't work - that type of business at that  
4           location and it isn't appropriate. You have  
5           the power to restrict that. If you are  
6           inclined to do this approval, after you go  
7           through a proper study for the traffic  
8           impacts, you take that into account.

9           I want to make a few other points.

10           General Municipal Law Section 239(m)  
11           requires that whenever there is a site plan  
12           approval within a certain distance of a county  
13           route, the county referral is mandatory. The  
14           fact that this may normally or commonly be a  
15           minor site plan approval could be handled  
16           internally with a PEDD, does not obviate the  
17           need for the 239(m) referral. There is nothing  
18           in the General Municipal Law 239(m) that makes  
19           a distinction between a minor and a major site  
20           plan. Most towns don't have that kind of  
21           distinction. That's something that Colonie  
22           has. I'm not criticizing it. That's fine. The  
23           point is that you have to make the referral to  
24           the county and it has been made. You have to  
25           wait either 30 days from the referral or until

1           they make a determination before the 30 days  
2           has passed. If they haven't made a  
3           recommendation, then you're free to move  
4           ahead. You have to at least wait that time.  
5           You have to give them a full statement of the  
6           application. It's disconcerting to think that  
7           all they have is the same information that  
8           they provided when they reviewed the ZBA  
9           decision because obviously they don't have the  
10          ZBA decision and there needs to be a traffic  
11          study.

12                   CHAIRMAN STUTO: Let me ask as a matter  
13                   of record, when the referral was made? Was it  
14                   before the ZBA?

15                   MS. VAIDA: It's not 30 days yet. We  
16                   already checked that.

17                   MR. LACIVITA: The referral went down  
18                   March 15<sup>th</sup>.

19                   CHAIRMAN STUTO: But 30 days have not  
20                   expired.

21                   MS. VAIDA: That's correct.

22                   MR. BAKER: There is one final issue to  
23                   raise. I don't want to make too big of a deal  
24                   of it, but it's an important procedural issue  
25                   and it highlights the fact that you don't have

1 the full information in front of you. This is  
2 an action subject to SEQRA and as far as I can  
3 tell, the Zoning Board ignored SEQRA. We know  
4 that they certainly didn't do a coordinated  
5 review, because it wasn't sent to you to  
6 comment on. Obviously, this is a small project  
7 and it's under 4,000 square feet. You would  
8 first think that it's a Type II action, but  
9 it's not a Type II action because the 4,000  
10 square feet exemption only applies as a use  
11 variance. It's not part of the project. The  
12 use variance was part of this project, it is  
13 therefore an unlisted action under SEQRA. You  
14 need an environmental assessment form and you  
15 need to make a determination of significance  
16 as part of that. All this really goes to and  
17 for the record, the information that's missing  
18 here particularly on traffic -- it would  
19 warrant an Environmental Impact Statement.  
20 This reinforces the need that you should at  
21 least need to be requiring the full traffic  
22 study to look at all of these issues before  
23 you're making that determination to approve  
24 the project. I think that in terms of saying  
25 that there may be a traffic study by somebody

**Legal Transcription**

1 two years from the date that hasn't even  
2 kicked in yet that may have been a condition  
3 to the Crisafulli approval - my understanding  
4 is that the traffic study there is only after  
5 two years after that final pad is filled. So,  
6 that clock hasn't even started to run. If  
7 you're doing a traffic study, that's the  
8 proverbially closing the door after the horse  
9 has left the barn. You put in these projects  
10 and you've done this work and you may have had  
11 the permanent problem with that intersection.

12 As Mr. Caponera said, the uses of this  
13 property predate probably any zoning in the  
14 Town of Colonie. Certainly it predates all the  
15 changes in the roads and everything that  
16 happened there. The point is that now there is  
17 an opportunity to fix this and this is the  
18 time to look at it carefully and make it so  
19 that we understand the impacts. You don't  
20 allow it to go in and then say, maybe we'll  
21 look at it later and maybe we'll do something  
22 and we don't have any money, or we don't know  
23 how it's going to be fixed, or who is going to  
24 be responsible for it. Certainly your  
25 questionable ability to alter a site plan

1 after the fact based on a study -- I'm not  
2 even going to give a legal opinion as to if  
3 that's possible or not. Clearly, you can't  
4 make a decision tonight because the Albany  
5 County Planning Board hasn't ruled. You should  
6 hold this public hearing open. You should  
7 demand that the traffic study be done and have  
8 these other questions be answered.

9 I think that the last question from the  
10 ladies that were up here before about the  
11 nighttime impacts of lighting of this is an  
12 excellent and very good comment. You should  
13 also ask for information on nighttime visuals  
14 that are going to be coming from here, or at  
15 least clear conditions to reduce lighting.

16 It's in Mr. King's interest that he wants  
17 to attract attention to his business and be  
18 highly visible at all times. That's not the  
19 same as the community's interest. So, I think  
20 that this needs a lot more work on this  
21 application. Of course, while you can't  
22 approve the project until Albany County has  
23 come in and given you their recommendation,  
24 nothing stops you from turning it down. You  
25 can't overrule the ZBA's grant of a variance,

1 but the variance is not binding on your  
2 decision for site plan approval and your  
3 decision if this meets the requirements of the  
4 Land Use Law for Colonie. As presented now,  
5 you should turn it down. It needs a lot more  
6 work. Thank you.

7 CHAIRMAN STUTO: You're saying that it  
8 doesn't meet the Land Use Law requirements,  
9 taken in concert with the variance?

10 MR. BAKER: No, I don't think that it  
11 does.

12 CHAIRMAN STUTO: In what respect? You may  
13 say that we haven't heard from 239 and SEQRA  
14 because we haven't completed the traffic study  
15 which is a condition of the variance. In what  
16 respect is it not -

17 MR. BAKER: Because it is not harmonious  
18 with surrounding neighborhoods because of the  
19 impacts of odors and noise from the restaurant  
20 operations as determined previously with  
21 regard to the Crisafulli project. You did not  
22 allow a restaurant in there because it was not  
23 harmonious with the surrounding neighborhood.  
24 That was one of your standards, Mr. Chairman.

25 CHAIRMAN STUTO: No, we didn't forbid

1           that over there. The applicant agreed not to  
2           do that.

3           MR. BAKER: It was also a condition of  
4           the approval.

5           CHAIRMAN STUTO: Because we got the  
6           consent of the applicant.

7           MR. BAKER: But you specifically made it  
8           a condition and put it in there.

9           CHAIRMAN STUTO: That doesn't mean that  
10          it doesn't conform with the Land Use Law.

11          MR. BAKER: I would submit that because  
12          of the dialogue and the review that happened  
13          at that time, it was an agreement and  
14          consensus that a restaurant was not  
15          appropriate there and the Planning Board did  
16          impose that as a condition.

17          CHAIRMAN STUTO: With the consent of the  
18          applicant; that's correct.

19          MR. BAKER: Regardless, it was a  
20          condition.

21          CHAIRMAN STUTO: That doesn't mean that  
22          it doesn't conform with the Land Use  
23          Law - that not having a restaurant doesn't  
24          conform with the Land Use Law.

25          MR. BAKER: I would submit that it does

1 make that precedent and is relevant. But  
2 putting that aside -

3 CHAIRMAN STUTO: That may be relevant.

4 MR. BAKER: And I think that the traffic  
5 problems generated around here are not  
6 harmonious with the surrounding neighborhoods,  
7 as the people who live there can testify to a  
8 lot better than I can about that. You have  
9 problems with this intersection, and the  
10 traffic patterns going in and out really don't  
11 work. There are other locations for this  
12 business. Nobody is defending that the  
13 Valvoline is an aesthetically pleasing or a  
14 good use for the site. Something else might  
15 come up to it. We don't know that efforts were  
16 ever made to try to market that. I didn't see  
17 anything in the ZBA decision.

18 CHAIRMAN STUTO: You made a lot of good  
19 points and how you're going into an area of  
20 what your opinion is and you're getting off  
21 the legal - you know what I'm saying? What the  
22 legal requirements are and what our job is.  
23 You lose credibility every time you go further  
24 and further -

25 MR. BAKER: I'm not losing credibility.



1 I'm pointing out that because of all the  
2 developments, I submit that it does not meet  
3 the standards of the Land Use Law. That's your  
4 decision to make. I think that certainly  
5 absent the information on traffic - the  
6 traffic studies, you don't have enough  
7 information to make the determination that it  
8 clearly is harmonious with the surrounding  
9 neighborhood.

10 CHAIRMAN STUTO: Thank you.

11 MS. DALTON: With regard to SEQRA, are we  
12 required to table this until after Albany  
13 County Planning Board meets?

14 MS. VAIDA: I don't believe that we can  
15 act without waiting the 30 days, or having a  
16 decision before the 30 days.

17 MS. DALTON: What about the SEQRA, Elena?

18 MS. VAIDA: I believe that it would be an  
19 unlisted action and I think that there was a  
20 full environmental assessment form completed.  
21 The Town Attorney's office took a look at it  
22 and it was a short form that was submitted.

23 CHAIRMAN STUTO: I'm not sure what they  
24 did on that ZBA level. We have in front of us  
25 prepared by the Town Attorney's office a short

1 form EAF. I don't know if that answers the  
2 question, but we had to go through and  
3 consider all the things.

4 Douglas Cichon.

5 MR. CICHON: My name is Douglas Cichon. I  
6 live at 48 Cloverfield Drive. I don't think  
7 that you guys realize -- let me put it this  
8 way: We purchased our home a little less than  
9 two years ago because this is a very family  
10 friendly neighborhood. It's a child-friendly  
11 neighborhood, specifically. I live at  
12 48 Cloverfield, directly behind the Stewarts.  
13 I can tell you that we do have light issues  
14 from that Stewarts. We are planting evergreens  
15 to block the light. The traffic light also  
16 throws a red light into our living room. So,  
17 she's going to have issues with that light.

18 Second of all with the traffic flow - I  
19 come home this way from work up Everett Road  
20 every single day. The easiest thing to do when  
21 you're making a left going west out of this  
22 Papa John's - it will not take the pizza  
23 driver long to figure out that they just take  
24 a right and a quick left and cut through the  
25 neighborhood, our neighborhood, which is a

1 cul-de-sac. You can bypass the light. There is  
2 at least 10 children under the age of 10. I  
3 have a 22 month year old at home that lives on  
4 that horseshoe. There are a lot of kids in the  
5 street and that pizza driver is driving  
6 through that. I'm not happy about that. Kids  
7 play in the street. I drive very carefully  
8 down that street because there are a lot of  
9 children on that street. You have the light  
10 issue, you have a lot of kids that are exposed  
11 to more traffic and there's one other point.

12 I forgot my third point, but my primary  
13 concern is the traffic. There are a lot of  
14 kids in the neighborhood and I wish that you  
15 would consider that.

16 CHAIRMAN STUTO: Thank you.

17 Mary Fitzsimmons.

18 MS. FITZSIMMONS: I was just wondering,  
19 if you granted this variance how might  
20 Mr. Crisafulli might feel when he wanted to  
21 then put a restaurant into the office  
22 building. Then we might have multiple  
23 restaurants.

24 CHAIRMAN STUTO: The variance has already  
25 been granted by the Zoning Board of Appeals.

1           That's a different board. They granted the  
2           variance permitting this use.

3           MS. FITZSIMMONS: Thank you.

4           CHAIRMAN STUTO: Thank you.

5           Anybody else from the public want to  
6           speak?

7           MS. TATE: My name is Judith Tate and I  
8           live at 46 Green Meadows.

9           One of the things that was not yet  
10          addressed is the appearance of the building.  
11          Even with our care and your care, we think  
12          that they should change it before they put it  
13          up. This building is certainly not in keeping  
14          with the residential flavor of the community  
15          and what we have tried to achieve. I think  
16          that it's very, very commercial. You've spent  
17          a great deal of time on other projects and the  
18          work that's needed. I think that you should  
19          take your time on this, also.

20          CHAIRMAN STUTO: Thank you.

21          I guess we'll give an opportunity for  
22          rebuttal for the applicant. There were a lot  
23          of legal issues raised and so forth.

24          MR. CAPONERA: Just a quick point,  
25          Mr. Chairman, and members of the Board. I

1           listened to Mr. Baker's comments in regard to  
2           case law in the State of New York, and it is  
3           quite clear. When a variance is granted for a  
4           particular use, under the law, it becomes a  
5           conforming use and any comments that were made  
6           relative to what happened on the Crisafulli  
7           property is completely irrelevant to what's  
8           going on here. We have a variance that was not  
9           appealed. It's the law. Therefore it becomes a  
10          conforming use under the cases in the State of  
11          New York. So, I don't think that the Board  
12          should consider what happened across the  
13          street on the Crisafulli property, which by  
14          the way is far closer to the 99 percent of the  
15          people who have spoke here tonight in terms of  
16          where that property is. The Crisafulli  
17          property is right in their back yard. I  
18          already showed the Board the area here  
19          surrounding the property (Indicating), the  
20          200-foot area of where this property is. These  
21          folks, if you're talking, are back up in here  
22          - four, five, six or seven hundred feet away.  
23          It's not within the 200 feet.

24                    The Farrell's spoke about the design of  
25          the building. The one person that I think is

1 most effected is a gentleman that's sitting  
2 right here who we have met with, we have  
3 answered his concerns and we agreed to  
4 accommodate him.

5 As far as SEQRA is concerned, it's  
6 already been acted on. I've filed a SEQRA form  
7 and I believe that the Town Attorney has acted  
8 on that and indicated what type of action it  
9 is. Relative to your other question about the  
10 application and submittal, the county and the  
11 General Municipal Law - Elena, you said that  
12 it was submitted on the 17<sup>th</sup> of March?

13 MS. VAIDA: The 15<sup>th</sup>.

14 MR. CAPONERA: So, you do have to wait  
15 the 30 days. That's about it.

16 MS. DALTON: I have a question for you  
17 and Mr. King. I'm not sure if this is a fair  
18 question. I believe that Mr. Baker has made it  
19 quite clear that there will be a lawsuit if we  
20 act on this in ways that he feels are not  
21 compliant with the law. I'm not going to come  
22 down one way or the other about whether or not  
23 I think that he's right. At what point does  
24 this become not a viable project? If you don't  
25 want to answer that, that's fine.

1           MR. KING: There isn't going to be an  
2 answer that's going to be conducive to this  
3 environment. I guess I'm getting too old for  
4 this stuff. I think that I'll defer any  
5 comment on that just under the circumstance. I  
6 do appreciate the question. Your thought  
7 process is good.

8           MS. DALTON: I'm sorry about that.

9           MR. KING: That's okay.

10          MR. NARDACCI: Just one follow up. The  
11 neighbor that spoke that's within that  
12 200 feet, would you consider trying to make  
13 some other changes that are a little more  
14 reasonable?

15          MR. KING: If this project is going to  
16 get somewhere, yes. I think that at this  
17 juncture, that's probably a secondary thought.  
18 You've worked on other projects of mine. I  
19 live in this Town. I went to Siena College. I  
20 do all the right things. We can of course look  
21 at that and you know that I will and you know  
22 that from my track record here.

23          MR. NARDACCI: I think that you have an  
24 idea of our track record being reasonable and  
25 fair. I think that's a good point that was

1 brought up and it's something that's germane  
2 to the law. Other applicants who have worked  
3 with it and have done some really nice  
4 designs. That would really be the only  
5 structure in that area that would be a little  
6 more modern with all the glass. There is  
7 nothing else like that around there.

8 MR. KING: I was trying to make it stick  
9 out a little bit. There was a theory behind  
10 it.

11 MR. NARDACCI: It is a challenging site  
12 and I respect that.

13 MR. KING: If I felt that we were getting  
14 somewhere. I have been in business a long time  
15 and I do things the right way. We want to be  
16 here. It's a great site and it's perfect for  
17 what we want. If we hit an impasse with some  
18 of this other stuff, we'll try to appease the  
19 neighbors.

20 MR. NARDACCI: I know that it's a  
21 challenging site. It's a small site and we  
22 have tried to work with applicants that were  
23 redeveloping parcels. It's a lot easier to  
24 just go to some green field and say, we're  
25 going to build here new. It's harder to work



1 with constraints. We try to take that into  
2 consideration.

3 MR. KING: I'm in the gas station  
4 business, too. We want to be on corners and  
5 we're dealing with that high visibility and  
6 the egress/ingress. I'm well versed in that.  
7 That's just the way it is. Retail sites have  
8 that. You pay for it and you get the return. I  
9 wouldn't be doing it if I thought it was going  
10 to fail. That's not the business that I'm in.

11 MR. NARDACCI: I just speak for myself,  
12 but having an opportunity to see a different  
13 architectural rendering would be helpful.

14 MR. KING: I'd be happy to look into  
15 that, if we feel that we can get on the other  
16 side of this. I want to be a part of the  
17 community. I don't want to be an adversary.

18 MR. NARDACCI: How is the other store  
19 doing?

20 MR. KING: Doing well.

21 CHAIRMAN STUTO: Paul, do you have  
22 something?

23 MR. ROSANO: We talked a couple of times  
24 tonight about the - it was brought up in my  
25 notes about the hours of operations. Is that

1 set in stone, or is there something that we  
2 can negotiate?

3 MR. KING: If we need to change them, I  
4 can't do it. It's a requirement from  
5 Corporate. There are some that are 24 hours.

6 MR. ROSANO: Thank you.

7 CHAIRMAN STUTO: Tim?

8 MR. LANE: Nothing else.

9 CHAIRMAN STUTO: Mike?

10 MR. SULLIVAN: Nothing.

11 CHAIRMAN STUTO: Lou?

12 MR. MION: I have seen a concern on both  
13 sides with the traffic. Based on what Elena  
14 had said, I think that we have to wait for  
15 Albany County. I can see the logic on both  
16 sides. The law says one thing about what you  
17 have to do, but in reality is the traffic  
18 there going to get any better? Is it going to  
19 get any worse? Do we need a full-blown study?  
20 I think that what we have to do is wait for  
21 Albany County and see what they expect. We  
22 need some clarification.

23 CHAIRMAN STUTO: Unless we can define  
24 what we want in a traffic study and make sure  
25 that's credible -- it's in front of us now.

1           Let me give you my opinion and we can  
2 continue the discussion.

3           I think that the attorney for the  
4 neighborhood association made a lot of good  
5 technical points. The Section 239 review is an  
6 excellent point.

7           The point on the traffic study - I think  
8 it's an excellent point. Victor says that it's  
9 the decision of the Zoning Board of Appeals  
10 that has the force of law and it says that  
11 there shall be a traffic study done. My  
12 personal opinion is that what was presented to  
13 us does not constitute a traffic study. That's  
14 my opinion as a Board Member.

15           With regard to the 239 review, we got an  
16 opinion from our Counsel that it has to be  
17 sent back and we have to wait anyway on that  
18 point so we may as well get the traffic study  
19 the next time we come back. That's my opinion.

20           With respect to the project, I agree with  
21 Victor on this point. It's now a conforming  
22 use. The proposed use is a conforming use,  
23 given the Land Use Law in tandem with the  
24 variance. I think that our hands are tied as a  
25 Board to say that we're not going to approve

1           this use.

2           MS. VAIDA: In the Land Use Law, just so  
3           it's clear, on final site application  
4           requirements -- this is under minor review.  
5           First of all, I think I that the Board would  
6           have the authority to ask for any additional  
7           reports and materials that they felt that they  
8           needed, which I think encompasses the traffic  
9           study, if the board wanted one. The  
10          anticipated impacts on services i.e. traffic  
11          sewer and water is something that the Board  
12          can consider. The impact on adjoining  
13          property, noise, visual, drainage, hours of  
14          operation -- there are a whole list of  
15          factors.

16          CHAIRMAN STUTO: I think that we're all  
17          aware of that as a Board.

18          MS. VAIDA: I guess what I'm saying is  
19          that even if there is a variance, there might  
20          be a problem with the other criteria. Just  
21          because it's permitted doesn't mean that it's  
22          permitted under the Land Use Law.

23          CHAIRMAN STUTO: I'm not sure that I get  
24          your point, to be honest with you.

25          MS. VAIDA: I'm going through the

1 criteria and I'm not suggesting anything, but  
2 under the criteria, if the Board felt that it  
3 was too much of an impact on traffic that it  
4 was too nonconforming and the impacts couldn't  
5 be mitigated, theoretically it could be -

6 CHAIRMAN STUTO: It's a very, very hard  
7 standard to reach - almost impossible.

8 MS. VAIDA: I think that the applicant  
9 has already said that they're willing to work  
10 with us.

11 CHAIRMAN STUTO: I won't speak to the  
12 merits of the project. I agree with a lot of  
13 what the neighbors said, me personally. I  
14 think that the architecture and the lighting  
15 have to be looked at and I think that it has  
16 to be toned down a lot. If you look around  
17 everything that's there, these are things that  
18 are within our power to have an impact on. I  
19 think that it has to be toned down a lot and  
20 I'd agree to talk and listen. That's my  
21 opinion. I think that there is too much glass.  
22 I think that it's too big of a front. I think  
23 that there is probably going to be too much  
24 light. I think that the hours have to be  
25 examined as well. That's my opinion.

1           The final point is that I think that we  
2 do need a traffic study. I think that we need  
3 to talk about what we want in that traffic  
4 study. I don't know if you could help us out  
5 in that with the turns and all that stuff.

6           MR. SULLIVAN: I would like to see the  
7 effectiveness of left turns exiting between  
8 4:00 PM and 6:00 PM to see -- I don't think  
9 that you can put a level of service on it, but  
10 basically see if you can make a left turn out  
11 of there when traffic is queuing up at the PM  
12 peak hour.

13           MR. KING: At both exits, Mike?

14           MR. SULLIVAN: Yes, please.

15           MR. LANE: We also requested the accident  
16 history for that?

17           CHAIRMAN STUTO: Yes. Sure.

18           MR. NARDACCI: Joe, if we could request  
19 from the Traffic Safety folks, the accident  
20 history.

21           Mike, is your comment what Dave Jukins  
22 mentioned?

23           MR. SULLIVAN: Yes. I think that you can  
24 get in. I agree that you can get in because  
25 you would take a right turn in whether you're

1 coming off of Everett or you're coming down  
2 Albany-Shaker, you can take a right turn in.  
3 Getting out, I think, is going to be a  
4 problem.

5 FROM THE FLOOR: Who does the traffic  
6 study?

7 CHAIRMAN STUTO: They do.

8 FROM THE FLOOR: They do their own?

9 CHAIRMAN STUTO: They do it and we review  
10 it with our engineers.

11 FROM THE FLOOR: Shouldn't it be an  
12 independent study?

13 MR. LACIVITA: One of the things that we  
14 do is we typically would have the Capital  
15 District Transportation Committee look at it.  
16 They are one of our consultants with all  
17 traffic impacts within the Town of Colonie.

18 MR. KING: Can I ask a question? I know  
19 that we're getting late here. Can we just run  
20 through what you're asking of myself just so  
21 that I can make a decision after this meeting?  
22 The texture of the building, I know that's  
23 what you're looking for.

24 The architecture of the building, the  
25 traffic study and the lefts out of both

1           Everett and Albany-Shaker.

2           MR. NARDACCI: The lighting also.

3           MR. KING: Okay, hours of operation.

4           Where are we going for that? If we want to  
5           vote on that right now, that might be a whole  
6           lot easier.

7           MS. VAIDA: He already said that he can't  
8           adjust the hours of operation.

9           CHAIRMAN STUTO: I want it thought about.

10          MR. ROSANO: What power source are you  
11          going to use for heat? You said you're going  
12          to be taking the fuel tank out.

13          MR. KING: Actually, they're on natural  
14          gas now, Paul. That was an old abandoned  
15          heating oil tank on the backside. The front  
16          side is the waste oil that they used to use in  
17          the old days. They just dumped it in and it  
18          hasn't been used for a long time. It's on  
19          natural gas.

20          CHAIRMAN STUTO: Mr. Baker, did you have  
21          a point you wanted to make?

22          MR. BAKER: Just for asking for  
23          clarification on the traffic study.

24          MR. SULLIVAN: My main concern is the  
25          left turns out.



1 MR. BAKER: Not just left turns out but -

2 MR. SULLIVAN: Those were your concerns.  
3 My concerns were the left turns out. That was  
4 my requirement.

5 CHAIRMAN STUTO: I'd appreciate it if you  
6 could address that as well.

7 Some questions arose in my mind whether  
8 the 22 cars - whether that includes delivery.  
9 I may ask more in depth questions on how that  
10 is generated under that traffic  
11 count - whether those are patrons pulling in  
12 and out or whether that includes deliveries  
13 and how they calculate that. Is there one  
14 sheet out of that book?

15 MR. ANDRES: That will all be included in  
16 the traffic study. That is the total for all  
17 the activity that would be going on at that  
18 facility.

19 CHAIRMAN STUTO: I think that we'll make  
20 a motion to table this until the 30 days pass  
21 or we hear from the county on Section 239. I  
22 guess that's the County Law or General  
23 Municipal Law. I think that we're going to  
24 continue the hearing at the next meeting.

25 MR. KING: The hours of operation? That's

1 something that you can vote on this evening.  
2 Because if that's going to be an issue, then I  
3 can't consider this. I'm sure that you guys  
4 understand that I don't want to get through  
5 all that and then find out the hours are an  
6 issue.

7 MR. NARDACCI: I can certainly understand  
8 the neighbors concerns with regards to hours,  
9 but the fact is that you have a business there  
10 that's open until 11:00 with Stewarts. I  
11 understand that creates more impact, but if  
12 one business can do it, how can we tell  
13 another business that they can't be open until  
14 11:00? If you're looking to go beyond that -

15 MR. KING: I'm going with the minimum  
16 that they require.

17 MR. NARDACCI: My opinion is that I don't  
18 have a problem with that. There are a lot of  
19 other things that I have a concern with and  
20 that's not one of them.

21 CHAIRMAN STUTO: I'm personally reserving  
22 my opinion on that. I want to think about it.

23 MS. DALTON: I don't think that it's a  
24 deal killer.

25 MR. MION: I agree with that.

1 MR. SULLIVAN: I agree with Tom.

2 MR. LANE: I do as well.

3 MR. KING: That helps. I appreciate you  
4 doing that for me.

5 CHAIRMAN STUTO: Okay we have it all on  
6 the record. I don't think that we need a set  
7 of conditions. I think that we just need to  
8 adjourn.

9 MR. LACIVITA: Based on the count, Peter,  
10 I guess my question is - is the hours of  
11 operation - has that just been identified that  
12 it would be 11:00?

13 MS. VAIDA: No, it's not binding.

14 MR. LACIVITA: So I'll read the  
15 conditions?

16 CHAIRMAN STUTO: No, it's on the record.  
17 We're just adjourning.

18 MR. KING: Before you do that, just for  
19 my benefit I just want Joe to read it quick.  
20 There has been enough ambiguity from early on  
21 now and I want to make sure I understand what  
22 is required of the project.

23 Joe, could you read those for me, please?

24 CHAIRMAN STUTO: He can just read them.  
25 They're not part of any motion.

1 MR. ROSANO: Can we adjourn first and  
2 then read them? Let's do that.

3 CHAIRMAN STUTO: Yes. That's fine. Can we  
4 adjourn to a date? Do we have any idea on a  
5 date?

6 MR. LACIVITA: It would be based on the  
7 applicant's ability to get the information  
8 back to us. I know that we will have a  
9 decision by the Albany county Planning Board.  
10 They meet April 21st and we'll have a decision  
11 by April 22nd. The next meeting after that is  
12 April 26th, which we could possibly put it  
13 there, or it's a May 12<sup>th</sup>.

14 MR. LANE: May 12th. Let's give it a  
15 little more time.

16 CHAIRMAN STUTO: Tentatively May 12th.

17 MR. LACIVITA: If you adjourn it to a  
18 specific date, there will be no posting  
19 required.

20 MR. NARDACCI: I would require it to be  
21 reposted. Most of the neighbors are here, but  
22 repost it just to make sure.

23 MR. LACIVITA: So, it will be a May 12<sup>th</sup>  
24 date.

25 MR. ROSANO: That's May 10<sup>th</sup>.

1 MR. LACIVITA: You're right. That's  
2 May 10<sup>th</sup>.

3 MR. BAKER: I'm just wondering how we can  
4 get access to the reports and the new  
5 information and how far in advance that would  
6 have to be done?

7 CHAIRMAN STUTO: We're talking May 10<sup>th</sup>.  
8 Can you get it to us by the end of the month?

9 MR. KING: Yes.

10 MR. ROSANO: I'll move to adjourn.

11 MR. LANE: I'll second the motion to  
12 adjourn.

13 CHAIRMAN STUTO: All in favor?

14 ***(Ayes were recited.)***

15 CHAIRMAN STUTO: All opposed?

16 ***(There were none opposed.)***

17 CHAIRMAN STUTO: The motion is passed.

18 MS. DALTON: Motion to adjourn

19

20 ***(Whereas the proceeding concerning the***  
21 ***above entitled matter was adjourned***

22 ***at 9:34 p.m.)***

23

24

25

