

1 PLANNING BOARD COUNTY OF ALBANY
2 TOWN OF COLONIE

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4 *****
5 THE APPLICATION FOR REZONING THE WEST END OF
6 THE TOWN OF COLONIE
7 *****

8 THE STENOGRAPHIC MINUTES of the above entitled
9 public hearing BY NANCY STRANG-VANDEBOGART, a
10 Shorthand Reporter, commencing on June 14, 2011 at
11 7:15 p.m. at the Public Operations Center
12 347 Old Niskayuna Road, Latham, New York 12110

13 BOARD MEMBERS:

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

22 Also present:

- 23 Joseph LaCivita, Director, Planning and Economic
24 Development
- 25 Suzanne Perry-Potts
- Donald Zee, Esq.
- Ralph Schimmel
- Thomas Romano
- Helen Romano
- Jerry Phibbs
- Charles Stokes, Callanan Industries

1 Joe Bianchine, ABD Engineers
2 Steven Dollefeld
3 Dan Kelly, Hudson River Industries
4 Mark Rockwell, Rockwell's Autobody
5 Bob Martino
6 David Fusco
7 John Wolcott
8 Anthony Valentine, Estate of Benjamin Valentine
9 Jennifer Barone
10 Katrinka Scarff
11 Teresa Schicatano-Duvall
12 Shelley Lupe
13 David Raber
14 Tim Nugent, Esq., Watervliet Fish and Game and
15 Forbes Rifle and Pistol Club
16 Don Allard
17 Judy Hauser
18 John Belvin
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1 CHAIRMAN STUTO: We're going to begin the
2 proceedings.

3 Could you read the notice to orient us as
4 to what we're doing tonight and then I'll ask
5 Joe for an introduction. We have one main
6 applicant, and there are other applicants that
7 have joined in this process. I'll give them
8 the opportunity to speak first, since they
9 have made the application. Then, we'll take a
10 list of anybody who wants to speak. We'll give
11 you a choice of microphones.

12 Elena, could you start with reading the
13 notice?

14 MS. VAIDA: This is the public meeting
15 notice that has been published in the Times
16 Union and the Loudonville Spotlight.

17 CHAIRMAN STUTO: AS well as our website.

18 MS. VAIDA: Yes, as well as the website.

19 A public meeting will be held at the Town
20 of Colonie Public Operations Center, main
21 meeting room, 347 Old Niskayuna Road, Latham,
22 New York on Tuesday, June 14, 2011 at 7:00 pm.
23 All persons interested in hearing information
24 regarding the proposed rezoning of certain
25 parcels of land in the Morris Road, Cordell

1 Road, Kings Road, Lupe Way, Curry Road and
2 Conservation overlay area are encouraged to
3 attend. Property owners will present
4 information to the Planning Board and the
5 public at the meeting regarding their proposal
6 to rezone parcels currently in a single-family
7 zoning district to be transferred back to an
8 industrial district zone. Information will
9 also be presented on the effect, if any,
10 requested what a zoning change would have on
11 the conservation overlay affecting the
12 parcels, which proposal is pending before the
13 Town of Colonie Planning and Economic
14 Department.

15 CHAIRMAN STUTO: Joe, I'll ask you to an
16 introduction.

17 Is it fair to say that the Town of
18 Colonie Town Board has asked us to review this
19 and make a recommendation to them?

20 MR. LACIVITA: Yes, that's exactly it.

21 CHAIRMAN STUTO: And our recommendation
22 will be simply that; a recommendation. The
23 ultimate decision will be made by the Town
24 Board.

25 MR. LACIVITA: That's correct; yes.

1 CHAIRMAN STUTO: Do you want to give a
2 brief overview or history of this?

3 MR. LACIVITA: Sure. Back in 2003 the
4 prior administration decided to take a
5 comprehensive look at the issue related to the
6 continued growth and the economic development
7 of the Town would begin to move forward. In
8 2003 they started the Comprehensive Plan
9 overview and in 2004 they hired Saratoga
10 Associates to develop the Comprehensive Plan
11 for the Town of Colonie, which again, was all
12 inclusive of the entire Town of Colonie. That
13 plan was adopted in August of 2005 by the Town
14 Board.

15 They there were certain goals, visions
16 and implementation practices within the
17 Comprehensive Plan. The implementation
18 practices of our Comprehensive Plan were very
19 defined. It looked at a one-year, which was
20 immediate action and it also looked at
21 short-term actions, which were one to two
22 years. Midterm actions were 2 to 5 years and
23 ongoing actions, as they are stated, are
24 ongoing to see if the plan is meeting the
25 targets and the goals set forth.

1 One of the immediate actions within that
2 one year time frame of the adoption of the
3 Comprehensive Plan was to update the zoning
4 and subdivision regulations throughout the
5 Town of Colonie. So, again it was an inclusive
6 of all throughout the Town of Colonie. It did
7 not look specifically into one geographic
8 area. It was all encompassing of the Town.

9 In January 2007 the Land Use Law was
10 adopted, which also at that point in time
11 zoning regulations and zoning districts were
12 adopted throughout the Town.

13 With that said, the reason were here this
14 evening is the west end of the Town was
15 rezoned at the time from an industrial
16 use - to some of it - a single-family with the
17 implementation of an overlay district. We're
18 here this evening to discuss the change in
19 that zoning from again, industrial to
20 single-family and the implementations of the
21 overlay district that's on it.

22 CHAIRMAN STUTO: Thank you. Just as a
23 final introduction before we turn this over to
24 the applicants, everybody will get an
25 opportunity to speak. At this time we're not

1 going to set time limits on it. We hope that
2 everyone is just polite and keeps it to a
3 reasonable period of time. If we need to set
4 time limits on it, we will. Please address the
5 Board. There should not be a back-and-forth
6 between people in the crowd. Everyone will get
7 a chance to be heard.

8 The Board Members do take this very, very
9 seriously and we're trying to gather all the
10 information that we have had at prior
11 meetings. We have files that we have been
12 reviewing, as well. We have been reviewing the
13 history of this; both the official history and
14 the new history that has come to us. We have
15 had a couple meetings on this. We have the
16 transcripts. We have been reviewing those and
17 we're very, very interested in information
18 that we're going to gather tonight. Everyone
19 will get an opportunity to speak. We
20 appreciate you coming out tonight and if we
21 need to take a break in the middle, we will.
22 If not, we'll plow right through.

23 Now, Suzanne Perry-Potts, you're the
24 original applicant and will give you the
25 courtesy of speaking first if that's your

1 desire. I know that you and Victor have been
2 working together, also.

3 MR. CAPONERA: Mr. Chairman, members of
4 the Board, members of the audience, I'm Victor
5 Caponera. I represent several of the property
6 owners that have made this application
7 adjoining with Ms. Potts. With your
8 permission, Suzanne would like to basically
9 give an overview of what she went through last
10 year. I'm not sure if all of you Board Members
11 were on the Board at that time, but she's
12 going to try to summarize this in a short
13 period of time. Then, I'll get up and do my
14 summary.

15 CHAIRMAN STUTO: That will be fine.

16 MS. PERRY-POTTS: Hi, my name is Suzanne
17 Perry-Potts and I live over on 1050 Kings Road
18 in the Town of Colonie. I would like to thank
19 the Planning Board for granting our appearance
20 on the agenda tonight.

21 The adoption of the Town of Colonie's
22 Local Law number one of 2007 resulted in well
23 over 1,000 acres in the western end of Town
24 rezoned from industrial and Business E to
25 single-family residential/land conservation

1 and two sections of commercial office. It also
2 placed a Conservation Development overlay and
3 the entire Western end of the Town.

4 This rezoning has resulted in making
5 almost approximately 50 businesses
6 nonconforming. The intent behind nonconforming
7 use is that these businesses will be phased
8 out over time. These businesses are beneficial
9 to the Town. Of these 50 businesses, almost
10 all of them are in some type of warehousing
11 for construction business. Those businesses
12 provide a needed service to this community.
13 They provide employment for residents in
14 Colonie and the surrounding communities. They
15 are jobs that pay well above the minimum wage.
16 They pay property and school taxes to the tune
17 of three quarters of a million a year. These
18 are all pluses.

19 In addition to that, many of these
20 businesses pay a highway use tax, which is the
21 tax rate based on every mile driven in New
22 York State.

23 In addition to the Conservation
24 Development Overlay, as an added expense to
25 develop or redevelop the property, you have to

1 do a conservation analysis to assess the
2 conservation value of the property. Based on
3 the outcome of the analysis, we're penalized
4 for conserving land by a reduction in the
5 allowable density of the property. That
6 overlay further devalues our property.

7 Let me explain how the nonconforming use
8 affects these businesses. If it's a rental
9 property, you have to see a use variance from
10 the Zoning Board of Appeals every time you
11 have a tenant change, unless it is the same
12 identical use. If you need a building permit
13 for expansion, once again, you need to seek a
14 use variance from the ZBA because
15 nonconforming use structures are not allowed
16 to be enlarged. When a nonconforming use is
17 discontinued for 18 months, it cannot be
18 reestablished unless you apply for a use
19 variance. If the owner decides to sell their
20 developed property, a buyer would have to
21 conform the building to the new zoning, or
22 have the exact same type of use. Otherwise,
23 they would have to try to get a use variance
24 for their proposed use. If a structure of a
25 nonconforming use were to become damaged for

1 75 percent or more of fair market value, it
2 would not be allowed to be rebuilt. Every time
3 you appear before the Zoning Board of Appeals,
4 you have to pay a fee. Most property owners
5 would probably have an attorney because of the
6 difficulties in getting variances.

7 This rezoning application is only asking
8 for 645 acres to be returned to their previous
9 zoning classification, or to the former
10 Business E for something that is comparable.

11 There are 104 properties. I have obtained
12 a signed letter for 91 of them. In acreage,
13 601 acres out of 645 have a letter asking to
14 be rezoned back and for the overlay to be
15 removed. In addition, I have letters from
16 property owners of 24 properties that are not
17 in the rezone, but are asking for the overlay
18 to be removed from their properties. With 210
19 additional acres added to the 601, that equals
20 811 acres that want that overlay removed. I
21 have four additional letters that I have
22 received since I turned in some paperwork to
23 Joe about two weeks ago.

24 In my original application to the Town
25 Board, I've asked the previous Business E

1 properties to be changed to airport business
2 area.

3 Due to the opposition of that
4 designation, Victor and I have worked together
5 to create a suggested modified industrial zone
6 for that area. He has more information on
7 that. In my opinion, the 2007 Zoning Law was a
8 planned attack by a few individuals to reduce
9 the property rights and the property values of
10 the industrial and Business E owners in the
11 west end of Colonie. I just want to remind the
12 property owners that are here tonight that the
13 people that I'm going to mention involved in
14 the rezoned no longer work for the Town or
15 hold any elected positions in the Town. As far
16 as I know, the people on our Planning Board,
17 the Town Board and current employees in the
18 Planning Department were not involved. So,
19 please keep that in mind.

20 One of the residents asked how it was
21 that the business owners were in the dark
22 about this whole thing - this whole very
23 lengthy process. First of all, on the
24 residential survey that they sent out, they
25 notified residents that upcoming meetings

1 would be on the Town of Colonie website and in
2 the Colonie Spotlight. This was omitted on the
3 business survey. There were updates in the
4 Town newsletter, which is mailed out two or
5 three times a year to residents only; not to
6 businesses. The mail house for the Town that
7 sends out these notices has acknowledged that
8 not all areas of the Town received this
9 newsletter and survey. And since the 12303 zip
10 code is mostly a Schenectady zip code, that
11 area may not have been receiving them. There
12 was no individual notification by the Town.
13 This was confirmed by Kelly Majeta*, formerly
14 of the Planning Department. The actual notice
15 of public hearing for the Zoning Law that was
16 enacted in January of 2007 was only published
17 once in the Colonie Spotlight. Let's compare
18 that to the notice of yearly flushing of the
19 Latham water system. That is published in nine
20 different newspapers a total of nine times
21 every year.

22 One of the first things that the Town did
23 in 2003 to start this whole process that ended
24 with the Zoning Law 2007 was they sent out a
25 survey to the residents and a different survey

1 to the businesses. The Town received back
2 almost 5,000 residential surveys and they
3 broke down the responses to the 43 questions
4 by zip code. Evidently, they didn't like the
5 response they received for question number 23
6 which was: The following commercial facilities
7 are needed in the area that I live. You can
8 place a check mark for any or all of the
9 following: a small corner store with no gas
10 station, a gas station, a neighborhood
11 shopping area, supermarket complex, or no
12 additional commercial facilities are needed.

13 The responses for this reason code in the
14 West End of the Town: 12303, 12304 and
15 12309 -- your responses for the neighborhood
16 shopping area and supermarket were between
17 95 percent and 100 percent. Those respondents
18 said that they were needed. The Town should
19 take the total results of the respondents. For
20 the entire Town they changed it to 2 percent
21 to 3 percent. No matter how you do the math,
22 it doesn't add up to those totals. They
23 changed the results. In my opinion, this shows
24 that they have an agenda in mind that involved
25 no more commercial development in the west end

1 of Town, no matter what the people who live
2 there wanted. They posted those fraudulent
3 survey results in November of 2003, six months
4 before they even started the meeting to
5 develop the Town Comprehensive Plan.

6 Supervisor Brizzell started an unofficial
7 committee to decide if there was a moratorium
8 needed in the western end of Town. They had
9 their first meeting on August 26, 2004. No
10 land owners of business properties were asked
11 to join. The committee consisted of the Town
12 Attorney, the Director of the Planning
13 Department, Senior Planner DeLaughter, two
14 Town Board Members, Save the Pine Bush
15 representative Lynn Jackson, and John Wolcott,
16 the Pine Bush Preserve Commission's Director
17 Chris Haber*, Neil Gifford, and four residents
18 that all live outside of the industrial and
19 Business E area. That committee is known as
20 the Pine Bush Committee.

21 These meetings were secrets and they were
22 not open to the public. In my opinion, the two
23 directors from the Preserve don't belong on a
24 committee that is developing a moratorium. The
25 moratorium is a temporary land use control.

Legal Transcription

1 The New York State Environmental Law 107,
2 paragraph 5 states that the Albany Pine Bush
3 Preserve Commission shall have no authority to
4 control private land. I do realize that the
5 Town does have a right to develop a
6 moratorium, but that group had secret closed
7 meetings and never gave a report to the Town
8 Board. The representatives on the committee,
9 Chris Hawver and Lynn Jackson - that committee
10 was just for developing a moratorium. That
11 isn't true because they spoke at the
12 Comprehensive Plan public hearing and they
13 asked them to consider the current industrial
14 zoning and they asked them to put overlay on.
15 Neil Gifford was also on the committee. He
16 also asked that. They said they had nothing to
17 do with the zoning change. That isn't true
18 either because the Town Attorney still held
19 those meetings that all those people were
20 asked and they still had input to Saratoga
21 Associates.

22 They also attended a meeting for the
23 zoning. Neil Gifford admitted that he provided
24 information to the Town to draw the boundaries
25 with the overlay and said that was the extent

1 of his input. E-mail this shows he drew up a
2 letter explaining what he felt the overlay
3 should be called and that it should be called
4 the Pine Bush Site Review Plan. He wanted to
5 make it part of the Zoning Law that all
6 applications in the Pine Bush area would be
7 reviewed by the Albany Pine Bush Preserve
8 Technical Committee. He also wrote a section
9 of the law concerning the overlay, word for
10 word. This committee definitely had input and
11 of how the Pine Bush area was represented in
12 the Comp Plan and in the development of the
13 2007 Zoning Law. This committee was biased and
14 definitely inappropriate. The Town Attorney,
15 Planning Director, Lead Planner and Town Board
16 Members were members. Furthermore, Mr. Gifford
17 from the Preserve does not belong on any
18 committee making decisions to certain private
19 land.

20 The Comprehensive Plan has misleading and
21 confusing statements concerning the Pine Bush
22 area and the Preserve, making one think that
23 their private land is part of the Preserve.
24 You need the space that the Town will work
25 with the Commission to identify critical

1 parcels for development in the Preserve. Their
2 map of the Preserve includes all our private
3 land. You're not even supposed to develop in a
4 Preserve. In my opinion, they're trying to
5 make people think the Preserve Commission has
6 the same powers as the Adirondack Park Agency.
7 They do not.

8 The first public hearing for the 2007
9 Zoning Law Planning Director Mr. Pearson
10 misrepresented the western end of Town when he
11 stated that the industrial zoning is not a
12 logical use for that area, considering the
13 fact that there is a lot of vacant land in
14 that area. In my opinion, if you have 50
15 businesses on four miles of roadway that needs
16 an industrial designation, that is not
17 logical.

18 Lead Planner DeLaughter also stated that
19 a commercial office designation was put on
20 Cordell Road to accommodate the existing
21 commercial and industrial. This is another
22 lie. Commercial office does not allow
23 industrial.

24 Last year I mentioned the fact that Dan
25 Wojcik of Saratoga Associates was also writing

1 a Comp Plan for the Town of Bethlehem. In
2 their Comp Plan there was an overlay that did
3 reduce the density. In Colonie's, they
4 recommended a typical conservation subdivision
5 design that doesn't reduce the density. It is
6 possible that he confused that when he wrote
7 the Zoning Law. After all, he accidentally
8 used the name Bethlehem instead of Colonie in
9 earlier versions of our Comp Plan. He was not
10 exactly the most unbiased person to write the
11 Comp Plan Zoning Law. Twenty years ago he was
12 on the Land Use Management Advisory Council
13 with Mary Brizzell when they attempted to down
14 zone this very same area.

15 When the Town adopted the 2007 Zoning
16 Law, part of the law stated that the Town
17 would comply with SEQRA. They certainly did
18 not comply with SEQRA to adopt this law. Lead
19 Planner DeLaughter filled out a very
20 inadequate long environmental assessment form.
21 He didn't even list the correct proposed
22 zoning classifications. He absolutely failed
23 to address any environmental impacts in three
24 areas that were rezoned more intensive. These
25 three areas were anywhere from 60 to 120 acres

1 each from the residential and land
2 conservation to industrial. One area in the
3 Pine Bush Preserve study area that was hundred
4 acres went from Residential Business E to all
5 industrial. He didn't say one word about any
6 of those three areas. The negative declaration
7 was not published, as required, on DEC's
8 Environmental Notice Bulletin until six months
9 after the Zoning Law was adopted. It is
10 supposed to be published before. The notice
11 that they did finally publish stated that the
12 Zoning Law is just a consolidation of various
13 land-use regulations into one chapter. There
14 was not one word about zoning changes.

15 Also, at last year's meeting I had stated
16 evidence that the Town Board had already
17 agreed to vote yes for this new Zoning Law
18 before the Town Board or the Supervisor had
19 even received a copy of DeLaughter's
20 inadequate environmental assessment form.
21 Furthermore, there is not even a signed and
22 dated SEQRA form for the 2007 Zoning Law.
23 SEQRA has never been completed for this law.

24 Lastly, according to New York State
25 General Municipal Law, when the Town proposes

1 to adopt a law that would apply to land that
2 abuts a boundary line of another municipality,
3 it has to refer the proposed law to the County
4 Planning Board. The Albany County Planning
5 Board operates differently than our Planning
6 Board. Here, Joe gives the members all the
7 information in the application and the Board
8 makes a decision.

9 At the Albany County Planning Board the
10 County Planning Director, who is Mark
11 Fitzsimmons, oversees the application and
12 writes a recommendation for the action. He
13 then gives the recommendation to the Board.
14 The Board either agrees, disagrees or they
15 recommend various things. You never see the
16 actual application.

17 The Town of Colonie only referred the
18 proposed adoption of the Colonie Land Use Law
19 to the Albany County Planning Board. They
20 failed to refer the full statement on the
21 proposed action. That included the deletion of
22 the existing Zoning District and the formation
23 of new ones. Furthermore, the Director of the
24 Albany County Planning Department,
25 Mr. Fitzsimmons, knew full well what the

1 proposed action was. He knew that it was a
2 town wide rezoning, including the drastic down
3 zoning of the industrial land in the Pine Bush
4 area. He allowed the incomplete referral to go
5 before the Albany County Planning Board. The
6 Albany County Planning Board only looked at
7 this on regarding the consolidation of various
8 provisions of the Town Code dealing with Land
9 Use regulations into one chapter. The Albany
10 County Planning Board never received a
11 referral for rezoning. Mr. Fitzsimmons was
12 well aware of the full action because he is a
13 member of the Albany Pine Bush Preserve
14 Commission Technical Committee along with
15 Kevin DeLaughter, and Neil Gifford. They met
16 monthly.

17 The matter of Colonie's proposed
18 Comprehensive Plan and Land Use Law and
19 specifically the down zoning of the industrial
20 lands in the Pine Bush area have been
21 discussed at those meetings over a three-year
22 period. The Town also failed to file a report
23 of final action as required within 30 days.
24 They never did. How is Albany County supposed
25 to know the Town adopts the law if the Town

1 doesn't follow through with legal requirements
2 and notify them?

3 Mr. Caponera will have more information
4 on that.

5 To sum it up, in my opinion these
6 property owners had their rights severely
7 violated. The Pine Bush Committee has fired
8 against them to defraud these industrial
9 property owners out of their property rights
10 and property values to benefit the Preserve.
11 They did it as slyly and quietly as they
12 could. If we didn't find out within four
13 months of the adoption, there would be nothing
14 that we could do. Not only did they consider
15 possible impacts on the environment for the
16 approximately 300 acres that they rezone more
17 intensive, they also didn't consider the
18 socioeconomic impacts of down zoning over
19 1,000 acres of industrial land in the Pine
20 Bush area. They never considered the reduction
21 in property and school taxes and future loss
22 of jobs in this area and how that would affect
23 the residents. I know that the Preserve has
24 said that living next to the Preserve
25 increases your property values and that

1 translates into higher taxes, but I disagree.
2 I don't see how living next to property where
3 the employees wear hazmat suits to apply
4 pesticides, or property that they burn every
5 few years, or property that they destroy
6 that's you can even walk through would
7 increase your property values. It is not the
8 same as living next to the Preserve that is
9 left untouched. The 2007 Zoning Law is a
10 disgrace and embarrassment, to the Town of
11 Colonie. If this is what the people of the
12 municipality wanted, why did the Town have to
13 commit fraud, violate the business owners
14 property 14th amendment right, intentionally
15 violate SEQRA procedure and intentionally
16 violate New York State GML 239 to pass the
17 2007 Zoning Law. It may have been to cheat
18 these property owners out of the property
19 rights and values. They didn't do it for the
20 Town residents. These few people conspired
21 together for their own personal agenda.

22 I most respectfully ask you to give a
23 positive recommendation to the Town Board
24 resolution number 482, the west side rezone,
25 and the removal of the conservation

Legal Transcription

1 development overlay. Thank you.

2 CHAIRMAN STUTO: Thank you.

3 MR. CAPONERA: Thank you, Mr. Chairman,
4 Members of the Board.

5 What I'd like to do is kind of lay this
6 out to the Board as clearly as I possibly can.
7 I know that Suzanne has done a very nice job
8 in putting this together for us, but I want
9 everyone on the Board to understand where we
10 stand and where we were before January 4,
11 2007. The easiest way to do it is to provide
12 to all you members these color-coded maps. I'm
13 going to start by basically showing you what
14 amount was in 2004, which is the map. It shows
15 a much larger amount.

16 This is the official map of the Town of
17 Colonie in 2004 (Indicating). This is with the
18 zoning that was in the Town of Colonie in
19 2004. What we've done is taken a portion of
20 that, which is the area that we're talking
21 about, and we put it on this foam board.

22 What's important to note here is that you
23 look at the west end and what do you see? You
24 see purple. It's all purple. It's industrial.
25 If you look closer, we see that it's been

1 purple - all purple in 1957. Since 1957 this
2 land that I have my hand on (Indicating) is
3 zoned industrial. So, the Town must have
4 thought something about rezoning the property
5 50 plus years ago to industrial. The main
6 railroad line is running right through it.
7 There are other roads that go through there
8 and I'll talk about that in just a minute.

9 What happened is what Suzanne talked
10 about - January 2007 when the Town Land Use
11 Law - that purple changed -- and if you look
12 up on top you'll see that same exact location
13 and you don't see purple anymore. See the
14 green and yellow in a small area here that is
15 kind of a tangerine color (Indicating)? What
16 does that mean? What happened is exactly what
17 Suzanne said. Every bit of this with the
18 exception of the lower portion down here
19 (Indicating) was rezoned from industrial to
20 single-family residential, or conservation, or
21 along Cordell Road was commercial office. When
22 I told the Board that, I didn't know that this
23 was happening. I think that everyone on the
24 Board knows that I'm in front of this Board a
25 lot, and in front of the Zoning Board a lot. I

1 have to be honest, I didn't know this was
2 going on. I didn't know until some of my
3 clients, many of whom are here tonight, called
4 me up and said Victor, something really weird
5 happened. I'm trying to get a tenant for my
6 property and I'm told that my property is not
7 zoned industrial anymore. It's zoned
8 residential, or commercial office and
9 therefore it's no longer a conforming use. The
10 use I want to change it to isn't exactly the
11 way the previous use was, which means you need
12 a variance - a use variance. Some of you folks
13 on the Board know that's an extremely
14 difficult variance to get. There are two types
15 of variances; area variances and use
16 variances.

17 So, I started looking at this and I said:
18 Holy smokes, about 700 acres were rezoned from
19 industrial for the past 50 years to either
20 residential, conservation, or for a couple
21 small spots, commercial office. It doesn't
22 make any sense. Why, you might ask? Well, I'll
23 tell you.

24 In working with Suzanne more, I realize
25 that there are scores of businesses that have

1 been in existence in this area for 40 or
2 50 years and they've been in existence and
3 paying the taxes that have been employing many
4 people. All the sudden without any written
5 notice given to any one of these businesses,
6 the road gets slipped out right from
7 underneath them. Here they are trying to do a
8 business and now realizing that the property
9 that they have been doing business on the last
10 30, 40 or 50 years doesn't conform anymore.
11 Yes, the exact use that you have now can
12 continue, but as soon as you want to do
13 anything like change tenants or changing use
14 that would have been allowed in industrial
15 zone - that's no longer allowed.
16 Fundamentally, ladies and gentlemen on the
17 Planning Board, that's not fair. Now we've
18 gone through this before and I've done this on
19 several occasions on other properties in the
20 Town where similar situations have happened,
21 but nothing near the scope of this; nothing
22 near the scope of 600 plus acres.

23 The comments were made that we sent
24 notices out. You didn't send notices out to
25 the paper. I submit to you the following: If

1 you look at the 2004 zoning map here
2 (Indicating) and you look at the 2007 zoning
3 map, what you see is as follows: What you'll
4 find is that in 95 percent of the area of the
5 Town was rezoned. The zoning simply went from
6 single-family residential to single-family
7 residential. Business went to a commercial
8 office residential, or NCOR zone. That's
9 essentially the same as the business zone.
10 What am I saying? In plain language what I'm
11 saying to is that most of the Town when they
12 rezoned, they simply renamed the type of zone.

13 Take this area right here (Indicating);
14 it's all yellow. This area stays yellow. We
15 had a designation in 2004. We've had
16 single-family, R1, R2 or R3. It allowed
17 single-family residential. The lots had to be
18 a little bit different in size when they
19 rezoned. They named it one single-family zone.
20 They coded it SFR or single-family
21 residential. The lot size now became uniform;
22 18,000 square feet. If you have a
23 single-family residential use in 2004 - and I
24 think this probably dates back in the
25 50's - you can still do this in 2007 when they

1 changed it. Likewise, with pretty much all of
2 the other parts of the Town. You get what I'm
3 saying. They didn't fundamentally change a
4 property owner's rights.

5 If you have a commercial use on Route 5,
6 you continue to have a commercial use on
7 Route 5. It didn't change the use, except in
8 this area. To the best of my knowledge, not
9 one of the 50 plus or minus business owners
10 that have conducted business in this area for
11 the last 30, 40 or 50 years ever got notice.
12 Wouldn't you think that in common fairness and
13 common decency that if we're going to change
14 someone's property rights for the uses they
15 have on their property, which is industrial
16 for 50 plus years and just completely pull the
17 rug out they well now it's residential -
18 wouldn't you think that someone would have
19 given someone notice? Every single client that
20 I've talked to and was talking with
21 Ms. Perry - no one got any notice. Fundamental
22 fairness was not followed here. What we ask
23 for here? We're not asking to gild the lily
24 here. We're not simply saying take every
25 single business property that you rezoned and

1 put it back to what it was. Instead, we have
2 the proposal down below and every one of you
3 got a color copy. We're only asking for the
4 folks that have signed their names on this
5 request to zone it back to industrial. There
6 are 91 of them of, according to Suzanne's
7 latest report. This is shown on the area here
8 on the lower map where the red lines are
9 through it (Indicating).

10 Now, in addition you will know that
11 there's an area here that I have my finger on
12 (Indicating). It looks like a fork. It's the
13 same in 2004. What happens in 2004 which is
14 the same as Business E. What happens? It goes
15 to 100 percent residential. Again, none of the
16 commercial property owners in this area got
17 notice for any written notification of this
18 and now the property is completely
19 nonconforming. We're not asking to put this
20 back to industrial, or asking for it to be
21 pulled back to the way that it was, which
22 allowed a Business E use. We propose a
23 modified industrial use that doesn't allow
24 certain uses. It would allow currently in
25 industrial zones: correctional facilities,

1 transfer station, junkyards, outside
2 manufacturing, processing and mining is
3 allowed. In this modified version that we're
4 proposing for asking that none of that. It's
5 much the same as what was allowed prior to
6 2007 when it became single-family residential.
7 So, in a nutshell, that's exactly what we're
8 asking for.

9 As I said before, we're certainly not
10 looking to gild the lily here. We're simply
11 asking for the people who never got written
12 notice on, never knew what was going on with
13 their property rights or property values until
14 after the fact to be put back to where they
15 were for the past 50 or 60 years. Namely,
16 bring this back to their industrial use. You
17 can see from the lower color photograph here
18 of the exact same replica of the west end
19 (Indicating). We're not asking to put any of
20 these green areas back to industrial. They may
21 stay as the Town Board rezoned it back in
22 2007, which is conservation. There are other
23 areas here that are residential that again,
24 we're not asking to change. One of the other
25 things that I want to mention -

1 CHAIRMAN STUTO: So, how many acres are
2 you asking to have changed? How many parcels
3 are you asking to be changed?

4 MR. CAPONERA: We have 91 parcels.

5 Is that correct, Suzanne?

6 MS. PERRY-POTTS: No, there are 104
7 parcels in the 645 acres that we're asking to
8 be rezoned.

9 CHAIRMAN STUTO: Just for a point of
10 clarification, you had mentioned number 50.

11 MS. PERRY-POTTS: There were 50
12 businesses, approximately.

13 CHAIRMAN STUTO: How does that play into
14 the 104 parcels? Do some of them own more than
15 one parcel in question? Can you explain that
16 to me?

17 MS. PERRY-POTTS: There are only about 50
18 businesses and there are approximately 60
19 owners. Some of them do own more than one
20 parcel. Some of them are just vacant land.

21 CHAIRMAN STUTO: Thank you.

22 MR. CAPONERA: I think that clarifies
23 that. As I said there's more than one -

24 CHAIRMAN STUTO: There are 645 acres? Is
25 that the amount?

1 MR. CAPONERA: Suzanne, is that correct?

2 MS. PERRY-POTTS: Yes.

3 CHAIRMAN STUTO: How many acres were
4 changed originally? Did you say 1,000?

5 MS. PERRY-POTTS: I couldn't add up the
6 total. It's got to be well over 1,000 acres.

7 CHAIRMAN STUTO: Okay, about 60 percent
8 that you're looking to have converted back; is
9 that your approximation?

10 MS. PERRY-POTTS: Or maybe even less,
11 because I think it's over 1,000.

12 MR. CAPONERA: So, basically we feel that
13 there was no justifiable reason to have
14 rezoned these properties. Again, in the letter
15 that I submitted to the Board, it contains
16 approximately 50 businesses that are up and
17 running in the west and all have signed
18 letters requesting that their property be
19 zoned back to the way that it was prior to the
20 2007 January 4 rezoning - back to the way that
21 was the past 60 years. It certainly was not
22 justifiable.

23 In an effort to further the credibility
24 to my presentation, I brought in Joe Bianchine
25 who is an engineer with ABD

1 Engineers. I'd like him to talk to the Board
2 about his position about the people that he's
3 represented in this area and the types of work
4 that he's done in this area. I would like for
5 him to give his professional opinion based
6 upon him working in this area for the last 30
7 or 40 years. I'd like him to talk about why
8 this should never ever have been rezoned to
9 residential or conservation.

10 MS. VAIDA: I have a few questions. This
11 may have been addressed already. I think that
12 there was some reference to it, but you were
13 saying that there was no notice sent out to
14 the people in the west end.

15 I wanted to ask Ms. Potts whether or not
16 she received the survey notice that was sent,
17 according to the findings in the Comprehensive
18 Plan. I'm going to attest that I personally
19 recall receiving this survey. I was sort of
20 excited about the fact that the Town was doing
21 this revamping and was looking for the
22 public's input but there was a survey sent
23 to - it says all households in the Town of
24 Colonie, approximately 35,000 households.

25 CHAIRMAN STUTO: Can you identify the

1 document that you're referring to?

2 MS. VAIDA: It's actually the
3 Comprehensive Plan. It's in there as regarding
4 the public involvement process.

5 MS. PERRY-POTTS: The residential
6 survey - I do not recall -

7 MS. VAIDA: It doesn't say that it was a
8 residential survey. It was a survey that was
9 sent to all of the households.

10 MS. PERRY-POTTS: Yes, they called it the
11 residential survey. I got a copy and that was
12 sent out, they said, to all of the homeowners.
13 They also sent a separate survey called the
14 business survey and they claim that they sent
15 it to all businesses. I do not recall
16 receiving it in 2003. I know that I didn't
17 fill it out because then I would have
18 remembered. Is it possible that I could have
19 received it? I do not remember getting it.

20 MS. VAIDA: I guess one of my concerns is
21 that if the Town mailed - which it seems like
22 it did - all of these surveys, even if a
23 notice was sent to you, maybe you wouldn't
24 have opened it. I assume that this might have
25 gone in the garbage.

1 MS. PERRY-POTTS: I can tell you what I
2 would have done with that survey. I do open
3 all the mail. In 2003 I was very busy. I had a
4 two-year old child who didn't sleep and I was
5 running a business. A survey probably would
6 have gone on the bottom of the pile. I
7 probably didn't fill it out. I'm not saying
8 that I didn't receive it. That's possible.

9 Also, I spoke to the mail house that sent
10 these out almost two years ago. I think that
11 it's in the newspaper, too. They admitted that
12 the survey was not sent out to all parts of
13 the Town of Colonie. There are certain
14 sections at that time that did not receive it;
15 12303 was possibly part of it because it was
16 only a small section. It was mostly a
17 Schenectady County zip code.

18 MS. VAIDA: Who did you speak to?

19 MS. PERRY-POTTS: Someone in the mail
20 house. I think that it was a Jennifer, or
21 something like that.

22 MS. VAIDA: When you say mail house -

23 MS. PERRY-POTTS: It's a business that
24 sends out the Town newsletter and it sent out
25 the surveys.

1 MR. LANE: Is it Mailworks?

2 MS. PERRY-POTTS: It might have been
3 Mailworks. There are two that they were using
4 at that time.

5 MS. VAIDA: And you don't have the name
6 of the person?

7 MS. PERRY-POTTS: Not here with me today;
8 no I don't. It was like two years ago.

9 As for individual notification, for the
10 public hearing for the Zoning Law -

11 MS. VAIDA: I'm just saying that the
12 survey, in a sense, was an individual notice
13 and that the Town was contemplating -- and in
14 the process of doing a comprehensive review of
15 the current Zoning Law, was looking for input
16 from the public.

17 MS. PERRY-POTTS: You will not find the
18 word zoning on the front page of that survey.
19 It just says that they're developing a
20 Comprehensive Plan and they just wanted to see
21 how people feel and what they think about the
22 Town. I don't believe the word zoning is on
23 it.

24 CHAIRMAN STUTO: Do you have a copy of
25 the survey handy?

1 MS. PERRY-POTTS: Yes.

2 MS. VAIDA: This also talks about there
3 being various work groups and public
4 workshops.

5 MS. PERRY-POTTS: For the Comprehensive
6 Plan - there were a lot of meetings, yes.

7 MS. VAIDA: So, did you know about those?

8 MS. PERRY-POTTS: No, I did not.

9 MS. VAIDA: But there were a lot of
10 meetings. They were divided into workshops and
11 focus group meetings. They had about six of
12 those business workshops, youth workshops,
13 town-wide meeting 1, town-wide meeting 2,
14 Comprehensive Plan Advisory Committee public
15 hearing and then a Town Board public hearing.

16 MS. PERRY-POTTS: Now, they said that
17 they sent the survey out to the same people
18 who got the Town newsletter. I know for a fact
19 that in 2003 I did not get the Town
20 newsletter. I didn't start to receive it - I
21 think that I got one or two maybe towards the
22 end of 2007. Before that, I did not get the
23 Town newsletter.

24 MS. VAIDA: This doesn't say that it was
25 limited to the people who get the Town

1 newsletter. It says that it's mailed to all of
2 the households in the Town of Colonie.

3 MR. CAPONERA: Let me just follow up on
4 what you said. I can assure you one thing, one
5 of the clients I represent, got not a
6 scintilla of notice that their property was
7 going to be rezoned, or was contemplated to be
8 rezoned from a 15 year or 16 year industrial
9 to residential. I assure you that they would
10 have been at the next Board meeting, or
11 created a Board meeting, or demanding a Board
12 meeting to show their opposition on this.

13 For those of you who I represent, am
14 accurate on that?

15 MS. LUPE: Absolutely. We did not receive
16 anything on that.

17 MR. CAPONERA: Is there anything that I
18 just said that isn't accurate?

19 MS. LUPE: No.

20 CHAIRMAN STUTO: Can we have a show of
21 hands please to see who agrees with that
22 statement?

23 ***(Those that agreed raised their hands.)***

24 MR. LANE: Victor, overall throughout the
25 Town, other than the changes that were made

1 obviously, no other area is changing use
2 except for this area? There is now one other
3 area that you can identify?

4 MR. CAPONERA: There may be other areas
5 and I will point one out to you that I got
6 rezoned.

7 Rate here, along Route 7. Along Route 7
8 they rezoned 10 clients of mine - their
9 properties were business to multi-family
10 residential.

11 MR. LANE: And they did what?

12 MR. CAPONERA: I implored the Board to
13 rezone it back to the way that it was. In
14 other words, it's a different name, but at the
15 same use. I came before the Planning Board. I
16 don't know if you were on the Board at that
17 time. I made my application. The Planning
18 Board recommended that I go back to the way
19 that it was. The Town Board adopted a rezone.
20 What I'm saying is that nowhere in the Town
21 was the expansiveness of the rezoning done
22 like the west end. There are other pockets.
23 There were many other areas in the Town where
24 they mistakenly rezoned properties.

25 In fact, I just did another one on

1 Central Avenue where the Town rezoned it from
2 business to residential. When I showed the
3 Town Attorney what happened, he immediately
4 identified it as a mistake and they corrected
5 it. It took a while, but it got done. So, this
6 is not the only place where an industrial or
7 commercial use was zoned to residential. It's
8 the only place that encompasses 600 plus
9 acres.

10 CHAIRMAN STUTO: Can you show me on the
11 map where the actual residences are that you
12 had mentioned? I want to see the residences
13 that are going to be impacted. You talked
14 about a buffer.

15 MR. CAPONERA: Yes, I was going to talk
16 about that before I hand it over to Joe.

17 As you can see, this is the map of 2004.
18 It basically was industrial and then it became
19 residential. We have proposed a 101-foot
20 buffer that would run all along these
21 properties that we're proposing and actually
22 go down along here where it backs up to any
23 residential uses. That was a mitigating factor
24 that we were proposing. The idea is that if
25 this property were to be rezoned and this

1 property would be used for any allowable use
2 in an industrial zone, nothing could happen
3 within the 101-foot buffer. That's the buffer
4 area that we're talking about. That's where
5 the residences are, Mr. Chairman.

6 CHAIRMAN STUTO: Thank you.

7 MR. CAPONERA: Regarding the survey that
8 Ms. Vaida referred to, I'll read it into the
9 record.

10 "The Town of Colonie Comprehensive
11 Confidential Residential Survey. The Town of
12 Colonie is beginning a process of preparing
13 the Comprehensive Plan for the community. The
14 plan will provide recommendation about how the
15 Town will grow in the future, including where
16 and what type of new development should occur,
17 what natural areas or historic sites should be
18 protected and with community and
19 infrastructure that will be needed in the
20 short and long term. This is being conducted
21 by the Town's Planning and Economic
22 Development Department to help assess the
23 needs and concerns of residents. Please take a
24 moment to answer the following questions and
25 then returned to the Town by September 5,

1 2003. Feel free to make additional comments on
2 the back. Your response is extremely important
3 and will help guide the development of our
4 Comprehensive Plan. Public participation
5 workshops and opportunities will be held in
6 the future and advertised on the Town's
7 website www.Colonie.org and in the Spotlight
8 newspaper. We strongly encourage you to get
9 involved with this process. If you have any
10 questions or comments, please contact Kelly
11 Mateja. Thank you very much, The Town
12 Supervisor.

13 MS. VAIDA: Ms. Potts said that there was
14 a separate one for businesses. Does she have
15 that one also?

16 MR. CAPONERA: Yes, indeed. I'll read
17 that into the record, too.

18 The Town of Colonie Comprehensive Plan
19 Confidential Business Survey. The Town of
20 Colonie is beginning the process of creating a
21 Comprehensive Plan for our community. The plan
22 will provide recommendation about how the Town
23 will grow in the future, including where and
24 what type of new development should occur with
25 natural areas and what historic sites should

1 be protected and what community and
2 infrastructure improvements will be needed in
3 the short and long-term. The survey is being
4 conducted by the Planning and Economic
5 Development Department to help assess the
6 needs and concerns of businesses. Please take
7 a moment to answer the following questions and
8 then return it to the Town of Colonie by
9 September 5, 2003. Feel free to make
10 additional comments on the back.

11 It says the exact same thing.

12 MS. VAIDA: If we can have copies for the
13 transcript, that would be appreciated

14 MR. CAPONERA: Absolutely. It just says
15 if you have any questions, call Kelly.

16 MS. DALTON: Of the folks that raise
17 their hands, if you are business on this and
18 would appear - who here is a business owner in
19 the Town of Colonie and not a resident of the
20 Town of Colonie?

21 ***(The audience responded with raised hands.)***

22 MS. DALTON: We can then assume that the
23 people that own businesses and owned
24 residences got the notice.

25 FROM THE FLOOR: I didn't get any notice.

1 MR. CAPONERA: I would like to ask the
2 question. Did any of the business owners in
3 this area who got a copy of this Town of
4 Colonie Comprehensive Plan Confidential
5 Business Survey - could we ask that Mr.
6 Chairman?

7 CHAIRMAN STUTO: Sure.

8 MR. CAPONERA: How many of the business
9 owners got a copy of this confidential
10 business survey?

11 ***(No one in the audience raised their hand.)***

12 MR. CAPONERA: Not one person.

13 I'm going to turn this over to Joe
14 Bianchine right now and he's going to follow
15 up on what I've been saying.

16 CHAIRMAN STUTO: We're talking about
17 conservation overlay?

18 MR. CAPONERA: Well, he's going to talk
19 about the rezoning that and is going to get
20 into the conservation overlay. I think that
21 needs to be explained.

22 MR. BIANCHINE: I'm Joe Bianchine with
23 ABD Engineers and Surveyors. I've been before
24 this Board many times. There have been many
25 changes to this Board over the past 35 years

1 and more. I'm familiar with the zoning in the
2 Town, the site planning process with the Town
3 and so forth. I have represented many clients
4 in this purple zone here (Indicating) over the
5 years in developing their property. Primarily,
6 I work with property owners and developers in
7 citing their property and developing their
8 property in terms of conforming to the Town
9 Zoning in terms of setbacks, green space
10 requirements, water requirements, drainage
11 requirements, sewer, traffic, transportation,
12 neighborhood concerns -- all of these issues
13 we have come before the Planning Board and
14 gone through a process to develop. I've also
15 worked in a number of other communities in the
16 area, so I'm familiar with other communities.
17 In this particular case what they're asking
18 for is a rezoning back to pretty much to what
19 it was because most of these properties, as in
20 Victor said, are already developed. It's not
21 that there is a lot of vacant property here.
22 These properties are already developed and
23 they were developed in accordance with the
24 Town's zoning in place at the time. So, it's a
25 real hardship for these properties to change

1 the zoning now because now they're all
2 nonconforming uses. They can add-on and they
3 can modify their properties without going
4 through, as Victor said, a use variance. That
5 is a very restrictive and very hard process to
6 prove. It's time-consuming and costs a lot of
7 money. Further, if they go to sell their
8 property, they can't really sell it because
9 the only people that they can sell it to are
10 people who are businesses that are almost the
11 exact same use as they have. So, it restricts
12 the sale of their property such that somebody
13 is not going to come in and buy this property
14 that's already developed and then convert that
15 property to a commercial office use. It's just
16 cost prohibitive to buy it when the property
17 owner has to diminish the value of the
18 property just to get rid of it. It puts a real
19 hardship on them.

20 The next thing is this conservation
21 overlay. All of this land is conservation
22 overlay (Indicating) which means essentially
23 that you have to dedicate at least 40 percent
24 of your land to green space. In Colonie, it's
25 forever been at 35 percent across the Town.

1 You have to have at least 35 percent green
2 space. You can count wetlands and you can
3 count constrained lands. Now, with the
4 conservation overlay, the minimum is 40
5 percent - plus, you can count wetlands, or
6 easements or steep slopes. You could have a
7 piece of land where not just 40 percent of
8 your land is green space, but you can have
9 50 percent, 60 percent or 70 percent of your
10 land be as required green space. It really
11 significantly hurts the property owner in that
12 case because now a lot of this he cannot use.
13 In most cases, as I said, the land is already
14 developed so that green space is something
15 that you can change. You have to have it in
16 order to develop in the Town. It puts a real
17 hardship on the property owner. In this case,
18 the rezoning is basically just for primarily
19 properties that are already developed, because
20 it puts a significant restraint on those
21 properties in terms of how they can be used.

22 MR. NARDACCI: Joe I have a quick
23 question. I know the answer to this, but I
24 want to have it said publicly.

25 Have you ever had a client that you

1 brought here that wasn't approved because they
2 were in the conservation overlay and they
3 couldn't meet the requirements?

4 MR. BIANCHINE: No, I have not. I have
5 one still pending, but they've been approved.
6 But, they had the land to do it. It is
7 constrained as to what they could developed
8 and what they thought they could get on them
9 and now they get less.

10 CHAIRMAN STUTO: There are exceptions
11 too. I know this is one of the major topics
12 tonight. Section 190-30 of the Colonie Town
13 Code which is part of the Zoning and Land Use
14 Law about the Conservation Development Overlay
15 District. There are a number of exceptions
16 under 190-30b.

17 "The Conservation Development Overlay
18 shall apply unless the development is a minor
19 site plan development. A development is
20 classified as a minor subdivision as defined
21 in this article. The Planning Board determines
22 based upon a conservation analysis outlined
23 below that there is no reasonable basis for
24 requiring conservation development. In order
25 for the Planning Board to make such

1 determination, the applicant must demonstrate
2 at least one of the following: the land
3 contains the resources, conservation value,
4 the acreage is too small to preserve a
5 substantial amount of land for conservation
6 value, or the lot configuration is unique and
7 precludes preservation of a substantial amount
8 of land of conservation value."

9 I just say that so you have a complete
10 record for our Board Members and also for the
11 public.

12 In addition, it seems that I recall that
13 we have applied these exceptions to some of
14 the applications that have been reviewed. I
15 can't remember a specific one. I believe that
16 was one where the land contains no resources
17 for conservation. We didn't like that one.

18 MR. NARDACCI: Another thing - there are
19 seven distinct Conservation Overlay Districts
20 in the Town. Those were put in with the zoning
21 change.

22 MR. BIANCHINE: It's not just that. Here
23 there are other areas.

24 MR. NARDACCI: I wasn't there during this
25 conversation, but why do you believe the

1 Conservation Overlay District was included in
2 this area of the Town?

3 MR. BIANCHINE: I think that was just as
4 a result of the Pine Bush people insisting on
5 it in their review of the rezoning.

6 CHAIRMAN STUTO: In addition, if we do go
7 through this analysis and looking at that
8 portion of the law, there can be no minimum
9 lot sizes. So, you could get more on a lot
10 smaller area.

11 MR. BIANCHINE: I don't disagree with
12 that this land is already developed. What
13 we're saying is in this case you can get more
14 allowance because it's already developed as
15 such.

16 CHAIRMAN STUTO: Well, some is developed
17 and some isn't.

18 MR. BIANCHINE: Pretty much most of it
19 is, in this case. What are undeveloped are
20 wetlands or constrained lands that you can't
21 develop anyhow.

22 CHAIRMAN STUTO: So, 645 acres is what
23 you're asking to be rezoned back? Most of this
24 development?

25 MR. BIANCHINE: It's developed - and even if

1 it was just partially developed, they could
2 expand on the property but they would have to
3 go through this process. Now, 35 percent is
4 40 percent and you can't count wetlands and
5 you can't count the constrained lands. So,
6 that adds to the 40 percent. Other communities
7 many times don't even have a green space
8 requirement, or 30 percent is the norm not
9 35 percent and now it's 40 percent.

10 CHAIRMAN STUTO: I think 35 percent is
11 reasonable.

12 MR. BIANCHINE: It's always been
13 35 percent in Colonie.

14 CHAIRMAN STUTO: Okay, I just want a
15 complete record.

16 MS. VAIDA: I have a question, also. Have
17 you reviewed the Comprehensive Plan?

18 MR. BIANCHINE: No, not in a while.

19 MS. VAIDA: Because one of the goals of
20 the Comprehensive Plan - and this was based
21 upon the results of the survey - was to
22 develop a network of open lands, provide
23 wildlife habitat - potential recreational
24 trail corridors. Also, to encourage the
25 conservation of viable farmland and

1 significant open space throughout the Town.
2 One of the things that we're going to do is
3 we're getting the minutes from the meetings
4 that were held, because I assume that there
5 was some presentation regarding the importance
6 of that area and why it was important to try
7 to conserve space there.

8 MR. BIANCHINE: What you see up here
9 (Indicating) in green, primarily -- this land
10 is already set aside for conservation land if
11 lands that cannot be developed. So, there is
12 somewhat of a network already.

13 MS. VAIDA: And would you agree that any
14 Zoning Law has to be consistent with the
15 Comprehensive Plan?

16 MR. BIANCHINE: Oh, it absolutely has to
17 be consistent with the Comprehensive Plan.

18 MS. VAIDA: And what's being proposed
19 right now is inconsistent.

20 MR. BIANCHINE: Yes. So, in order to
21 change the zoning, you need to change the
22 Comprehensive Plan as well before you change
23 the zoning, if that happens

24 MS. VAIDA: I would like to point out
25 that there's a section called the Pine Bush

1 area and it says change the existing
2 industrial zoning to low density residential
3 and pockets of industrial to consider the
4 natural resources. Revise zoning to use of
5 conservation subdivision design.

6 And again, I understand you didn't get
7 notice, but I don't know if you've ever looked
8 at the Town's website. You seem to be
9 interested in this. This was published on the
10 website for, I believe, almost a year -- and
11 comments in addition to all those meetings.

12 MS. PERRY-POTTS: I never even heard of
13 the Town's website until I found out about
14 this rezoning.

15 To comment about the Comprehensive Plan ,
16 that information at the Comprehensive Plan
17 came from a certain group of people. They came
18 from Neil Gifford and Chris Hawver -

19 FROM THE FLOOR: Mr. Chairman, when is
20 she going to be done? Is she going to be able
21 to speak for the rest of the folks and
22 representatives here, or are we going to be
23 able to speak?

24 CHAIRMAN STUTO: These are the
25 applicants. They have initiated this. They

1 will have as much time as they need to make
2 their presentation. They are acting as a
3 group; the attorney, the engineer and
4 Ms. Perry-Potts.

5 MS. VAIDA: You're making this
6 allegation, but I don't agree with you. I
7 don't think the record supports what you're
8 saying.

9 MS. PERRY-POTTS: I have e-mails and
10 letters the state that the Pine Bush Committee
11 spoke in front of the public hearing for the
12 Comp Plan and they requested that they
13 reconsider the industrial zone and they asked
14 to have that overlay put on. Both Mr. Gifford
15 for the Preserve and the Pine Bush Committee,
16 of which he is a member, the Town Attorney,
17 two Town Board Members, the Director of
18 Planning and the Lead Planner were members of
19 that group. I wouldn't have a problem if it
20 was a group of residents, but the fact that
21 there were people that were Town employees and
22 elected officials that were on that
23 committee -- the Town Attorney and Kevin
24 DeLaughter actually reviewed a letter that
25 Chris Revere wrote - she read the letter in

1 front of the Comprehensive Plan public
2 hearing. They're reviewing what those
3 residents say. It was very biased.

4 MS. VAIDA: Do we have that e-mail?

5 MS. PERRY-POTTS: I probably gave it to
6 you, but I do have it here.

7 MS. DALTON: I have a question because
8 I'm not understanding the allegations of
9 biased, lying, conspiracy and fraud. Those are
10 all words which you have used. What I hear,
11 without the benefit of seeing the documents
12 that you have, is that people took every
13 opportunity that they had to participate in
14 every public open and private lobbying
15 opportunity that they could have. I heard
16 public officials participated in groups to
17 collect information. I don't hear lying,
18 conspiracy and I don't hear fraud. Let me just
19 finish my statement before you answer. If you
20 do have evidence of lying, conspiracy and
21 fraud, it's very important to present that
22 because we don't want that in our Town.

23 MS. PERRY-POTTS: I can give people a
24 copy of the survey where they change the
25 figures. Is that distributed? It was just one

1 page in question, number three, where they
2 change the results.

3 MR. LACIVITA: Was that in your recent
4 packet?

5 MS. PERRY-POTTS: That was one, plus I
6 sent it in a year ago when C.J. O'Rourke
7 requested certain information. I sent in like
8 a month or two after that. So, I submitted
9 that survey twice. That survey by the Town
10 changing the results - that's fraud.

11 MS. VAIDA: Changed the results?

12 MS. PERRY-POTTS: Well I didn't do it.
13 Who you think would change the results?

14 MS. DALTON: I think there's also room
15 for error here.

16 MS. PERRY-POTTS: You know what? I
17 thought there was an error too. When I first
18 looked at it, the codes were broken up on top.
19 I went to my zip code, 12303, and I was just
20 skimming quick to see it. I saw all 100
21 percent all along. Then when I took it home,
22 and I looked at it a few weeks later I noticed
23 the other two zip codes right next to it which
24 were all in the same area. They were all
25 94.5 percent, 93.7 percent, 98.6 percent.

1 Maybe 100 percent is correct because in this
2 area there are no gas stations, and there are
3 no supermarkets, and there are no shopping
4 centers. So, maybe the people that didn't send
5 it in said yes, we can use one.

6 I have that, too, if you'd like a copy
7 again.

8 MR. LACIVITA: Suzanne, I'd like to
9 speak specifically to the May 23rd submission
10 that you gave us. This is not a survey, per
11 se. It seems like it summarized facts. Is that
12 what you submitted?

13 MS. PERRY-POTTS: It was one page. The
14 survey is like six or seven pages long.

15 MR. LACIVITA: So, it is in the packet
16 that the Planning Board Members received.

17 MR. CAPONERA: I just want to wrap it up.
18 I'm not talking about any of this conspiracy,
19 or any of that. You understand that I'm
20 basically representing folks that have owned
21 and used their property for the last 30, 40,
22 50, 60 years and I trust that every member of
23 this Board has taken the opportunity to go and
24 drive through this area and see what's out
25 there. This isn't a figment of my imagination

1 of what is going on. Just look. Open your eyes
2 and see what's going on out there. You can see
3 that the uses like Callanan Industries, Wade
4 Lupe - how that ever became a commercial
5 office zone is beyond my wildest imagination.
6 How does that happen? I'm saying that it was
7 done mistakenly. I'm going to give you that.
8 Wrongfully - I'll give you that, too. It
9 should not have happened. This is what my push
10 is.

11 These folks are hardworking, taxpaying
12 folks that have used their property for this
13 industrial use and heavy commercial use for 50
14 or 60 years - as long as this property has
15 been rezoned. There is a main railroad that
16 goes right through this property that spurs
17 off of it. The warehousing is used. Common
18 sense - that's all I'm saying.

19 You heard me ask everybody in this room
20 if they ever got this notice that Elena talked
21 about. You know, did you get this notice to
22 fill out, relative to commercial? Not one
23 person raised their hand. My point is this: I
24 told you about how most of the Town was
25 rezoned and that it went from business to

1 business and residential to residential,
2 except in this large area. Fundamentally
3 speaking, if you're going to change my zoning,
4 give me notice. Give me the opportunity to
5 come before the Board and say, you can't do
6 this to me. You can't disenfranchise me.

7 The Constitution of our United States
8 says that you have to give due process to
9 people before you can take their property.
10 It's right in the constitution. It happened
11 here.

12 I'm representing these folks that have
13 strived all of their lives. They're
14 hardworking people paying their taxes and now
15 they're faced with a situation where guess
16 what? Our property is not zoned for the use
17 that we have uses this property for - for the
18 last 30, 40 or 50 years. That's fundamentally
19 wrong and fundamentally unfair. That's all I'm
20 asking this Board to consider, when you
21 finally formulate a recommendation to the Town
22 Board relative to our request. Again, we're
23 not looking for the whole piece. We're not
24 looking for everything to go back. We're only
25 looking for the people that have signed the

1 letters requesting the rezoning. That's all.

2 Thank you, very much.

3 CHAIRMAN STUTO: In our packet we have a
4 full environmental assessment form. Do you
5 have anything to do with that?

6 MR. LACIVITA: That was the one actually
7 submitted by Suzanne Perry-Potts.

8 CHAIRMAN STUTO: I see her name on it. I
9 just want to give the Attorney the opportunity
10 to speak to it.

11 MR. CAPONERA: I haven't really looked at
12 it that closely. There are some cases on this
13 that I'm going to share with your counsel
14 relative to that.

15 CHAIRMAN STUTO: I'm not sure of the
16 point that you're making. Does it require an
17 environmental review?

18 MR. CAPONERA: No, the current one - I'm
19 not sure that it's needed in a situation like
20 this, based on some case law that I
21 have - based upon what was previously done.

22 CHAIRMAN STUTO: We have a flow chart
23 here - rezoning procedure for the Town of
24 Colonie. Are you familiar with that?

25 MR. CAPONERA: Yes, I am.

1 CHAIRMAN STUTO: It clearly calls for an
2 EAF.

3 MR. CAPONERA: I understand and we're not
4 going to get into that right now. There are
5 all kinds of issues that I could bring up
6 relative to the previous passage of the law.
7 This isn't the time for that. I understand the
8 flow chart.

9 CHAIRMAN STUTO: We, as a Board, have to
10 deal with the environmental issue. I'm giving
11 you an opportunity to speak to that if you
12 want to now.

13 MS. PERRY-POTTS: I would like to.

14 CHAIRMAN STUTO: We may end up closing
15 the hearing after tonight.

16 MS. PERRY-POTTS: Did you just want to
17 talk about SEQRA?

18 CHAIRMAN STUTO: The EAF that's before
19 us, yes.

20 MS. PERRY-POTTS: From what I understood
21 from the Town Attorney's office is that since
22 the Town Board is going to be making the
23 decision, the Town Board and the Town
24 Attorneys were going to be handling the SEQRA
25 process.

1 MR. CAPONERA: I presume that the Town
2 Board would be the lead agent on this - since
3 they are the ones making the proposed change.
4 This Board is a recommendation Board and I
5 don't know that you would be the lead agent in
6 this.

7 CHAIRMAN STUTO: Our flow chart would
8 imply that some environmental assessment and a
9 determination of impact - whether significant
10 or non significant - is done prior to the Town
11 Board. We will let the attorneys work on that,
12 as part of our record, I want to say that.
13 You've been critical prior to the '07 and this
14 Planning Board was not in existence at that
15 time, insofar as the membership, and it was a
16 prior administration of the Town Board.

17 MR. CAPONERA: That's my understanding
18 and I will tell you Mr. Chairman, and members
19 of the Board, that with all due respect,
20 remember what we're asking for. We're not
21 looking to change a zoning district that was
22 once residential into industrial. We're
23 looking to bring it back to what it was before
24 January 4, 2007. Therefore, I submit to the
25 Board what environmental significance can

1 there be if we're looking to go back to what
2 it was? To me, that's just common sense. I'm
3 not asking to take a residential piece and
4 turn it into an industrial zone. I'm simply
5 saying; give us back what we had. Oh, by the
6 way, I don't want all 600-some acres rezoned.
7 I only want the 91 people or so who have
8 signed letters requesting that the Town Board
9 do this.

10 MS. VAIDA: Victor, an environmental
11 study - because you keep saying that this was
12 zoned industrial and it's been like that for
13 50 years - keep in mind that 50 years ago they
14 didn't do any kind of environmental review. I
15 don't even know if the law was in existence.
16 When this rezoning occurred, it may have been
17 the first time that a SEQRA review was
18 actually conducted.

19 FROM THE FLOOR: Was the Pine Bush
20 Conservancy there 50 years ago?

21 MS. VAIDA: I have no idea. I know that
22 the Pine Bush was.

23 FROM THE FLOOR: That protects land.

24 CHAIRMAN STUTO: We're not going have a
25 back and forth. You'll get your opportunity.

1 We're going to take a five minute break
2 and then we'll come back.

3 ***(There was a brief break in the proceedings.)***

4 CHAIRMAN STUTO: Okay, we're going to
5 start going through this. Again, I'd like to
6 repeat that we're going to keep it as
7 efficient as possible and we'll see how it
8 goes. If we have to call it back into order,
9 we'll do that.

10 I'm generally going in the order that you
11 signed in, but I also have the prerogative to
12 bring some logic to this. So, because it's
13 germane to one of the major components of the
14 last presentation, I'm going to call Neil
15 Gifford from the Pine Bush Commission.

16 MR. GIFFORD: Good evening, Mr. Chairman.
17 Thank you for the opportunity to speak this
18 evening. My name is Neil Gifford: the
19 conservator's conservation director of the
20 Albany Pine Bush Preserve Commission. I've
21 worked for the Commission for about 14 years
22 in various positions.

23 As you all know, one thing the Commission
24 does in addition to buying property and adding
25 it to the Preserve of fair market value, is

1 also commenting on development proposals in
2 overlay districts in development and zoning
3 changes.

4 The Commission members, as you know, are
5 made up of the Supervisor of the Town of
6 Colonie, the Supervisor of the Town of
7 Guilderland, the Colonie Executive, the Mayor
8 of the City of Albany, four citizens appointed
9 by the Governor, the Chapter Director of the
10 Nature Conservancy and it's being shared and
11 co-chaired by the Department of Environmental
12 Conservation Commissioner and the Commissioner
13 of New York State office of Parks and
14 Recreation and Historic Preservation.

15 Because all of those entities are
16 involved, the Commission works with those
17 various entities to provide comments. The
18 Commission is a non-regulatory public benefit
19 corporation created by the New York State
20 Legislature in 1988. We have no powers of
21 domain and no regulatory authority beyond the
22 borders of the Preserve. As I said, we do to
23 make recommendations or suggestions to
24 Planning Boards, Town Boards, the Common
25 Council of the City of Albany when proposals

1 are presented within what the Commission
2 considers the Albany Pine Bush Study Area.
3 That is approximately bounded By Central
4 Avenue, Western Avenue or Route 20 on the
5 South. It extends from Fuller Road out to the
6 Schenectady County border.

7 CHAIRMAN STUTO: Is that area defined by
8 statute?

9 MR. GIFFORD: Areas of the Preserve are
10 defined by statute. The study of the area is
11 not. The law requires that we create and
12 maintain our own Comprehensive Plan. In that
13 Comprehensive Plan or management plan and
14 final environmental impact statement - that
15 boundary is identified in detail.

16 It roughly covers about 13,000 acres
17 within that study area boundary. The
18 Commission went through our own public process
19 initially in 1993, again in 1996, in 2002 and
20 again in 2010 to evaluate undeveloped open
21 space in that area for four basic criteria.
22 This was to the degree to which they contain
23 existing historical significance, offers and
24 linkages for Preserve land, open space and to
25 which they support archaeological or

1 environmental resources like the species,
2 habitat, wetland resources or important
3 archaeological resources.

4 As was eluded to by Ms. Potts and by a
5 member of your own Board, the Commission did
6 take every opportunity as with a number of
7 other representatives throughout the public
8 planning process for the Comprehensive Plan to
9 make recommendations and suggestions. One of
10 the recommendations that was made to the
11 Comprehensive Plan Committee and to the Town
12 when they were reviewing the draft Comp Plan
13 was the Conservation Development Overlay
14 District or whatever the terminology that is
15 used in the Comp Plan for the Pine Bush area.
16 That was specifically because there were six
17 other Conservation Development Overlay
18 Districts proposed in the draft plan. There
19 was not one proposed for the Albany Pine Bush
20 area. We noted that the six other areas
21 support important open space that residents
22 that live there love very much and provides
23 environmental benefits. It is the only area
24 that supports globally endangered ecosystems,
25 45 documented wildlife species with

1 conservation need, several lists including the
2 species including state and federally
3 endangered species, threatened species and
4 species of threatened concerned. There are
5 also about a dozen globally rare plants. So,
6 it seems appropriate for the Commission to
7 make a recommendation that the Conservation
8 Overlay Development District be included
9 within the eastern end of the Town of Colonie
10 that more or less corresponded to the Albany
11 Pine Bush study area boundary established
12 years ago. We have not made, to the best of my
13 knowledge, any specific recommendation for
14 suggestions regarding zoning. We did make
15 recommendations regarding an overlay district
16 because I said the Pine Bush supports all of
17 seven Conservation Development Overlay
18 Districts - Pine Bush is the only one that
19 supports threatened and endangered species in
20 globally impaired ecosystems. It seems logical
21 that you would have a Conservation Overlay
22 Development District here.

23 Additionally, in 2007 the Comp Plan was
24 approved in the Local Land Use Law was
25 adopted. One of the changes was that a

1 significant amount of acreage in this section
2 of the Town had been purchased at fair market
3 value and added to the Preserve to support
4 some of these important environmental
5 resources; ie wetlands, endangered species,
6 threatened species or high-quality pitch pines
7 or oak barons. All of the Commission's work is
8 consistent with the management plan for final
9 environmental impact statements that went for
10 a full public review and that is available on
11 our website at www.albanypinebush.org. That
12 entire plan and the website outlines exactly
13 why these properties were valued, and what we
14 call a vision for the Albany Pine Bush
15 Preserve. That vision recommends open space
16 added to the Preserve over time through the
17 acquisition outright. We have done that many
18 times in working with the Nature Conservancy
19 and working with the State of New York, as
20 well as through conservation easements. It's
21 recommended and suggested in the Comprehensive
22 Plan. So, there are a number of tools in the
23 toolbox for us to work with property owners
24 and with each of the municipalities in the
25 Pine Bush study areas to balance economic and

Legal Transcription

1 environmental concerns. That is what we strive
2 to do in a non-confrontational and proactive
3 way.

4 CHAIRMAN STUTO: Is that fair to say with
5 respect to the application in front of us that
6 you have no opinion with respect to the
7 rezone, but you would like to maintain the
8 conservation overlay; is that right?

9 MR. GIFFORD: More or less, that is
10 correct, but the Commission today had not seen
11 the entire application for rezoning, the
12 environmental drafts impact statement or the
13 long environmental assessment form. So, the
14 Commission would at some point request the
15 opportunity to review that application in its
16 entirety. Yes, the Commission has no opinion
17 on the rezone itself. I think ideally you
18 would look at the use of any given area of any
19 given parcel and how that may affect the
20 adjacent Preserve land. We would not like to
21 see the Conservation Development Overlay
22 District lifted. We believe it would be
23 inconsistent with the Comprehensive Plan and
24 with SEQRA.

25 CHAIRMAN STUTO: Thank you. Are there any

1 questions from the Board Members?

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

3 CHAIRMAN STUTO: At this point, I'm going
4 to go through the list.

5 Donald Zee?

6 MR. ZEE: Good evening. I'm an attorney
7 and I'm here I'm behalf of 2880 and 2894 Curry
8 Road, better-known as the site of the
9 Weatherguard Roofing facility. That property
10 currently has 250 employees on a daily basis.
11 The property owner pays tens of thousands of
12 dollars of taxes on it.

13 CHAIRMAN STUTO: How many acres?

14 MR. ZEE: He owns 5.8 acres. The concern
15 that we have are numerous with regard to the
16 current zoning of the property. We would like
17 it to be rezoned back to the industrial zone
18 use that my client acquired the property in
19 1989, as well as 1997. He has two parcels
20 there.

21 Part of the concern is that this industry
22 is changing. It's changing to a newer, greener
23 technology; green roofs etc. As a result,
24 there is going to be modifications that are
25 necessary to this industry and to the use of

1 this property. Based on the overlay zone,
2 based on the fact that the current
3 zoning -- my client was one of the first to
4 utilize green roofs - environmentally
5 sensitive for the roofing - they're going to
6 need to expand. Even the restrictions on the
7 property - they will not be able to expand
8 their business there. If they cannot expand
9 the business there, they will be forced to
10 move to another location. So, that is
11 something that will be a potentially adverse
12 environmental impact to the community. You're
13 talking about 250 jobs. You're talking about
14 the tax base that is generated from the
15 property itself.

16 With regard to the notices - I understand
17 what has been said. My clients have concurred
18 that they did not receive those.

19 Be that as it may, I'm here to also talk
20 about the Comprehensive Plan and analyzing the
21 Comprehensive Plan and that there are ways to
22 modify and amend the Comprehensive Plan. I
23 just ask the Town and this Board to look at
24 the zoning map that was in place in 2004.
25 Given what has transpired in 2007, it looks

1 like 60 percent to 70 percent of the
2 industrial zoned land in the Town is lost and
3 converted to residential uses. As a practical
4 planning matter, that's really part of the
5 charge of this Board to look at good planning
6 and to make recommendations to the Town Board.
7 Is it really appropriate for the Town to lose
8 60 percent of its industrial zoned land? In
9 fact, in the United States today we are losing
10 manufacturing jobs and industrial jobs. Now
11 you're talking about drying out the businesses
12 that are used and in need of the use of the
13 industrial lands. We're not talking about
14 bringing back all 1,100 acres of this land. By
15 doing this, you are bringing back a certain
16 percentage of industrial zoned land. This can
17 only have a positive effect to areas such as
18 the school system.

19 Secondly, I want to talk about some
20 comments that were stated. It was said four
21 times in the short presentation.

22 He says that the Pine Bush Preserve
23 Commission buys the land at fair market value.
24 I have to say that personally representing a
25 lot of clients, not only in the Town of

1 Colonie, but throughout the capital region
2 that I have been involved with -- probably the
3 transfer of 45 acres of land to the Pine Bush.
4 I have to say that 90 percent of them were not
5 willing participants, but they ultimately gave
6 in because the methodology in which the Pine
7 Bush Preserve Commission uses to determine
8 fair market value and the undue influence, in
9 my opinion, on the Planning Board, Town
10 Boards, Planning Boards, Zoning Boards is
11 incredible. They do impact fair market value.
12 What they deem as fair market value - I doubt
13 many of the property owners sitting here today
14 were even willing to sell their property for.
15 I think the creation of this overlay district
16 is making it so difficult for property owners
17 in the future for expansion purposes.

18 I talk about the people who own the
19 Weatherguard facility and probably other
20 businesses here - you are, in fact, driving
21 down the value of their property. In driving
22 down the value of their property, you're going
23 to drive down the value of the adjoining
24 properties as well which are vacant -

25 CHAIRMAN STUTO: I don't mean to

1 interrupt, but a lot of the points that you
2 are making are consistent with Mr. Caponera's.
3 We have a lot of people that we have to get
4 to.

5 MR. ZEE: I don't recall Mr. Caponera
6 saying anything about property values in the
7 sense of underlying -

8 CHAIRMAN STUTO: Are you near wrapping
9 up?

10 MR. ZEE: I didn't think there was a time
11 limit.

12 CHAIRMAN STUTO: You're right. I said
13 there was no time limit but if things get too
14 long since there are so many people here
15 tonight -- I just asked the question, are you
16 near the end? You're not near the end, is that
17 what you're saying?

18 MR. ZEE: No, I'm very close to the end.

19 I understand that the Town of Colonie
20 has had issues with regard to cash revenue;
21 the budget of the Town and the shortfalls of
22 money. For the Town to set aside 600 acres of
23 land and change the zoning from industrial to
24 residential - I believe the value of
25 residential land or if you're versus the

1 industrial zone land per acre is substantially
2 different. If you are satisfied changing that
3 zone and further compounding it by not lifting
4 the overlay district, you're going to reduce
5 the value of the land thus reducing the total
6 tax assessment in the Town. The burden of the
7 tax reduction is going to be borne by the rest
8 of the Town. I think that should be in
9 economic valuation. I don't know if that ever
10 took place when they did the initial SEQRA
11 reviews. I don't know if they considered what
12 the economic impact of the rezoning and the
13 loss of all this industrial zoned land, as
14 well as the future potential of the industrial
15 zoned land now that it is zoned exclusively
16 single-family residential would be. I think
17 those elements should be looked at.

18 A lot of people will not recognize thi,
19 but appearing before the Planning Board
20 notice - I know it's Victor's pleasure to come
21 here as is my pleasure, but it's a very costly
22 thing. There's Mr. Bianchine and Victor's
23 services and at the end of the day you're
24 talking about the review process. It's not
25 \$100 per acre of developed land, you're

1 talking about tens of thousands of dollars
2 that it costs a property owner to seek
3 governmental approval. If you're adding an
4 overlay district you're adding several
5 thousand dollars more to that.

6 I believe, Mr. Chairman, you had
7 mentioned the fact that there had been some
8 situations where the overlay districts - the
9 Planning Board set aside the requirements of
10 the overlay district to amend certain
11 criteria. I think given the fact of its
12 proximity to the Pine Bush Preserve lands,
13 that it would be very difficult for a property
14 owner if this overlay district is to stay in
15 place to allow for a waiver of requirements
16 for the overlay district.

17 Mr. Gifford had talked about being with
18 the Bush Preserve Commission. I've been doing
19 land planning for 25 years and honestly Save
20 the Pine Bush is a very important organization
21 that helps preserve the Pine Bush.

22 Back when the first cases came back in
23 1986 or thereabouts, they pointed out that
24 there was needed 2,000 acres of land for the
25 preservation of the Pine Bush. I believe now

1 they said they need 3,000 plus. I believe that
2 Mr. Gifford said they need 13,000. The area of
3 review was 13,000 acres. I read the
4 transcript - all 144 pages of that the other
5 day. They said that now they are expanding
6 into the Woodlawn area of Schenectady County.
7 So, at one point in time does the County,
8 State and Town say stop spending money to put
9 aside -

10 CHAIRMAN STUTO: I have 20 more names are
11 after yours. If I have this start imposing
12 time limits -- I'll let you come back at the
13 end.

14 MR. ZEE: I just wanted to say that at
15 some point in time there should be some
16 logical planning.

17 CHAIRMAN STUTO: Ralph Schimmel.

18 MR. SCHIMMEL: Thank you, Mr. Chairman.
19 My name is Ralph Schimmel. I live at 5 Lupe
20 Way, which is not contiguous to but adjacent
21 to the property known as 8 Lupe Way. All of my
22 remarks tonight are specifically designated
23 for the property being rezoned at 8 Lupe Way.

24 For the record, I live in the zip code
25 12304 and I attended all the Comprehensive

1 Plan meetings and I got notice as to the Town
2 and off the web which I might add is a
3 wonderful vehicle for people to use.

4 CHAIRMAN STUTO: Can you show us where
5 that is on the map?

6 MR. SCHIMMEL: It's right here
7 (Indicating).

8 CHAIRMAN STUTO: Thank you.

9 MS. DALTON: Mr. Schimmel, you attended
10 the last public hearing last year, did you
11 not?

12 MR. SCHIMMEL: Yes, I was and that was a
13 question that I had. The comments that we made
14 and the petitions that we submitted - I assume
15 that they're all going to be part of the total
16 record for this review?

17 MS. DALTON: I read them.

18 MR. SCHIMMEL: I thought you were going
19 to bring up about my participation on the new
20 Comprehensive Plan. Don't mention that,
21 please.

22 The other thing that I wanted to mention
23 is that 8 Lupe Way is an undeveloped piece of
24 land. It has been for as long as I've been
25 here which is 2002, and I'm sure many, many

1 decades before that since I've seen no
2 evidence that there was any. You're not
3 talking about a piece of property where there
4 is an existing business that has been
5 disturbed by this zoning process. Again, my
6 comments are relative to 8 Lupe Way. I live in
7 a development which is called Rose Garden,
8 which is in the area of maybe 30 or 35 houses.
9 Some are older than the new development. I
10 think that we have pretty close to
11 100 percent - everybody opposed to changing of
12 that parcel from single-family residence to
13 anything other than that.

14 Further, we are completely supportive of
15 the conservation overlay that exists there in
16 that particular area. I remind you that at
17 some point in the process here that Mr. Lupe
18 Owen was in negotiations with the Pine Bush to
19 take that parcel under their wing as the Pine
20 Bush. I think that those negotiations failed
21 because of whatever - whether it was money or
22 whatever it was. But there was consideration
23 at one point of having that area now called
24 8 Lupe Way as part of the Pine Bush.

25 The other thing that I want to talk about

1 is as I said in that 2010 meeting, I think
2 that the highest and best use for that parcel
3 of property is residential. There are a lot of
4 people that are going to be impacted by
5 anything other than residential in that area
6 and I see no other reason to change it. Quite
7 frankly, in the 2010 hearings and the hearings
8 that were done, I've heard no compelling
9 reasons to change that from what it is to
10 something different. Again, any change from
11 that zone will be a significant impact to the
12 residents in the area.

13 The other thing that I wanted to say was
14 an issue that I brought up which has nothing
15 to do with the zoning, but it's an issue I'll
16 make. Whatever you propose to do with that
17 parcel, I'd like you to address the issue of
18 ingress and egress. I had a discussion with
19 Mr. LaCivita about that. We're in an area
20 that's a dead end and it continues to expand.
21 It's a new subdivision down at the end of the
22 street which has six or seven new houses that
23 are there with no secondary way of egress out
24 of there. In the event of some natural
25 disaster or emergency, we're landlocked.

1 Anything that you do in this future parcel or
2 whatever it is that you recommend, that's
3 something that you should take under
4 advisement.

5 I don't know if you have any questions
6 for me. That's all I have to say.

7 MR. LANE: Within the proposed change
8 that Mr. Caponera presented, where would you
9 be? Is your lot the bottom one?

10 MR. SCHIMMEL: Yes, the bottom one, here
11 (Indicating).

12 MR. LANE: Would he be changed?

13 MR. CAPONERA: He would stay residential,
14 and that's the area where we propose the
15 101-foot buffer.

16 MR. LANE: But it remains residential.

17 MR. CAPONERA: Yes, it remains
18 residential.

19 CHAIRMAN STUTO: How do you feel about
20 his proposal of that 100-foot buffer?

21 MR. SCHIMMEL: If you propose to change
22 it, I think that's appropriate. It's my
23 opinion that I'm in opposition to that.

24 CHAIRMAN STUTO: The whole area or just
25 one particular parcel?

1 MR. SCHIMMEL: That whole parcel of
2 8 Lupe Way is about 50-some acres. Originally,
3 8 Lupe Way was one parcel in the subdivision
4 that I bought into. In some other process they
5 changed it so the entire acreage was
6 considered to be 8 Lupe Way.

7 MS. LUPE: They subdivided it and put
8 part of it as residential in the part that
9 you're in.

10 MR. NARDACCI: Sir, when did they develop
11 your -

12 MR. SCHIMMEL: In 2002. In the earlier
13 stages were back in 1990's.

14 MR. LACIVITA: Peter, I just had one
15 question.

16 Mr. Schimmel, I just want to be clear. We
17 heard about the rezoning of existing
18 industrial uses back to the residential. I
19 just want to be clear; 8 Lupe Way currently
20 exists as a vacant piece of land and was not
21 used back as industrial back when the
22 industrial was around?

23 MR. SCHIMMEL: That was my
24 understanding - that it was part of the
25 subdivision that I bought into. It was a

1 residential lot.

2 MS. LUPE: It was all industrial;
3 including his lot. When they built their
4 subdivision, they applied to have it rezoned
5 from industrial to residential. That's when
6 his development was done. It was all
7 industrial land.

8 MR. NARDACCI: Who applied? The owners of
9 the development?

10 MS. LUPE: It was my cousins. It was my
11 family.

12 MR. NARDACCI: They applied for a
13 subdivision change?

14 MS. LUPE: Yes, and we expanded - we made
15 a neighborhood there.

16 MR. NARDACCI: From the industrial zone.

17 MS. LUPE: From an industrial zone, yes.

18 MR. LACIVITA: But there is no industrial
19 activity going on today on that site.

20 MS. LUPE: It's adjacent to our
21 warehouses. It's all in between our
22 warehouses.

23 MR. SCHIMMEL: It's all vacant land,
24 except on Cordell Road.

25 MR. LANE: How many acres?

1 MR. SCHIMMEL: I saw somebody put a sign
2 up there that said for sale. It was CRBE. My
3 neighbor looked it up on the website and it
4 said something less than 60 acres.

5 MS. LUPE: It is.

6 CHAIRMAN STUTO: Thank you.

7 Thomas and Helen Romano.

8 MS. ROMANO: I just want to confirm that
9 yes, there was a committee formed by Mary
10 Brizzell. The purpose of it was a moratorium
11 in this area of the Town. A lot of this stuff
12 could have been a driving force with the
13 Comprehensive Plan to have developers to get
14 plans approved. The purpose of that was not
15 for rezoning. The purpose of that was for a
16 moratorium.

17 We usually met upstairs in Mary
18 Brizzell's library office. I think once we may
19 have met at the firehouse. There was one
20 meeting that was an informal meeting because
21 we were kind of getting bogged down and
22 nothing was really going forward. Several
23 people met at my house. No Town official was
24 at my house. The Pine Bush Commission was not
25 at my house. A bunch of us private citizens

1 got together and drafted a moratorium at which
2 time I did send it off to the Pine Bush
3 Commission and to the Town. That was the sole
4 purpose of it.

5 We've been having meetings since 1985. I
6 have gone to every LUMAC meeting. I gone to
7 all the Comprehensive Plan meetings. I'm sorry
8 that they didn't know about what was going on.
9 At the same time, there were plenty of places
10 that they could've found out. There's the
11 website that we all know about. I find it hard
12 to understand why they all get up now after
13 the fact and complain. They had a lot of
14 opportunities back then. I also live in the
15 12303 zip code and I got all the information.
16 That's all I really have to say.

17 CHAIRMAN STUTO: Thank you.

18 Mr. Romano?

19 MR. ROMANO: Hi. Thank you for the
20 opportunities here. This will be very long.
21 I'm totally in favor of the conservation
22 overlay. It doesn't restrict any development
23 at all. It saves the builder costs as far as
24 infrastructure, permits, development. You must
25 also take into consideration slopes and the

1 wetlands. Even in doing all of that, still
2 permitting and development can continue to
3 occur. So, once again I would hope that we can
4 continue to have the conservation overlay in
5 place. I think it's a good idea to address the
6 issue of existing buildings and existing
7 businesses that are operating. Some should be
8 grandfathered. However, I think it could be
9 dealing with something that may be could be
10 expanded into something that you really don't
11 want. I'm afraid that other individuals might
12 come from other areas of the Town and perhaps
13 say well, you rezoned these people, why can't
14 you rezone me? You're going to have to be
15 careful if you grandfather these people. I do
16 support the grandfathering to the existing
17 businesses. I believe the buffer zones are
18 critical and I would hope that the Board
19 Members would have an opportunity to come out
20 and see various features such as protected
21 stream corridors, wetlands and the abutment of
22 commercial and industrial with residential.
23 That never should've occurred, but it did
24 because of the way that the zoning was set up.

25 A few parcels of land went up for sale on

1 Cordell Road just recently. One of them was
2 106 Cordell Road. It was 1.7 acres. The asking
3 price is \$150,000. That's 1.7 acres. Another
4 parcel at 110 Cordell Road was 2.1 acres;
5 \$200,000; and 8 Lupe Way which was mentioned
6 earlier and consists of 56 acres and the
7 asking price of that is \$850,000. So, I'm not
8 certain that any of the zoning, as it appears
9 right now, is affecting the value of the land
10 that much. Thank you for your time.

11 CHAIRMAN STUTO: Thank you.

12 David Raber.

13 MR. RABER: I'd like to thank Susan for a
14 very comprehensive presentation. I like to
15 address briefly the mailing which I have never
16 received, or had known anything about.

17 I spoke to the previous meeting and
18 briefly said that I own other property and any
19 time that I've had any kind of impact or my
20 neighbors or any organization would impact my
21 property, I have received a registered letter.

22 I'm currently involved in property
23 downstate that's in the New York City
24 watershed, that I own. Any agricultural
25 Council in Delaware County by easements - they

1 come to the landowners and then make a
2 presentation to purchase the easement for
3 water quality, wildlife and preservation of
4 farmland.

5 I do disagree strongly with the concept
6 of the overlay. The overlay is not a purchase
7 of an easement. If the Pine Bush desires to
8 purchase an easement they should purchase an
9 easement. The overlay is a way to get around
10 purchasing an easement which compensates the
11 landowner for fair market value of the
12 property, which is affected by essentially an
13 overlay or an easement; whatever you would
14 like to call it has the same affect.

15 I do appreciate having the Pine Bush
16 surround our property. I think it's great. I
17 enjoy going to work. I enjoy looking out of
18 the field and seeing deer and turkeys in all
19 the land around us that they have
20 purchased - and I stress purchased. It is, I
21 think, a great asset to the Town of Colonie.
22 It's one of the reasons that we located our
23 business here. My partners and I all enjoy
24 wildlife. We all enjoy having a commercial
25 business. We employ roughly 30 individuals and

1 we like driving to work in the morning and
2 seeing deer and turkeys right next to our
3 building.

4 I would stress that when we purchased the
5 property for fair market value, it was
6 purchased knowing that it had commercial
7 zoning attached to the property. We did not
8 hear or receive any written notification
9 whatsoever. As soon as we did, we started
10 attending meetings and voicing our concerns
11 for how the process developed and how it's
12 continuing to develop. I do wholeheartedly
13 agree with what Victor and others have put
14 together, as far as presentations.

15 I asked earlier how much land Pine Bush
16 currently owned and I'm sure Mr. Gifford
17 knows - I don't know and I'm surprised that
18 nobody on the Board knew the answer. I assume
19 it's a substantial amount. Having said that,
20 I'm totally against how it devalues our
21 property and makes it harder for all the
22 property owners to develop their properties.
23 Thank you for your time.

24 CHAIRMAN STUTO: Charles Stokes.

25 MR. STOKES: I represent Callanan and

1 Kings Road Materials. I made a presentation
2 last year so I will pass.

3 CHAIRMAN STUTO: Last summer at the Town
4 Hall?

5 MR. STOKES: Yes.

6 CHAIRMAN STUTO: I remember seeing you
7 there.

8 MR. CAPONERA: They take our position,
9 Peter.

10 CHAIRMAN STUTO: Dr. Steven Doellefeld.

11 MR. DOELLEFELD: I would like for my
12 attorney to be able to speak on my behalf.

13 CHAIRMAN STUTO: Sure.

14 MR. NUGENT: Hi, my name is Tim Nugent
15 and I'm here representing both Watervliet Fish
16 and Game and Forbes Rifle and Pistol Club.

17 Those entities own much of the area that
18 was affected by your rezoning in 2007.

19 MR. LACIVITA: Members of the Board, this
20 was the fax that we received towards the end
21 of the day and it's in your packet that I gave
22 you.

23 CHAIRMAN STUTO: Give us one second.

24 MR. LACIVITA: It's behind the
25 environmental impact assessment form.

1 MR. NUGENT: Watervliet Fish owns
2 approximately 41 acres. Forbes owns over
3 59 acres. Together they have about 10 percent
4 of the area that was rezoned in 2007. They own
5 the 100 or more acres of which some 93 acres
6 have been rezoned. They are not part of this
7 application, but had they known that this was
8 going forward earlier, I'm sure they would
9 have asked to join. Just like the businesses,
10 these clubs receive -

11 CHAIRMAN STUTO: Let me stop you right
12 there.

13 Victor, is it your understanding that in
14 the current application that they're not
15 included in the application -

16 MR. CAPONERA: Correct.

17 CHAIRMAN STUTO: Joe, is there a way to
18 make sure that -

19 MR. LACIVITA: That we include them?

20 CHAIRMAN STUTO: That we make a clear
21 note that -- there are two parcels?

22 MR. NUGENT: Actually, there are four or
23 five parcels. There are three in particular
24 that were rezoned.

25 MS. VAIDA: Ms. Potts, didn't you do

1 placards and notifications to the property
2 owners in this area so that everyone knew
3 about this?

4 MS. PERRY-POTTS: When I first talked to
5 people specifically, I did not notice that
6 they were off of 155; Rifle Range Road. I did
7 not realize that was there. I didn't realize
8 it at all. I didn't realize until about six
9 months or year ago, when I did a more detailed
10 assessment of the area. If I had known, I
11 would've definitely -- as soon as I did, I
12 tried to attempt to call them. They are
13 included in the overlay.

14 CHAIRMAN STUTO: Joe, the point I'm
15 making is that if we were considering
16 this - if they are similarly situated to the
17 other applicants we should at least give it a
18 very close consideration.

19 MR. NUGENT: That's something that I was
20 going to ask the Board to do. That is accessed
21 by what's known as Rifle Range Road, which is
22 a private drive. It's not a Town road. It's
23 owned by two different entities. There is one
24 owner for the top and then I believe Forbes
25 owns -

1 MR. DOELLEFELD: There are actually three
2 owners of that road. The Vacarelli properties
3 that are right out at 155; they own the first
4 few hundred feet. Forbes owns three eighths of
5 a mile, I would guess. Watervliet owns the
6 remainder.

7 CHAIRMAN STUTO: They're all on Rifle
8 Range Road?

9 MR. DOELLEFELD: They all have Rifle
10 Range Road as an address.

11 CHAIRMAN STUTO: I understand that, but
12 they're all for shooting rifles and that type
13 of thing?

14 MR. DOELLEFELD: The Vacarelli property
15 is not.

16 CHAIRMAN STUTO: Are the Vacarellis
17 represented here?

18 MS. PERRY-POTTS: I don't think there's
19 one single-family that's they're still zoned
20 industrial.

21 MR. NUGENT: This upper portion that is
22 largely industrial is what I'm about to
23 comment on. You have a privately held road in
24 the Town that has now created essentially a
25 land lock single-family zone, which can only

1 be accessed by private road over which other
2 entities have control.

3 CHAIRMAN STUTO: You don't have easement
4 over the road?

5 MR. NUGENT: The club has an easement.
6 Additionally, the club, Watervliet, has two
7 parcels here; a roughly 28-acre parcel and an
8 11-acre parcel. The 11-acre parcel is subject
9 to a no development restriction.

10 CHAIRMAN STUTO: To whose benefit?

11 MR. NUGENT: The Nature Conservancy.
12 Similarly, a large section of the [SIC} Baxson
13 parcel which is somewhere around 59 acres
14 owned by Forbes has similar restrictions.
15 While the Town has created a single-family
16 residential zone, nothing can get built there.
17 Again, it's very restricted access. While they
18 may have an easement to drive in and out, that
19 easement or roadway is not going to rise to
20 the standards of the Town road. You're not
21 going to be able to get your emergency
22 vehicles, school buses or fire trucks on
23 there. I don't understand the purpose of the
24 rezoning particularly when one of the factors
25 in your Comprehensive Plan, as Ms. Vaida

1 pointed out, was to encourage recreation. This
2 29-acre parcel was zoned other outdoor uses
3 and now it's zoned single-family.

4 MR. LANE: Is that a designation that
5 exists anymore?

6 MR. LACIVITA: That's one that has
7 changed and is no longer utilized.

8 MR. NUGENT: If your purpose was really
9 to encourage recreation, you took something
10 that was zoned basically for recreation and
11 made it a single-family use. It doesn't exist
12 any more.

13 MR. LANE: So, in your letter you want to
14 go back to what the original zoning was.

15 MR. NUGENT: And if they don't, have that
16 zoned industrial, as most of the parcels in
17 the area were.

18 MR. LANE: But you just said they can't
19 develop because there were restrictions on it.
20 Then you'd want to go back to industrial?

21 MS. VAIDA: That land is vacant land?

22 MR. NUGENT: Yes, most of the land is
23 vacant. There is a clubhouse and a couple of
24 outbuildings.

25 MS. VAIDA: The rezoning hasn't effected

1 your clients' ability to continue their
2 business there, correct?

3 MR. NUGENT: They continue to operate
4 this as their clubs.

5 MS. DALTON: How does the new zoning
6 inhibit them from using their existing
7 property in the ways that they use their
8 existing property? That's the part I'm not
9 understanding.

10 MR. NUGENT: Currently it doesn't, but it
11 certainly restricts their ability when they
12 want to go and make any improvements, or if
13 they want to sell the land in the future.

14 MS. VAIDA: Well, they can sell it if
15 it's used for the same purpose under the
16 current Zoning Law because the current Zoning
17 Law does allow nonconforming uses to continue.

18 MR. NUGENT: I understand. But if they
19 don't find someone who fits that niche, then
20 they're restricted to that market.

21 CHAIRMAN STUTO: It's a limited market.

22 MR. NUGENT: Yes, extremely limited.

23 MS. DALTON: Am I misunderstanding? You
24 can sell it for a single-family residence or
25 you can sell it for the same type of use.

1 MR. NUGENT: But they don't have a
2 roadway in.

3 MS. DALTON: I'm assuming that if
4 somebody bought the property they would have
5 to negotiate the same kind of easement that
6 you have negotiated.

7 MR. NUGENT: Even if they get the same
8 easement, the easement isn't going to allow a
9 road that can be built to Town standards. I
10 don't think that this Board is going to allow
11 development of 59 acres into residential
12 houses without being able to have adequate
13 roadways. It's ingress and egress only. It
14 doesn't allow for utilities to be brought in.

15 MS. DALTON: I'm sorry. If it was only
16 for recreational and outdoor use in the past,
17 then even if it was returned to its former
18 zoning, you could only sell it to someone for
19 recreational and outdoor use. In this case,
20 what we're talking about is you can either
21 sell it to somebody for recreational and
22 outdoor use or you can now sell it to somebody
23 for residential use if they can figure out how
24 to make it work. So, what it looks like to me
25 is that you have more options than you had

1 before. Could you explain to me how I'm not
2 seeing this properly?

3 MR. NUGENT: I'm not sure I can. All I
4 can do is repeat myself. There is no access.

5 MS. DALTON: I understand that.

6 MR. NUGENT: Without access, nobody is
7 going to buy it.

8 MS. DALTON: But there wasn't access
9 before. You have lost nothing that I can
10 understand. You had a restricted use parcel
11 before without access. You have a restricted
12 use parcel now without access. You've lost
13 nothing that I can see.

14 MR. NUGENT: The ingress and egress
15 easement would allow industrial, or if some
16 person wants to come in and do commercial
17 activity or industrial activity - to drive
18 through the property. Those people don't call
19 on the Town to have services such as school
20 busses to pick up their children.

21 MR. LANE: If industry came in there,
22 industry would need to have a Town standard
23 road. They wouldn't need to bring utilities.
24 That's no different than a residential
25 development. They would still have to meet

1 those requirements.

2 CHAIRMAN STUTO: The point is here is
3 that there are still access problems. If you
4 come in for a major site plan review for an
5 industrial development, you're still going to
6 need access and have the same issues that you
7 would with a residential subdivision. You'd
8 have the same utility problems as well.

9 MR. NUGENT: Except that if it's zoned
10 similarly to the other parcels, it's much
11 easier to merge your parcels and bring in the
12 necessary utilities and roadways.

13 CHAIRMAN STUTO: It's the same argument.

14 MR. CAPONERA: The bottom-line is that if
15 you look at the yellow here, you can see that
16 it was rezoned from industrial to residential.
17 That's all. It sounds like there are some
18 restrictions that are attached to it that I'm
19 not aware of, but the fact of the matter is
20 that it was rezoned from industrial to
21 residential. The idea is that I suspect that
22 if there was any idea of redevelopment, you
23 could more easily market the property to
24 surrounding properties if it was where it was.
25 I just wanted to add that.

1 CHAIRMAN STUTO: But the property to the
2 left - is that green? What is that listing?

3 MR. CAPONERA: Conservation. I will say
4 that we're not asking to have that rezoned.

5 CHAIRMAN STUTO: I understand. I think
6 that it's a unique property. I think that we
7 should give it close scrutiny.

8 MR. LANE: He's going to need a more
9 specific proposal than going back to what it
10 was.

11 MR. NUGENT: We still have 70 acres that
12 was previously zoned industrial. There are 11
13 here, 59 or so there and then roughly 29 here
14 (Indicating) that was previously the other
15 outdoor sports area.

16 MS. VAIDA: So, that could only be used
17 for other outdoor sports - the 29 acres? Is
18 that which you're saying?

19 MR. NUGENT: I think the 29 or 27 was
20 just outdoor sports, previously. Everything
21 else was industrial. I'm suggesting that
22 everything else surrounding it was industrial.
23 The club would be fine going forward with the
24 previous use. That would make it industrial
25 like everything else and makes it much more

1 attractive to the surrounding parcels.

2 CHAIRMAN STUTO: Thank you.

3 Dan Kelly.

4 MR. KELLY: Good evening. Planning Board,
5 I like to thank you for setting up a special
6 meeting tonight. Being a property owner and
7 the business owner at 119 Morris Road, I
8 believe we're part of Sue's - we're with her
9 on that. I purchased the property in 1998.
10 We're an industrial manufacturing operation.
11 When I purchased it, it was industrially
12 zoned. Through this rezoning process, we're
13 office commercial.

14 CHAIRMAN STUTO: What kind of business do
15 you have?

16 MR. KELLY: We're a commercial
17 architectural woodworking company.

18 CHAIRMAN STUTO: Design and manufacture?

19 MR. KELLY: Yes, design and manufacture.
20 We have a couple tractor-trailers a today and
21 probably another dozen different delivery
22 vehicles in and out of our facility.

23 CHAIRMAN STUTO: How large is the parcel?

24 MR. KELLY: It's probably about 6 acres.
25 We're a 15,000 square foot facility.

1 MR. LANE: What's the name of the
2 business?

3 MR. KELLY: Hudson River Industries.

4 We received no notification of all. I
5 don't live in the Town of Colonie. We received
6 no notification, or e-mail, or any other form
7 of correspondence.

8 I am a planning Board in another Town. I
9 make a point to make sure that any
10 modifications - that the property owners are
11 notified by certified mail or other means.
12 That certainly didn't take place in this
13 process. I just want to say that I'd like to
14 have the zoning that we had before. I think
15 that Sue's proposal is reasonable. I think
16 they left a lot of green space. The buffers
17 have been left in place. I think those
18 properties should be rezoned to industrial
19 zoning.

20 MS. VAIDA: This rezoning has not
21 affected your ability -

22 MR. KELLY: This rezoning has most
23 definitely affected the value of my property.

24 MS. VAIDA: But you can continue the
25 business.

1 MR. KELLY: I can continue to operate.
2 That's absolutely correct. If I choose to sell
3 this property, it's an industrial building.
4 So, who knows what someone might want to do in
5 that building some day? It's going to greatly
6 restrict the value of that property. So, it's
7 a detriment to my property rights.

8 MS. VAIDA: Unless you were selling your
9 business?

10 MR. KELLY: To the same exact type of
11 operation; that's correct. That really limits
12 the market and greatly reduces the market
13 value of my property.

14 MR. LACIVITA: I have one question. Based
15 on the original application that was submitted
16 to us by Ms. Perry-Potts, 119 Morris
17 Road - based on the map that was provided, it
18 shows 3.1 acres and you just stated that your
19 parcel is about six acres. Did you acquire
20 some since then?

21 MR. KELLY: No, that's correct. I
22 misspoke. That sounds about right. If that's
23 what it says on the map, then that's what it
24 is.

25 MR. LACIVITA: Thank you.

1 CHAIRMAN STUTO: Don Allard.

2 MR. ALLARD: Mr. Chairman and Board
3 Members, my name is Don Allard and I live at
4 92 New Shaker Road. I would say I'm about a
5 half a mile from the Pine Bush, or a five
6 minute drive to some spectacular unique
7 natural area. Every minute I can I try to get
8 out there and hike. I urge all of you that if
9 you have a map out there to explore it, that
10 you find out what you've got here. You've got
11 a real gem. I just would like to encourage the
12 Board to leave the zoning the way that it is
13 currently; single use with a conservation
14 overlay.

15 I think that the previous administration
16 did a great favor in working to develop a
17 Comprehensive Plan. I did get the survey. I
18 remember getting it very specifically. I
19 turned it in. I think that there are thousands
20 of Colonie residents that use this area on a
21 daily basis.

22 There is a high percentage of lawyers
23 tonight. I wish there were more Colonie
24 residents here to speak about the overall
25 benefit of this area and that's all I wanted

1 to say. Thank you.

2 CHAIRMAN STUTO: Thank you.

3 Mark Rockwell.

4 MR. ROCKWELL: I own 97 and 99 Morris
5 Road. I'm sure that you're familiar with my
6 location. I purchased less than an acre of
7 property in 2005. In 2006 I went in for a
8 permit to put barriers in my parking lot and
9 found out through the Planning Department that
10 they had rezoned me. I never got notification
11 of it.

12 CHAIRMAN STUTO: Are you in business or
13 are you intending to be in business?

14 MR. ROCKWELL: Yes, I'm in businesses;
15 Rockwell's Autobody. When they rezoned my
16 property from industrial to residential, it
17 took me out of compliance with the EPA. I'm
18 kind of in turmoil. I've been in turmoil since
19 I found out about the rezoning change. I've
20 been walking on eggshells. I can't even really
21 do business the way that I want to do business
22 because I don't know where I stand as far as
23 what is required of me.

24 When I purchased the building to comply
25 with the Town of Colonie, one of the

1 requirements was to put a spray booth in. They
2 gave me a year's time to do that. I came to
3 the point where I was going to purchase the
4 spray booth, which was \$56,000. I went in and
5 found out that they had rezoned me so I had
6 stopped the sale on the spray booth which
7 takes me out for compliance. Since 2005 I've
8 been in turmoil. I really don't know how to go
9 forward.

10 CHAIRMAN STUTO: Can I ask how you're
11 conducting your business? It doesn't sound
12 like you're doing what you intended to do.

13 MR. ROCKWELL: Because of the fact that
14 I'm not in compliance - because of the fact
15 when you rezoned me, you took me out of
16 compliance.

17 CHAIRMAN STUTO: Are you doing any
18 business?

19 MR. ROCKWELL: Yes, I'm doing business.

20 CHAIRMAN STUTO: Detailing but nothing
21 else?

22 MR. ROCKWELL: I do auto body repair and
23 detailing. The thing is that I'm at a
24 standstill. I don't know which way to go
25 because of the fact if you're going to rezone

1 me to residential, you pull my livelihood away
2 from me, my retirement. I've been a struggling
3 artist. I purchased the property because it
4 was zoned industrial. If you keep it
5 residential, there is no point in me
6 continuing there other than the fact that I'll
7 make it a living hell for everybody. That's
8 what it will turn out to be.

9 I don't mean to be argumentative or rude,
10 but I worked hard to get to where I am. I'm
11 not going to let anyone pull it out from under
12 me, at this point in time. Thanks for your
13 time.

14 CHAIRMAN STUTO: David Fusco

15 MR. FUSCO: My name is David Fusco. I own
16 the property at 151 Cordell Road. Victor
17 Caponera and Joe Bianchine are here
18 representing me tonight. I just want to let
19 everyone know that I'm in favor of the rezone
20 to put our properties back to where we were.
21 Thank you.

22 MR. LANE: Can you tell us a little bit
23 about your property?

24 MR. FUSCO: The property at 151 Cordell
25 Road was the former Krause Junkyard. I

1 purchased it and found out I couldn't use it
2 as I wished to, which was a construction
3 company and maintenance shop. I then hired
4 Victor Caponera and Joe to come in and apply
5 for a use variance, which I was granted at
6 about nine months of my time and \$40,000. So,
7 I'm in full compliance.

8 If this overlay is not removed, I'm
9 thinking about going back to the Assessor and
10 since I'll probably be losing another
11 20 percent of my property, I'm going to ask
12 for a 20 percent reduction because of the
13 value that I'm losing from this overlay. I'm
14 bordering wetlands and I have a creek that
15 goes through the center of the property, which
16 I lose 100 feet on each side of the creek for
17 a buffer area. I don't have much property to
18 use out of the four acres - which I understood
19 going in there, but with the Conservation
20 overlay in play, I lose another 20 percent of
21 my profit. I have made a little more than an
22 acre property use out a piece of property that
23 Mr. Krause let me use prior to purchasing it.
24 I purchased the property and now I can't even
25 do what I was doing before I owned it.

1 I do a lot of development in the Town.
2 Joe LaCivita knows of me. I want to do the
3 right thing. We acquired the use variance, but
4 as I listen to all these people here and with
5 this conservation overly, I didn't realize
6 what an impact that it had on my property.
7 Just doing some math and quick thinking here,
8 I think that I'm going to go to the Assessor
9 in the morning and talk to him about reducing
10 the value of my property.

11 MS. VAIDA: What is your business that
12 you got a variance for?

13 MR. FUSCO: It's a construction company.

14 MS. VAIDA: What did you say about a
15 junkyard?

16 MR. FUSCO: Prior, it was Krause's
17 junkyard on Cordell Road next to Callanan. We
18 cleaned it up.

19 MS. VAIDA: So, you didn't want to use it
20 as a junkyard anymore.

21 MR. FUSCO: No, we didn't. We wanted to
22 use it as a construction parcel.

23 MS. VAIDA: How big is it?

24 MR. FUSCO: It's a little more than four
25 acres.

1 MS. VAIDA: And you got a use variance.

2 MR. FUSCO: I got a use variance. It cost
3 me \$40,000.

4 MS. VAIDA: But that runs with the land.
5 You're not in any danger -

6 MR. FUSCO: No, I'm in full compliance.
7 Thank you.

8 CHAIRMAN STUTO: John Wolcott.

9 MR. WOLCOTT: My name is John Wolcott. I
10 live at 344 Sheridan Avenue in Albany. I'm a
11 member of Save the Pine Bush. I have to say
12 that a lot of what's been said tonight applies
13 to open space versus industrial zoning and so
14 forth. This isn't ordinary open space we're
15 talking about. I'd like to reiterate two
16 things.

17 This is globally unique and it's
18 absolutely beautiful land. It's recreation for
19 the residents. There are people that are
20 concerned about it all over the world from a
21 natural standpoint for of its natural species.
22 It's geologically unique, too.

23 I find some overstatements and
24 mischaracterizations and they're typical. Any
25 development eases the tax burden and helps the

1 school taxes. Well, yes and no. With regard to
2 the residential zoning and putting in the
3 utilities and so forth, afterwards, the tax
4 payers have to pay for the road. You lose
5 something really valuable here and it's beauty
6 and you lose the availability for education
7 and science. It started out as 58,000 acres
8 and now it's down to a lot less. It's less
9 than 10 percent of that.

10 I don't think that the Commission or the
11 Nature Conservancy are asking for that much.
12 Even in the percentage in the Town, that's
13 been exaggerated. As a public body, you're
14 committed to seeking the common good.

15 I participated in the Comprehensive
16 Master Plan. I didn't go to too many meetings.
17 I sent stuff in by mail. I made some
18 suggestions and want the parties to stick with
19 the Pine Bush Commission on both the zoning
20 and the Comprehensive Plan. Conservation
21 zoning is just zoning that's compatible with
22 nature, like recreation uses like the
23 Watervliet Rod and Gun Club.

24 Another mischaracterization that I see is
25 going back to 50 or 60 years - that's

1 incorrect. It wasn't industrial. It could have
2 been. It actually was by Karner Crossing, but
3 that's not the area that we're talking about.
4 That was all barns.

5 Also, 50 or 60 years ago, even back
6 before 1966, people didn't know what the Pine
7 Bush really was. A minority of people did.
8 Now, they know a lot more. That's why there is
9 rezoning and the conservation overlay. I think
10 that's reasonable.

11 If you look back at what I sent in, I
12 asked for that and I also recommended a
13 financial plan. The Town could have bought up
14 a lot of the land since 2007 in a very
15 reasonable and affordable way by implementing
16 the provisions that are available to the
17 state. That was used in the Town of Warwick in
18 Rockland County. A small percentage of all
19 property transfers are put into a fund that's
20 managed by citizens for open space in any town
21 or county. What is called community protection
22 law, which is significant? Open space protects
23 a community. It's true. It does. I know people
24 believe that they own land outright and they
25 can do anything that they want to do with it.

1 That's modified. That's what we have zoning
2 for. You can't dam up a creek and have it
3 going into a neighbor's parcel to do damage or
4 cut down a row of trees that are windbreakers.
5 When you get into the terminology, land is
6 owned in tenancy, tenancy in common, tenancy
7 in its entirety and so forth.

8 MR. NARDACCI: I'm sorry to interrupt.
9 I'm hoping that you can wrap it up so that we
10 can move on.

11 MR. WOLCOTT: I'll make this quick.

12 I'm currently informed that one of these
13 landowners or representative told a
14 representative of the Pine Bush Commission
15 that we'll never sell anything to you. If
16 that's something that's spreading around, the
17 only thing that I can say is that we're going
18 to lobby for taking land by eminent domain.

19 MR. ROSANO: This is for the record.

20 How much of the Pine Bush Preserve
21 actually falls within the Town of Colonie?

22 MR. WOLCOTT: Quite a lot of it.

23 MR. ROSANO: How many acres?

24 MR. WOLCOTT: I'm not sure.

25 MR. ROSANO: If you can't answer it, I

1 can ask Mr. Gifford to answer that.

2 MR. GIFFORD: I don't know exactly off
3 the top of my head. I believe it's about 900.
4 It's outlined in the management plan. It
5 breaks out the existing Preserve property for
6 each municipality and the acreage where the
7 municipality is recommended, in addition to
8 the Preserve.

9 MR. ROSANO: How much in taxes do you pay
10 to the Town of Colonie?

11 MR. GIFFORD: The Commission doesn't pay
12 anything. The Commission doesn't actually own
13 the land. Each individual Commission members,
14 like the Town of Colonie, Town of
15 Guilderland -

16 MR. ROSANO: So, let me cut to the chase
17 here. Every time you take over property in the
18 Town of Colonie, you're taking tax dollars out
19 of our revenue, right? Am I right, or am I
20 wrong?

21 MR. GIFFORD: That's correct.

22 MR. ROSANO: You're telling me that every
23 time you buy a piece for property at fair
24 value, you're taking it off the tax rolls.

25 MR. GIFFORD: That's correct and it's

1 dedicated to the Preserve.

2 CHAIRMAN STUTO: The Estate of Benjamin
3 Valentine.

4 MR. VALENTINE: I'm not the best public
5 speaker, but I purchased this property in the
6 late 60's or early 70's on Morris Road, Kings
7 Road and Curry Road. Benjamin had the property
8 because he wanted to build. He passed now. He
9 started to build and all of the sudden they're
10 cutting down on the appraised value. He's gone
11 now. What are we supposed to sell the
12 properties for? Now that you've changed it,
13 it's a lot less. It creates a financial burden
14 for his estate.

15 CHAIRMAN STUTO: I just want to pause for
16 a second. We didn't change anything, just for
17 the record. A couple of people have said that.
18 What happened was - there was a rezoning done
19 in 2007 by the Town Board which was from a
20 prior administration. That's not the function
21 of this Board, which is the Planning Board and
22 none of the people on this Board right now
23 were around back then. That's the same thing
24 for the Town Board. Only because a couple of
25 people have said that - I wanted to make sure

1 that we all understood.

2 MS. DALTON: Mr. Valentine, before you
3 move on I just want to ask you a question
4 about what you just said. You just said that
5 when your dad passed - and I'm sorry for your
6 loss - that the property was appraised. What
7 year was that and what was the appraised value
8 at that time?

9 MR. VALENTINE: It was in '05 and I don't
10 have the appraised values with me. Now, it's
11 going to be lower -

12 MS. DALTON: You don't know for certain.

13 MR. VALENTINE: If we leave it like this,
14 it's going to be lower.

15 MS. DALTON: But you can't tell me that
16 you've lost five percent or ten percent? You
17 don't know right now what the amount of
18 value -

19 MR. VALENTINE: The property that is
20 there right now is worth a considerable
21 amount, and we have to pay Uncle Sam. Now,
22 that cuts us back. That's going to create a
23 real problem.

24 CHAIRMAN STUTO: Can I ask how many acres
25 you're talking about?

1 MR. VALENTINE: About 30 acres, then he
2 has another property across the road there.
3 That's in Guilderland. I'd like to see it be
4 returned back to what it was and then after,
5 if the people that own property - give them
6 the option to change it back individually, if
7 they would like to. That would be fair. It
8 just blocks all the use for these people that
9 have properties. They count on it to pay their
10 taxes. You're shortchanging them on their
11 abilities to make a dollar and to provide
12 revenue for the Town.

13 I'm a conservationist. I love nature. I
14 respect anything that you have to say about
15 nature. There is one bad thing about the Pine
16 Bush that anybody that has spent time there
17 would understand. The tick problem is killing
18 people there. That's one thing that should be
19 addressed. Rather than buying property and
20 creating more tick area - instead of
21 introducing a snake or a spider or animal or
22 predator to eat the ticks -- a good friend of
23 mine died of Lyme disease and he used to stay
24 over there all the time. He lived right there.
25 That's something that we all have to worry

1 about. If you did bring back industry, it
2 would eliminate a lot of the tick problems. It
3 wouldn't give them a lot to live on. There are
4 many other places for people to live without
5 having them get diseases from where they live.
6 I just wanted to say that if you had a chance
7 to redo this again, I would appreciate
8 consideration to bring it back to how it was,
9 initially. Thank you.

10 CHAIRMAN STUTO: Thank you.

11 Jennifer Barone.

12 MS. BARONE: First of all I'm a resident
13 and a citizen. I live at 68 Morris Road. I've
14 spent six months of my life since I was 15 or
15 16 - I've had Lyme disease and lived
16 downstate, actually. I got misdiagnosed. My
17 life has been severely impacted by it. I've
18 been on disability and I've been re-infected
19 many times over the last 23 years since I
20 originally got infected. Actually, I haven't
21 been able to work because of the Lyme disease
22 and complications from it along with lead
23 poisoning. That wouldn't improve with any
24 industrial development. That would get worse
25 with more pollution and with the increase of

1 heavy metals and all the other things in our
2 environment. A lot of people have heavy metal
3 poisoning and aren't aware of it because the
4 blood test actually didn't show it. I actually
5 had to do a special kind of urine test.

6 You can get rid of all the trees, but you
7 still wouldn't get rid of the ticks. You can
8 get Lyme disease in New York City and any
9 other city. It's essential to the life cycle
10 of the tick to be able to reproduce and
11 complete the life cycle. They need a rodent;
12 either a rat or a squirrel, in addition to a
13 large mammal and it's been proven. Concreting
14 this area is not going to make any difference.
15 It would probably make the population worse
16 because you're killing off all the natural
17 predators that feed on the rats and the
18 squirrels that would help decrease the tick
19 population; like the eagles and the hawks and
20 all of birds and prey and all the other
21 animals that would feed on them.

22 Of all of the opinions that I
23 got - almost everybody in the community except
24 for one agreed to sign my petition. I did
25 contact almost every single person on my road;

1 Morris Road. We don't have a lot of people on
2 that road. The initial signatures that I got
3 were about 80 and they're not all from Morris.
4 Some of them are from the roads next to mine
5 because we don't have a lot of people on that
6 road, which is the main reason that I and most
7 other people live there because we like living
8 in a semi-rural environment. We like the clean
9 air. I have asthma and I need to have clean
10 air around me. Any kind of development is not
11 going to help that.

12 The total signatures from all of the
13 petitions is about 300. They were all obtained
14 from only a few concerned residents and
15 citizens who went around to get them from
16 their neighbors. We're not from any group.
17 We're not affiliated with any group in doing
18 these petitions. We all did them on our own.
19 All the signatures are from residents; most of
20 them from residents right in this immediate
21 neighborhood in the Town of Colonie and in the
22 Town of Guilderland.

23 We're all opposed to the rezoning and if
24 the conservation overlay changes, any kind of
25 rezoning would be a complete disaster

1 environmentally in terms of public health, our
2 quality of life, our property values and
3 homes. We're not just talking about our
4 businesses; we're talking about where we live.
5 Never mind our businesses or lack of ability
6 to work. If we have no place to live, that
7 doesn't matter. If you destroy our property
8 values, we have nothing. For me, personally,
9 that's all I have. I don't even have that. The
10 bank has it. If you do any kind of
11 development, there is no way that I can ever
12 sell it for anything close to the value. I
13 still can't sell it for close to the value now
14 because I got a neighbor down the road selling
15 mulch. So anytime the temperature gets warm,
16 my whole house and yard stinks like horse
17 manure now. It smells like I'm living next to
18 a horse farm. This is just from some guy
19 selling mulch. This is not some big business.
20 This is a very small business down the road. I
21 was surprised to see how much it actually
22 stunk, but I couldn't sit in my back yard. I
23 had to sit in the air conditioning. It was
24 very unpleasant to be in the house smelling
25 that, as well, having had the fans blowing the

Legal Transcription

1 smell in. The guy next store has been
2 operating an illegal business since I've moved
3 into my house. He shares a driveway with me.

4 He is zoned as a residential property,
5 but is running a commercial business out of
6 his property. I've complained several times to
7 people that work the Building Department in
8 the past. They did try to contact him, but
9 nothing was ever done. My question is: Why
10 didn't the Town do something to force him to
11 comply to the zoning that is already
12 there - since he is zoned residential? He runs
13 a super small business out of there, too. He
14 just got a couple of trucks. He's burning
15 garbage back there, which is also illegal.
16 He's storing construction debris back there.
17 That's the view out of half the windows out of
18 my house now. It's looking at his debris that
19 he lays back there. I've also complained about
20 that and I've called the Fire Department.

21 I hate to see what's going to happen if
22 we do change the zoning anymore and allow
23 these people any more leeway than what they
24 already have. They're abusing and impacting us
25 already with what they're doing. It's

1 basically at the limit right now for what
2 they're doing.

3 As Mr. Romano mentioned before,
4 residential, commercial and industrial
5 property should have never been put right next
6 to each other ever.

7 When I bought my house, I didn't even
8 know my own house was zoned industrial, even
9 though all the properties around it are zoned
10 residential and now it's commercial. It used
11 to be industrial in the old zoning. All the
12 properties around me are zoned residential; we
13 are all residences. We've been residences
14 forever, but it was zoned industrial. The
15 zoning was originally messed up and made no
16 sense at all. It still is nonsensical. It's
17 somewhat better than it was before. It's at
18 least somewhat more of a balance than it was,
19 I would say, restrict more of the harmful
20 development by keeping it to a commercial
21 office, instead of industrial. I'm not saying
22 that it's good, but it's definitely preferable
23 to any changes. Everyone agrees.

24 I don't think that it's fair to destroy
25 livelihoods any more than they've already been

1 impacted by this and by the shop chopping down
2 the road.

3 I don't even feel safe walking down the
4 road by myself anymore. I can't walk my dogs
5 down my road. I have to drive a couple blocks
6 over to one of the dead end streets and walk
7 them down there or drive them to a park and
8 walk them. That's because of the traffic on my
9 road and because mostly the truck traffic.
10 They do speed.

11 The petition did ask for more help with
12 the traffic control with the truck traffic to
13 actually eliminate all nonresidential truck
14 traffic so that just people that did business
15 would drive there. Most people come through
16 during rush hour. They come through in the
17 middle of night from 890. They have a lot of
18 other options. They can stay right on 890 and
19 go to State Street and Central Avenue or
20 Route 7; wherever they need to go. There is no
21 need to cut through our neighborhood.

22 The rifle range is already horribly
23 disruptive. I actually called the Police
24 because I thought that people were hunting
25 illegally behind my house and setting off

1 fireworks. It was very early on a Sunday and
2 Saturday morning. It disturbed my sleep. My
3 dogs were so scared they were cowering and
4 hiding underneath the bed. I felt like I was
5 in a war zone. It was very traumatic. I went
6 through 911 in New York City and I've actually
7 been in a war zone before.

8 MR. NARDACCI: Can you make one or two
9 more points and then wrap up?

10 MS. BARONE: It was horrible. I live on
11 Morris, which is pretty far from the rifle
12 range. I'm just radically opposed to
13 development.

14 I lived in more than 20 countries over my
15 life and mostly when I was younger and in
16 college and after college. I spent three and a
17 half years in Nepal and India. Nepal is the
18 second poorest country in the world. India is
19 also one of the poorest. Some of the most
20 stunning, if not the most stunning natural
21 beauty on the planet was in the Himalayas, the
22 jungles, the grasslands and deserts. They
23 have huge conservations districts there. In
24 spite of blinding poverty and people going
25 through diseases and dying from terrible

1 diseases -- they don't even have enough money
2 for flip flops or soap or to send their kids
3 to school. Kids have to work in order to eat
4 either in the fields or outside the home. They
5 still preserve their environment. They
6 recognize the value of it. Even the poorest
7 people over there understand it. They do it
8 because they know that it's important to their
9 economy, their society and their own health
10 and future.

11 In spite of the extreme beauty over
12 there, they don't have the endangered Karner
13 Blue Butterfly. We are the only place in the
14 world that has this butterfly. There are a few
15 very isolated small areas on Long Island,
16 Saratoga, Maine and Michigan, but this is the
17 only area they have in the entire world,
18 except for these small pockets here and there
19 in the northeast. It's very limited and
20 they're endangered. It's the law that we
21 protect them. I think that it's probably a
22 violation of the species law to do any
23 development or to get rid of this conservation
24 overlay. There are other things with the
25 wetland development too. Even if it's not

1 violating that, it's definitely going to
2 violate the principals of that and affect our
3 water supply by contamination. It's going to
4 effect the greenhouse gasses.

5 CHAIRMAN STUTO: Can you bring it around
6 to a conclusion? We'd love to see your
7 petition, if you've handed that into Joe
8 LaCivita for part of the record.

9 MS. BARONE: I believe that this was made
10 part of the record at a meeting last year. I
11 did have some additional signatures that we
12 are going to make part of that record. I'd
13 have to make a photocopy for you.

14 MR. LACIVITA: Jennifer, if I could get a
15 copy of the newest one because what you gave
16 me in March of 2009 only has about 40 names
17 and you said you have 100 or maybe more. I'd
18 like to get a copy of that.

19 MS. BARONE: Okay. I'll give you a copy
20 of the whole thing.

21 CHAIRMAN STUTO: And you can also mail it
22 in, if you want to keep a copy.

23 MS. BARONE: I won't mention anything
24 that's actually written on the petition.

25 I'll just finish up real quick.

1 They say that this area is irreplaceable
2 once it's destroyed. We need to keep it a
3 conservation overlay to protect this. It
4 should be a permanent protection and not
5 subject to zoning changes by special interest
6 businesses. If these areas are lost, they
7 can't be replaced, replanted or regenerated.
8 If they did, it would take an enormously long
9 time to do that. It's not even sure that it
10 would be possible. We owe it to ourselves and
11 to our children. We need to think about the
12 future, please. Thank you.

13 CHAIRMAN STUTO: Anybody who hasn't
14 spoke?

15 MR. PHIBBS: My name is Jerry Phibbs and
16 I have owned 75 acres here in the Town of
17 Colonie probably longer than most people that
18 are on the Board. I'd like to give you a
19 little lesson in economics as to what happened
20 to me. I'll make it as fast as I can.

21 As a young guy, I bought that piece of
22 property because at that time it was Business
23 E. Then they changed it to the purple stuff
24 here (Indicating) and left me out of this. I
25 got changed to residential. At the time that

1 happened, I was not advised of it. I would
2 have never went for it. One of the reasons
3 that I bought it is that I was in the bottled
4 gas business and I delivered a lot of propane
5 to all the trailer parks up and down Central
6 Avenue. Whitestone Trailer Park which is on
7 the other side of the railroad tracks and now
8 part of what is the city dump, was the nicest
9 thing that was around.

10 I wanted to create a real nice mobile
11 home park; not a trailer park, but a mobile
12 home park. I went to the Town of Colonie and
13 asked them what I had to do. Within three
14 months they changed the zoning because they
15 didn't want a trailer park in that part of
16 Town. As a matter of fact, they changed the
17 zoning of where a mobile home park could be
18 and it was only in a couple of very small
19 places in the Town of Colonie that they left
20 for anybody to develop. I and been in Florida
21 and I had seen what was happening in Florida
22 and I wanted to do it up here. I brought my
23 family up on that piece of property and I paid
24 taxes on it for 50 years. I figured at some
25 point in life I could retire from it.

1 So, about 15 years ago, I tried to
2 develop it. Donald Zee represented me in front
3 of the Planning Board at that time. I had
4 spent \$155,000 with engineers making beautiful
5 roads through my property and everything that
6 they wanted and we came up with 115 houses
7 that could maximally be built in there, if I
8 made the roads square. If I made them with
9 twists and turns and gave the Pine Bush and
10 Nature Conservancy and everyone all the room
11 that they wanted and all the greenspace, I
12 could only get 95. Every time I came to the
13 Planning Board, I got knocked down again. The
14 Nature Conservancy, through Pine Bush, offered
15 to buy me. At that time I'm going to say that
16 the boom was really starting in real estate.
17 It was back in the 90's. I said, okay, I'll
18 live with the fact of it being forever wild.
19 He offered me \$890,000 if I remember exactly.
20 At that time, being developed, it was worth
21 close to two million. I agreed to take one
22 million. They came back to me a few years
23 later and offered me the million if I would
24 forgive half of that and give half of it away
25 as a donation so that I didn't have to pay

1 taxes on that million because it was all going
2 to be capital gains.

3 I'm trying to give you guys the facts.
4 You weren't around then. You weren't born and
5 if you were born, you were so small you don't
6 even know what was happening back at that
7 time. That's how long I've been on that road
8 and I've seen everything happen that can
9 happen there.

10 I've heard Mr. and Mrs. Romano on their
11 little piece of property to try to keep
12 everything forever wild. I'm not against
13 nature. I love to see the deer. I don't shoot
14 the deer. I see the turkeys. Today I was up
15 there and I saw a red fox. It's been a long
16 time since I've seen a fox.

17 Getting back to the story that I wanted
18 to give you about economics, after all of
19 these years and all of these problems trying
20 to develop and get the money when it was worth
21 a lot of money, they were having problems
22 raising the money. They bought different
23 pieces of property. Crossgates couldn't
24 develop. They mitigated different pieces of
25 property. They were screwing around and they

1 got thrown out of the Pine Bush or the Nature
2 Conservancy. They don't want to hear about it.

3 Who asked a question about them paying
4 taxes? The minute that they get their hands on
5 your property - which they will never pay fair
6 value for - they'll screw you around and I'll
7 get back to that. They'll pay no taxes. It
8 comes off the rolls. I wanted to put 100
9 houses up there. I had a lot of property
10 because the prior administration was part of
11 the Pine Bush. I don't know why they're afraid
12 of these people, or why you guys would be
13 afraid of them. They take away from you. This
14 is all green and beautiful and it's all nice,
15 but you certainly don't need the overlay. They
16 have enough now. He just said that he had
17 1,000 acres. You guys just took 1,000 acres
18 away here and put the overlay on top of it.

19 I'd like to get back to that half
20 million. They're going to give me a million
21 dollars for my piece of property if I'll
22 forgive half of that so that I don't have to
23 pay taxes on the other \$500,000. I said forget
24 it. I'll go the other route. I'll pay my fair
25 share of taxes and I'll sell it to a

1 developer. One thing or the other came along.
2 I don't know how it happened, but we just got
3 knocked out of the box. We never went any
4 further. Every time we went into the Town to
5 do something, up comes the Pine Bush, up comes
6 the Nature Conservancy. We got shot down
7 again. Probably at the same time, I had Don
8 [SIC] Sweeton as engineers. They said we're
9 knocking our heads against the wall. Mary
10 Brizzell and her whole situation are members
11 of the Pine Bush. You're not getting any place
12 with this.

13 So, along comes the Town. Joe Mahan, who
14 is our Supervisor's husband at the time was on
15 the Board. He said Jerry, we're looking for
16 land in the Town to build softball
17 fields - recreational fields. You have flat
18 level land and very few trees. We can go in
19 there and we can try and get the Town to buy
20 it. One of the Town lawyers lived by Veeder's
21 property and abutted 12 acres of their
22 property and gets the Town to buy it. Arnis
23 was who it was. I told him just give me some
24 money. Give me \$100,000. I'll give you 10
25 years to give me the million - no interest, no

1 nothing and you can have the whole farm. It
2 will be forever wild and will take care of the
3 nature conservancy. We have no water or sewer
4 although we're paying sewer assessments now.
5 Some day they're going to put it in. I'll
6 never live long enough to see that. Our kids
7 go to Mohonasen schools.

8 I want to tell you what happened lately.
9 About three or four years ago I was contacted
10 and asked if I wanted to sell my farm and I
11 said, yes, I do. I'm up there. I want to
12 retire. I'm 70 years old. Yes, I do. At that
13 time is when we got into this down economy in
14 about 2008. They hired an appraiser from
15 Amsterdam. He was some farmer and I walked the
16 farm with him. He said, I'll give you fair
17 market value for your property. Do you know
18 what he came back and said my property was
19 worth? This is right shortly after this crap
20 went into effect.

21 I never was notified one time by any
22 means that this thing was under consideration.
23 That's because I don't live in a house. I live
24 on Albany-Shaker Road near my business in a
25 new house. So, the way that the Town's

1 planning is - they'll let you build one house
2 but that's the end of it. If you want to go
3 two houses, you have to go for a subdivision.
4 So, I elected not to build a house there
5 because I wanted to develop this area.

6 I'm getting sidetracked a little bit, but
7 I'm almost done. I wanted to tell you what the
8 appraisal came back on. They said \$375,000 and
9 that was right after this went into effect.
10 Now, the next thing that I would like to tell
11 you is that out of the goodness of their heart
12 they offered \$400,000. Now, that's what I took
13 personally after owning that piece of property
14 for 50 years.

15 Mr. Caponera knows me. He knows that I'm
16 not a liar. You people may know me because I
17 sell motorcycles down on Albany-Shaker Road.
18 I've got no reason to come in here and say
19 that I don't want to see nature. I love
20 nature. As a matter of fact at one time I had
21 20 horses on that farm. That's many years ago.
22 Here I am today watching this and I have to
23 say that it's bull because you listen to all
24 these people.

25 One fellow stood up here and he lives on

1 Sheridan Avenue. That's good for him. He
2 belongs to the Nature Conservancy or Pine
3 Bush, but he has nothing to do here. He
4 doesn't pay any taxes here and probably never
5 did pay any taxes here.

6 I know the lady that just got up there
7 and told her story and it was quite amusing
8 about her having Lyme disease. She lives on a
9 small piece of property and didn't pay any
10 money for it and she lives near the man who
11 had a body shop that he screwed up with. I
12 don't think that this Board is looking to hurt
13 anybody. They weren't in office when this
14 thing went down. But they've got to take a
15 look at what happened. I just told you what
16 happened. I lost my retirement. It's still
17 forever wild.

18 Someone else mentioned about selling to
19 the Nature Conservancy. It will never happen
20 in my lifetime; never. I would never take
21 \$400,000 for that piece of property. Where can
22 you go and buy 75 acres of open property for
23 \$400,000? Figure what they're getting per
24 building lot in this Town. We never got water
25 and we never got sewer, although we were

1 promised it over the years waiting for this or
2 that to happen. It never happened. It never
3 will happen. I don't believe that the Town
4 cares about this end of the Town of Colonie.
5 Why were they screwing with it back in the
6 last administration? If you guys do your job
7 right and you are in office now, I hope you'd
8 like to stay in office. The right thing to do
9 is to help the people that are losing all this
10 money. They put their whole life into it like
11 I did for retirement and they get screwed with
12 this stuff.

13 Do you know what the Nature Conservancy
14 and Pine Bush is? It's a job for these people.
15 That's all it is. It's a bottom line job. When
16 they retire, they could care less. They're not
17 conservationists. It's a job.

18 I don't think that you know why this
19 happened. Nobody has even asked you why. You
20 haven't told anybody why it happened. I don't
21 think that the previous administration did.
22 They hired someone from Saratoga and that's
23 what their idea was. Sure, if you do this
24 stuff, you don't have to build schools.

25 CHAIRMAN STUTO: Did your property get

1 affected by the rezoning?

2 MR. PHIBBS: I'm against this.

3 MR. LANE: You're in that property
4 though.

5 MR. PHIBBS: Yes, I'm in the overlay.

6 MR. LANE: You're still Business E?

7 MR. PHIBBS: No, I'm residential. Years
8 ago they rezoned this section. This is where I
9 am right here (Indicating). They rezoned right
10 there.

11 CHAIRMAN STUTO: You've been residential
12 for quite awhile, is that correct?

13 MR. PHIBBS: I have been, yes. It was
14 worth something because there is a lot of
15 industrial up here. These people don't need
16 more land. This is really small. When you look
17 at this overlay, there is very little
18 industrial here. It's all residential, but you
19 won't let anybody build. I'm talking about the
20 regime that's been in office for many years. I
21 don't know if it's changed yet in the Town,
22 but it's so hard, long and costly to get
23 anything done.

24 I hired Victor Caponera years ago to get
25 a building on Shaker Road - commercial,

1 100 percent commercial. I wanted to put up a
2 steel building. It took me two years and
3 \$10,000 just to get a building permit and what
4 did they do afterwards? They jumped my taxes
5 which is what they do to everybody. They never
6 lower your taxes for what you do to these
7 people's value. Real estate went down. My
8 condo went down. The house that I live in the
9 wintertime went down.

10 Florida in the Fort Myers Beach
11 area - Florida dropped my taxes. I went from
12 \$9,000 on my house to \$6,000. I forgot what
13 the condo was. It was pretty near \$4,000. That
14 doesn't happen here.

15 CHAIRMAN STUTO: We're getting a little
16 off the topic.

17 MR. PHIBBS: Okay, well, I spoke my
18 peace. I think you understand where I'm coming
19 from.

20 CHAIRMAN STUTO: We're not asking
21 anything for your particular property, right?

22 MR. PHIBBS: No. I don't see how you can
23 do this to people without compensating them.

24 MR. CAPONERA: With regard to properties
25 in the Conservation Overlay Zone - he's asking

1 that be removed; am I correct?

2 MR. PHIBBS: Yes, I'd like to see it go
3 back to be fair to everybody. They have enough
4 property already. There are all kinds of
5 animals there. Thank you for your time.

6 CHAIRMAN STUTO: Okay, who else hasn't
7 spoken here?

8 MS. HAUSER: My name is Judy Hauser and I
9 didn't intend to speak tonight, but there were
10 two points that were made tonight that I'd
11 really like to speak on.

12 First of all you talked about purchasing
13 the land and that it actually goes to the Town
14 of Colonie?

15 MR. GIFFORD: Some of it goes to the Town
16 of Colonie and some of it goes to New York
17 State.

18 MS. HAUSER: So, on the weighing scale,
19 one equals the other.

20 Mr. Caponera talked about property that
21 was zoned previously Business E and now there
22 is a different category. In most cases that
23 particular land is already in that particular
24 use. They just adjusted it to make it the
25 current zoning. That's a viewpoint that has

1 nothing to do with what's being done here.

2 One other thing that I would like to
3 bring out is that if you decide to change this
4 back to commercial, make sure that it's only
5 the property that was affected by the last
6 rezoning. As Mr. Phibbs mentioned, his was
7 already residential. There are other
8 properties on there that were residential back
9 in 1990 that are now asking to turn
10 residential because it was just purchased. He
11 knew very well that it was residential at the
12 time. He wants to put a building on it, but he
13 wants to turn it back to commercial. I do ask
14 that you take that into consideration.

15 As far as the surveys go, it seems to be
16 a little odd that 100 percent of the
17 businesses that also have houses in Colonie
18 did not receive a survey. When you take into
19 consideration that my husband and I both get
20 mail - if I get the mail first and I think
21 it's not worth reading, I toss it. Perhaps
22 that's what happened to these people. It's not
23 necessarily that 100 percent did not receive
24 surveys, maybe they realized what it was and
25 just tossed it out. We were at the last

1 meeting last time. They said that they didn't
2 know anything about it.

3 Helen and I have been to almost every
4 meeting. Not so much lately, but almost every
5 day since the beginning. We were very
6 interested in what was going on in our area.
7 If they've only been interested in the last
8 four years, what can I say? They should be
9 checking on it periodically. Obviously, things
10 changed and nobody cared to check into what
11 was going on even though it was their
12 property.

13 When I bought into Residential E, I was
14 19 years old. I didn't know what zoning meant.
15 I learned a lot since then though. It's buyer
16 beware.

17 Mr. Phibbs talked about not knowing that
18 the property was rezoned. I just have to say
19 that there are many people that forget quite
20 often when they stand up in front of the
21 meetings and argue profusely and then they
22 don't win and then all the sudden they don't
23 remember. I think that there were a few of
24 those. There was one individual that bought
25 property and then wanted to build on it and

1 then found that he couldn't do it and then
2 said I didn't know I couldn't do that; when he
3 was very, very boisterous at the previous
4 meeting.

5 I just ask you to take everything into
6 consideration and keep in mind that those of
7 us that want to keep it residential - we live
8 there. They're our homes. We put up with the
9 air pollution that they have been giving us.
10 We put up with the water pollution that
11 they've been giving us. It's only a certain
12 area of ours that has to have water. A big
13 portion of it still have wells. That's
14 something that you really, really need to take
15 into consideration. It's not just one that
16 will be effected by it; it's everybody.

17 They want environmental overlays. Why are
18 they afraid to put protection on the other
19 lands?

20 My last question is to Suzanne. What is
21 your property going to be rezoned to?
22 Currently, you're residential and you use it
23 as commercial but you also have a house on it.
24 So either way, no matter what it does, you're
25 going to be noncompliant.

1 MS. PERRY-POTTS: When we bought the
2 property, it was industrial and Business E
3 with the intent of putting a business there.
4 My husband got a building off of Central
5 Avenue for free. All he had to do was move it.
6 We got an approval to put that house there. We
7 had to get approval.

8 MS. HAUSER: But that property was
9 residential at that time.

10 MS. PERRY-POTTS: No, it wasn't, but you
11 were allowed to put a residence in the
12 industrial. That's the whole problem with this
13 whole thing. There were so many mixed-uses in
14 all the zones.

15 MS. HAUSER: What are you going to do
16 now?

17 MS. PERRY-POTTS: Right now, where our
18 house is - not our garage - is single-family
19 residential.

20 MS. HAUSER: And the rest of the
21 property?

22 MS. PERRY-POTTS: Now, the property lines
23 go with the zoning so our entire little corner
24 where our house and our garage is
25 single-family residential.

1 MS. HAUSER: Thank you.

2 CHAIRMAN STUTO: Thank you.

3 Who hasn't spoken?

4 MR. RUTH: I'm Paul Ruth. I am in favor
5 of changing back over because I am a property
6 owner, but as the esteemed gentleman over here
7 who quoted Benjamin Franklin - it seems that
8 he's doing the same thing over and over again.
9 I'm hoping that this time we'll have different
10 results because I feel the same way that
11 Mr. Phibbs does. That's my retirement. I own
12 45 acres. I have a home in Colonie which is
13 23 Oak Tree Lane and I also own a business on
14 New Karner Road. I've lived my whole life in
15 the Town of Colonie.

16 When I bought my property, it was zoned
17 industrial. Just like Mr. Phibbs, I bought it
18 for my future and my family's future. I pay my
19 taxes regularly and I do have several places
20 to receive these notices and I never received
21 notice. I will swear that on a lie detector
22 test. I say this every time I come to a
23 meeting.

24 I had property in Clifton Park. When I
25 bought the property, I got all kinds of

1 notices and registered mail for anything. None
2 of that transpired here. I pay my taxes when
3 they send the bill to me. I figure if I pay my
4 taxes, I should be able to get my due process.
5 There are attorneys here and they're all
6 saying the same thing.

7 What I'm going back to - and this is for
8 everybody here: If you buy a dime, you expect
9 a dime. If you buy your woman a diamond and
10 she finds out it's a cubic zirconium, you get
11 slapped.

12 When I pay my taxes - why do I do these
13 things? It's for my family and the Town that I
14 live. I sponsor little league teams and I do
15 everything I can to help the Town. The way I
16 look at it, I generate money here. I pay my
17 employees and they spend their money here. I
18 pay my property taxes on my building. I'm not
19 bitching about my taxes. I'm bitching about
20 the fact that I bought something that should
21 have been what it was and it got changed
22 without me knowing about it.

23 CHAIRMAN STUTO: Thank you.

24 MR. MARTINO: My name is Bob Martino and
25 I live on the corner of Albany Street and

1 Lishakill Road. I'm at 8 Lishakill Road and
2 I'm here because of the pink slip that was on
3 the telephone pole across from my property. I
4 didn't realize that you had an agenda with
5 these particular properties. As long as you're
6 considering a possible rezoning, when this
7 rezoning went through, the line off of Central
8 Avenue was established where Business E and
9 Residential were divided. When this rezoning
10 came through, they changed from Lishakill Road
11 for about one-third of a mile up Albany Street
12 and made that Business E. There are all
13 residences in there. That's affecting us as
14 far as putting garages up because now we have
15 to go with the commercial side sets and the
16 commercial front sets. I'd like you to
17 consider changing that back to where it was.

18 MR. LANE: That's not a part of this
19 application, right?

20 MR. MARTINO: It's not part of this
21 application.

22 CHAIRMAN STUTO: Were you industrial? Can
23 you show me where your property is?

24 MR. MARTINO: I'm right here
25 (Indicating).

1 CHAIRMAN STUTO: So you were residential
2 already, is that correct?

3 MR. MARTINO: That's correct.

4 CHAIRMAN STUTO: You weren't affected by
5 the older rezone so I don't think -

6 MR. MARTINO: I'm just saying that if you
7 look, there is a short section and it's all
8 basically residences and wetlands with the
9 creeks. It has no business being commercial.

10 CHAIRMAN STUTO: You were residential and
11 then you got changed to commercial, is that
12 what you're saying?

13 MR. MARTINO: Yes. I would like to see it
14 go back to residential so that we can build
15 garages and things to residential specs.

16 CHAIRMAN STUTO: What is the address?

17 MR. MARTINO: That was 8 Lishakill Road.

18 CHAIRMAN STUTO: It's a little hard to
19 analyze that now and think about it. You may
20 have to make a separate application.

21 MR. MARTINO: I was here last year when
22 this small group was put together that said
23 that they were going to study this stuff and
24 then it went underground.

25 CHAIRMAN STUTO: What meeting was that?

1 MR. MARTINO: It was about a year ago. It
2 was like four or five people that said that
3 they were appointed by the Town to look into
4 this situation and the rezoning. They were
5 supposed to have meetings and then the whole
6 thing went underground and I didn't find out
7 anything about it. The next thing I see is
8 your pink slip on a pole and it says exactly
9 the same thing that it said last year.

10 MR. LACIVITA: I think that there are two
11 separate issues here. I think that the one
12 that you're talking about with the four or
13 five people that came together was the
14 Comprehensive Plan.

15 MR. MARTINO: No, it wasn't the
16 Comprehensive Plan. It was to study the
17 mistakes that were made on the rezoning.

18 CHAIRMAN STUTO: I wasn't aware of that
19 since I've been on this Planning Board.

20 MR. NARDACCI: Sir, I think that
21 regardless, unfortunately, it's going to be a
22 separate issue because this is specific to
23 this application. This application
24 specifically relates to a different area. This
25 is a forum and you're giving your remarks, but

1 what I would suggest that you do and the more
2 appropriate thing for you to do is to follow
3 up directly with the Planning Director, Joe
4 LaCivita and talk to him and then perhaps you
5 could sit down with the staff and figure out
6 and understand what the process is.

7 MR. MARTINO: I'm saying you put the pink
8 slips across the street from my house and
9 across the street from my house has nothing to
10 do with what you're talking about here
11 tonight. I don't understand.

12 CHAIRMAN STUTO: That's to notify you of
13 this application here.

14 MR. MARTINO: But it also says that it
15 affects this property.

16 MS. PERRY-POTTS: It was for the borders
17 of the overlay - all the way down Albany
18 Street - because that's where the overlay is.
19 That's where you saw it was on Albany Street.

20 MR. MARTINO: I'm probably in the
21 overlay.

22 MS. PERRY-POTTS: You're not if you're on
23 the other side. On Lishakill between Albany
24 Street and Route 5 - you're not in the
25 overlay.

1 MR. MARTINO: But you guys put the signs
2 up.

3 MR. NARDACCI: I would suggest that in
4 order so that you're fully informed -- that's
5 what I would do. I think that's the most
6 appropriate action.

7 CHAIRMAN STUTO: Who else hasn't been
8 heard?

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

10 CHAIRMAN STUTO: Would you like to sum
11 up, Mr. Caponera.

12 MR. CAPONERA: I paid attention to
13 everyone's comments and I thought that they
14 were spoken from the heart. I appreciate that,
15 but the bottom line is that nothing changes.

16 I think that the majority of people here
17 are asking this Board's favorable
18 consideration of this application. You know
19 what we're looking for. We've heard all the
20 other remarks. I think that there are valid
21 substantive reasons why we're asking for this
22 and I'd be happy to answer any questions that
23 you might have.

24 CHAIRMAN STUTO: I have a question and
25 it's more of a discussion. We had talked

1 during the break about some kind of creative
2 solution that might be a middle ground, for
3 lack of a better word. Are there any creative
4 ideas either on the Board or -- as I look at
5 it, I think that we have to drill down a lot
6 closer to what each and every property is
7 here, instead of just looking at a blanket
8 map. I've driven through the property. The
9 devil is in the details.

10 MR. CAPONERA: Which is why this lower
11 map was so detailish. Suzanne actually had a
12 piece with every single property listed with
13 the SBL number and every number related to
14 that. There has been a tremendous amount of
15 detail drawn up on this, in terms of which
16 properties are part of the proposal and which
17 properties are not. It's been drawn up
18 basically on this lower map. Clearly, there
19 has been a lot of detail and then as far as
20 the mitigation - we heard from some folks over
21 on Lupe Way. That whole area there has a
22 buffer. There has been mitigation issues that
23 we have considered.

24 CHAIRMAN STUTO: Can you go over where
25 you proposed the buffers again?

1 MR. CAPONERA: Absolutely. This follows
2 along the residential area, all the way around
3 and it's even further down than what is shown
4 on this map (Indicating).

5 CHAIRMAN STUTO: Is it the red dots?

6 MR. CAPONERA: Yes, but it goes beyond
7 that. We're extending it all the way out, all
8 the way around so as to where there is any
9 residential development, there is a buffer.

10 MR. FUSCO: We did take into
11 consideration anybody who upholds this - their
12 particular property -- we carved them out. The
13 map is very detailed. We showed who did and
14 didn't want the zoning changed back.

15 CHAIRMAN STUTO: Joe, do we have the map?

16 MR. LACIVITA: I think so.

17 MR. LANE: We don't have exactly what you
18 have, but we do have this one (Indicating).

19 MR. CAPONERA: That's pretty much it.
20 What Mr. Fusco is saying is that Suzanne spent
21 probably thousands of hours on looking at this
22 and identifying each and every property owner,
23 communicating with those folks and those folks
24 that didn't want the zoning. Obviously, they
25 were carved out. So, we tried, like you said,

1 Mr. Chairman, the devil is in the
2 details.

3 MR. LANE: Does that bump us into any
4 issues with spot zoning?

5 MR. CAPONERA: As I said before, spot
6 zoning is where you take a piece of
7 property - let's assume we'll take this piece
8 right over here and say to the Board, I'd like
9 this to be changed to industrial. That's not
10 what we're doing here. I'm asking the Town
11 Board - we're asking the Town Board to just
12 bring property back to the way that it was
13 prior to January 4, 2007.

14 MR. LANE: With the exception of those
15 people who do not.

16 MR. CAPONERA: Correct.

17 MS. DALTON: I think that the problem
18 here, in my perspective, is that despite
19 allegations that these changes were made
20 improperly, it seems that there has been
21 compelling evidence that there were a lot of
22 things considered when these changes were
23 made. At this point, to simply change it back
24 negates all the study that was already done
25 and all the reasons why it was proposed to

1 begin with. In fact, while there was economic
2 impact on the business owners whose zoning was
3 changed, changing it back at this point has
4 the potential for creating an economic impact
5 for the people that have residential homes.
6 So, one of the things that we talked about is
7 that you don't want to lay a disproportionate
8 burden on your business owners and your Town
9 just because we now have new information about
10 the value of how this conservation area
11 doesn't pay taxes. On the other hand, there
12 are compelling reasons to make the changes
13 that were made. So, is there another
14 mitigation strategy, whether it is something
15 like making it less expensive to create a
16 variance or creating a new kind of zoning that
17 allows additional uses, but some sense at some
18 point? It seems to me that there has to be
19 something more creative or keep what we have
20 or go back to what we used to have. So, I'm
21 wondering if anybody has looked for some of
22 those more out of the box solutions.

23 MR. CAPONERA: Yes, we have and this is
24 basically what we came up with.

25 You made a comment about the residential

1 homes. For the record, I want everyone to
2 understand that the folks that were in this
3 area that have residences - what was their
4 zoning before it changed? It was industrial.
5 This isn't the oddest thing - which is what
6 you're alluding to.

7 MS. DALTON: I'm not saying that they
8 didn't gain when the change was made. What I'm
9 saying is that those changes were made for
10 reasons that were well documented with regard
11 to the Conservation area and with regard to
12 the value of the residential area.

13 MR. CAPONERA: Without ever giving one
14 single commercial property owner an
15 opportunity to be heard.

16 MS. DALTON: I wouldn't necessarily agree
17 with that.

18 FROM THE FLOOR: I have a question. If
19 your husband was cheating on you, would you
20 want to know about it or not?

21 MS. DALTON: I've had that situation and
22 you can ask Mr. Caponera all about it.

23 FROM THE FLOOR: I'm just saying that if
24 my wife was cheating on me, at least I'd like
25 to know about it.

1 MR. NARDACCI: With regard to the overlay
2 districts: The Town of Colonie has a number of
3 overlay districts. There are seven
4 Conservation Overlay Districts. We have
5 historical overlay districts. You've been
6 practicing planning and Land Use Law for a
7 number of years and you've dealt with overlay
8 districts throughout your tenure, correct?

9 MR. CAPONERA: Yes, but the overlay
10 district is kind of something new. It's not
11 been around for 30 or 40 years.

12 MR. NARDACCI: Overlay districts are
13 legal though, right?

14 MR. CAPONERA: Absolutely.

15 MR. NARDACCI: And in your estimation and
16 in your understanding -- what is your
17 understanding of how an overlay district would
18 exist?

19 MR. CAPONERA: In my opinion, generally,
20 what it does is it takes areas that have open
21 areas that are yet to be developed. They say,
22 let's try to limit what these open areas can
23 or can't be used for. Essentially, what it's
24 saying is that for those areas that are not
25 yet developed -- that's to say that the Town

1 wants to put this stamp over this restriction
2 and say that you're not going to be able to
3 develop it in the normal way unless you
4 reserve and take out these areas that
5 Mr. Bianchine spoke about that can't be used.
6 So, basically, what it does is limits a
7 property owners' ability to develop this
8 property under the current zoning and the
9 former zoning which is 35 percent greenspace.
10 It ups it to - I'm going to generalize it to
11 more like 50 percent green.

12 MR. NARDACCI: Here is the challenge. We
13 have individual and concrete rights. But also
14 we have this Pine Bush study area which is
15 significant. It's recognized globally as a
16 significant area. There are endangered species
17 and some of the reasons that we have for
18 having overlays directly relates to the
19 preservation of species as well as being
20 sensitive to the environmental characteristics
21 of that area.

22 Now, this is my fourth year on this Board
23 and we've looked at several projects including
24 industrial and manufacturing that have come
25 forth in the overlay district. One was Crumb

1 Rubber. In my estimation, we didn't have a
2 problem in moving forward on that approval.
3 Certainly, it required some more study. I
4 think that the number that was thrown out was
5 that well, it took \$150,000 and you're adding
6 several thousand dollars. You're not saying in
7 order to get through the planning, you're
8 doubling or tripling the burden on the
9 developer. So, I understand the rhetoric and I
10 understand the concerns. The reality is that
11 we've seen projects come forward in these
12 overlay districts that I feel like went
13 through fairly quickly and fairly.

14 MR. ZEE: Excuse me, if I may. I
15 represented Crumb Rubber along with Joe
16 Bianchine and they went into an existing
17 building. So, it's kind of difficult to say
18 that it went through easily when you're
19 talking about a use that went into an existing
20 building, right off of Albany Street. The
21 building was already there. It was vacant for
22 a period of time and I think that fortunately
23 Crumb Rubber was able to come into that place.

24 I've had experience with regard to
25 overlaying districts and in fact, last night I

1 was in the Town of Glenville with regard to an
2 overlay district where they created a village
3 or Town Center Overlay District and at the end
4 of the day when the Town fathers who
5 implemented and enacted the overlay district
6 saw the errors of their way, we wound up
7 getting 30 feet variances for our project. It
8 took an extra 90 days to get the project
9 approved and we were under a time line. We
10 took the existing two buildings, which were
11 approximately 145,000 square feet and we had
12 to tear them down and build new space. That
13 would have never happened if they enforced the
14 overlay district. Without that, that property
15 which has been sitting vacant for seven years
16 in the heart of Glenville, would continually
17 be vacant.

18 MR. NARDACCI: Part of what I'm talking
19 about is we talked a lot about hypothetical,
20 but I'm trying to find real instances where we
21 have dealt with this issue. We just haven't
22 come up with -

23 MR. ZEE: I have a real problem with
24 regard to sunset clauses.

25 MR. NARDACCI: Actually, I was asking

1 Victor.

2 MR. ZEE: But you asked about a
3 compromise. I first want to point out that I
4 have a concern in regard to sunset clauses
5 because nobody knows when they really want to
6 retire and sell their business. So, someone
7 who buys their business at age 30 and you have
8 a sunset clause, even if it's 10 years, they
9 may want to continue operating for a period of
10 time. That is as opposed to Mr. Phibbs who
11 says he's 70 years old and he might want to
12 sell sooner rather than later. That's why I
13 have a concern about sunset clauses. Maybe
14 there should be talk about changing that
15 percentage a bit for the properties that are
16 rezoned so that you don't have the overlay
17 district for these properties that are rezoned
18 back. The recommendation is maybe bump it up
19 to 40 percent greenspace so that there is
20 additional greenspace set aside. It doesn't
21 fully impact the property owners as it does
22 with the overlay district because there are
23 sensitive lands, but you can use the
24 calculations and increase the greenspace
25 amount but eliminate the extra hurdles of the

1 overlay district review.

2 MR. NARDACCI: Do you think that the
3 Albany Pine Bush is an environmentally
4 sensitive area?

5 MR. ZEE: Do I believe it?

6 MR. NARDACCI: Yes.

7 MR. ZEE: No. I've been involved in a lot
8 of property that has been deeded over to the
9 Pine Bush and -

10 MR. NARDACCI: I'm asking the applicant.
11 Do you think that the Albany Pine Bush is an
12 environmentally significant area?

13 MR. CAPONERA: I think that there are
14 portions of it that are. I think that to put a
15 Conservation Overlay District over this entire
16 area, including all this area in the
17 residential zone is ludicrous. The answer to
18 your question is that some of it is, much of
19 it is not.

20 MR. NARDACCI: Where are Conservation
21 Overlay Districts appropriate, in your
22 estimation?

23 MR. CAPONERA: Well, I believe that there
24 is an area up in here by the Mohawk
25 (Indicating). Let's look at conservation

1 overlay. There is a huge area up here on the
2 northern part of the Town that I'm actually
3 working on various projects and you probably
4 are too. It's very open. It's very
5 undeveloped. It's a perfect area where
6 conservation overlay probably should go.

7 On the other side of Route 9 over here on
8 this side of the north end (Indicating), it's
9 completely unused right now. It's a great area
10 for conservation overly. I think that's why
11 they turned their direction over here mainly
12 because of the Pine Bush and their interests
13 and what they're going for. They're not nearly
14 as undeveloped as the other areas.

15 There's another area over here that's
16 hardly developed at all. There are literally
17 hundreds of properties here that are developed
18 and being used and many of the properties that
19 signed this petition - part of the property is
20 being used or some portion for industrial use.
21 Not all of it. That's why the area over here
22 abutting the residences that I think Ms. Lupe
23 who was here a little while ago indicated that
24 we proposed to put this buffer -- we're trying
25 to make some accommodations. That's a long

1 answer to your simple question.

2 MR. NARDACCI: I think that part of the
3 challenge is trying to understand why the Pine
4 Bush exists, why the Commission was created by
5 the state and why the federally endangered
6 species are involved. Try to understand and
7 mitigate the international, national and
8 statewide concerns with what we're doing. I
9 think that there has to be some kind of
10 balance. I think that's something that's
11 always a challenge. You have buffers between
12 what I think are sensitive areas.

13 MR. CAPONERA: What a wonderful balance
14 we've proposed. Here is 100 percent
15 industrial. Here is a tremendous amount of
16 greenspace. I think that Ms. Vaida spoke about
17 that earlier. Look at the greenspace here
18 (Indicating). Not one inch of that is going to
19 be rezoned as proposed. It's a wonderful
20 balance. It's a wonderful concept that we're
21 coming up with. We're not trying to take
22 anything away from what the Pine Bush has
23 done.

24 MR. NARDACCI: What I think that we need
25 to understand is why Conservation Overlay

1 Districts exist and if they should exist or
2 not. Certainly we know they're legal. I'm just
3 asking the question.

4 MR. CAPONERA: I think that in the Town,
5 they're reasonably new.

6 MR. NARDACCI: There are Historic Overlay
7 Districts and we want to preserve the
8 character of certain communities.

9 MR. FUSCO: When you have a Historical
10 Overlay, it increases the value of that
11 property. That's wonderful. But if someone was
12 coming to your property and says your house
13 now is worth half of what it was worth five
14 years ago because there is something sitting
15 here - whatever it is - a biological thing
16 being a plant or animal or whatever, you say
17 fine. You can live with the plant or animal;
18 just compensate. That's all I'm asking for. If
19 they want to put all the green in the world
20 there, I just want to be compensated.

21 MR. NARDACCI: To your point sir, I can
22 see where you're coming from. I own property.
23 I also own an income property. I understand
24 values of real estate. Certainly I do a lot of
25 economic development work. I represent

1 developers in my private business.

2 We've heard a lot of hypotheticals,
3 right? Maybe as part of the process we have to
4 have some sort of economic study. What is the
5 real decrease of values? Mr. Phibbs came with
6 his specific case. I understand that. Maybe we
7 have to look at it in a more macro level.
8 Let's look at all the sales of properties.
9 Over how many years that the conservation
10 overly has been there.

11 MR. FUSCO: How can you judge that
12 because this is so new? This whole proposal
13 thing is so new. Because of the economic time
14 that we're in right now, the property values
15 have dropped, so now we're not really looking
16 at a realistic picture.

17 MR. NARDACCI: Let's look at the parcels.
18 I'm sure that there are a lot of parcels that
19 have changed hands. Have they followed the
20 national trends?

21 MR. FUSCO: I don't think many parcels
22 have changed hands here. I've had my parcel
23 for over 25 years. I pay my taxes on it.

24 MR. NARCACCI: A big argument here has
25 been the economic argument. I don't think that

1 we should just take it in a vacuum. I think
2 that we should actually look at what really
3 has happened.

4 MR. FUSCO: I agree with that. If you
5 think that's worth that money, just figure out
6 a way to pay me. I have no problem with that.

7 MS. DALTON: I own property here and in
8 other places. One of my properties increased
9 in value by at least \$150,000. Part of that
10 was because of the economics and part of it
11 was because of the development that happened
12 around me.

13 MR. CAPONERA: So, your property got
14 rezoned too, didn't it?

15 MS. DALTON: Actually, it didn't get
16 rezoned. What I was going to say is that
17 someone else here said buyer beware. Someone
18 had told me that it was going to stay forever
19 wild and instead someone came and developed it
20 and it wasn't zoned the way that I was told.

21 MR. FUSCO: But mine was zoned the way I
22 was told.

23 MS. DALTON: What I'm saying is things
24 change. Sometimes it's the property owner.
25 Sometimes it's a flood or a fire or a natural

1 disaster of some sort that's going to change
2 the value of your property. Sometimes it's new
3 information about something that happened on
4 the site.

5 MR. FUSCO: I understand that, but
6 whether it's the State of New York or the Town
7 of Colonie -

8 MS. DALTON: You don't always get
9 compensated. I'm not saying that you should
10 not be. I'm saying that things happen and
11 people don't always get compensated.

12 MR. NARDACCI: Our charge, as a Planning
13 Board - our role in this process is
14 investigating. We're charged with
15 investigating the facts and investigating
16 what's the situation. We're hearing opinions
17 and that's part of this. Taking public input
18 and understanding that. I also think that we
19 have to do some other due diligence. We have
20 to follow up on the fact that there are things
21 that show us that maybe we should be looking
22 at the economics. We should look at other
23 Conservation Overlays. We could do some
24 comparisons.

25 CHAIRMAN STUTO: I want to get back to

1 the map questions and the devil is in the
2 details. There is better mapping. Is it
3 engineer done, or is it hand done?

4 MR. LANE: I think that we have your
5 original hand drawn one.

6 MS. PERRY-POTTS: Those are the
7 boundaries that the Town has on the zoning
8 map.

9 MR. CAPONERA: Yes, but there is a larger
10 foam board.

11 MS. PERRY-POTTS: I gave them a copy of
12 the tax map, too.

13 MR. CAPONERA: Yes, there was a tax map
14 that was provided and on that tax map it's got
15 every single property owner within this area
16 identified.

17 CHAIRMAN STUTO: I'd like to understand
18 where every single residence is, too.

19 MR. CAPONERA: I believe it's all there.

20 CHAIRMAN STUTO: What about the buffering
21 that's being proposed?

22 MS. PERRY-POTTS: Can we go street by
23 street? I can show you where the residences
24 are.

25 There is a property owner there and she

1 is signed on.

2 CHAIRMAN STUTO: But the buffer appears
3 to only be those dotted lines.

4 MS. PERRY-POTTS: Because that is the
5 most heavily dense of the residential.

6 CHAIRMAN STUTO: Victor was trying to say
7 that it was more than that.

8 MS. PERRY-POTTS: I gave you guys a copy
9 of the tax map of just 8 Lupe Way and we
10 extended it right here because this property
11 here (Indicating). These are all businesses
12 except there are a few houses here
13 (Indicating) and they have all signed on.

14 On this side, it's all businesses. The
15 very last property on this map - one-third of
16 this was in residential and two-thirds of that
17 was industrial.

18 He put up a big garage (Indicating). He's
19 a paving contractor.

20 CHAIRMAN STUTO: They haven't done paving
21 in five years.

22 MS. PERRY-POTTS: But he's still in
23 business.

24 Here is Jennifer Barone and one other
25 house that didn't sign on.

1 CHAIRMAN STUTO: That's inside the
2 zoning?

3 MS. PERRY-POTTS: Yes, and you can't go
4 around them.

5 If you go down a little bit further,
6 there is one house here that is completely
7 surrounded by businesses. It's a very old
8 house. I think that there was a lake or
9 something there. I wasn't around back then,
10 but it's 10 feet from the road. It's very old
11 looking. A little bit further down, there is
12 another house that's from the old camp days.

13 CHAIRMAN STUTO: Is there a water body
14 down there?

15 MS. PERRY-POTTS: There used to be. All
16 there is now is a creek. It was a swimming
17 hole and that's gone.

18 If you keep going down on this side of
19 the road, there is a lady here that's opposed
20 to it. She runs a pet grooming business out of
21 her home.

22 There is a house here (Indicating) and
23 they signed on.

24 Down here there are all businesses. These
25 four houses here - I probably wouldn't have

1 included them except they were in commercial
2 office. I couldn't just leave these four acres
3 by itself. These people signed on because they
4 have a commercial garage.

5 These people did sign on, but they had
6 previously operated businesses out of their
7 home. I can't just leave two acres. If I
8 could, I would, but this over here is land
9 conservation (Indicating).

10 When you go down Kings Road, this
11 property here -

12 CHAIRMAN STUTO: This is being proposed
13 for modified industrial.

14 MS. PERRY-POTTS: Yes, it used to be the
15 old Business E. This property here owns this
16 (Indicating) and has a driveway to get back
17 here. He bought his property in the 1990's.

18 These people are the same as ours. They
19 have an old house and they operate the
20 business out of there.

21 This is a house that signed on also. He
22 used to have bulldozer. He's been there for
23 ages.

24 This is our house. It used to be
25 industrial zone.

1 These people all signed on.

2 This one here is a shack with a bunch of
3 cars around it. There was a nice woman there
4 that lived there for I don't know how long
5 until she was about 75 and now she's down in
6 Poughkeepsie and I don't know where she is.
7 Her relatives just have come and dumped
8 vehicles on the property. Nobody has really
9 lived there. It's really an eyesore. They have
10 not signed on. I talked to the woman's
11 daughter and son-in-law.

12 The old Agway was on Morris Road and then
13 around it the same property owner had First
14 Prize Paintball.

15 Across from that on Morris Road you have
16 alternative storage and you have a firehouse.

17 The people on the other side of Kings
18 Road -- there is a house and he owns this
19 whole property (Indicating). He wants the
20 change back.

21 This place here is BBL Construction
22 services (Indicating).

23 MS. VAIDA: Peter, can I make a
24 suggestion? We really need to remember all
25 this.

1 Would you be able to do another map that
2 maybe has the residences delineated in one
3 color and businesses in another color and then
4 make it clear who wants to change?

5 MR. LACIVITA: The question that I have
6 is we have a list before us that has 122 names
7 on it. It identifies the fact that there are
8 91 out of 104 properties. There are 122
9 properties listed on here. We don't know which
10 91 have signed onto it at this point in time.

11 To Elena's point, we could have our MIS
12 unit -- if you can define the 91 properties,
13 we can chart it on our mapping based on
14 industrial, residential, business that are
15 currently operating and get this back before
16 the Board.

17 MS. PERRY-POTTS: Do you want me to just
18 color in the properties?

19 CHAIRMAN STUTO: He's got the technology
20 to do that if you give him the numbers.

21 MR. LACIVITA: Back in 2009, you had
22 given us letters of people who had signed on.
23 I want that updated so that we have a clear
24 and concise list that these people have agreed
25 that we're moving forward with the rezoning. I

1 will then transfer that information to a chart
2 that MIS will produce for us that will be
3 color coded so that we will know what is
4 single-family and what is residential and then
5 we'll get that information back to the Board.
6 Right now, the numbers aren't adding up in my
7 mind and I'm just curious as to who dropped
8 out and who's added on. We don't know that
9 right now.

10 MS. PERRY-POTTS: I do have an update
11 right now. In the rezoning, there has been
12 nothing changed. The only thing that has
13 changed is that a few more people have added
14 on and been asked if they want their property
15 out of the overlay, also. I will give you an
16 update. I even have a map that I made the
17 other night.

18 There aren't 122 properties. There are
19 104 properties.

20 MR. LACIVITA: I just counted them one by
21 one on each page. I counted 122.

22 MS. PERRY-POTTS: I've counted them
23 several times. There are 104 properties and
24 I've got signatures of 91 of them.

25 We also had signatures of property owners

1 of 210 additional acres. So, the 210 plus the
2 601 acres in the rezone is a total of
3 811 acres. You can have this one. It has the
4 original signatures for four more people that
5 want out of the overlay.

6 This is a map that I made up last night.
7 We had the Gun Club here - because they want
8 the overlay gone also.

9 MR. LANE: But they're not a part of
10 the -

11 MS. PERRY-POTTS: No, they're not, but I
12 just wanted you to know that. That's where
13 they are. All these dark blue properties are
14 additional people that want that overlay
15 removed. They're all over the place. I haven't
16 talked to everybody. I just see them here and
17 there.

18 Today, this has four additional property
19 owners and updated a list of properties.

20 CHAIRMAN STUTO: I appreciated that you
21 went around. It's good to know what's going on
22 internally, but I'm also curious what's on the
23 outside - like each individual pink block. I
24 see that you have some screening to have the
25 residential up there, but I'm also concerned

1 about any other ones that will have
2 impact -- like a buffer next to a residential
3 property that would like to stay residential.

4 You went through each internally those
5 that you wanted rezoned, if you will. I'm also
6 curious on the external circumference of
7 those. I'm wondering about the residences.

8 MS. PERRY-POTTS: Where there are
9 businesses, if you want screening, the time to
10 do that was when those businesses got
11 approval. I think that it's a little late now
12 to do that.

13 CHAIRMAN STUTO: It depends on the
14 configuration, but I understand the point.

15 MS. PERRY-POTTS: For the vacant land,
16 when someone develops it is the time to make a
17 buffer then - or suggest a buffer. I think
18 that Mr. Lupe was very generous with that
19 buffer. This land was all industrial when
20 those houses were built. Like Jennifer Barone
21 said, she moved into an industrial area. Why
22 should we have to pay for -

23 CHAIRMAN STUTO: That's your opinion, but
24 I want facts. That's what I'm saying. We
25 haven't formed an opinion. I'm curious what's

1 on the outside.

2 MS. PERRY-POTTS: All along here there
3 is still a lot of land (Indicating). A lot of
4 this is the Pine Bush Preserve land. You can
5 see that on the zoning map.

6 Over here on the Curry Road side, there
7 are very large lots.

8 CHAIRMAN STUTO: That's a different Town,
9 isn't it?

10 MS. PERRY-POTTS: I notified the people
11 in the Town of Guilderland twice for the
12 meeting that we had at the Pinewood School for
13 the residents. I put up 300 posters and shoved
14 them in mailboxes. We got 20 people that came.
15 They had a week's notice. If it was important
16 to them, they should have come.

17 CHAIRMAN STUTO: I'd just like to talk
18 this through with the Board because we're
19 looking to close the hearing down. We may take
20 some written information for a couple of
21 weeks.

22 MR. CAPONERA: May I suggest a workshop
23 session or something, once you get it color
24 coded?

25 CHAIRMAN STUTO: We may have our own

1 workshop.

2 Joe, what do you think? I don't know what
3 you have technologically that you might be
4 able to help us with.

5 MR. LACIVITA: I'm going to talk to the
6 MIS department tomorrow and see what we can
7 do.

8 CHAIRMAN STUTO: And maybe one of those
9 aerial photos.

10 MR. LACIVITA: Yes, and we'll work off of
11 management information systems; MIS
12 Department. We can get that.

13 MS. PERRY-POTTS: I know that update of
14 the list that I gave you - I forgot to update
15 the date on it. It still says May or
16 something.

17 CHAIRMAN STUTO: Okay, thank you. I think
18 that we're looking to wrap up here.

19 MR. NARDACCI: I think a good point was
20 made that if we want to know what the sales
21 and values are of the property, consult with a
22 real estate professional.

23 CHAIRMAN STUTO: Okay, is there anybody
24 that wants to be heard that hasn't been heard?

25 MR. BELVIN: I'm John Belvin. I own 80

1 Morris Road. I own commercial buildings. I
2 bought the first building in 1973. I built the
3 second one in 1989. Before that, I bought the
4 back property. It was Rudd's Beach. When I
5 built the second building in 1989, at that
6 time, I dug up Morris Road and ran an
7 eight-inch sewer main all the way to the back.
8 Also, I dug up Morris Road again and put three
9 water services back in the hopes that I could
10 build two more buildings back there. We have
11 about \$40,000 in the ground. I can't even see
12 it.

13 In about 2000 I bought three houses and
14 demolished them. I capped off three more sewer
15 lines. I didn't find out what was going on
16 here until about 2007. We didn't know about
17 the rezoning. We found out that a friend was
18 going to submit plans and went to the Building
19 Department. At the time that, he was told that
20 his property was residential. At that time, I
21 asked what our property was. They changed it
22 to commercial office. It was heavy industrial
23 for years like everybody else's property;
24 Morris Road, Kings Road, parts of Curry Road
25 and so forth.

1 I've been here since 1973. I had nothing
2 when I started. I'm a sewer contractor and I
3 have been for 39 years in the Town of Colonie.

4 At that time when I did find out, I
5 called Kevin DeLaughter. I knew Kevin very
6 well and what Kevin told me was we wanted to
7 commercialize it. There is no chance that the
8 Town was going to turn it back over to heavy
9 industrial.

10 So, also at that time I called the
11 Building Department. I talked to them and they
12 said, no, even though you bought that other
13 land, you have the wrong frontage to build and
14 you can't build another building for
15 construction. So, I realized that it wasn't
16 your fault or the Town Board. It all relates
17 back to the other regime. That's exactly what
18 happened. I don't know by anybody in this
19 world that has the right to change anybody's
20 property without notification. I didn't get
21 anything like the rest of the people. Here we
22 stand. It's your decision and the Town Board's
23 decision and I hope that you make the right
24 decision. Thank you very much.

25 CHAIRMAN STUTO: Anybody else who hasn't

1 spoken?

2 MS. SCARFF: I have a slightly different
3 perspective from the other people that has
4 spoken this evening. I live at 1239 Kings Road
5 and it is a residential house. We purchased
6 the house, it was zoned industrial and we knew
7 that it was zoned industrial and that's one of
8 the reasons that we bought the house. My
9 husband is a welder and he had thought that he
10 might want to start his own business at some
11 point. Since we've lived in the house, we
12 bought the house it was surrounded by trees.
13 It was a lovely area. It was very nice and
14 cool and shady since then. We're surrounded
15 now by the Pine Bush area. They have taken
16 down trees and our house is now hot.

17 MR. LANE: The Pine Bush took down the
18 trees?

19 MS. SCARFF: The Pine Bush people have
20 taken down the trees so when the other folks
21 stand up here and say we're worried about
22 global warming, okay, but don't take down the
23 trees. To me, as a science teacher, there's
24 kind of a conflict of interest. It doesn't
25 match what I teach my kids at school.

1 Also they came to our house and they
2 asked us to sign a petition where they wanted
3 to burn the property directly across the
4 street from our house. I looked at the leaves
5 in my yard and the very tall trees on one part
6 of the property that wasn't directly in across
7 the street. I knew that if those trees caught
8 on fire, they would set my yard on fire. So,
9 no, I didn't sign that permit. However, they
10 did go ahead and burn. They did keep a margin
11 away from my house, but we didn't get notified
12 and my boys happened to be in the house. They
13 come home from school and they go into the
14 house. They're middle school and high school
15 students, but no parents in the house and yet
16 they're burning across the street and we
17 received no notification.

18 In addition, when they cleared the
19 property across the street, they also sprayed
20 chemicals on the property - some kind of
21 herbicide to keep the plants from coming back.
22 We have well water and I don't know what the
23 effect is going to have on the well water, but
24 you can imagine the worry of a parent when
25 we're drinking the water that comes from the

1 ground where we see those chemicals sprayed. I
2 know that they're hazardous chemicals because
3 I have seen them with their hazardous material
4 suits on. My husband does have it on video
5 tape so if you'd like to see it, you can have
6 film footage of them poisoning the land that
7 we live around.

8 CHAIRMAN STUTO: Yes, ma'am.

9 MS. SCHICATANO-DUVALL: My name is Teresa
10 Schicatano-Duvall and my father owns 54 acres
11 on Curry Road and has owned it since 1968. The
12 frontage is on Curry Road. He is in the Town
13 of Colonie. He also received no notification.
14 If it wasn't for the work that Suzanne has
15 done, we would have never known. She has done
16 a lot of hard work, so she should receive some
17 kind of accolades for that.

18 He has never been notified. We've had a
19 small farm stand where people sell trees and
20 that type of stuff. We went for permitting for
21 that type of use, but it was always
22 industrialized. There is only two houses next
23 to us. They have a small business operation.
24 There are no other houses around us -- where
25 my mother lives and Weatherguard Roofing. So,

1 there are very few houses, but it is now zoned
2 residential. The tax bill comes with small
3 building use on it. It's supposedly a rezone
4 to residential. There is an issue all the way
5 around as far as it being rezoned and how it's
6 indicated on the tax bill and what it really
7 is.

8 Obviously, Pine Bush has approached us
9 and they bought 24 acres that my father owned
10 on the other side of the street. We were told
11 that was wetlands when it was taxed commercial
12 all those years and all of the sudden it
13 became wetlands. So, there seems to be another
14 agenda.

15 I also sat as the Chairman of the Board
16 of the Latham Chamber of Commerce, which is
17 now Colonie Chamber of Commerce. These
18 discussions were going on way back about the
19 Conservation Overlays and there was a
20 moratorium in our area of building which was
21 specifically discussed within the Town. That
22 was brought in front of the Chamber of
23 Commerce, but it was said that no building was
24 going to be allowed whether it was residential
25 or commercial. That was because it was being

1 looked at because by the Pine Bush Preserve
2 and the Nature Conservancy being a federal
3 agency and part of the state. Additionally,
4 that the regulations were being brought down
5 from the top.

6 So, I think that there is more than
7 what's being admitted here. I think that
8 everybody needs to be brought forward with
9 what the real facts are, and really look at
10 what the zoning laws are, and what the people
11 want and how much in taxes did they pay versus
12 what's the revenue that they're going to get
13 if they decide to sell. People should have
14 been notified. They really weren't. I can
15 remember that The Crossings had a meeting, but
16 it was never really specifically addressed
17 what it was for. It was dots put up on the
18 walls and it was really not told what it was
19 for. I was there.

20 CHAIRMAN STUTO: Thank you.

21 Anybody else who hasn't been heard?

22 MR. CAPONERA: I don't know if the
23 Planning Board knows it, but when the Pine
24 Bush buys a piece of property, they normally
25 clear cut. It did happen to several clients of

1 mine who own property adjacent to it and they
2 went wild. They said, Victor, come on over to
3 my property. There was nothing there, just
4 this wide expanse of sand. This is what
5 Ms. Scarff was just talking about. What they
6 want there is the Pine Bush to grow; the scrub
7 pine. That's what happens and a lot of times
8 they burn it. They're creating the area that
9 is indigenous, I suppose, to the Karner with
10 just the scrub pine.

11 CHAIRMAN STUTO: Thank you.

12 What does the Board think of closing this
13 part of the hearing and keeping it open for
14 written statements?

15 MR. NARDACCI: I think that we should do
16 that. I think that a few weeks for any other
17 additional information or written comments.

18 CHAIRMAN STUTO: Okay, today is the 14th.

19 MR. LANE: What is our time limit before
20 we make a recommendation to the Town Board?

21 MR. LACIVITA: I would have to know what
22 the time line is, just from an MIS
23 perspective, to try to get this mapping done
24 too.

25 MR. LANE: So the clock hasn't started

1 running.

2 CHAIRMAN STUTO: Well, let's keep
3 comments open to the last day of the month,
4 which would be June 30th. Will we be able to
5 get maps together by then?

6 MR. LACIVITA: I would hope so.

7 CHAIRMAN STUTO: We'll be able to
8 deliberate as a Board still after that.

9 Tim, I don't have an exact date for you,
10 but the comments are open until the 30th. So,
11 the time will run at least until then. And our
12 decision is only going to be a recommendation.

13 Do we have a motion to close the oral
14 portion of the hearing?

15 MR. NARDACCI: I'll make a motion.

16 CHAIRMAN STUTO: And have written
17 comments until June 30th.

18 MR. MION: I'll second.

19 CHAIRMAN STUTO: All those in favor?

20 **(Ayes were recited.)**

21 CHAIRMAN STUTO: All those opposed?

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

23 CHAIRMAN STUTO: The ayes have it.

24 Thank you everybody for coming.

25 Thank you, Suzanne, in particular for all

1 the hard work you put in.

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Whereas the above entitled matter was

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concluded at 11:53 p.m.)

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CERTIFICATION

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4 **I, NANCY STRANG-VANDEBOGART, Shorthand**
5 **Reporter, New York State Approved Transcriber**
6 **and Notary Public in and for the State of New**
7 **York, hereby CERTIFY that the record taken by**
8 **me at the time and place noted in the heading**
9 **hereof is a true and accurate transcript of**
10 **same, to the best of my ability and belief.**

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15 **NANCY STRANG-VANDEBOGART**

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18 **Dated September 16, 2011**

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