

1 PLANNING BOARD COUNTY OF ALBANY  
2 TOWN OF COLONIE

3 \*\*\*\*\*  
4 PAPA JOHN'S PIZZA  
5 402 ALBANY-SHAKER ROAD  
6 APPLICATION FOR MINOR SITE PLAN APPROVAL  
7 \*\*\*\*\*

8 THE TAPED AND TRANSCRIBED MINUTES of the above  
9 entitled proceeding BY NANCY STRANG-VANDEBOGART  
10 commencing on May 10, 2011 at 7:38 p.m. at the  
11 Public Operations Center 347 Old Niskayuna Road,  
12 Latham, New York 12110

13 BOARD MEMBERS:

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

21 Also present:

- 22 Tom Andres, ABD Engineering
- 23 Joe LaCivita, Director, Planning and Economic  
24 Development
- 25 Victor Caponera, Esq.
- 26 Peter Faith, PE, Greenman-Pedersen
- 27 Tom Johnson, PE, Barton and Loguidice
- 28 Christian King
- 29 Jeffrey Baker, Esq., Green Meadows Civic  
30 Association
- 31 Kathy Ordway, President, Green Meadows Civic  
32 Association

1 [Also present - continued]

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3 Susan Smith

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5 Jim Kitts

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7 Margaret D. Binsse

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9 Kelly Farrell

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11 Judith Tate

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13 Mary Alice Morgan

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1 CHAIRMAN STUTO: Papa John's.

2 MR. LACIVITA: Papa John's is located at  
3 402 Albany-Shaker Road.

4 From the April 12<sup>th</sup> Planning Board  
5 meeting, the Board reviewed the minor project,  
6 that typically would have been an  
7 administrative action. Through a Zoning Board  
8 decision that came out, the Board was required  
9 to review the project for five various  
10 components which we discussed on April 12th.  
11 We were able to get through the majority of  
12 those comments and tonight we're here to  
13 discuss the traffic component.

14 With that, I'll turn it over to  
15 Mr. Caponera.

16 CHAIRMAN STUTO: Who is to your left?

17 MR. LACIVITA: This is Tom Johnson. He's  
18 the TDE that will discuss the traffic  
19 component.

20 CHAIRMAN STUTO: Hi Tom. I've spoken to  
21 you on the phone. I haven't met you yet.

22 Mr. Caponera?

23 MR. CAPONERA: Thank you Mr. Chairman,  
24 members of the Board.

25 Mr. LaCivita is correct. As you recall,

1 the last time that we were here, there were  
2 several Board Members who had asked us to go  
3 back and do a traffic study. That was done.

4 With us tonight is Peter Faith and he's  
5 with Greenman-Pedersen. Obviously Tom Andres  
6 is here. He was here the last time.  
7 Mr. Christian King is here also.

8 As we all recall, that was the main  
9 issue. I believe we needed to have that done  
10 with regard to the Zoning Board of Appeals  
11 decision. Also, I think that the Board was  
12 pretty hard on getting this redesigned.

13 As you can see with the foam board, we  
14 redesigned and what we presented to you is  
15 eons different from what this is. This is a  
16 far more attractive colonial looking structure  
17 and we also had a look at the left in and left  
18 out.

19 In the meantime, the attorney that  
20 represents the association that was here the  
21 last time, Mr. Baker, and I had the  
22 opportunity to discuss some of the concerns  
23 that the neighborhood had. I believe that but  
24 for some changes in the language - there was a  
25 letter that was submitted.

1 Do you have that, Mr. Chairman?

2 CHAIRMAN STUTO: What letter are we  
3 talking about?

4 MR. CAPONERA: Mr. Baker's of May 10<sup>th</sup>.

5 While you're spreading that out, I'd like  
6 to go through it. The neighbors had some  
7 concerns and Mr. Baker and I reviewed those  
8 concerns and I have discussed them with my  
9 client and his engineer. I think that for the  
10 most part we're compatible with these  
11 requirements and suggestions. I'll walk you  
12 through them, if you don't mind.

13 CHAIRMAN STUTO: Please do.

14 MR. CAPONERA: Basically, as everybody  
15 knows, the history of this property is a gas  
16 station and repair facility that's changed  
17 over the years. The Valvoline, that closed  
18 recently, was an oil change and radiator fluid  
19 changing facility. Before our client purchased  
20 this property, obviously, he needed to do a  
21 Phase I and they determined that there is a  
22 couple of tanks - not large tanks, but small  
23 tanks that had to be removed. The study that  
24 was done by virtue of the testing showed that  
25 there was no contamination either in the

1 ground water or in the soil, but that the  
2 tanks have to removed. Mr. Baker and I  
3 discussed this with the concerns of his client  
4 and they are certainly the concerns of my  
5 client. We both want to make sure that the  
6 property is clean and meets the requirements  
7 of DEC. So, the engineers went out and got a  
8 spill numbered permit from DEC and he's going  
9 to do whatever it takes to remediate this  
10 property, including the removal of the tanks.

11 One of the things that Mr. Baker and I  
12 talked about today was a condition that this  
13 Board be put on approval relative to what's  
14 called a community air monitoring plan; CAMP.  
15 I know that, not like pitching a tent, this is  
16 not the type of CAMP that we're talking about.  
17 Basically, it is the Department of Health  
18 regulation program that's administered by DEC.

19 I think that Mr. Baker wants to make that  
20 a condition to this and our submission to the  
21 Board would be certainly if it's something  
22 that DEC wants to see done and it's required,  
23 we'll do it. We don't think that's going to be  
24 needed under the circumstances, but we're  
25 going to follow DEC's lead on this and make

1           sure that the property is remediated.

2           One thing that everyone here should know  
3           that when you're dealing with gas stations is  
4           that sometimes DEC requires monitoring and  
5           testing. I don't think that's going to be  
6           required here, nor does Mr. King's expert in  
7           this. If it is, we'll do that too.

8           One of the comments by Mr. Baker was that  
9           you couldn't get a CO until everything was  
10          remediated by DEC. We all know that if there  
11          is a requirement for monitoring, you can still  
12          get a CO. The fact of the matter is that we're  
13          going to comply with DEC and get this  
14          resolved.

15          The other issue is the visual impacts.  
16          Obviously, we've taken care of that by the  
17          proposal and the elevations that you see in  
18          your packet.

19          Some of the other conditions were that  
20          the site plan should identify all outdoor  
21          lighting, which it has. It's all going to be  
22          down-styled. I always use the word shoebox.  
23          Does that make sense? That's so it doesn't  
24          spill off the property.

25          One of the other issues was the neighbors

1 wanted to make sure that when Papa John's  
2 closed that the place wasn't lit all night  
3 long. I don't think that Mr. King has any  
4 desire of keeping the electricity bills  
5 running all night. When it's closed and the  
6 employees leave, he's not going to run all the  
7 lights.

8 One of the other requirements, if you  
9 remember the last time we were here, was a  
10 wonderful freestanding sign that's on the  
11 property. I'm joking, of course. It's not one  
12 of the most attractive signs. I go by it three  
13 to five times a day. Mr. King indicated to the  
14 Board that he intends on taking that sign  
15 down. Presently, he has no intention of a  
16 freestanding sign so long as the signs, as you  
17 see here, are allowed by the Town. That will  
18 require probably an appearance before an  
19 enlightened Board called the Sign Review  
20 Board. As long as the Sign Review Board grants  
21 it, he has no problem of no freestanding sign.  
22 Of course, I told Mr. Baker that we would need  
23 the assistance of the neighborhood writing a  
24 letter to the Sign Review Board indicating  
25 that it's necessary that they prefer not to



1           have a freestanding sign. So, our position is  
2           that we can't sit here and ask the Board to  
3           set as a condition that there be no  
4           freestanding sign if we can't get the signs  
5           that we are asking for. We had no intension of  
6           doing it as long as we can get this.

7           CHAIRMAN STUTO: What do you believe that  
8           you are entitled to?

9           MR. CAPONERA: One wall sign.

10          CHAIRMAN STUTO: What you're entitled to?

11          MR. CAPONERA: Yes.

12          MR. KING: One wall and one freestanding.  
13          Just like what we did at 471 Troy-Schenectady  
14          Road. We do anticipate this being a positive  
15          outcome, but we won't know until we get that.

16          CHAIRMAN STUTO: So you're entitled to  
17          one wall, or one wall and one free standing?

18          MR. CAPONERA: Both; one freestanding and  
19          one wall. We want just two walls.

20          CHAIRMAN STUTO: I understand.

21          MR. CAPONERA: It shouldn't be a problem,  
22          but you never know.

23          MR. LANE: Is that already scheduled for  
24          the Sign Review Board?

25          MR. KING: Not yet.

1 MR. CAPONERA: We didn't want to be  
2 presumptuous, obviously, until we get through  
3 this part.

4 The other item was my client agreed to a  
5 condition requiring that Green Meadows not be  
6 used as a thru-street to avoid the  
7 intersection of Everett and Albany-Shaker and  
8 we don't have any problem with that either.  
9 Obviously, Green Meadows is going to be used  
10 for local deliveries.

11 I know that we had asked the Board's  
12 consideration for hours of operation and we  
13 actually asked the Board for a straw pull  
14 before we left. The hours were from 10:30 in  
15 the morning until 11:00 at night. One of the  
16 conditions that the homeowners were asking for  
17 was that we agreed that we got to close by  
18 11:00 and we don't have any problem with that  
19 either.

20 So, Mr. Chairman, those are the points  
21 that Mr. Baker and I talked about and I think  
22 that from a general comment, we don't have any  
23 issues with those requests with the exception  
24 of the signs that I just mentioned. Again,  
25 we'll comply with DEC and if we have to do the

1 CAMP, we'll certainly do that.

2 CHAIRMAN STUTO: Okay, do you have  
3 someone that wants to talk about the traffic  
4 study?

5 MR. CAPONERA: Absolutely.

6 CHAIRMAN STUTO: Let's do that.

7 MR. FAITH: Thank you. My name is Peter  
8 Faith. I'm with Greenman-Pedersen Engineers.  
9 Our office is located right on Wolf Road.  
10 We did the traffic study for this project.

11 The site is a bit challenging in terms of  
12 turning in and out. It's like any corner  
13 property at a busy signalized intersection. So  
14 when we decided to do an analysis to give the  
15 Board some information on how to evaluate this  
16 property, we decided to compare it to  
17 different types of projects that could be on  
18 this site within the Town Code. We went  
19 through the trip generation analysis, and as  
20 it turned out, there are five different land  
21 uses. One of those land uses was for the Papa  
22 John's facility. We used information from the  
23 trip generation manual to come up with all the  
24 standards for every land use except for the  
25 Papa John's. Fortunately, we had the ability

1 to do the traffic counts at the recently  
2 opened Papa John's facility to come up with  
3 real live trip generation rates in the Town of  
4 Colonie. The short answer is that of the five  
5 different land uses that were analyzed in our  
6 traffic study, the Papa John's generates the  
7 least amount when you look at the two peak  
8 hours that we looked at; the AM and the  
9 afternoon peak hour. The only alternative land  
10 use that was close or actually the same in the  
11 afternoon peak hour was a bank without a  
12 drive-thru facility. So, we recognize that a  
13 bank will also generate some traffic in the  
14 morning. People come in the morning to  
15 transact business. We were able to draw our  
16 conclusion out of all the land use that could  
17 be built on this site in terms of pure traffic  
18 generation, Papa John's facility would have  
19 the least amount of impact on the operations  
20 of Albany-Shaker and Everett Road.

21 The challenge of turning in and out of  
22 the two locations obviously is based on the  
23 queues of the traffic at this intersection. We  
24 felt that based on the speed of the traffic  
25 approaching the intersection, and also the

1 sight distance at both the locations, as long  
2 as the traffic is held to a minimal amount and  
3 the least amount of generated based on the  
4 land use on the site, that the access points  
5 function adequately. It's similar to any other  
6 development on a corner property. It's not too  
7 much different than right down the street on  
8 Everett Road at the Mobil Mart that has two  
9 access points right opposite an intersection.  
10 This land use carries less traffic than a  
11 Mobil Mart. It was one of the alternate land  
12 uses that we analyzed.

13 I won't speak for Tom, but the site has  
14 been reviewed and we generally find that the  
15 comments coincide with our conclusions.

16 We note that the County Department of  
17 Public Works has asked for a restriction of  
18 the left turn into the driveway on Everett  
19 Road. We were proposing to do that by putting  
20 a sign within a county right of way, right at  
21 the driveway. A motorist approaching the site  
22 from Albany-Shaker Road will be able to see  
23 the no left turn sign at this location so that  
24 they can continue on through and take a right  
25 into the property right at Albany-Shaker Road,

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1 and then take this short turn onto Everett  
2 Road.

3 CHAIRMAN STUTO: Are there any other turn  
4 restrictions proposed?

5 MR. CAPONERA: No.

6 CHAIRMAN STUTO: Tom Johnson is our  
7 engineer with Barton, and Loguidice and he has  
8 studied the traffic report.

9 Tom, can you tell us what your  
10 conclusions are?

11 MR. JOHNSON: Sure. Basically, we did  
12 review the traffic study in relation to his  
13 other representations with regard to traffic.  
14 I have six comments overall. The first five  
15 were directly related to the traffic study.

16 We did agree with the number of trips  
17 that was in the estimated traffic study of the  
18 PM peak hour and in the morning. It's always  
19 good to get some local information when you  
20 can do it, which is what the applicant did  
21 with the other Papa John's. We did agree with  
22 the numbers. We also agreed that of all the  
23 land uses that we did study for the project as  
24 a comparison, only Papa John's or a bank  
25 without a drive-thru window would generate the

1 least amount of traffic of all the uses of the  
2 site.

3 CHAIRMAN STUTO: Would that be less than  
4 the oil change use?

5 MR. JOHNSON: That would generate 10 to  
6 12 trips during the PM peak hour. This would  
7 be slightly more than that. It's still minimal  
8 in my opinion.

9 Four is that we do concur with the  
10 analysis results that the traffic from the  
11 site will not adversely impact the  
12 intersection of Albany-Shaker Road and  
13 Everett Road.

14 Comment number five - there is a note  
15 that it is difficult at times to access the  
16 site during the peak hour. It is challenging.  
17 We do agree with this statement.

18 The Albany County Planning Department  
19 suggests that the DPW look at possibly  
20 regulating left turns at Everett Road.

21 CHAIRMAN STUTO: You suggest that we do  
22 that and that be a restriction?

23 MR. JOHNSON: At least have a look at it.  
24 The lefts in would probably be more  
25 problematic than the left out. At the time of

1 the letter, the DPW was currently reviewing  
2 that area.

3 CHAIRMAN STUTO: That sign that is being  
4 suggested - did they do any good?

5 MR. JOHNSON: They're not the best  
6 solution but they do help, yes.

7 MR. FAITH: If I could offer my opinion?  
8 In my experience the signs help and are a  
9 viable alterative.

10 MR. JOHNSON: I would agree with that.

11 The last comment has to do with the  
12 Albany County Planning Board's note that the  
13 Town consider the impact of delivery trucks  
14 and drivers traveling through the Green  
15 Meadows neighborhood. Such a route is longer  
16 in distance and there would be more stops in a  
17 signalized intersection. I don't envision  
18 delivery trucks actually using the  
19 neighborhood.

20 That wraps up the comments that I have.

21 CHAIRMAN STUTO: Okay.

22 Do you want to add anything else before  
23 you go to the Board Members?

24 MR. FAITH: If I could just say that Tom  
25 said that the DPW was currently reviewing at



1 the time of your letter. There was a letter  
2 from the DPW dated May 9<sup>th</sup> and I don't know if  
3 the Board has that or not. I'd like to ask  
4 about the left turn restriction into the site.

5 CHAIRMAN STUTO: Can you read the comment  
6 of what they said?

7 MR. FAITH: Yes. We are considering  
8 prohibition of left turns into the property  
9 from Everett Road. Additional restrictions are  
10 not expected unless undesirable traffic  
11 patterns arise.

12 CHAIRMAN STUTO: Thank you.

13 Mr. Caponera, do you have anything else  
14 before we go to the Board?

15 MR. CAPONERA: That's pretty much it.

16 CHAIRMAN STUTO: Kathy?

17 MS. DALTON: I just want to say that I  
18 think that you guys did a really good job  
19 addressing the comments that we had the last  
20 time. I think that the redesigned building is  
21 really very attractive and I just want to  
22 commend you for how well you seemed to have  
23 worked together. I don't have questions. That  
24 was my only comment.

25 CHAIRMAN STUTO: Lou?

1           MR. MION: I have to agree with Kathy. I  
2 sat down there. Since the last meeting I was  
3 there three different times between 4:00 and  
4 5:30 and observed the traffic. There is  
5 traffic down there, but I think that we can  
6 work with what's there. Congratulations, it's  
7 a job well done.

8           CHAIRMAN STUTO: Mike?

9           MR. SULLIVAN: I don't know if this is a  
10 question for Mr. Johnson or not.

11           There will be no restrictions on left  
12 turns out onto Everett Road? Is that a correct  
13 understanding?

14           MR. CAPONERA: No.

15           MR. SULLIVAN: And you agree with that  
16 recommendation?

17           MR. JOHNSON: Yes.

18           MR. SULLIVAN: That's all I had.

19           CHAIRMAN STUTO: Tim?

20           MR. LANE: There's no question that the  
21 elevations look better. On the April 21<sup>st</sup>  
22 letter from the Albany County Planning Board  
23 under 4, it refers to the fact that you be  
24 required to work with the DCC. Is this in  
25 reference to removing the tank?

1 MR. ANDRES: That is not.

2 MR. LANE: That's a separate issue.

3 MR. ANDRES: Yes, but as was noted  
4 earlier there are tanks that need to be  
5 removed from the site. This is additional dry  
6 well that was also tested. Nothing was found.  
7 This was in order to be able to put a cooler  
8 in the back.

9 MR. LANE: Do you need New York State DEC  
10 permits to do that?

11 MR. ANDRES: We don't believe that we'll  
12 need a DEC permit because of the stormwater  
13 structure. However, there is a concern because  
14 the sump pump was taken out of the basement of  
15 the building. When we have the other tanks  
16 removed we'll have another company look at  
17 that to make sure that it is okay. If there is  
18 a problem, we'll have to deal with that.

19 CHAIRMAN STUTO: Paul?

20 MR. ROSANO: As what Lou said before, I  
21 spent three nights sitting in that parking  
22 lot, myself. I actually had my wife with me. I  
23 wanted another set of eyes. I actually made  
24 her drive from Glenmont up Albany-Shaker Road  
25 in 5:00 traffic to see how bad it was getting.

1           There is traffic there. There is no question.  
2           Anybody who goes there knows that there is  
3           traffic.

4           The only thing that I will comment on is  
5           the people that are cutting through that  
6           parking lot to miss the light to go down  
7           Everett Road. I almost got ran over twice. I  
8           don't want to tell you where those cars came  
9           from, but I will tell you that they were from  
10          the neighborhood. They were young people.

11          This reminds me so much of the Valdemore  
12          on the corner of Osborne and Sand Creek. I  
13          can't imagine anybody coming east on  
14          Albany-Shaker Road, turning right on Osborne  
15          and turning left into this property. I don't  
16          see it happening. I think that if you're going  
17          to go into that pizza place, you're going to  
18          stay on Albany-Shaker Road and you're going to  
19          go through the light and you're going to turn  
20          right. So, putting up the signs, I think, is  
21          going to help. I don't think that it's a big  
22          issue. I can't imagine someone turning across  
23          three lanes to go into the pizza place from  
24          Everett Road. That's my only comment.

25          CHAIRMAN STUTO: My comments are that I

1 think that the applicant did a good job  
2 meeting the neighbors where they needed to be  
3 met. I'm not speaking for the neighbors.

4 Is Kathy Ordway here?

5 MS. ORDWAY: Yes.

6 CHAIRMAN STUTO: Hi. I recognized you,  
7 but didn't put the name and face together. We  
8 read your letter into the record last meeting  
9 and we took that seriously.

10 We have a letter from Susan O. Smith,  
11 President of the Loudonville Neighborhood  
12 Association. We've all had that letter for  
13 awhile here. We're going to listen to whoever  
14 signed on the sheet.

15 I'm glad that Jeffrey Baker signed first  
16 because he does represent the neighborhood  
17 association.

18 Mr. Baker?

19 MR. BAKER: Thank you, Mr. Chairman. I'll  
20 be brief.

21 I think the main point is here just  
22 getting some clarification on the question of  
23 remediation. We unfortunately are working from  
24 a bit of a lack of knowledge because there is  
25 nothing in the Town's files that indicate the

1 results of any of this.

2 We kind of found out about the level of  
3 DEC involvement with the neg dec that was  
4 prepared by staff. They found the two tanks  
5 that need to be remediated and they found  
6 evidence of contamination from the tanks.  
7 There is evidence for contamination in the  
8 soils. The levels are relatively significant.  
9 The test consists of organics that come off of  
10 the soils and it tells you whether you have to  
11 do more intense studies. That's what triggers  
12 the report with DEC.

13 When I talked to DEC about two weeks ago,  
14 the person that I spoke with last had not  
15 received any of the soil data from the test. I  
16 don't know if they didn't have it, or if I was  
17 talking to the wrong person. The fact is that  
18 I don't have any data to go by. All they're  
19 asking for is that there should be a specific  
20 condition in the permit that makes it very  
21 clear. I'm not trying to be overly burdensome  
22 to the applicant here. All onsite soil  
23 remediation which means excavating and digging  
24 it up - that's what you usually do when you're  
25 digging up a tank - is completed prior to a

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1 certificate of occupancy. I'm not saying prior  
2 to a building permit, because of some building  
3 work that they might be doing have to be  
4 concurrent and that's not a problem. For a  
5 certificate of occupancy, the remediation  
6 should be completed. During the time of  
7 excavation, it can't be in place. We're  
8 willing to differ to DEC and DOH on that. The  
9 CAMP governs the chemicals and any particular  
10 matter that could come up in the courts of the  
11 excavation and those are fairly common.

12 God forbid it turns out while they're  
13 doing the investigation that there has  
14 actually been off site migration because it  
15 was a service station for decades. If there  
16 was off-site contamination, I trust that DEC  
17 will deal with that. That's going to be a  
18 bigger problem. We're not saying that's  
19 actually going to be a factor to hold up the  
20 construction, but we want o make sure that the  
21 remediation on-site has been completed to  
22 DEC's satisfaction prior to going forward. I  
23 think that's pretty reasonable.

24 CHAIRMAN STUTO: Are you and Mr. Caponera  
25 in agreement on that? I know what you said

1 about monitoring.

2 MR. CAPONERA: We're going to wait until  
3 he's finished.

4 MS. VAIDA: I have a question for  
5 Mr. Baker.

6 Are you saying that DEC wouldn't allow  
7 that place to open because of the safety -

8 MR. BAKER: It's not necessarily an issue  
9 of safety to the building or to the people  
10 inside. They have a more narrow jurisdiction  
11 of how you remediate it. This is an oil spill.  
12 We're not dealing with any other type of  
13 thing. They remediate and clean up oil spills  
14 in-house all the time. They're not going to  
15 require you, necessarily, to abandon the  
16 property. They have their own narrow focus.  
17 It's not the same thing. You have your focus  
18 that you have to look at. I'm trying to bring  
19 the groups together here and make sure that  
20 it's done together. It may not. They may say  
21 because of the nature of the excavation,  
22 physically, you can't finish the work that's  
23 going to be done. I don't know. We don't have  
24 any of the information. I'm just trying to  
25 make sure that we're not inadvertently



1           allowing, from the Town's perspective,  
2           construction to go forward. This is not a DEC  
3           permitting process as if I'm getting a  
4           wetlands permit or something that has the  
5           public involvement or commentary where it's  
6           easy to know what the DEC is doing and they  
7           don't have to solicit public comment.

8           MS. VAIDA: Have you contacted the DEC?

9           MR. BAKER: Yes, I said that the person  
10          that I talked to at Region 4 that they don't  
11          have any data. It's an open case that hasn't  
12          been closed. As far as I know, none of the  
13          data has been submitted to the Town.

14          CHAIRMAN STUTO: Does the applicant have  
15          a reaction to that requested condition?

16          MR. KING: Thank you. I'm Christian King.

17          We did initial Phase I which requires  
18          full borings down to the ground water. DEC  
19          came back and asked for an additional six.  
20          Those have been completed and all the analysis  
21          has been done. The report is being prepared by  
22          the DEC right now. There is zero groundwater  
23          contamination, which is our biggest concern  
24          out of the gate.

25          There is a plume of a foot - about

1 16 feet down which is a very, very small area  
2 that has very old type materials. The early  
3 indication is that DEC is not going to require  
4 us to dig that up. So, what we have to do is  
5 two things; deal with the 440 gallon waste oil  
6 tank which is right here in front of the two  
7 service bays, which we're really required to  
8 dig out. We want to get them out. There is  
9 also a heating oil tank that is no longer used  
10 to heat the facility. We now have natural gas.  
11 Really what's going to happen is those are  
12 going to go out.

13 One of the things that I want to urge  
14 everybody is that DEC is one of the most  
15 oversightful agencies that I've ever dealt  
16 with in any of the businesses that I own. They  
17 don't allow you to do anything unless you do  
18 it the right way. I think that Mr. Baker and  
19 the neighborhood association can rest assured  
20 that once that is all done, they'll monitor  
21 every phase of everything 100 percent through.

22 One thing that I do want to make clear is  
23 that the camp that Mr. Baker is referring to  
24 is a DOH program that is an interagency. DEC  
25 enforces it and makes sure that it's adhered

1 to. So, we're well aware of it. I'm in the gas  
2 station business. I've cleaned up multiple  
3 sites over the years. All indications are that  
4 all we're going to be doing is taking out this  
5 tank, this tank and the 450 gallon tanks are  
6 small tanks. I just wanted to make that clear.

7 CHAIRMAN STUTO: Is there something that  
8 DEC does when that is completed?

9 MR. KING: Yes, they give you an NFA  
10 letter. That's a no further action letter.

11 CHAIRMAN STUTO: Is that what you're  
12 looking for specifically - and NFA letter  
13 prior to a CO, Mr. Baker?

14 MR. BAKER: Generally, that's probably  
15 right. Sometimes those NFA letters can be held  
16 up for a period of time, but usually the case  
17 of groundwater and the soil -- I think that to  
18 put a requirement for an NFA letter here prior  
19 to a CO is probably reasonable. From what  
20 Christian is saying, we're not claiming that  
21 this is the worst site in the world.

22 MR. KING: The only comment I'd make on  
23 the NFA letter is that it may take them four,  
24 five, or six months for them to issue it. I  
25 don't want to be held up on the CO for that. I

1 think that we could be overstepping some  
2 bounds here on what the Town is really looking  
3 at here. The DEC is the DEC and we're hoping  
4 that they monitor it all along. The problem is  
5 that once we submit the reports, they have to  
6 review them. We may be ready to open and they  
7 haven't issued the NFA letter. So, that it  
8 would be conditioned on that NFA letter could  
9 be a little cumbersome.

10 CHAIRMAN STUTO: What do the two  
11 attorneys suggest to bridge that gap?

12 MR. CAPONERA: We've already agreed that  
13 we would comply with the DEC rules and  
14 regulations. We've already agreed that we're  
15 going to get a no further action letter. I  
16 think that Jeff wanted to make sure that was  
17 done. I've gone through this with other  
18 clients. It takes some time to get that no  
19 further action letter.

20 CHAIRMAN STUTO: Can the Town issue a  
21 conditional CO?

22 MR. LACIVITA: Yes, we have done those in  
23 the past, Peter. We do have a condition on  
24 there that the applicant will comply with any  
25 DEC response - or something like that, if that

1 would be the condition of approval.

2 MR. BAKER: DEC tends to be more  
3 responsible in getting out the NFA if there is  
4 a deal pending there. I think that the  
5 condition of the CO might be a good thing.

6 MR. LACIVITA: That would be a  
7 requirement that we would follow up on so we  
8 could take a look at that condition.

9 CHAIRMAN STUTO: Before you get the  
10 final.

11 Does that work?

12 MR. BAKER: I'm satisfied with that.

13 I have only one other point. In terms of  
14 design, I don't know what your normal practice  
15 is on this. This is sort of a chicken and the  
16 egg. What if there is a condition of no  
17 freestanding sign conditioned upon getting the  
18 variance from the Sign Review Board, or  
19 something like that? That's just so that the  
20 whole thing is taken care of.

21 We'd like to have these conditions  
22 written into the permits - specifically the  
23 restriction on delivery drivers using Green  
24 Meadows Road so if worse comes to worse, there  
25 is something that can actually be enforced.

1           CHAIRMAN STUTO: To the building permit  
2 or to the CO?

3           MR. BAKER: To your approval.

4           CHAIRMAN STUTO: Okay.

5           MR. BAKER: That's all I've got.

6           MS. VAIDA: There was an issue that you  
7 brought up last time about the Albany County  
8 Planning Board. You were concerned about that  
9 at the last meeting.

10          MR. BAKER: They've given a review and  
11 their approval. I could quibble a little bit  
12 on traffic study, but we're happy with the  
13 changes that have gone through. We'll still  
14 have the concerns going forward. The best case  
15 scenario would be not to have this open until  
16 11:00. Having a hard stop at the closing of  
17 11:00 and turning the lights off - we just  
18 want to make it clear in terms of no lights.

19          By the way, the design here is much  
20 better.

21          The exterior signs are turned off at  
22 11:00. We'd like to have the building as  
23 reasonably dark as possible, absent the  
24 security lights inside. Clearly, we're not  
25 going to have the big glass area with the

1 shining bright lights coming out late at night  
2 and that's a lot better. We're pretty  
3 satisfied with this.

4 MR. KING: What we typically do is that  
5 we have three lights inside; one in the back  
6 room, one in the production area and one out  
7 front. Typically because this site is going to  
8 be dark, we'll probably leave a couple of  
9 night lights on - on the downward because we  
10 don't want our people walking out to a dark  
11 parking lot, obviously. So, there will be a  
12 couple down lit here and here (Indicating). It  
13 won't be lit like normal, but just to make  
14 sure that there is some exterior lighting.  
15 Other than that, we don't anticipate any of  
16 the lights being on.

17 CHAIRMAN STUTO: Thank you.

18 MR. KING: Jeff, the only other thing is  
19 that I want to be clear. At 11:00 we close and  
20 we have to clean. We might not get out of  
21 there until 11:30 or 11:45. So, while we're  
22 closing at 11:00, all the lights might be on  
23 until we shut down. I just want to make that  
24 clear. We agree to an 11:00 closing and we  
25 just want to make sure that at the latest on a

1 busy night, if we haven't gotten to cleaning  
2 early on, it might be midnight before we're  
3 out of there and the lights are all shut down.

4 MR. BAKER: We understand that.

5 MR. SULLIVAN: The wall lights would go  
6 out at 11:00 though, right?

7 MR. KING: Yes.

8 CHAIRMAN STUTO: If you're done,  
9 Mr. Baker, I'm going to go through the list  
10 here of the neighbors. You may have already  
11 addressed some of their concerns.

12 Kathy Ordway.

13 MS. ORDWAY: I'm Kathy Ordway, President  
14 of the Green Meadows Association and it's good  
15 to see you all on the Board.

16 I would just like to explore briefly with  
17 Mr. King or with the Board the major concern  
18 that we have about delivery traffic cutting  
19 through our neighborhood. If you've been at  
20 the intersection during these business hours,  
21 you know what the back up is and we really  
22 worry that delivery person would take a right  
23 into Green Meadows.

24 I don't have to describe to you the  
25 amount of pedestrian traffic that we have in



1 the neighborhood. I'm talking about older  
2 people walking their dogs to three-year olds  
3 that are learning to ride their bikes with  
4 training wheels. It all exists in our  
5 neighborhood. That's part of our environment  
6 there. We want that.

7 I'm very pleased that Mr. King has agreed  
8 to make that an issue with Papa John's that  
9 the delivery drivers will be instructed not to  
10 cut through the neighborhoods.

11 You're not really in the pizza business  
12 though, right?

13 MR. KING: Yes, we are in the pizza  
14 business.

15 MS. ORDWAY: I would just like to have an  
16 understanding of what you will be doing to  
17 make sure that you, yourself, since you're the  
18 one agreeing to this, will be doing to make  
19 sure that those drivers who probably will be  
20 young people changing over periods of time  
21 from one person to another - from four people  
22 to another four people, how are you going to  
23 actually enforce that agreement that you have  
24 made that you will make sure that the delivery  
25 drivers will not cut through our neighborhood?

1           MR. KING: I guess a couple of things.  
2           The level of service out on Albany-Shaker has  
3           shown that the traffic is a level C, which is  
4           good. Our folks are going to go out of their  
5           way to make a left so I think that's number  
6           one. I think that most of it is going to be  
7           right there.

8           Secondly, the traffic study that was done  
9           in the peak hours for this area is 4:30 to  
10          5:30. It's not going to really start getting  
11          busy until after that. The level of service  
12          actually increases.

13          As far as polices of the store, as we do  
14          before every evening rush, we discuss with our  
15          drivers line by line items about going over  
16          that safety thing; buckle up, no loud music,  
17          the whole thing that you go through with these  
18          guys. We will obviously continue to impress  
19          upon them what the access is.

20          MS. ORDWAY: You have a store manager  
21          there, also?

22          MR. KING: Yes, we have a store manager  
23          and an assistant manager. Part of those  
24          operations are going over the responsibilities  
25          of the drivers.

1 MS. ORDWAY: But you're not on the site  
2 all the time.

3 MR. KING: No, I'm not on site.

4 MS. ORDWAY: So, you're saying that part  
5 of the induction of new drivers will be safety  
6 issues, which will be not to cut through  
7 neighborhoods.

8 MR. KING: We have driver policies. Like  
9 I said, we review them daily. There is safety  
10 and we will include a line item about not  
11 cutting through neighborhoods.

12 MS. ORDWAY: Thank you.

13 CHAIRMAN STUTO: Mary Alice Morgan.

14 MS. MORGAN: I had not seen the proposed  
15 changes to the former Valvoline place. Is it  
16 still the same building that they're going to  
17 use? Where is the other sign that was  
18 mentioned?

19 MR. CAPONERA: One faces Everett and one  
20 faces Albany-Shaker.

21 MS. MORGAN: So you still have a large  
22 amount of grass, but not as much as before.

23 MR. CAPONERA: There is much more grass  
24 than before.

25 MS. MORGAN: The light pollution, because

1 of our neighbors across the street, is a  
2 problem. I understand that this isn't totally  
3 shut down if you're very busy and can't get  
4 everything cleaned up, but it is a big  
5 difference once you have a business. The light  
6 pollution - the kind of lighting that was  
7 mentioned was down lighting. Will they be  
8 on - the ones that are for the employees - as  
9 they exit the building? You mentioned that  
10 there is down lights on the outside of the  
11 building. Will they stay on at that point or  
12 do they turn off after that?

13 MS. KING: We can do whatever the Board  
14 likes, in that regard. My anticipation is  
15 having the three night lights that are inside;  
16 one in the back, one in the production area  
17 and one at front, as we do in all our  
18 facilities -- because there is some site  
19 lighting on the site, we would probably be  
20 coupled with down lights on and turn the  
21 majority of them off so that our folks can  
22 safely exit at night. If it's the desire of  
23 the Board to have a separate timer on that, we  
24 can do that and say shut them off at like,  
25 1:00. That would be fine.

1 MS. DALTON: Mr. King, on this side of  
2 the Board, we're concerned with the security  
3 of that area, if it's not lit at all. One of  
4 the things that I like being influenced by the  
5 fact that I currently have an 18-year old son  
6 who goes out and stays out way later than  
7 midnight. So, kids wandering around and  
8 hanging out - I would prefer to see that  
9 properly lighted.

10 MR. KING: We don't want it being  
11 burglarized or vandalized, similarly like what  
12 happened at the LA Dodgers stadium with the  
13 lights in the parking lot. We're willing to  
14 work with what the Board's desires are.

15 MR. LACIVITA: Down style lighting is one  
16 of the design standards within the Town of  
17 Colonie, anyway. It's nothing outside the  
18 realm of what we have for design standards.

19 MS. MORGAN: I don't remember what the  
20 height of those lights either.

21 MR. LACIVITA: On the building itself, I  
22 think that it's just based on the height of  
23 the building itself.

24 MS. MORGAN: And they're shielded?

25 MR. LACIVITA: They're shielded with down

1 styles; like a shoebox.

2 MS. MORGAN: About the traffic - we live  
3 there. I still think that there is a  
4 possibility that it could be more of a problem  
5 than a visit during one hour of that traffic  
6 cycle. I would hope that the police or whoever  
7 takes care of traffic safety in the Town of  
8 Colonie will keep an eye on how that develops,  
9 especially during rush hour. It may be normal  
10 to you, but when you live there and you try to  
11 come and go during those rush hours, it  
12 doesn't seem like an easy thing at all.

13 MR. LACIVITA: I think that is incumbent  
14 on the neighborhood association. There is a  
15 process through the Highway Safety Committee  
16 that if you see cut through traffic that you  
17 can actually bring that to the Planning  
18 Department. There is a form on file to sign  
19 and get those recommendations heard, if that  
20 tends to be a problem. That was going to be  
21 one of the things that I was going to mention  
22 here to the Planning Board. Although Mr. King  
23 can do the utmost to try to tell his drivers  
24 not to cut through, it may not be a Papa  
25 John's delivery. It might be another delivery

1 and there might be other cut through traffic.  
2 You can go to the Highway Safety Committee in  
3 order to get yourself heard and get on their  
4 agenda and see what they could possibly do for  
5 you.

6 MS. DALTON: Ma'am, I would just remind  
7 you that I think that Mr. King is hoping that  
8 some of your neighbors will order pizzas so  
9 there will be Papa John's cars coming through.  
10 So, just be a little judicious in terms of  
11 whether you think that it's reached some kind  
12 of critical mess beyond pizza eating people in  
13 your neighborhood.

14 MS. MORGAN: The worse case scenario is  
15 somebody going through at high speed when  
16 there are kids out playing, as there are in  
17 that neighborhood.

18 MS. DALTON: I understand completely.

19 MS. MORGAN: I walk at night and I do  
20 make sure that I have something on that's  
21 white, but I would want to keep an eye on that  
22 myself. Thank you, very much.

23 CHAIRMAN STUTO: Thank you.

24 Jim Kitts.

25 MR. KITTS: Good evening. I want to thank

1 Christian for listening to us and coming up  
2 with a design that certainly fits the  
3 neighborhood more than the Las Vegas strip.

4 What is the size of the signs on the  
5 building? Are they 16-inch, 48-inch?

6 MR. KING: They're four feet by 10-feet  
7 wide.

8 MR. KITTS: With the lighting - there  
9 isn't going to be any parking lot lights or  
10 pole lights?

11 MR. KING: At this time, there wasn't any  
12 proposal to have any pole lights. We may have  
13 to look at that later if the Town has any  
14 issues with the perimeter lights.

15 MR. KITTS: Again, my feeling is that if  
16 we need pole lights, then they should go out  
17 when the store closes.

18 What about snow removal? You're going to  
19 have snow here.

20 MR. KING: We do have snow here, but we  
21 have an actual spot that we chose for  
22 stacking. That was one of the conditions that  
23 the Planning Department requested. On all the  
24 properties that I have we have snow removal  
25 and we bring in a back hoe and dump truck.



1 MR. KITTS: That's all I have, thank you.

2 CHAIRMAN STUTO: Susan Smith.

3 MS. SMITH: I appreciate the opportunity  
4 to speak. I just wanted to say first that the  
5 revised elevations are terrific. You made a  
6 wonderful attempt to blend in with the rest of  
7 the neighborhood. I think that it's also  
8 important for the down lighting.

9 We share the concerns of the civic  
10 organization and thank you for your work.

11 CHAIRMAN STUTO: Thank you.

12 Margaret Binsse and Kelly Farrell.

13 MS. FARRELL: First I want to thank  
14 Mr. King for taking our opinion into  
15 consideration in redesigning the new building.  
16 We think that it's more aesthetically pleasing  
17 now. I know that we discussed last time the  
18 tinting. I don't know if that's still an  
19 option.

20 MR. KING: We reduced the glass by almost  
21 two-thirds. Obviously the tinting is a whole  
22 different design and I'd prefer not to do  
23 that. We've been trying to make it fit in, but  
24 also it's a business.

25 MS. FARRELL: We do appreciate you

1 working with us. It does look a lot better.

2 MS. BINSSE: We didn't see the design up  
3 close like this. It looks good.

4 MR. KING: Thank you, very much.

5 CHAIRMAN STUTO: Thank you.

6 Judith Tate.

7 MS. TATE: I'd like to thank you for the  
8 redesign change. It's a big improvement.

9 Last time we were here we talked about  
10 the accident report.

11 MR. LANE: We were going to ask for  
12 those.

13 MR. LACIVITA: We had got them from  
14 Highway Safety and I believe that I passed  
15 them on.

16 MR. ROSANO: Joe, there was a comment  
17 that they were minimal.

18 MR. LACIVITA: Yes, they were minimal in  
19 comparison.

20 MR. ROSANO: There was actually something  
21 from Ken Pirro to that concern.

22 MR. LACIVITA: Mr. Pero did not see it as  
23 an issue based on the number count. Actually,  
24 since they've changed and they've reconfigured  
25 Everett Road, the number count has gone down

1 over time. We felt it to be not a concern.

2 CHAIRMAN STUTO: Anybody else from the  
3 neighborhood?

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

5 CHAIRMAN STUTO: Let's try to keep a list  
6 of the conditions.

7 MR. LACIVITA: I think that I have most  
8 of them here and I think that they were kind  
9 of going back and forth.

10 MS. VAIDA: I think that we have to do  
11 SEQRA first.

12 CHAIRMAN STUTO: Where are we with SEQRA?

13 MS. VAIDA: In the packet there were  
14 papers from the last meeting. There was no  
15 signature on the environmental impacts. I  
16 think that there was a consensus here that  
17 this documentation that was presented on the  
18 record shows that there will not be any  
19 significant adverse environmental impact from  
20 this project. In support of that, has everyone  
21 reviewed the findings of fact? They are facts  
22 that support the negative declaration that's  
23 attached to that. That goes into much more  
24 detail. If that meets with everyone's  
25 approval, then you could take a motion to

1 accept the recommendation. First, an unlisted  
2 SEQRA action and that a neg dec be issued.

3 CHAIRMAN STUTO: And I'll just point out  
4 that the remediation would be an improvement  
5 environmentally.

6 Do we have that motion?

7 MR. MION: I'll make that motion.

8 MR. LANE: Second.

9 CHAIRMAN STUTO: All in favor?

10 **(Ayes were recited.)**

11 CHAIRMAN STUTO: All opposed?

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

13 CHAIRMAN STUTO: The ayes have it.

14 Conditions?

15 MR. LACIVITA: With reference to the  
16 conditions, this letter that was handed to us  
17 this evening, I think that it was an action  
18 between both attorneys and Mr. King to accept  
19 the number of conditions in it. Although there  
20 are a couple of caveats in here like no  
21 freestanding signs and so on. I think that has  
22 to be determined by the Sign Review Board. I  
23 think that the body of the letter, as it  
24 stands, pretty much sets forth the conditions  
25 of the approval.

1           I think that the lighting on the site be  
2           used for security purposes and exit purposes,  
3           that there will be - as far as the no through  
4           traffic - delivery people will be instructed  
5           as to a no cut through and then the last thing  
6           that I had was the address of the snow  
7           removal. Whatever your typical practice is,  
8           that snow would be removed from the site as it  
9           starts to develop snow.

10           MS. VAIDA: I believe that there is a  
11           couple more. There is the condition that they  
12           comply with the environmental clean up  
13           requirements.

14           What was it that you guys agreed on?

15           CHAIRMAN STUTO: That the conditional C  
16           of O could be issued as long as that was being  
17           pursued with due diligence. However, the final  
18           wouldn't until a no further action letter was  
19           received from DEC.

20           MR. KING: I have just one comment. I'm  
21           uncomfortable with this letter going into this  
22           because of the language. We already had a mess  
23           on our hands earlier -

24           MR. LACIVITA: I'm sorry. Maybe I was  
25           misunderstood. I would actually take them and

1 make those changes. It would not be the letter  
2 itself.

3 MR. KING: I'm sorry. I just wanted to  
4 make sure we were clear.

5 MS. VAIDA: What Joe read is really not  
6 the wording of the conditions.

7 MR. KING: I just want to be clear.

8 MS. VAIDA: I believe that there was a  
9 condition with the left hand turns; is that  
10 correct?

11 MR. CAPONERA: No left turns from  
12 Everett Road into the site.

13 MS. VAIDA: And the Albany County  
14 Department of Public Works?

15 MR. KING: The Albany County Department  
16 of Public Works - that's not a condition. We  
17 could still be working right through.

18 MS. VAIDA: Okay, did we say that it's  
19 going to close by 11:00?

20 MR. LACIVITA: All lights to be turned  
21 off by 11:00.

22 MR. KING: But the security.

23 CHAIRMAN STUTO: The hours of operation  
24 shall be from 10:30 am to 11:00 PM.

25 MR. KING: The illuminated ones can

1 absolutely go off at 11:00. All the interior  
2 lights will still be on and the down lighting  
3 will be on until we're done inside.

4 CHAIRMAN STUTO: Are we missing any  
5 conditions?

6 MS. VAIDA: Were there any other ones  
7 that I didn't include, Mr. Baker?

8 MR. BAKER: No.

9 MR. CAPONERA: Just as a matter of  
10 protocol, just to go through and make sure  
11 we're all on the same page, can we just go  
12 through them?

13 CHAIRMAN STUTO: I think that it's a good  
14 idea, actually.

15 MR. ROSANO: What about the free standing  
16 sign?

17 MS. VAIDA: Well, it wasn't really a  
18 freestanding sign.

19 MR. CAPONERA: That was subject to the  
20 Sign Review Board.

21 MS. VAIDA: And the lighting after 11:00  
22 will only be security lighting and it will be  
23 closed by 11:00. The hours of operation will  
24 be 10:30 to 11:00 PM.

25 MR. CAPONERA: Papa John's signs to be

1 turned off at 11:00 PM and the rest of the  
2 lights, with the exception of the security  
3 lighting, off no later than 12:00.

4 MS. VAIDA: And then there is a condition  
5 regarding the snow removal.

6 What was the condition on the snow  
7 removal?

8 MR. KING: Just a notation on the plan.

9 MR. ROSANO: At whatever point you call  
10 the trucks to come.

11 MS. VAIDA: There is going to be no cut  
12 through traffic by the drivers on Green  
13 Meadows.

14 CHAIRMAN STUTO: And they will be so  
15 directed.

16 MS. VAIDA: The DEC compliance.

17 MR. KING: And a CO can be issued pending  
18 a no further action letter.

19 MS. VAIDA: Then the no left hand turning  
20 from Everett into the site.

21 Anything else?

22 CHAIRMAN STUTO: Do we have a motion?

23 MR. LANE: I'll make a motion.

24 MR. MION: Second.

25 CHAIRMAN STUTO: All in favor?



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

CHAIRMAN STUTO: All opposed?

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

CHAIRMAN STUTO: The ayes have it.

MR. CAPONERA: Thank you.

CHAIRMAN STUTO: Thank you for a  
civilized process and coming to hopefully a  
reasonable solution.

***(Whereas the proceeding concerning the above  
entitled matter was adjourned  
at 8:40 p.m.)***

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25**CERTIFICATION**

*I, NANCY STRANG-VANDEBOGART, New York  
State Approved Transcriber and Notary Public  
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**NANCY STRANG-VANDEBOGART**

**Dated June 10, 2011**