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PLANNING BOARD COUNTY OF ALBANY
TOWN OF COLONIE

TEXAS ROADHOUSE
105 WOLF ROAD AND 449 & 455 SAND CREEK ROAD
APPLICATION FOR CONCEPT ACCEPTANCE.

THE STENOGRAPHIC MINUTES of the above entitled matter BY NANCY STRANG-VANDEBOGART, a Shorthand Reporter, commencing on September 25, 2012 at 7:44 p.m. at the Public Operations Center, 347 Old Niskayuna Road, Latham, New York 12110

BOARD MEMBERS:

PETER STUTO, CHAIRMAN
LOU MION
BRIAN AUSTIN
KATHY DALTON
TIMOTHY LANE
MICHAEL SULLIVAN

Also present:

Elena Vaida, Esq., Counsel to the Planning Board

Joe Grasso, PE, Clough Harbour and Associates

Frank DeLong

Susan Bredice

Pat Mitchell, Creighton Manning Engineering

Gary Wilkerson

Thomas Burke

1 CHAIRMAN STUTO: Next on the agenda is
2 Texas Roadhouse, 105 Wolf Road and 449 and 455
3 Sand Creek Road. This is an application for
4 concept acceptance. I believe that we've seen
5 this for sketch plan in the not too distant
6 past.

7 Mr. Lynch?

8 MR. LYNCH: Mr. Chairman and Members of
9 the Board, counsel, good evening.

10 I'm Peter Lynch and I'm here with Pat Mitchell
11 from Creighton Manning and Mr. Burke, the
12 applicant.

13 I'd like to start off, if I may, with talking
14 about the design features of the building which
15 we believe actually meet some of the design
16 criteria for the COR district.

17 We have building materials that consist of red
18 brick, wood, cedar siding and green wood trim
19 with a metal roof. All of those materials are
20 the types of materials that the COR design
21 criteria recommends.

22 This particular view here that I'm looking at -
23 the left elevation - this is the elevation that
24 is actually going to be the front entrance of
25 the building (Indicating). Facing us is Sand

1 Creek Road and as you can see, it's not just a
2 long flat wall. It's got design features that
3 really break up the building on the lower level
4 here. Believe it or not, as you're looking at
5 this thing, it looks like it's a major roof
6 line, but really it is a flat roof with some
7 parapets and some design features that make it
8 look like a bunch of different styles of roofs
9 when it's really just a flat roof. The design
10 features for the building actually call for
11 parapets when you do have a flat roof. We've
12 also got the idea here by breaking up the
13 building into what appears to be sections.
14 You're complying with the design standard here
15 for a small scale impression created by the
16 building.

17 This section of the building here is the
18 section that is going to be facing Wolf Road.
19 Again, you have the red brick, wood cedar
20 siding, wood green trim and again, with the idea
21 that you're breaking up the building in sections
22 and giving it some character with some of the
23 design features along the roof line. We believe
24 that the coloring of the materials purports
25 completely with the brownish colored brick of

1 the Chipotle building at the front of the site
2 at 105 Wolf Road. Our contention is essentially
3 that the scale of the building and the breaking
4 up of the building into what appears to be
5 sections and the materials being used actually
6 fits the architectural features of the COR
7 district.

8 As you can see, we have two flags on the roof.
9 It's our view of the sign ordinance. First of
10 all, national flags are exempt. They are not
11 signs. Clearly the United States of America
12 flag is a national flag, but the ordinance does
13 not say the United States of America flag. It
14 says a national flags. Frankly, flags which
15 pertain to the nation or which are patriotic in
16 nature would actually fall within the exemption
17 for being a sign. We have the state of Texas
18 flag here, which we believe is in fact
19 pertaining to the nation and pertaining to
20 patriotic views. So, from our view, the flags
21 at the top of the building are not signs, but
22 rather are exempt.

23 Just to let you know our position on that, we
24 are also proceeding with an application for a
25 sign permit. We are going to be required to get

1 some exceptions from the size from the Sign
2 Review Board and that application will, of
3 course, run parallel with this one.

4 CHAIRMAN STUTO: Has someone taken a
5 contrary position to that, with respect to the
6 Texas flag, or no?

7 MR. LYNCH: Not to my knowledge. I'm just
8 presenting the case tonight. I read the
9 ordinance and in my view of it, that's a
10 reasonable view of the ordinance.

11 Anyway, we wanted to let you know about what we
12 feel the building make-up is.

13 CHAIRMAN STUTO: I'm going to ask you to
14 stop for a minute.

15 Can you pass that along? The details are not
16 easy for us to see. This is just a friendly
17 suggestion. Next time, if you have a smaller
18 one, if we could have that in our package, that
19 would be helpful.

20 MR. LYNCH: Peter, I didn't realize it,
21 but apparently the sign application being filed
22 - I thought that the 8.5 by 11 PDFs of the
23 building were also being proffered.

24 MR. TENGELER: They were.

25 MR. GRASSO: They're in the packet. I

1 just don't think that I have a color copy.

2 CHAIRMAN STUTO: Can you point out the
3 flat roof part? That's the part that I don't
4 get.

5 MR. LYNCH: If you look at this, you
6 really don't think of that as being a flat
7 roof; it is. It has the design features which
8 really take away the flat roof. You're hiding
9 all the mechanicals and you're giving character
10 to the building.

11 The rear wall, if you will, facing the
12 residential properties, do not have windows.
13 Frankly that's because it's a kitchen area, and
14 frankly I don't think that you want windows
15 looking out onto the residential properties.

16 MR. LANE: What about venting fans?
17 They're not going to be shown here, I wouldn't
18 think.

19 MR. LYNCH: I'll ask Pat if he knows.

20 MR. MITCHELL: I think that they're
21 required to be inside.

22 MR. LANE: So, they're going to be
23 somewhere near the kitchen obviously.

24 MR. MITCHELL: I don't know off-hand where
25 those vents are.

1 MR. GRASSO: Just to clarify for the
2 Board, the elevation that has been provided, I
3 think, is a mirrored image. The direction of
4 the elevations are flipped on this site; is
5 that right? The flags are toward the front?

6 MR. LYNCH: Right.

7 MR. LANE: But it's still going to be
8 closer to the residential.

9 MR. MITCHELL: The cook line and the prep
10 area -- there is a hood basically in the middle
11 of the building. The residential side is over
12 here (Indicating).

13 MR. LYNCH: If I may, Parker Harrington is
14 with Texas Roadhouse. He just indicated to me
15 that the venting is actually on the roof.
16 One of the comments, if I may, that Joe had put
17 in his TDE letter is the issue of lighting
18 impact because we are lighting the flags on the
19 roof. He made a comment about whether or not
20 that would have any kind of impact on the
21 adjoining residential properties. So, in
22 working in conjunction with Texas Roadhouse's
23 engineers, Pat was able to come up with a plan.
24 Right now I'm showing the building at this
25 location here (Indicating). This is a 50-foot

1 line around the building, which would show the
2 spillage of the lighting from the roof. As you
3 can see, we are well within the property and not
4 spilling over onto the residential properties
5 along Kenlyn. We do spill over on a couple of
6 the parking spaces on 99, but that's already a
7 lit commercial parking lot. So, we wanted to
8 address the issue that Joe had raised. Frankly,
9 it's our contention that the lighting of the
10 flags on the roof are not going to have an
11 adverse impact on the residential properties
12 along Kenlyn. The last time we were here, one
13 of the questions that was raised was that you
14 guys asked for a master plan - just a concept --
15 if we built out a third building, how would it
16 appear.

17 What we have here is Chipotle up here on Wolf
18 Road, Texas Roadhouse back here and just a
19 concept of a retail space (Indicating). Right
20 in the middle of the site - that doesn't mean
21 that's where it's going to be. Just to give you
22 the idea that the total build-out of the site,
23 when we're done would have the three buildings
24 on it.

25 Just so you'll recall, we actually are putting

1 together an assemblage of three parcels of land,
2 which 105 Wolf Road previously had the two-story
3 office building on it. This property right back
4 here has the existing residence/commercial
5 garage on it that will be coming down. This
6 property right here had the Clay's Fish Market.
7 All three of those buildings being obsolete,
8 essentially, I'm going to say the office
9 building was an eyesore, but certainly Clay's
10 and the commercial garage are, also. The
11 office building had run its course. While we are
12 doing the assemblage of the three properties
13 into one, we ultimately plan to have a build-out
14 similar to these lines.

15 Another question that was asked the last time
16 that we were here - and it came up during the
17 Chipotle review -- what this is showing is
18 Chipotle - this is that one story garage in the
19 back. What we are showing at this location here
20 is a potential location for an access point for
21 99 (Indicating). Right now the idea of saying
22 well, we're going to give these guys an easement
23 - there would be a lot of detail that would have
24 to be worked out if that ever happens in the
25 future. First of all, there would have to be an

1 agreement between the parties relative to the
2 access easement. There would have to be an
3 agreement between the parties relative to the
4 finances of that agreement, certainly with
5 respect to the burdening of this site with
6 additional traffic, and so on. The 99 has a
7 liquor licence and while Texas Roadhouse also
8 has liquor, there is an indemnification
9 agreement and certain requirements for insurance
10 with respect to that. We would have to explore
11 that type of issue also with 99.

12 With that said, ultimately there is a
13 potential access point for that as we're
14 depicting it on the plan right here
15 (Indicating).

16 CHAIRMAN STUTO: Is there a note that goes
17 along with that?

18 MR. LYNCH: There is a note that says,
19 "Potential location of access to lands of Gatto
20 to be provided in the future, exact location to
21 be determined based upon future layout and
22 circulation."

23 CHAIRMAN STUTO: It's an important point.
24 That's why I'm talking about it.
25 Joe, is that the language that you're going to

1 include?

2 MR. GRASSO: Yes. It reads a little bit
3 different.

4 "Potential location of access easement to lands
5 of Gatto, if provided."

6 He said "to be provided."

7 CHAIRMAN STUTO: We can work that out.
8 It's an important point.

9 MR. GRASSO: The Planning Board should
10 look at the wording and make sure that they are
11 comfortable with it.

12 MR. LYNCH: I want the Board to understand
13 that conceptually, we're not opposed to the
14 idea. But it is a business arrangement where
15 the devil is in the details on these things.
16 It's certainly not going to be a gratuitous
17 thing to - okay, guys, we're going to build
18 this access point for you and you go ahead and
19 use our access point to go through our property
20 without certain conditions being imposed. It
21 would have to be reasonable both ways.

22 CHAIRMAN STUTO: The way that Joe is
23 explaining it to me, the next time that 99
24 comes in, that's the time when the rubber would
25 hit the road to make a connection - the next

1 time that they come in for site plan revision.
2 Is there a similar concept with the banks that
3 are on the corner?

4 MR. LYNCH: Not really, Peter. It's just
5 too hard to work out here. This corner parcel
6 right here is completely isolated from our
7 parcel (Indicating). There is an existing
8 access drive right along the rear of the corner
9 parcel that leads to this parcel and at this
10 juncture, we just don't have any idea of
11 whether or not an access would be viable there.
12 There was a comment from Joe that if there was
13 an access point, this building should be moved
14 up along the street line, as I recall it.
15 Right now, we're not showing a potential access
16 point here. We really don't see it as being
17 likely.

18 CHAIRMAN STUTO: Do you want to comment on
19 that now?

20 MR. GRASSO: It's a little bit hard to see
21 because it's not colored, but there is an
22 access drive parallel to Sand Creek Road
23 between the building and Sand Creek Road. This
24 is the access road that goes across the
25 frontage of your site, parallel to Sand Creek

1 Road going this way (Indicating).

2 We had said that access road could provide
3 a logical cross-access connection to the two
4 bank parcels. If that was not going to be
5 accommodated, which we do support that type of
6 cross-connection, that building could be slid
7 closer to Sand Creek Road and better comply
8 with the design requirements of the zoning
9 district. Basically the zoning district
10 doesn't support those types of cross-access
11 drives between your building and your road
12 frontage. But because that's the way that we
13 have it designed, it's almost set up naturally
14 to provide a natural cross-access connection.
15 So, if that's considered in the future, we
16 would support this type of site plan design.

17 MR. LYNCH: This concept of the master
18 plan is really not demonstrative of what will
19 really actually happen. We could have a tenant
20 come in and say we want to be closer to Wolf
21 Road. We could have a tenant come in and say,
22 we want to be further away from Wolf Road.

23 CHAIRMAN STUTO: We understand that. We
24 appreciate you putting it on there so that we
25 can visualize it.

1 MR. LYNCH: One of the big things for the
2 purposes of the concept plan is as you can see,
3 we're going to have parking in the front yard
4 facing Sand Creek Road. In a COR district,
5 parking in the front yard is not allowed,
6 absent a waiver. So, one of the specific
7 requests that we'll be making and we are making
8 is that we be allowed to have parking in the
9 front yard. Of course, with the ultimate build
10 out, this won't really be like a typical front
11 yard. Right now it is.

12 Also, you've got the idea of 80 percent of the
13 frontage having some kind of demarcation with a
14 wall or some kind of definition along the street
15 line to outline the property. I could be wrong,
16 but I think that Joe's TDE letter agrees with
17 this - that until we actually have the third
18 build-out, we really wouldn't know where to put
19 the wall for the demarcation. So, while we
20 don't have a problem with the idea of the 80
21 percent requirement along the street line, we
22 ask that it be deferred until the final build-
23 out of the site.

24 CHAIRMAN STUTO: Okay, we'll wait for
25 Joe's comments.

1 MR. LYNCH: That's pretty much it in a
2 nutshell. I know that you guys are familiar
3 with the project and the sketch plan. We
4 haven't changed the project at all relative to
5 that. Obviously we're going to be
6 incorporating all the conditions that were
7 imposed through the Zoning Board of Appeals.

8 CHAIRMAN STUTO: Joe Grasso, our Town
9 Designated Engineer, could you provide your
10 comments?

11 MR. GRASSO: We have a comment letter in
12 your packet dated September 17th and I'm just
13 going to read through all of those comments.
14 They do appear still relevant to the project as
15 designed, even though we have gone into some
16 discussion about some of them.

17 The first one is regarding SEQRA.

18 "The Town Attorney's office has classified
19 this as an unlisted action pursuant to SEQRA and
20 a short EAF has been provided with your
21 application materials. The only involved agency
22 is the Colonie Planning Board with a referral to
23 the Albany County Planning Board for
24 recommendation which will be forthcoming. We
25 believe that the short EAF adequately describes

1 the environmental setting on the project and
2 based on apparent limited environmental impacts
3 and consistency with the findings statement of
4 the airport area GIS, which this site resides
5 within, we don't believe that significant
6 environmental impacts are expected. So, as
7 such, a SEQRA determination can be made with the
8 Planning Board's review of the final site plan.
9 The final site plan will be forthcoming in the
10 future."

11 A variance was approved for the project by the
12 ZBA back in August which allowed a 10-foot
13 parking setback along the southeast property
14 line abutting the residential zoning district -
15 that's the residential properties along the rear
16 of Kenlyn Drive. The setback variance was
17 granted with some conditions as follows "A white
18 plastic solid fence with a minium height of
19 eight feet shall be erected and maintained along
20 the southeast corner beginning near Sand Creek
21 Road and extending to the north corner of 6
22 Kenlyn Drive. The fence shall be erected on an
23 18-inch high berm. Eight to ten foot high
24 evergreen trees shall be planted and maintained
25 on 105 Wolf Road side of the fence to provide a

1 visual screen. Said trees shall be provided
2 with an automatic variation system and the
3 rectangular section of the parcel located
4 between 107 Wolf Road and lots 8 and 10 Kenlyn
5 Drive is to remain in a natural state."

6 MR. LYNCH: That's this area right here
7 (Indicating). This is already very heavily
8 vegetated and will remain so.

9 MR. GRASSO: The last condition being
10 refuse collection is prohibited prior to 7:00
11 am. So, we have reviewed the concept plans in
12 accordance with those conditions and found it
13 to be consistent. As such, those details could
14 be carried forth on a final site plan.

15 As Pete had mentioned, the applicant is
16 requesting a waiver from the COR design
17 standards to allow parking lot paving within the
18 front yard of Sand Creek Road. "The
19 justification is to accommodate the future
20 development and building placement on the lot.
21 The master plan for the site shows the future
22 building being situated along Sand Creek Road,
23 thereby making the majority of the on-site
24 parking internal to the site and between the
25 various establishments. As such, justification

1 for the waiver appears valid. If the Planning
2 Board agrees with the justification, they will
3 prepare a draft resolution for consideration by
4 the Planning Board during final review.
5 The COR design standards also recommend a
6 minimum frontage build-out of 80 percent.
7 However, since the project will involve future
8 development along Sand Creek Road, the applicant
9 is not proposing installation of decorative
10 fencing or a wall at this time. We agree that
11 the development of the wall is not appropriate
12 right now and in conformance with the design
13 standards should be reviewed upon further
14 development of the site.

15 The plans indicate cross-access easement to
16 the Gatto parcel that was a requirement during
17 the review of the Chipotle restaurant. As
18 changes are made to the access arrangement, the
19 notes and easement limits should be
20 reestablished over the new access drive
21 continuous to Sand Creek Road. The Town
22 Department of Public Works has also recommended
23 a cross-access arrangement to be made to the two
24 bank parcels at the corner of Sand Creek Road
25 and Wolf Road. In general, we are supportive of

1 cross-access arrangements and such an
2 arrangement could reduce congestion and
3 conflicts associated with the intersection.
4 The proposed master plan that includes the
5 development of an additional building along Sand
6 Creek Road appears reasonable. We prefer that
7 the retail building be shifted parallel toward
8 Sand Creek Road, unless the access drive along
9 Sand Creek Road provides access to the adjacent
10 properties. Although the physical connection
11 does not need to be made at this time,
12 provisions for cross-access rights should be
13 provided.

14 CHAIRMAN STUTO: Okay, I'm a little
15 confused between five and six. Do you mind
16 showing us on the diagram?

17 MR. GRASSO: Not at all. Five really
18 points to two cross-access connections.

19 CHAIRMAN STUTO: The other drawing would
20 be better, I think. Can you stand up and show
21 us what you're talking about?

22 MR. GRASSO: Sure. Like Pete had
23 mentioned, there is an existing bank in
24 operation right here (Indicating). This former
25 bank is now closed. They've got a curb cut on

1 Wolf Road, as well as an access drive that
2 comes down off Sand Creek Road. The Town of
3 Colonie Department of Public Works brought up a
4 comment that they support cross-access between
5 this project site and both of these end parcels
6 (Indicating) and we support that possible
7 future cross-access connection. Obviously, it
8 would need to get worked out with the
9 development of the final plan - this building
10 here as well as what would happen in the
11 future. It would be ideal if one or more of
12 the curb cuts on Sand Creek Road in this
13 location could be eliminated in favor of having
14 some of the traffic go through this project and
15 this curb cut would have to be shifted further
16 away from that intersection. The further away
17 that we can get these curb cuts away from the
18 intersection, the better.

19 CHAIRMAN STUTO: Now, what were you
20 talking about before - an access road parallel
21 to Sand Creek? I didn't follow you there.

22 MR. GRASSO: This is the drawing that
23 shows a possible future configuration in this
24 area of the site. Right now they've got what
25 we call a parallel access road across the

1 frontage yard.

2 CHAIRMAN STUTO: But that's internal,
3 right?

4 MR. GRASSO: That is internal. This is a
5 place for a cross-access connection to these
6 two sites. That was not going to be provided,
7 or if the cross-access was going to be more
8 towards the back of the site or eliminated
9 entirely, the design standards from the COR
10 district support moving this building further
11 up towards Sand Creek Road, eliminating the
12 access drive. That is a decision that needs to
13 be made because it needs to be made for final
14 site plan consideration. I want it to be known
15 so that the Planning Board can take it into
16 consideration and review this plan as the
17 applicant works on developing their final site
18 plan.

19 CHAIRMAN STUTO: What you're saying to me
20 makes a lot of sense. Can you make sure that
21 the applicant understands what you're saying
22 and maybe we can get the appropriate note on
23 the drawing?

24 MR. LYNCH: I understood it very well
25 here. The reality is, you've got two separate

1 property owners on the corner of Wolf and Sand
2 Creek. This guy here, for example, with the
3 long driveway leading to the site - they may
4 not be willing to give up their access.

5 CHAIRMAN STUTO: I'm not saying that you
6 have to do it today.

7 MR. LYNCH: All I'm saying here is that
8 many details would have to be worked out
9 between the respective property owners relative
10 to it, and certainly we don't have those sites
11 within our control. I understand the idea of
12 eliminating the curb cuts closer to the
13 intersection, but at the end of the day here,
14 it also has to work for our property.

15 CHAIRMAN STUTO: Okay, it's only concept
16 tonight, but I'd like to work harder on that
17 between now and final.

18 MR. GRASSO: I'm up to number seven - the
19 consolidation deed that would merge all of
20 these lots is a requirement before final site
21 plan gets granted.

22 Regarding traffic impacts: the project is
23 expected to generate 78 new trips during the
24 p.m. peak hour for the whole site, including the
25 Chipotle. The applicant has provided some

1 information regarding what the former uses on
2 the site generated in terms of traffic and then
3 we're only looking at two more trips than those
4 former uses. As such, significant traffic
5 related impacts are not expected to occur.
6 There are mitigation fees that are assessed to
7 the projects within the airport area GEIS study
8 area. They would be able to get a credit for
9 those previous trips that occurred from the
10 site. They will have to make a mitigation fee
11 payment for traffic related impacts, but it's
12 going to be substantially reduced by taking into
13 consideration those previous trips.

14 We recommend a restriction on the use of
15 outdoor PA systems due to the proximity of the
16 site to the adjacent residences.

17 MR. LYNCH: Joe, before you jump to the
18 next one, can I just jump in for one second on
19 the PA thing? When we got that comment, Pat
20 checked with Texas Roadhouse and they actually
21 do use an outdoor PA system, but they are
22 suggesting that they use a low decibel level
23 and not use it after 10:00 p.m -- as hopefully
24 a middle ground.

25 CHAIRMAN STUTO: I don't know. There are

1 residents close by.

2 MR. GRASSO: Either the Planning Board can
3 weigh in now, or we can wait until we get
4 additional information regarding that.

5 CHAIRMAN STUTO: Are there neighbors here
6 that live nearby?

7 (Several audience members raised their
8 hands.)

9 CHAIRMAN STUTO: Okay, we'll hear from
10 you.

11 MR. GRASSO: I think that comment was also
12 brought up by the Planning Department, too.

13 MR. AUSTIN: Can you just clarify what
14 would be broadcast over the PA system?

15 MR. MITCHELL: It's just like a four-inch
16 speaker that we have right over the vestibule
17 of the door. We typically just call names if
18 they don't respond. Typically, you can't hear
19 more than a couple of parking spaces away from
20 the building.

21 CHAIRMAN STUTO: We'll have a proper note
22 for that, if that's the case.

23 MR. GRASSO: Going on with our comments,
24 I'm up to 10 in our letter. We have a concern
25 over the nighttime visability of the rooftop

1 flags, illumination of the metal roof facia,
2 etcetera. The architectural lighting of these
3 features does not appear to meet the COR design
4 standards. If lighting of these features
5 continues to be proposed, we recommend an
6 analysis to evaluate the impacts on the
7 adjoining residences along Kenlyn Drive.

8 Just to clarify because Pete provided a
9 response to this comment; our concern isn't so
10 much the illumination of these features, or
11 illumination off the site caused by these
12 lights. It's the visibility of having the
13 illumination on the site, as it would be viewed
14 from the residential properties. The building
15 is taller than the existing building - the
16 buildings that exist on the site. There hasn't
17 been an analysis done regarding the horizontal
18 distance - how tall these features on the
19 building are and how often they're going to be
20 lit. You make reference to LED border strips.
21 We don't know if that's on the sides, the back
22 of the building and if it's something that could
23 be viable from these residential properties
24 along Kenlyn Drive.

25 CHAIRMAN STUTO: I'm just going to say

1 something for the neighbors.

2 We ask that you sign in so we can call your
3 name in an orderly fashion if you want to speak.
4 There is a sign-in sheet on that table over
5 there (Indicating.)

6 MR. GRASSO: Although it's not necessarily
7 required to be built at this time, we recommend
8 an extension of a sidewalk -- there is an
9 existing sidewalk along Sand Creek Road. We
10 just recommend an extension there. It's got to
11 dovetail into their final plans for the
12 remaining parcel there along Sand Creek Road.
13 Our last comment is regarding that horizontal
14 alignment of the access drive. That goes from
15 the Texas Roadhouse out to Sand Creek Road.
16 Included in your packet are some comments.
17 There are couple that I highlighted from the
18 Planning Department. There was a comment
19 regarding two trees along Wolf Road that were
20 supposed to remain during construction of the
21 Chipotle restaurant that were eliminated. The
22 Planning Department had recommended that they be
23 reinstalled. We looked at it, and there are
24 underground utilities that are in the way there.
25 We don't think that it's feasible to install

1 those trees where they were and for that matter,
2 any location up there that would not interfere
3 with those underground utilities. So, we don't
4 support that comment.

5 They also commented regarding a restriction on
6 outdoor music should be considered to the close
7 proximity to the abutting residential neighbors.
8 I don't know if outdoor music venues are
9 proposed as part of the use.

10 And then a sign restricting the hours of
11 refuse collection.

12 In your packets there are additional comments
13 provided by adjoining neighbors along Kenlyn
14 Drive regarding some construction related
15 impacts, noise and vibration. That's something
16 that we can continue to take a look at and
17 review the file and solicit some additional
18 information from the applicant and their team,
19 as they move forward to make sure that we try to
20 mitigate any impacts during construction.

21 CHAIRMAN STUTO: I do have a letter in the
22 file and I'm not sure if the applicant was
23 copied on it from the resident of 12 Kenlyn.
24 Is that resident here?

25 MS. DALTON: No, she couldn't make it.

1 CHAIRMAN STUTO: She has concerns about
2 the impact of construction and use of heavy
3 equipment. I'm going to read this one sentence.
4 "All I'm asking is that when they're using that
5 heaving equipment over there that they take into
6 consideration that there are existing houses
7 very close and damage is being done."

8 I'd just like to get that in the record and
9 have you respond to that.

10 MR. LYNCH: That was raised during a
11 Zoning Board of Appeals process. Frankly, a lot
12 of the heavy construction work that was done
13 was done during the demolition of the office
14 building that previously existed on the site.
15 The comments that were made during the Zoning
16 Board of Appeals process. The engineer on the
17 Zoning Board actually asked the complaining
18 individual if she had a full basement, and she
19 does. It's my understanding that other
20 individuals along Kenlyn did not have the same
21 experience that she had. I think that what we
22 have here is we do have to demolish the garage
23 and the house, but that's a far cry from the
24 demolition of a two-story office building that
25 was about 18,000 square feet in size. Just by

1 virtue of the nature of the site, it has been
2 substantially cleared to the point that it's
3 going to be except for the additional lot that
4 we're going to pick up. A lot of the base work
5 for the project is already done.

6 MS. DALTON: How long do you imagine that
7 the entire time period between the time when
8 you start demolition and when you finish the
9 project?

10 MR. BURKE: I would anticipate, given the
11 conditions that we could be on the site, for
12 two or three months. That's not including the
13 time that it would take to construct the new
14 building. It's a separate issue.

15 MR. LYNCH: We, as the developer, if
16 everything is approved - if we were ready to
17 start tomorrow, Mr. Burke's responsibility is
18 to purvey the site for Texas Roadhouse -
19 deliver a pad and then Texas Roadhouse,
20 through their own contractor, will come in and
21 construct the building itself.

22 MS. DALTON: So, the two to three months
23 is just preparing the site.

24 MR. LYNCH: Correct.

25 MS. DALTON: And then there would be

1 additional plans for constructing the building.

2 MR. LYNCH: Correct.

3 MR. BURKE: If I might address with
4 respect to the letter that you have on file.
5 I've read all of that. She makes a number of
6 unspecified allegations of planning with
7 respect to damage. To my knowledge, none of
8 that was substantiated. However, I did
9 indicate at the Zoning Board of Appeals meeting
10 when I gave her husband my card and asked him
11 to call me personally on my cell phone - which
12 he now has - with the first hint of any trouble
13 or any concerns that he might have. I thought
14 that the whole issue was resolved. I didn't
15 place much value on the complaint as much as
16 the building was demolished and it was much
17 closer to six other houses, none of which
18 apparently suffered any damage at all.
19 The two banks that you talked about at the
20 corner of Wolf -- nor was the building which I'm
21 acquiring right directly behind us was effected
22 in any way - the residents and the commercial
23 property. Somehow, somebody way down on 12 had
24 issues and it was my fault. I think that we
25 have to certainly be concerned with a legitimate

1 concern from our neighbors, but I also want to
2 make sure that they are legitimate concerns.

3 MR. LYNCH: If I may point out, 12 Kenlyn
4 appears at this location (Indicating).

5 Between the construction area and 12
6 Kenlyn is this entire corner of the parcel
7 which is developed with mature trees and they
8 are going to remain intact. There is a
9 sufficient buffer. But at the end of the day,
10 people have their own perspectives and they
11 have their own issues, but I think that the
12 bulk of the heavy lifting on this site was the
13 demolition of the office building. It was a
14 significant building. Right now, we don't have
15 anything here right now. The garage is a
16 couple of thousand square feet. It's night and
17 day compared to the demolition of an office
18 building. So, we anticipate that there won't
19 be a problem. The contractor will be advised
20 of the sensitivity of the neighbors. One of
21 the things that we talked about during the
22 Zoning Board, for example, is that as soon as
23 practicable within the process, the eight-foot
24 fence along the division line here is going up.
25 In other words, we're just trying to mitigate

1 the impact.

2 MS. DALTON: I presume that it will be
3 done during regular working hours. You're not
4 going to be working extra hours to expedite it.

5 MR. LYNCH: This is a regular working hour
6 job. This is not a 24/7 situation.

7 The other thing that came up when Joe was
8 reading his comment is well, part of it is going
9 to be part of the sign process, the LED lighting
10 faces Wolf Road and Sand Creek Road. There is
11 no LED lighting on the rear of the building
12 facing Kenlyn. In looking at the design
13 standards for the COR district, the LED lighting
14 is definitional on the sides. It's not area
15 lighting and it's not pedestrian lighting. It's
16 not meant to do anything other than to
17 correspond to the signage. The COR design
18 standards don't even address it. So,
19 consequently it a new concept. It's an integral
20 part of Texas Roadhouse. Again, this is their
21 prototyp,e, and I will say that in speaking with
22 Parker, the flags on the roof are a material
23 element of their project. So, I want you to
24 know that it's not just well, we'll throw a flag
25 up there.

1 MS. DALTON: I'm offended that they're not
2 adding a New York State flag.

3 MR. LYNCH: Well, they're bringing Texas
4 to New York State and that's the whole idea.

5 MS. DALTON: In the spirit of cooperation,
6 it could be right in the middle; I'm just
7 saying.

8 MR. MION: Did I understand you
9 correctly Joe, saying that the concern is more
10 if you can see the illumination and not so much
11 the illumination - but they could see over the
12 residential area?

13 MR. GRASSO: That's correct.

14 MR. MION: I know that they said that it
15 has to be lit up 24 hours a day or maybe not 24
16 hours, but at night. That's the protocol.

17 MR. LYNCH: The flags will be visible as
18 flags.

19 CHAIRMAN STUTO: Any more comments before
20 we go to the public?

21 Sir, I know that you have your hand up, but I
22 have to call the names in order and you'll get
23 your chance to speak.

24 Frank DeLong.

25 MR. DELONG: I live at 4 Kenlyn Drive.

1 Mr. Shadick lives at 2 Kenlyn Drive and he
2 can't be here tonight. He hurt his back. I
3 represent him and me.

4 CHAIRMAN STUTO: Are you adjacent?

5 MR. DELONG: The two houses are exactly
6 behind that house. My house is exactly right
7 behind the house that they are going to take
8 down. These guys did the construction on that
9 other building. The only thing that I got was
10 dust because you get that. I had no damage.
11 My cellar is perfect. My house is perfect. I
12 just remodeled my whole house. I have no
13 regrets.

14 These are beautiful stores. There is one is
15 Syracuse. I've been in it. I'll tell you it's
16 a really nice thing to come to this area.

17 CHAIRMAN STUTO: Where is your next door
18 neighbor that you're talking about?

19 MR. DELONG: Shadick is the first house.
20 He's 2 Kenlyn. I'm 4 Kenlyn. The gentleman
21 right here is 6 Kenlyn (Indicating).

22 CHAIRMAN STUTO: You would agree with
23 that?

24 MR. WILKINSON: Yes.

25 MR. DELONG: I agree to the fence and the

1 trees in the back of the house. Right now I
2 have no lighting from any of those stores over
3 there because where the house is now. I don't
4 think I'm going to have any issues with it at
5 all.

6 CHAIRMAN STUTO: It's helpful to get your
7 comments on the record.

8 MS. DALTON: Can I say one thing? Thank
9 you for coming and representing the positive
10 for a construction project. Typically, people
11 come here when they're not happy about
12 something. So, it's very nice that you took
13 the time to come tonight. Thank you.

14 CHAIRMAN STUTO: Susan Bredice, 445 Sand
15 Creek Road.

16 MS. BREDICE: My only concern is about the
17 traffic study. I have a hard time thinking
18 that there is only going to be a slight
19 increase in the traffic, because I know what
20 the traffic is right now and there isn't any
21 existing business there. The business there
22 before was not existing for many years. The
23 existing building that was there was NYACK
24 College and they housed a doctor's office.
25 That being said, I am also happy with what is

1 happening. I think that the developer did a
2 good job with his other properties and did a
3 wonderful job with the existing property. What
4 I am concerned about is the outlet and the curbs
5 that are going to be going in on Sand Creek
6 Road. I live on Sand Creek Road. It's right
7 next door to my house.

8 CHAIRMAN STUTO: Can you point to where
9 your house is?

10 MS. BREDICE: My house is right there
11 (Indicating). There is one house between us.

12 CHAIRMAN STUTO: And then the street?

13 MS. BREDICE: I'm on the corner of Kenlyn
14 Drive and Sand Creek Road.

15 I'm concerned and especially when I saw the
16 revisions of what could be. I really want to
17 address that because that's what could be. I
18 don't know what's going to happen there when
19 they do further development there, but with that
20 access road coming through from the 99
21 restaurant, if that happens, I am concerned
22 about that and they're outletting out to Sand
23 Creek Road. I understand the cross-
24 connectivity. I understand how that would
25 alleviate the traffic, but I'm still concerned

1 about people coming and driving from the 99 and
2 cutting through that property and letting out
3 onto Sand Creek Road, especially since my
4 driveway is right down the street. That being
5 said, we don't know what's going to happen at
6 that point. I guess we'll address that when it
7 comes.

8 CHAIRMAN STUTO: Thank you. Joe, would
9 you like to address the traffic point she made?

10 MR. GRASSO: She brings up a valid comment
11 regarding - we support cross-connectivity
12 between commercial parcels, but obviously
13 where those curb cuts are on Sand Creek Road is
14 something that we'll have to take a look at.
15 Obviously what we don't want to do is create an
16 access arrangement that results in a serious
17 impact on the adjoining neighbors.

18 CHAIRMAN STUTO: The other one was about
19 traffic generation. She's saying that it
20 doesn't generate any traffic.

21 MR. GRASSO: The analysis presented looked
22 at all of the former uses on the site. It
23 probably looked at them in terms of their peak
24 operation. I understand that there has been a
25 lot of changes to this site through the years.

1 MS. BREDICE: It's been a long time since
2 there has been any peak operations there.

3 MR. GRASSO: I understand and I think that
4 what they looked at is what the peak traffic -
5 it's something that we typically use. Just
6 like we're comparing it to what the peak
7 traffic would be from the current use as well.

8 CHAIRMAN STUTO: How many cars are 78?

9 MR. GRASSO: It's a restaurant. It's a
10 fair number of vehicles. It's got good access
11 consideration. It's got access on Wolf Road,
12 which obviously can handle thousands of vehicle
13 per hour. It's got a curb cut on Sand Creek
14 Road that could help with good traffic
15 distribution. It's got a good access
16 arrangement.

17 CHAIRMAN STUTO: Thank you. Anyone else
18 from the public?

19 (There was no response.)

20 CHAIRMAN STUTO: Kathy you want to start?

21 MS. DALTON: What is the benefit of
22 putting the three parcels together? Why are we
23 not just creating three separate businesses on
24 three separate parcels?

25 MR. LYNCH: It was a recommendation at the

1 DCC meeting. We don't have to do it, but as a
2 practical matter, it's going to be a single
3 owner and these parcels or these uses are on
4 the site pursuant to lease. From our
5 standpoint, we don't have any opposition to
6 consolidate the parcels into a single parcel.
7 For example, everyone will have access onto a
8 public street also. I really don't think that
9 it's a big issue.

10 MS. DALTON: I just didn't understand if
11 there was some benefit to it.

12 CHAIRMAN STUTO: The way that the lots
13 were configured, it wouldn't have worked, would
14 it?

15 MR. LYNCH: The way that the lots were
16 configured was that it was an L-shaped parcel.
17 This parcel went all the way to the back
18 (Indicating). The Sand Creek parcel was here
19 and then you've got this long driveway coming
20 along like so with a building in the back here.
21 It just makes sense to really consolidate it
22 into a signal parcel.

23 CHAIRMAN STUTO: Lou?

24 MR. MION: Nothing.

25 CHAIRMAN STUTO: Brian?

1 MR. AUSTIN: I was the member that
2 expressed the concern about the building on
3 Wolf Road and also Sand Creek. I didn't get a
4 chance to visit the site last time. I have
5 since visited the site and I think that it's
6 great. This building does fit on both sides.
7 The only other concern would be the residents.
8 They seem to be in favor of the project and you
9 seem to be doing a good job with taking into
10 consideration their concerns also.

11 MR. LYNCH: Thank you.

12 CHAIRMAN STUTO: Tim?

13 MR. LANE: I agree that it's a good
14 project. It shows a great way to redevelop a
15 lot. As you just explained, it's an odd lot
16 and you've found a way to actually manage to
17 merge it into one.

18 For the one portion that's going to remain
19 undeveloped, is that going to also serve as your
20 snow storage area? Has that not been worked
21 out?

22 MR. LYNCH: I don't have the details on
23 that yet. I don't know the answer, Tim. The
24 idea here is to keep it as a buffer and a noise
25 buffer (Indicating).

1 MR. LANE: It's going to be entirely
2 paved. So, I was wondering what you were going
3 to do with the snow. It's going to be an issue
4 at some point.

5 MR. LYNCH: If we did concept acceptance,
6 we will be working on where we're going to put
7 the snow.

8 CHAIRMAN STUTO: Mike?

9 MR. SULLIVAN: I have no questions.

10 CHAIRMAN STUTO: Do you have any final
11 comments?

12 MR. GRASSO: No.

13 CHAIRMAN STUTO: My only comments are to
14 please think hard about that cross-connectivity
15 and whatever note can accommodate future uses,
16 even including the bank. I'll let the
17 engineers and you talk about that a little bit
18 more between now and final.

19 I'm a little bit concerned about the lighting,
20 as Joe said. I don't know if we can resolve
21 that now.

22 MR. GRASSO: Are there one of these built
23 somewhere else? I know that somebody mentioned
24 that there was one in Syracuse, but then you
25 mentioned that this is the first in New York?

1 MR. BURKE: This is the first one in the
2 Albany area, but we do have one in DeWitt.

3 MR. GRASSO: Any chance to possibly get
4 nighttime photos taken from 100 feet away?

5 MR. BURKE: Sure.

6 CHAIRMAN STUTO: What do we need to do to
7 take a vote?
8 Elena, do you want to talk about what concept
9 approval is?

10 MS. VAIDA: I think that everybody knows
11 at this point what concept is.

12 MS. DALTON: I'll do it. Concept approval
13 is just that. It's the approval of the
14 concept, but it in no way guarantees you
15 anything specific going forward.

16 MR. LYNCH: I think it's concept
17 acceptance. We understand.

18 CHAIRMAN STUTO: Do we have a motion for
19 concept acceptance?

20 MS. DALTON: I'll make the motion.

21 MR. AUSTIN: I'll second that.

22 CHAIRMAN STUTO: Any discussion?

23 (There was no response.)

24 CHAIRMAN STUTO: All those in favor say
25 aye.

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(Ayes were recited.)

CHAIRMAN STUTO: All those opposed?

(There were none opposed.)

CHAIRMAN STUTO: The ayes have it.

MR. LYNCH: Thank you, very much.

(Whereas the above entitled proceeding was
concluded at 8:42 p.m.)

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CERTIFICATION

I, NANCY STRANG-VANDEBOGART, Shorthand
Reporter and Notary Public in and for the State
of New York, hereby CERTIFY that the record
taken by me at the time and place noted in the
heading hereof is a true and accurate transcript
of same, to the best of my ability and belief.

NANCY STRANG-VANDEBOGART

Dated September 26, 2012

