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PLANNING BOARD COUNTY OF ALBANY

TOWN OF COLONIE

\*\*\*\*\*  
TEXAS ROADHOUSE  
105 WOLF ROAD  
AMENDMENT TO FINAL SITE PLAN  
\*\*\*\*\*

THE STENOGRAPHIC MINUTES of the above entitled matter by NANCY STRANG-VANDEBOGART, a Shorthand Reporter, commencing on November 19, 2013 at 7:21 p.m. at The Public Operations Center, 347 Old Niskayuna Road, Latham, New York

BOARD MEMBERS:  
PETER STUTO, CHAIRMAN  
BRIAN AUSTIN  
TIMOTHY LANE  
LOU MION  
KATHY DALTON  
KAREN GOMEZ

ALSO PRESENT:  
Joe LaCivita, Director, Planning and Economic Development  
Elena Vaida, Esq., Special Counsel to the Planning Board  
Bruce Rubin  
Pat Mitchell, Texas Roadhouse  
Joe Grasso, PE, CHA  
Lawrence Rubin  
Mike Tengeler, Planning and Economic Development  
Parker Harrington, Texas Roadhouse  
Tom Burke

1           CHAIRMAN STUTO: Okay, the next project is Texas  
2 Roadhouse. This is an amendment to the final site plan.  
3 This is additional parking and associated stormwater  
4 management.

5           MR. LACIVITA: Peter, I'm just going to say a few words  
6 before I turn it over to Mike to introduce this, or to the  
7 developer.

8           The Texas Roadhouse, as you remember, started  
9 originally with the redevelopment of this site in that  
10 we used to have an office complex and then it had the  
11 abandoned Clay's Seafood. We first started with  
12 Chipotle and then we came in with the Texas Roadhouse.  
13 The site was always planned for and developed for a  
14 three pad site, as we move forward. The amendment that  
15 you see tonight is truly an amendment to the original  
16 site plan to accommodate additional parking needs of  
17 the Texas Roadhouse based on its ongoing success as  
18 it's recently opened. I just wanted to bring you back  
19 to a history of what had happened with this site.

20           I don't know if you want to say a few additional  
21 words.

22           MS. DALTON: I have a vague recollection that when we  
23 first heard this project in its entirety, I thought that we  
24 spoke about that this might happen.

25           MR. LACIVITA: For the parking? I think that we talked

1 about parking needs, but it was never to this magnitude as  
2 to what has gone on. I think that we always talked about  
3 that there would be accessory parking in the future or  
4 shared parking when the third pad site came to be. It was  
5 always that the third pad site was going to be  
6 complementary, but not the same type of usage like  
7 restaurants because of working relationships that they had  
8 with the current tenants. That's why it was always a shared  
9 use with future parking needs.

10 MR. TENGELER: Just to echo that, it was always more or  
11 less a three pad site. If you were to talk about it in  
12 phasing terms, Phase I would have been Chipotle, Phase II  
13 Texas Roadhouse and Phase III this eventual site off of Sand  
14 Creek Road. You can consider this more like a Phase IIA.  
15 It's just a parking modification between Phase II and III.

16 CHAIRMAN STUTO: I just want to remind the public that  
17 if you want to speak on this project, please sign up on the  
18 sheet of paper over there on the table next to the door.

19 MR. MITCHELL: If I could elaborate, this parking lot  
20 is still considered temporary. We're still considering a  
21 third use on this site. If the landowner, Mr. Burke gets a  
22 tenant on this site in a month, this work that we are  
23 proposing to the Board tonight is going to get removed and  
24 we're going to come back to the Board with the third use.  
25 Everything that we're showing you tonight is temporary.

1           CHAIRMAN STUTO: I'll just say preliminarily so that  
2           you'll know what my predominate thought is that if there is  
3           not enough parking now, your third use better not be a  
4           parking intensive use.

5           MR. MITCHELL: And I can understand that. One of the  
6           reasons that we're in the situation is when Texas Roadhouse  
7           first opened up they get a lot more business than they  
8           typically do a few months down the road. They also operate  
9           at nearly a double staff for the first few months that  
10          they're opened. People come from other Texas Roadhouses and  
11          come in and train this personnel. So, at the beginning of  
12          the project parking it is more intensive than what it is  
13          given six months or a year down the road.

14          That being said, I'll just go over briefly what we  
15          are proposing here. We are proposing to construct 46  
16          additional temporary parking spaces in this area which  
17          is slated for the third pad use. It accounts for about  
18          15,000 square feet. It will be paved even though it's  
19          temporary. Due to adding these spaces, even though  
20          they are temporary, we are going to be required to  
21          convert one of the parking spaces over here to  
22          handicapped (Indicating) because of the number of  
23          spaces on the site we are required to have one more  
24          handicapped space. We don't want it out here away from  
25          the building. We're going to put it back against the

1 building. This is the overall site plan; Texas  
2 Roadhouse sits here, Chipotle sits here, this is Wolf  
3 Road and this is Sand Creek Road (Indicating). The  
4 parking lot will be with lights identical to the ones  
5 that are out there now. Stormwater is going to be  
6 addressed with a little 18-inch deep depression out  
7 here (Indicating). So, this will run off into the  
8 stormwater management area and infiltrate. There is  
9 some fencing and landscaping along Sand Creek Road.  
10 It's going to be limited to again, because we don't  
11 know -

12 MR. LANE: But it's not there now, though.

13 MR. MITCHELL: It's not there now, no. We weren't  
14 required to do it at the last one because we know that this  
15 is not going to be the final placement of this. Likely,  
16 it's going to end up on this side again when we come in  
17 front of the Board for the final pad site here (Indicating).  
18 We'll have to work those issues out. We didn't want to go  
19 in and put permanent fencing here and trees here only six  
20 months. It could be three months down the road and have to  
21 tear it all back out again.

22 We will put a split rail fence here (Indicating).  
23 We'll put some shrubs here (Indicating) to try to get  
24 the build-out of some extent along Sand Creek Road. We  
25 were considering putting trees here (Indicating). We

1 kind of have decided that split rail fence is going to  
2 work better here.

3 The problem is that the proposed parking lot is at  
4 grade and this parking lot has a curve around it. We  
5 wanted to prevent the potential for someone driving  
6 over the curb here, that's all.

7 There is no additional sewer and no water. There  
8 is no additional traffic from this. It's basically an  
9 overflow parking lot. We are requesting a waiver for  
10 parking in the front yard. A waiver had been granted  
11 for this parking. Now that we are extending it, we  
12 need to ask for that same waiver again. Again, when  
13 the third tenant comes in, the expectation is that the  
14 building will go up front and the parking will go  
15 behind. The parking will meet the requirement and at  
16 that point we won't need a waiver.

17 After submitting to the Town, the departments have  
18 a few comments. They asked for a spot grade at the  
19 emergency overflow. We added that. They've asked for  
20 a couple of notes that we can put snow storage in the  
21 infiltration pond and that we have to contact the  
22 stormwater officer prior to building this pond because  
23 there is some decompaction issues that we need to take  
24 care of.

25 We also got draft comments from Clough. We have

1 addressed these comments and I believe that you have  
2 those in your packet as well. If you would like me to  
3 read you those, I will.

4 MR. GRASSO: They don't have them. I'll go through  
5 them.

6 CHAIRMAN STUTO: Joe Grasso has reviewed this proposal  
7 on our behalf from CHA. Joe is our Town Designated Engineer  
8 on this project.

9 Joe, can you give us your comments?

10 MR. GRASSO: I'm not going to go through in detail  
11 because most of the relevant items of the application have  
12 already been discussed by Joe, Mike or Pat. This is a  
13 pretty straight forward application. It's zoning compliant  
14 except for the parking in the front yard of Sand Creek Road.  
15 That was one of the waivers that the Planning Board granted  
16 because both Wolf Road and Sand Creek Road are considered  
17 front yards of the project. So, the existing parking lot  
18 that's to the side of the Texas Roadhouse along the Sand  
19 Creek Road side was also a waiver requirement as part of  
20 that application. This parking goes closer to Sand Creek  
21 Road, so a new waiver is required. So, I'm going to pass  
22 out a draft Resolution for the Planning Board's  
23 consideration and I could read that into the record later  
24 on, if the project moves forward to final.

25 In terms of the SEQRA, they did complete a short

1 environmental assessment form. It was reviewed by the  
2 Town Attorney's office. They have drafted a negative  
3 declaration. It's an unlisted action pursuant to  
4 SEQRA. The Planning Board is the only involved agency  
5 so you're going to assume lead agency status. The Town  
6 Attorney's office has determined that the project would  
7 not result in any significant environmental impacts.  
8 We have reviewed that and we concur with those findings  
9 and that's something that the Planning Board would  
10 require action on prior to waiver approval and site  
11 plan approval.

12 Regarding the application and our comments, we had  
13 provided the applicant's consultant some preliminary  
14 comments from our office when we first got the  
15 application. We provided those comments in draft form  
16 to them. They are not included in your packet. They  
17 were generally related to some striping, some  
18 stormwater and some landscaping and all of those things  
19 have been addressed to our satisfaction. So, they're  
20 either included in the current plan before you, or have  
21 been addressed narratively to our satisfaction. Again,  
22 it's a good project.

23 We commend the applicant for coming in and  
24 memorializing additional parking to support their  
25 needs. We'd rather have this than having parking

1           trespassing off the project site or on the drive lanes  
2           creating safety hazards or restricting access to the  
3           site. We commend them for coming in and obviously it's  
4           not the last time that we'll look at a site plan  
5           modification for the parcel.

6           CHAIRMAN STUTO: Before I open it up to the public -  
7           and there is some interest in the public in speaking - can  
8           you comment on the original concept? What would be a good  
9           use of that third lot, should that come to be?

10          MR. GRASSO: What I think in terms of the use?

11          CHAIRMAN STUTO: Given the overflow parking that's  
12          going on now; yes.

13          MR. GRASSO: Any type of commercial retail, high  
14          intensity. I would even support a restaurant use.  
15          Obviously, the parking needs to fit. We have to look at how  
16          the parking is going to be used between the three parcels.  
17          Obviously, we've already got two restaurants, so you're not  
18          going to share as much parking between the uses if they're  
19          similar on the site. It's not to say that the site can't  
20          pick it up with another pad site and we'll have to look at  
21          their parking demands. We can also take a closer look at  
22          when that pad site comes in and what the actual parking uses  
23          on the site are. By the time that comes in we could be  
24          looking at different parking demands.

25          CHAIRMAN STUTO: Is the Board okay if we hear from the

1 public on this?

2 (All Board Members agreed.)

3 CHAIRMAN STUTO: Mr. Bruce Rubin.

4 MR. BRUCE RUBIN: My name is Bruce Rubin. I lived at 8  
5 Kenlyn Drive from November 1974 until 2006. I still have  
6 ownership interest in this property. I'm speaking not only  
7 on my own behalf, but on behalf of my mother and my brother  
8 who live there from 1976 until the present time.

9 Essentially, our backyard is next to the roadhouse  
10 project. It does have a full view of it.

11 CHAIRMAN STUTO: How many houses up are you from Sand  
12 Creek Road?

13 MR. BRUCE RUBIN: We're 8. I'll get into why we feel  
14 that this does have further impact and how this project has  
15 affected us, and why we feel that these 46 additional  
16 parking spaces will affect us. I was last here on August 2,  
17 2012 to speak about the reduction of the off-set between 25  
18 feet to 10 feet and what has transpired since then.

19 I'm speaking on behalf of my mother and my brother  
20 and they have given me some notes to let you know  
21 because they live there every day.

22 CHAIRMAN STUTO: I'm not sure about what you're saying  
23 about the 25 and 10 feet.

24 MR. BRUCE RUBIN: On August 2, 2012 this project  
25 between the parking area of this project and the homeowners

1 on Kenlyn Drive which has been a residence in that area for  
2 decades -- they proposed a reduction from 25 feet offset to  
3 10 feet.

4 CHAIRMAN STUTO: That's the green space between the  
5 pavement and the lot lines?

6 MR. BRUCE RUBIN: Correct. They had spoken with  
7 residents from 2, 4 and 6. We were ignored at that time so  
8 that's when we spoke at that point. It was resolve in that  
9 a fence would be constructed for 2 Kenlyn Drive, 4 Kenlyn  
10 Drive and 6 Kenlyn Drive with trees. The offset would be  
11 reduced from the 25 feet to the 10 feet behind the property.

12 MR. LANE: By offset do you mean buffer?

13 MR. BRUCE RUBIN: Yes, buffer. Behind 8 Kenlyn Drive  
14 it was supposed to be forever natural. That's what the  
15 understanding was. Since that time the natural area has  
16 been cut away. I don't know by whom, but I assume it was by  
17 the owner or the developer. I'd like to just show a picture  
18 to the Board.

19 MS. DALTON: Do you have a before picture or is this  
20 just the after picture?

21 MR. BRUCE RUBIN: Just the after picture. I don't have  
22 a before picture.

23 CHAIRMAN STUTO: So, you're on the back end corner of  
24 the lot and you're sort of directly opposite a building and  
25 a parking lot on that section. What about the stub? Is

1 that still wooded?

2 MR. BRUCE RUBIN: It's been cut into. We went there  
3 tonight to look at it again. I'd say about 25 feet has been  
4 cut away from the natural area. The reason for the natural  
5 area was to keep it forever natural and to give us a buffer.  
6 That's been eroded, as the picture can show. It's not an  
7 effective buffer when it's been cut away. That's the  
8 problem. It's very close to the property line to our back  
9 yard. My mother and brother who live there all the time are  
10 largely impacted by the view of the steakhouse. The  
11 infrastructure, the delivery trucks -

12 CHAIRMAN STUTO: You did not benefit from the fence or  
13 the landscaping?

14 MR. BRUCE RUBIN: Correct. The quality of life in the  
15 back yard has been impacted by the closeness of the  
16 steakhouse project. In that Zoning Board of Appeals  
17 meeting, things went a little bit fast because it was  
18 resolved that evening. Mr. Kirk Huang who was a Board  
19 Member at that time suggested to extend the nine foot high  
20 white fence to a certain distance to minimize the impact on  
21 our home.

22 Essentially, there was a discussion about a  
23 drainage area. At that time we just stuck with the  
24 buffer that existed. The buffer hasn't been  
25 maintained, with all due respect to the developer.

1 It's just been cut back.

2 CHAIRMAN STUTO: I'm going to ask the Planning Staff.  
3 Do you remember how that was supposed to be?

4 MR. LACIVITA: If you like Peter, I can read the five  
5 conditions of the approval that was granted by the Zoning  
6 Board of Appeals to show what this gentleman is talking  
7 about.

8 CHAIRMAN STUTO: You can put that record - if it's  
9 relative - into our own record.

10 MR. LACIVITA: This was a Zoning Board decision for  
11 105 Wolf Road. The proposed commercial parking with a  
12 10-foot setback from existing family uses located on  
13 adjacent lots in a commercial office or COR zoning district  
14 does not comply with the minimum 25 foot setback required by  
15 Section 190-24, 190-25 and 190. It later was granted  
16 conditional approval with the following conditions. The  
17 conditions were granted with the following conditions such  
18 as 1, a white plastic solid fence with a minimum height of  
19 eight feet shall be erected and maintained along the  
20 southeast property line bearing near Sand Creek Road and  
21 extending north to the corner of 6 Kenlyn Drive. The fence  
22 shall be erected on an 18-inch high berm. Three --

23 CHAIRMAN STUTO: What was 2?

24 MR. LACIVITA: The fence shall be erected on an 18-inch  
25 high berm.

1           3. An 8 to 10 foot high ever green tree shall be  
2           planted and maintained along 105 Wolf Road and the  
3           fence shall be spaced to provide visual screening.  
4           Said tree shall be provided with an automatic  
5           irrigation system.

6           4. Rectangular section of the parcel located  
7           between 107 Wolf Road and lots 8 and 10 Kenlyn Drive is  
8           to remain in a natural state.

9           5. Refuse collection is prohibited prior to 7:00  
10          a.m.

11          Those were the conditions granted on the approval  
12          and that was dated August of 2012.

13          MS. DALTON: What number was "it shall remain in a  
14          natural state?"

15          MR. LACIVITA: That was four. It says the rectangular  
16          section of the parcel located between 107 Wolf Road and lots  
17          8 and 10 Kenlyn Drive is to remain in a natural state.

18          CHAIRMAN STUTO: Have they violated that condition?  
19          I'd like to know as a matter of fact whether they have.

20          MR. LACIVITA: If you look at the picture, it looks  
21          like it may have been.

22          CHAIRMAN STUTO: Mr. Rubin, can you come up and look at  
23          this? We also have an aerial here for you to look at. We  
24          just need for you to show us where you are.

25          Joe, do we have a picture of where Lot 8 is?

1 MR. LACIVITA: Yes, we have it in the file.

2 CHAIRMAN STUTO: Okay, we know where it is now.

3 The question that I had asked is if they had  
4 violated that condition 5. I'm asking my staff this.

5 Can you reread the condition and then if Joe  
6 Grasso wants to answer it, that's fine.

7 MR. GRASSO: There were five conditions granted for the  
8 original project approval for the restaurant.

9 1. The white plastic solid fence, minimum of eight  
10 feet high shall be erected and maintained along the  
11 south east property line beginning near Sand Creek Road  
12 and extending to the north corner of 6 Kenlyn Drive.  
13 That would be along here up to this point (Indicating).

14 2. Fence shall be on an 18-inch high berm.

15 3. An eight to 10 feet high evergreen shall be  
16 planted and maintained on the Wolf Road side of the  
17 fence.

18 4. Rectangular section of the parcel located  
19 between 107 Wolf Road and Lots 8 and 10 Kenlyn Drive is  
20 to remain in the natural state.

21 That's this area to remain in its natural state.

22 CHAIRMAN STUTO: In your mind, have they complied with  
23 that?

24 MR. GRASSO: There has been no proof that there has  
25 been a violation of that condition. That picture is taken

1 from this corner looking towards the Texas Roadhouse.  
2 That's not a picture directly behind Lots 8 and 10. It's  
3 not up to this Board to take on enforcement actions. I  
4 don't see why this issue is related to this application.

5 CHAIRMAN STUTO: That's your opinion and that's true,  
6 but if the developer has acted in bad faith, I think that  
7 it's a relevant point.

8 MR. GRASSO: It is, and I haven't inspected it. Mike  
9 has been out there and he can't attest that there has been a  
10 violation. The picture isn't proof and we haven't heard  
11 from the applicant.

12 MR. LACIVITA: We have seen the compliance with the  
13 buffer, the trees, and the fencing and again this is the  
14 natural state - as it states there, we don't know what might  
15 have been there prior.

16 CHAIRMAN STUTO: That's obviously manicured and so  
17 forth. It's a question of where the line is and all of  
18 that.

19 MR. GRASSO: The property line at 8 is right here with  
20 the 25-foot drainage easement -

21 CHAIRMAN STUTO: They may need more screening, if they  
22 comply or not. These people may be entitled to more  
23 screening.

24 MR. GRASSO: That's up to the Board to decide.

25 CHAIRMAN STUTO: What relief are you asking for, Mr.

1 Rubin?

2 MR. LAWRENCE RUBIN: How much can I get?

3 MR. BRUCE RUBIN: If this nine-foot high fence could be  
4 extended to a minimum of 30 feet to block out that division  
5 -- the same consideration that 2, 4 and 6 Kenlyn Drive have  
6 received.

7 MS. DALTON: So, you're not saying extend it to a  
8 30-foot high fence.

9 MR. BRUCE RUBIN: No.

10 MR. GRASSO: From where it currently ends, you would  
11 like it extended 30 feet more.

12 MR. BRUCE RUBIN: Right.

13 CHAIRMAN STUTO: How long is your lot?

14 MR. BRUCE RUBIN: About 120 feet.

15 CHAIRMAN STUTO: What's the easement there for the  
16 Town? Can they go across that with a fence?

17 MR. LACIVITA: They would need a hold harmless  
18 agreement.

19 CHAIRMAN STUTO: A fence is not a major structural  
20 item.

21 MR. TENGELER: It's an encroachment, though. It would  
22 require a hold harmless agreement.

23 CHAIRMAN STUTO: You want the same conditions extended  
24 out 30 more feet. Are you sure that 30 is going to do it?

25 MR. GRASSO: No, the lot total is about 75 feet wide

1 and 12.5 feet covered by an easement.

2 MR. LANE: Well 30 feet is not going to go across 10.

3 MS. MILSTEIN: But are you looking for it to go across  
4 your lot? Something like that?

5 MR. LAWRENCE RUBIN: If possible, as far as the impact  
6 of the view and the vehicles - that far.

7 CHAIRMAN STUTO: Okay. Do you have any other points,  
8 Mr. Rubin?

9 MR. BRUCE RUBIN: No.

10 CHAIRMAN STUTO: Okay, why don't you sit close by in  
11 case we need to have you pop up? We'll let the developer  
12 respond.

13 MR. BURKE: My name is Tom Burke and I'm the property  
14 owner and developer. Thank you for giving us an opportunity  
15 to respond.

16 I just want to state for the record that we fully  
17 comply with all the requirements that were imposed upon  
18 us; items one through five. We have done absolutely no  
19 work, no cutting, no trimming, no pruning, no clearing  
20 of any sort in that area that is to remain forever  
21 wild. It's fall and the leaves come off the trees.  
22 Perhaps the homeowner himself or a representative of  
23 his may have been out there. I don't exactly know  
24 where the property line is. I'm not sure. I'm just  
25 suggesting and I'm not accusing, but we would never

1           violate a condition of approval by clear cutting or  
2           doing any work in that area.

3           I think that if Mr. Rubin and his mother would  
4           like to plant trees or if they want to buy a fence and  
5           put it up, they're certainly able to do that if they  
6           wish. It's their back yard and if they want to enclose  
7           it like any other homeowner, there are lots of fence  
8           companies that could come in and provide that fence.  
9           If necessary, I could plant a couple of evergreens  
10          along the border here, but I don't feel that at this  
11          juncture it would be appropriate or fair to impose the  
12          additional costs of fencing and the lawyers negotiating  
13          hold harmless agreements and all of the work that would  
14          be required for somebody who is not even behind the  
15          project. We've agreed to leave it in its natural  
16          state. We have done that. If he wants to buy a fence  
17          and erect it or if he wants to put trees back here - we  
18          all do that if we want to change our conditions. I  
19          think that it's more incumbent on the homeowner than on  
20          me when he suggests that well, how much do you want and  
21          he says how much can I get? That really kind of says  
22          it all right there for me. I'm not willing to do  
23          anything.

24                   CHAIRMAN STUTO: I disagree with you.

25                   MR. BURKE: I just wanted to state for the record that

1 contrary to the photograph which I never saw, we've done  
2 nothing here.

3 CHAIRMAN STUTO: That's fine and we appreciate that.

4 MR. BURKE: Thank you, very much.

5 CHAIRMAN STUTO: Would you like to see the photo or no?

6 MR. BURKE: Sure, if I may.

7 MR. MITCHELL: I can tell you that I was out there  
8 every week during construction and doing inspecting myself.  
9 There was absolutely no violation with that Zoning Board  
10 requirement. I have photographic evidence week by week. I  
11 can certainly provide that if you need it.

12 MS. DALTON: I just want to respond to both of you  
13 gentlemen because I really do believe that in good faith, it  
14 was not your intension to violate, but I think that we have  
15 at least a couple of questions before us. The first is  
16 whether or not there was a violation and clearly Joe is  
17 accurate in saying that there is certainly no evidence that  
18 there was a violation. I take you at your word that you  
19 didn't intend one. The second is whether or not the  
20 solutions that we suggested when you first appeared before  
21 us are solutions that fit the neighbors, and I think that  
22 it's relatively safe to say that had we known at the time  
23 that 25 feet, or however large that forever wild buffer zone  
24 was going to be, was not going to be respective to protect  
25 all the neighbors, we probably would have extended the

1 solution that we did for three of the neighbors to make sure  
2 that they were taken care of.

3 MR. MITCHELL: I would absolutely agree with you and  
4 we had offered that at that time and these homeowners didn't  
5 want the fence. They wanted us to leave it forever wild.  
6 That's why we have the project that has been approved and  
7 constructed.

8 MS. DALTON: I agree with you. So, the question now is  
9 if there is an appropriate opportunity to remedy any of  
10 that. I don't really know the answer to that yet. I do see  
11 that there is a problem. There are potential solutions.  
12 There is not just one solution. I do think that it's  
13 appropriate for the Board to consider the questions at this  
14 point. That's all I wanted to say. I don't want you guys  
15 to feel defensive because I don't think that it's the  
16 position of the Board that you did anything inappropriate.

17 MS. GOMEZ: So, the matter at hand is the conditional  
18 parking spaces. So, are we talking about something that is  
19 separate now?

20 CHAIRMAN STUTO: I'll tell you how I see it. This is a  
21 project which appears to be duly approved. There is no  
22 proof, as Joe and I agree, that they violated that condition  
23 by. However it's obvious that it's a more intense parking  
24 impact than was originally anticipated, or they wouldn't be  
25 in here asking for an expansion of a parking. That has an

1 impact from my point of view and has an impact on the  
2 neighbor. There is a visual impact that perhaps we should  
3 have addressed when it was before us before. I'm personally  
4 leaning toward a little more screening for this homeowner.  
5 That's my opinion.

6 MS. GOMEZ: So, just for clarification, before the  
7 Board right now is are we going to or not going to allow an  
8 additional 40-some odd temporary one month, two month or six  
9 months or whatever - parking spaces. That's the yes or the  
10 no, and then after this is done another venue would come in  
11 and we would know what the parking is. So, to approve the  
12 additional 40 parking spaces or not, do we have to do the  
13 fencing or not do the fencing? I'm just trying to  
14 understand.

15 CHAIRMAN STUTO: We don't have to. We can do it either  
16 way. I believe that we can do it either way. We can say  
17 we'll just approve the parking without dealing with the  
18 mitigation of the impact on the neighbors, or we can  
19 mitigate the impact on the neighbors at the same time.  
20 That's my opinion. It's our prerogative to do either.

21 MS. MILSTEIN: The other possibility is that the  
22 temporary could become permanent. You may never get a third  
23 place and maybe just have a parking spot that could end up  
24 being after the initial rush then it may just end up being a  
25 parking lot, correct?

1 MR. MITCHELL: Potentially, yes.

2 MS. MILSTEIN: So, the temporary may be a permanent.

3 CHAIRMAN STUTO: Is there any time limit established?

4 MR. GRASSO: There is no time limit established.

5 MS. MILSTEIN: Right now I'm presuming this. Is it  
6 grass?

7 MR. MITCHELL: We put some gravel down. It was meant  
8 to be lawn.

9 MS. MILSTEIN: But you put the gravel down without  
10 getting the permission, is that it?

11 MR. MITCHELL: That is correct. Once that happened, we  
12 went out and put tape around it so that they couldn't use it  
13 because it wasn't put there legally.

14 MR. LACIVITA: It was not the developer that had this  
15 put on. The actual applicant did it. Although it was  
16 wrong, it wasn't the developer that did it. When we found  
17 out, we reached out to the developer and let him know and  
18 that's why we're here. He knew that he had to go back  
19 before the Planning Board to make this an amendment to the  
20 site plan. It was unknownst to him. He did not have an  
21 agreement with Texas Roadhouse to use this property. Texas  
22 Roadhouse came in to our department and said, we made a  
23 mistake. We went forward and we've done this in other  
24 areas. Colonie has complex laws. That's why we are here  
25 today.

1           CHAIRMAN STUTO: So, that the Board understands that,  
2           they did something that they shouldn't have done, right?  
3           Who was that? Texas Roadhouse?

4           MR. LACIVITA: Texas Roadhouse.

5           CHAIRMAN STUTO: Can you say exactly what they did so  
6           that the Board understand that?

7           MR. LACIVITA: Our Stormwater Department was out  
8           looking at various sites, they saw that gravel was being  
9           placed on this site.

10          Mike, correct me if I'm wrong.

11          CHAIRMAN STUTO: So, they expanded the parking with  
12          gravel.

13          MR. LACIVITA: They expanded the parking with gravel  
14          for the temporary use that they thought that they were  
15          needing because the site had opened up. When we found that  
16          out, the Stormwater Department came into our department and  
17          ask if they had approval for this. We said absolutely not.  
18          We reached out to Mr. Burke and together we're trying to  
19          work through a solution to get them here today.

20          MR. TENGELER: We immediately had that area closed off  
21          so that no one could park there until they had their  
22          opportunity tonight to present. That, they have been  
23          complying with.

24          CHAIRMAN STUTO: Let's go through the Board with  
25          comments and questions.

1 MS. DALTON: The way that I see it, we can deny the  
2 application, obviously. We can approve the application with  
3 no conditions or we can accept the fact that there is an  
4 unexpected demand which created also unexpected consequences  
5 including more traffic and more everything. Last but not  
6 least, the fix wasn't successful.

7 MR. LANE: The foresight wasn't there.

8 MS. DALTON: The foresight was there. They asked not  
9 to have the same -

10 MR. LANE: They asked not to have the fence. They  
11 asked for all natural and they got all natural.

12 CHAIRMAN STUTO: Do you want to address that? Maybe  
13 they misunderstood.

14 MR. BRUCE RUBIN: I think that the all natural was  
15 agreed on.

16 CHAIRMAN STUTO: There is a question as to where the  
17 line is.

18 MR. LANE: You said no fence.

19 CHAIRMAN STUTO: Let him respond.

20 MR. BRUCE RUBIN: I don't believe that was offered to  
21 us because someone had broached a right of way or drainage  
22 and there might be as problem. So, we went with the all  
23 natural.

24 MR. LAWRENCE RUBIN: We were not even brought into the  
25 initial agreement between 2, 4 and 6. So, we came to the

1 Zoning Board meeting without any knowledge of what was even  
2 going on. That was the first time that we heard about the  
3 green area. We didn't know very much about the fencing  
4 because their lawyer had not included us in the initial  
5 talks. Mr. Huang, at that point, suggested the fence.  
6 Since that was the first time hearing it, we weren't even  
7 sure what that would impact on that evening.

8 MR. LANE: So, the offer was there and you turned it  
9 down.

10 MS. DALTON: Or the offer was there and you didn't have  
11 time to properly assess it.

12 MR. LAWRENCE RUBIN: That's right. It was not  
13 necessarily an offer.

14 CHAIRMAN STUTO: And you visualize the natural maybe  
15 being better. As it turned out, it's not; is that what  
16 you're saying?

17 MR. LAWRENCE RUBIN: You can see from the picture that  
18 the view is impacting our quality of life back there. Since  
19 the steakhouse is so close, we have the smells in the  
20 mid-afternoon. The 99 steakhouse is there and -

21 CHAIRMAN STUTO: There isn't much that we can do about  
22 that.

23 MR. LAWRENCE RUBIN: That's right.

24 CHAIRMAN STUTO: I don't want everybody to get mad. I  
25 don't know if Mr. Burke is angry. I think that I want to

1 take a five minute recess and we'll come back after that. I  
2 don't want to get into a fight. It's not going to get us  
3 anywhere.

4 (There was a brief break in the proceedings.)

5 CHAIRMAN STUTO: Okay, we're going to go back into  
6 regular session here. I'll let the applicant say whatever  
7 they need to say.

8 MR. BURKE: Just to be clear once again, my attorney  
9 Peter Lynch and myself went out on more than one occasion  
10 and knocked on all the doors on Kenlyn Drive. If somebody  
11 doesn't answer the door or is home and chooses not to answer  
12 their door, they were given the same public notice  
13 information that everybody else got, an opportunity to come  
14 and look at the project. They spoke for an extended period  
15 of time on the night when we received our approval. If you  
16 poll the minutes, you'll see that Mr. Rubin was offered the  
17 option of a fence. He didn't want that. He chose the all  
18 natural buffer. I will enhance that buffer with additional  
19 evergreens if somehow that is going to make the difference.  
20 I don't think that it's fair to impose a new condition on me  
21 for parking which is nowhere near his house by the way, and  
22 does comply with the 25-foot setback he constantly refers to  
23 has no bearing on his property which is behind the  
24 greenspace. It is not behind the steakhouse or the parking  
25 lot that exists or the parking lot that's being proposed.

1 None of that has any effect on him. It's a red herring. I  
2 reject it and I'm offended by it. I want that to be clear.  
3 I will put additional evergreens in this area in case  
4 somebody walks out back and wants to not see the building  
5 over here. But I don't think that it's my obligation to buy  
6 every neighbor a fence. I have a backyard and if I don't  
7 want to see my neighbor, I buy my own fence. He had his  
8 bite at the apple. If he asked me to put a fence up and  
9 then developed back here, how would he feel about that?  
10 Probably wouldn't like that. You can't have it both ways.  
11 Thank you.

12 MR. BRUCE RUBIN: Mr. Lynch, I remember distinctly at  
13 the longest second meeting he was specifically asked that  
14 questions why didn't he contact 8 Kenlyn Drive and other  
15 ones. He said, we didn't and he apologized and whether it's  
16 in the minutes or not, that's what he said. I'm an  
17 attorney. I'm not going to lie about this. There are  
18 certain things that I do remember. I may be old, but I  
19 haven't lost all my memory. I know that.

20 Secondly, the developer has said no infringement  
21 was taken with respect to this all natural area. Have  
22 someone from the Planning Board take a look. It's not  
23 only been mowed, but there are bits of excavation in  
24 that area as well. I'm not saying that they did it on  
25 purpose. It could have been done accidentally. I'm

1 not accusing them of any intensional violation. At  
2 most, it's an accidental violation. When I went to  
3 look at this tonight.

4 Currently I live in Troy since I got married.  
5 There are 100s of cars milling around that place. This  
6 46 additional spots will make more milling. It will  
7 impact and there is a clear area and you can see from  
8 the photograph. They say that a picture is worth a  
9 thousand words. It does show that it's not effective  
10 and if the all natural area has been violated further,  
11 I think that a fence would be helpful there. Thank  
12 you.

13 MR. MION: I think as a Board we should be looking at  
14 the temporary parking. That's the issue that's placed in  
15 front of us. As far as the view on that picture, I don't  
16 see that as being an accurate picture as part of what is  
17 behind your house. I think that's at an angle, yes, you can  
18 see the building. It was taken at an angle. I think that  
19 they have abided by the fact that there is natural green and  
20 they left it natural.

21 I just want to make the proposal - the developer  
22 has suggested putting up a couple more evergreens up  
23 there. In fact, I would suggest putting them up at the  
24 angle where the picture is so that they can't see the  
25 building. I would be more than happy to go along with

1           that. I think that's a good answer instead of a fence.  
2           You've got the best of both worlds. You've got it  
3           blocked out by the trees and it's still forever  
4           natural. You can't see it. As far as the other  
5           parking goes, it's completely down the other end and  
6           away from that end of the parking lot. I would support  
7           the parking lot and I would also support the evergreens  
8           if you consider putting them in there.

9           CHAIRMAN STUTO: Susan, did you want to say something?

10          MS. MILSTEIN: No.

11          CHAIRMAN STUTO: Karen?

12          MS. GOMEZ: No, I think that I have enough information.

13          MS. MILSTEIN: Actually, I do. I don't think that  
14          there is proof what it looked like before or after. We  
15          don't have that proof. I'm presenting a case on the before  
16          and after to know whether there was a violation that would  
17          have occurred. I don't feel that I have enough information.  
18          There isn't adequate proof on that one way or another.

19          MR. BURKE: What if there is a violation? What do we  
20          do?

21          MR. AUSTIN: But there isn't a violation.

22          MS. MILSTEIN: I wouldn't say that there wasn't. We  
23          don't know.

24          MR. GRASSO: It goes to Code Enforcement.

25          MR. LACIVITA: It's not this department.

1 MS. MILSTEIN: I'm just not convinced that it happened  
2 or it didn't happen at this point. That's my point.

3 MR. MITCHELL: I can say that Bob Cordell did go out  
4 and visit the site throughout construction. One of the  
5 comments that he had was the plantings along this fencing.  
6 I think that he had some suggestions for spacing out there,  
7 which we took care of.

8 MR. LACIVITA: I think that we added some trees there  
9 too.

10 MR. MITCHELL: I believe that we did end up adding two  
11 more trees out there at Bob's request. It was two more  
12 trees than was shown on the approved plan. It was on this  
13 end of the project but to satisfy Bob, we did that. Before  
14 Bob gives us a certificate of occupancy, he has to verify  
15 that we met the zoning requirements and in this case, we did  
16 meet those and the proof is in the pudding. When we get the  
17 CO, that means that there was no violation.

18 MR. TENGELER: I accompanied Bob on that final  
19 inspection on behalf of the Planning Department as well to  
20 verify what Pat is saying.

21 CHAIRMAN STUTO: I'll speak because I'm the Chairman,  
22 before everybody else speaks. I'll lay out my argument  
23 first.

24 The facts may be completely accurate on the side  
25 of the developer. They may not have violated or

1           disturbed the area that they weren't supposed to  
2           disturbed under Condition 5. Maybe the folks that live  
3           there made the wrong decision when they said we don't  
4           want a fence because they misunderstood, or maybe they  
5           fully knew. I think that the impact is obviously more  
6           than anticipated if the owner of the Texas Steakhouse  
7           is illegally graveling a lot that they're not supposed  
8           to gravel because there is too much parking. That's a  
9           lot of impact on the neighbors. You have Wolf Road,  
10          which is the most busy corridor in the Capital District  
11          abutting against a 35 to 50-year old development. You  
12          have to provide for these people. You have to screen  
13          them. I would say Texas Roadhouse is knocking it down  
14          pretty good in terms of their finances, if they have to  
15          turn away patrons and expand their parking lot. My  
16          personal opinion is that I think that the price of  
17          extending the fence exactly as it is with all the  
18          growth and the berm the full length of this person's  
19          property is where I want to be, or I would prefer to  
20          table this and we can examine the facts further to see  
21          exactly what the facts are because there is a dispute  
22          of facts. That's my opinion.

23                 MR. LANE: I just want to say that while I don't see  
24                 this particular item that is before us effecting this  
25                 situation directly, what it did do by paving this lot and by

1           having to come back before us is that it opened this door to  
2           this situation so that it has to be addressed.

3           CHAIRMAN STUTO: I think that we're entitled to  
4           mitigate the impact on the neighbors. It's obviously more  
5           of a use than was originally anticipated. That's the way  
6           that I'm looking at it.

7           Anybody else want to speak?

8           MR. AUSTIN: I would tend to go back to what Joe Grasso  
9           said in a brief statement. He said that we're not in the  
10          business of enforcement. I don't think that we are  
11          responsible to enforce whatever might have happened here,  
12          yet I think that mitigation might help for the neighbors.  
13          Once again, the new parking that is proposed, whether they  
14          gravel it and got caught and now they're getting their hand  
15          slapped and they have to come back before us and pay the  
16          money and do it all over again - they're doing what they  
17          have to do and the process is going forward like that. They  
18          made a mistake and they tried to sneak it by, we caught them  
19          and it's all good. We're working that through it.

20          The parking isn't anywhere near 8. Looking at the  
21          picture, you can't even see any of the parking - in the  
22          picture that you gave us. I see a few cars and that's  
23          it. I see the building and that's really pretty much  
24          it. I see some tall evergreen trees on one side of the  
25          fence. Mr. Burke offering to put some more evergreens

1 in along that parking area, I think, is more than  
2 generous on his part. I think that him showing that  
3 sign of good faith to do that is very, very nice. He's  
4 been presented with this all of the sudden just  
5 tonight. You didn't come before thinking that he's  
6 going to be putting in a fence. What's to say that 8  
7 gets a fence and then 10 likes the fence and they want  
8 a fence?. They might not be impacted by the fence, but  
9 they want a fence too. Pretty soon you have a fence  
10 all along Kenlyn Drive. I don't think that's really  
11 your responsibility. That's my opinion. I'm in favor  
12 of the parking where it is temporary or not, depending  
13 on how it plays out.

14 I'm sorry that your disappointed with how things  
15 have turned out and I don't know really what to say to  
16 that. I think that he's doing some nice things by  
17 saying that he'll help out in what he can. I think  
18 that to put him in the position to spend thousands of  
19 dollars potentially - I'm guessing the entire back yard  
20 is just not there. That's in my opinion.

21 CHAIRMAN STUTO: Anybody else want to speak before we  
22 go forward?

23 MS. DALTON: I just want to get back to reiterating my  
24 position that the applicant is here facing an unexpected  
25 need for more parking because of how popular the roadhouse

1 is. I think that opens a question for the entire lot. I  
2 think that the solution that we were presented with the  
3 forever wild near the property may or may not have been an  
4 appropriate solution. Having said all of that, I would be  
5 in favor of personally one of two things; either tabling  
6 this so that those of us who feel that it's an open question  
7 and want to go investigate whether or not there is a perfect  
8 solution that we have jurisdiction over have time to go do  
9 that. That would be my first choice. I will be out there  
10 just as soon as I can. I would be in favor of mitigating  
11 the problems on the entire site rather than splitting them  
12 up this side of the lot versus that side of the lot.  
13 Clearly, there are unintended consequences on this  
14 particular parcel and clearly I believe that we have an  
15 opportunity to fix that.

16 MR. AUSTIN: I don't believe that the fencing is on the  
17 site. The fencing goes to the end of the site and then the  
18 forever wild is behind it. Now, if the applicant was  
19 looking for temporary parking in the forever wild area, yes.  
20 I think that fencing is very appropriate there. We don't  
21 know what that looks like. I like your picture. It's very  
22 nice and it looks good. The trees are down as Mr. Burke  
23 said. The foliage has changed and everything is different.  
24 It's at an angle that we don't see directly back behind the  
25 house. So, as Ms. Dalton said, it might be a good idea to

1 table this. We all have different options. Maybe we should  
2 go out and take a look too -- a little close to that corner  
3 of the property. We're looking at the parking right now and  
4 that's really what we are concerned about. I don't even  
5 think that with the amount of parking that's going to be put  
6 in there, with the noise or whatever kind of lighting --  
7 that's not even going to affect 8. Once again, you can't  
8 see it from the picture angle that we saw.

9 MS. MILSTEIN: I have another question. If the parking  
10 is denied, then what would happen?

11 MR. MITCHELL: If the parking is denied, the applicant  
12 will have to go pull the gravel out of that area and there  
13 is no Code Enforcement in the Town of a Colonie that would  
14 prevent them from parking on this lawn. Unfortunately, they  
15 could do that. That's not what they want to do. That's not  
16 our goal here. We're trying to improve this, so that it's a  
17 safe parking area. If that can't be improved, potentially  
18 we could pull that out and we could park cars all over the  
19 grass.

20 MR. GRASSO: I disagree with that statement. That's  
21 been a constant enforcement action by the Town -- parking on  
22 the greenspace.

23 MS. GOMEZ: In talking about where we stand, I'll say  
24 right now that I stand where Peter stands. I think that the  
25 argument was thorough and accurate and that's where I would

1 land on the issue.

2 MR. GRASSO: Peter, could I offer up a suggestion?

3 CHAIRMAN STUTO: Sure.

4 MR. GRASSO: In trying to reach some consensus and hear  
5 what the neighbor has described and the picture which is  
6 specific and actually shows a condition out there and what  
7 the applicant or the owner has offered, I would suggest that  
8 the Board consider a row of five Canadian Hemlocks, eight  
9 feet tall and 10 feet on center. They would be on the north  
10 side of the easement, so it wouldn't require a hold  
11 harmless. They would be entirely within the project site so  
12 they would be the responsibility of the project owner to  
13 maintain. I do think that they would significantly mitigate  
14 views toward the back of the roadhouse from the property. I  
15 think that it would be a better solution than a fence along  
16 the property line. They would be significant and they would  
17 help to fill that gap. I'm not proposing any trees or  
18 fencing within that 25-foot wide drainage easement because  
19 that is maintained by the Town.

20 CHAIRMAN STUTO: Is that an underground drainage or a  
21 swale?

22 MR. GRASSO: It's underground drainage. The Town  
23 restricts any structures -- fencing being located within it.

24 CHAIRMAN STUTO: I think that they could figure out a  
25 way to put the fence there. I would only go along with that

1 if that's what the applicant wants.

2 MR. BURKE: I accept the proposal that's been offered  
3 by the Town's Engineer. I think that it's an eminently  
4 reasonable solution and I'm happy to bear the expense of  
5 buying and installing those evergreens. I think that will  
6 screen adequately for the neighbor and resolve the issue, if  
7 it's a real issue at all.

8 CHAIRMAN STUTO: I'd like to hear form the neighbor,  
9 Mr. Rubin.

10 MR. BRUCE RUBIN: We would like the proposal that you  
11 set forth as far as the fence.

12 CHAIRMAN STUTO: Continue the fence as it is now.

13 MR. BRUCE RUBIN: Yes.

14 CHAIRMAN STUTO: So, I'm not voting against the  
15 neighbor on this one. That's where I'm at. I agree with  
16 them. It's something that got missed -- or table it.

17 MR. HARRINGTON: I'd like to speak real quickly. My  
18 name is Parking Harrington. I'm with the real estate  
19 department of Texas Roadhouse. I want to address a group of  
20 things.

21 First, we really have no reason to touch this  
22 area. Initially, we want to have this area parked. In  
23 talking to Mr. Burke, we felt that this would be the  
24 best impact for the neighborhood to keep it not parked,  
25 so it's not developed and we have no benefit for

1 clearing this out. There would be nothing to gain from  
2 that. So, we haven't touched that area. I was there  
3 tonight.

4 As far as if we don't get this approved tonight,  
5 if people want to eat, they will find a spot to park.  
6 We're having people park across Wolf Road and crossing  
7 the street gets dangerous as it gets to be in winter  
8 with the ice and snow and people tripping and falling.  
9 People going into the neighborhoods looking to park and  
10 people parking the 99 and walking over. It just  
11 becomes a dangerous situation. If we remove the gravel  
12 and people park on the dirt, we're just looking for a  
13 way to keep it safe, lighted, we can plow it and people  
14 aren't going to trip and fall. It's more of a safety  
15 concern. If we table it tonight, we're not going to be  
16 able to pave it this winter and like Mr. Mitchell said,  
17 the biggest demands were when we opened.

18 CHAIRMAN STUTO: Why are you opposed to extending the  
19 fence?

20 MR. HARRINGTON: I'm not opposed to the fence. I just  
21 think that initially when we kept this area -- now we're  
22 kind of having the worst of both worlds for us. We're not  
23 having this area developed and we could have fit another 15  
24 or 20 parking spaces back here and we're spending the money  
25 on it.

1 I think that the suggestion of planting the trees  
2 here would be an excellent solution.

3 MS. DALTON: You were just saying that you were  
4 thinking of them parking back there and then for a host of  
5 reasons you moved away from that, and were also concerned  
6 about the fact that when and if you get another building on  
7 that parcel we're not quite sure what's going to happen with  
8 the parking. We're assuming that there is going to be a  
9 reduction in demand, but maybe not. It would be good for  
10 you if there wasn't. So, in theory if we were to put up a  
11 fence and the trees, wouldn't that open up that back space  
12 for the 10 or 15 parking spaces that could be banked parking  
13 spaces if you needed them?

14 MR. HARRINGTON: It could, and I'm sure that Mr. Burke  
15 would address that at the time when he gets another tenant  
16 here. Like he says this area might go well together. This  
17 might be where a building is. He doesn't know that and we  
18 don't know that. We negotiated that we understand that we  
19 might have our visibility blocked. We understand that there  
20 is going to be a parking demand for whatever user goes in.

21 We're only open for dinner.

22 MS. DALTON: So, Joe Grasso, is it reasonable to assume  
23 then that if we did that more extensive fix now with the  
24 fence, we could bank those parking spaces in the event that  
25 the new building comes up and there is not enough parking?

1 MR. GRASSO: Bank what parking spaces?

2 MS. DALTON: Possible parking spaces along where we are  
3 proposing to put a fence.

4 MR. GRASSO: No. It's a violation of an approval by a  
5 different board. You can't violate those conditions of  
6 approval.

7 MS. DALTON: So, they'd have to go back to the Zoning  
8 Board of Appeals?

9 MR. GRASSO: Yes.

10 MR. HARRINGTON: Whatever ultimately gets done here,  
11 Mr. Burke is going to have to come in here before this Board  
12 and get everything approved and satisfy whatever demands  
13 there are.

14 MS. DALTON: That's a different Board though. The  
15 point is that we would not be able to approve that so you  
16 would have to go back to the Zoning Board of Appeals because  
17 we didn't establish those five conditions.

18 MR. GRASSO: In theory they could go back and try to  
19 get a different approval.

20 MS. DALTON: What you were talking about with regard to  
21 a stormwater management would not be effected by that?

22 MR. GRASSO: No.

23 MR. AUSTIN: Now we're talking in theory.

24 MS. DALTON: We're talking of practice because they're  
25 asking for temporary parking. That means that sooner or

1 later another building is supposed to go there and that  
2 means that the temporary parking will be gone.

3 MR. AUSTIN: And then he'll come back before us at that  
4 time if he decides to go with those 10 or 15 spots and the  
5 forever wild space and then putting in a fence, potentially.

6 MS. DALTON: Yes, but if we are projecting reasonable  
7 effort about what is going to happen, the only thing that is  
8 different between what we're talking about now and what we  
9 are talking about in the future is the potential demand for  
10 the Texas Roadhouse services. If that demand remains high,  
11 as of course we're all hoping that it will, then they are  
12 going to need more parking.

13 CHAIRMAN STUTO: They do have a greenspace requirement  
14 too. How close are they to the limitation?

15 MR. BURKE: We're close.

16 CHAIRMAN STUTO: That's what I thought.

17 MR. GRASSO: They're at 39 percent. I don't expect us  
18 to see a proposal for development in that forever wild  
19 piece.

20 MR. BURKE: My intensions are to keep this natural  
21 forever and not to come back to the Board having sought an  
22 approval. I wouldn't come back then and say oh by the way,  
23 let's unring that bell and put parking back here. I'll  
24 represent to you now that it will be wild forever. I'm not  
25 going to ask you or the Zoning Board to change that. That

1 was a given on my part. When I said that I'd give it up and  
2 keep it green and not develop it, that was the deal that I  
3 made. So, I'll live with that deal. That's why I'm less  
4 than enthusiastic about --

5 CHAIRMAN STUTO: You're heading in a direction that  
6 they are not keeping up with their end of the deal. You  
7 have spent lots of money on this. You've studied it for  
8 hours. You have engineers. This poor family - an elderly  
9 woman and her son have not had those same advantages.

10 MR. BURKE: In what regard, sir?

11 CHAIRMAN STUTO: They didn't have hours to study the  
12 plans the way that you have. You're trying to say that they  
13 didn't keep up with their deal because they said that they  
14 wanted forever wild and they didn't want a fence. Well they  
15 didn't realize the impacts, maybe.

16 MR. BURKE: There is no impact.

17 CHAIRMAN STUTO: Yes, there is. There is a visual  
18 impact. Its right there. They can see your building from  
19 their property.

20 MR. BURKE: If you stand at a certain angle at the very  
21 rear of the property line and twist yourself sideways, yes,  
22 I guess you can. We have a remedy for that particular  
23 issue. I don't think that anybody stands at the corner of  
24 the property, leaning over and looking at a 45 degree angle  
25 across. It's a little ridiculous.

1           CHAIRMAN STUTO: Anybody else have anything else to say  
2 before we take some kind of vote?

3           MR. AUSTIN: I like the evergreens. I like the  
4 recommendation from our Town Designated Engineer. I think  
5 that my preference, if I was living there is that I wouldn't  
6 want a fence. I would want forever wild behind our  
7 property. It gives the illusion of having property. So,  
8 he's going to expand with evergreens so you can't see the  
9 building, essentially. These are all our opinions up here.

10          CHAIRMAN STUTO: They are the ones that live there.

11          MR. AUSTIN: I understand that. Like I said, we're  
12 going to fence half of that?

13          CHAIRMAN STUTO: I say the whole length of the  
14 property. That's my opinion.

15          MR. AUSTIN: Well 8 and then 10 as well. Because 10 is  
16 the other half of that property.

17          CHAIRMAN STUTO: Number 10 is not here.

18          MR. AUSTIN: Maybe they won't and maybe they will once  
19 they see the fence.

20          CHAIRMAN STUTO: If these people are right on the edge  
21 of forever wild, the other people are squarely in the  
22 forever wild. It's my opinion that they thought that it was  
23 going to be all woods behind their house. That's my opinion  
24 of what they thought. Now they see that's not the case.  
25 They can see the building.

1           MR. AUSTIN: Maybe we should table it so we can go out  
2 and look at it.

3           CHAIRMAN STUTO: I'll leave it to the developer. I  
4 would propose a motion that if you extend the fence the  
5 length of number 8, I'd be prepared to support that as a  
6 motion. These other people can have whatever opinion that  
7 they want. Or short of that, I would opposed what is before  
8 us and I would like to either table it or vote against it.  
9 That's where I'm going to be.

10          MR. BURKE: Texas needs to move forward now because the  
11 asphalt plants are going to close and they won't be able to  
12 pave. So, I feel like I'm being put between a rock and a  
13 hard place because I think that the solution that the Town  
14 Engineer offered up was appropriate and reasonable and I'm  
15 prepared to purchase and install those trees to provide a  
16 visual buffer. I don't believe that it's genuine hardship  
17 or issue. You have to literally go through the property  
18 line at the rear of their house and look sideways to get the  
19 picture that you saw. I don't believe that anybody sitting  
20 in the front row is doing that. I think that it's contrived  
21 and it's an artifice and I'm not buying it. I'm prepared to  
22 resolve it in a manner that's been suggested by the Town's  
23 Engineer. I don't think that it is fair or reasonable or  
24 equitable for me to have to engage in negotiations with the  
25 Town with crossing a 25-foot easement and then purchasing

1 and installing a fence for I don't even know how many feet.  
2 Nobody seems to know the length of that property. I'm not  
3 going to do that.

4 CHAIRMAN STUTO: Your engineers don't know the length  
5 of that property?

6 MR. BURKE: His property? No, why should they? They  
7 know how long my property is. They don't know how long his  
8 property is.

9 MS. GOMEZ: I would like to table it. I hear one thing  
10 here and one thing here. I'm comfortable with Peter's  
11 suggestion; otherwise, I say table it.

12 MR. AUSTIN: Is there a way that we can approve a part  
13 of it so that they can get the asphalt down? It's  
14 wintertime. Then, assuming that we're all going to go out  
15 there and look at the site, determine as a Board I guess by  
16 tabling it to a month or whatever, come back and say okay we  
17 like the trees or we like the fence. Is that a possibility  
18 that we can approve this? The parking is before us. The  
19 fence is not before us. The issue before us is the parking.  
20 It's not the fence and it's not the trees. He is making  
21 good faith with the trees. If we have an issue with the  
22 fence or the trees, we need to table this, let him do his  
23 parking so you can get it down before the asphalt before it  
24 freezes, and then go out and look individually or maybe as a  
25 group and check this out and go with whatever

1 recommendation.

2 Maybe Joe Grasso can go out as well and take a  
3 look.

4 MS. DALTON: My legal question is: Can we do an  
5 approval with a condition and have the applicant apply for a  
6 waiver of condition, then they can get the approval and we  
7 can put the condition on. We can go out and look at it. He  
8 can come back and look at it and say now that we've looked  
9 at it, we want to waive the condition. Is that doable?

10 CHAIRMAN STUTO: Joe Grasso, I'll look to you. You see  
11 what we are trying to do. We're trying to save to get  
12 approval for the paving, but we are reserving our right as a  
13 Board to come back for the visual mitigation up to and  
14 including a fence - continuing that fence and berm as is on  
15 Lots 2, 4 and 6 through Lot 8 or something less -- that we  
16 can take a vote on that. That's the condition - that we'll  
17 come back to approve the condition.

18 MR. GRASSO: The Board can include conditions as long  
19 as there is a nexus to the project, which I think that you  
20 have established. Some of the members have established  
21 that. All I would recommend is that there be limitations on  
22 what those conditions are so that you've got a baseline that  
23 you're starting from. Obviously, we're talking about what  
24 the developer is proposing which is the planting of the pine  
25 trees or the alternative -

1           MR. GRASSO: I will caution you that the importance of  
2 limitations is that you can't approve a project with a  
3 condition without knowing what you're limitations are on  
4 that condition. So, there has to be a limitation; length of  
5 fence, number of trees or whatever. I'll just throw some  
6 darts here. I had proposed an offer of eight trees. Based  
7 on what Pete had said and then what Karen had said you're  
8 more supportive of a maximum of a fence and you want a  
9 chance to view the fence to make sure that it's going to  
10 have the intended effect. I would say that you make a  
11 motion to approve the project conditioned on the  
12 incorporation of a maximum of 80 feet of fence -

13           CHAIRMAN STUTO: Is that the length of the property?  
14 Would that carry it through?

15           MR. GRASSO: Yes, it does.

16           CHAIRMAN STUTO: How do you know?

17           MR. GRASSO: Because I have the map in front of me.  
18 I'm saying approximately 80 feet, but I want to establish a  
19 limit.

20           CHAIRMAN STUTO: I'm making a point. The applicant  
21 said that he can't tell the length of the property, so how  
22 can you possibly tell?

23           MR. GRASSO: Because there is a scale on it.

24           CHAIRMAN STUTO: Is that the applicant's map?

25           MR. GRASSO: This is Creighton Manning's map.

1           CHAIRMAN STUTO: Is Creighton Manning here tonight?

2           MR. MITCHELL: Yes.

3           CHAIRMAN STUTO: You can't estimate the length?

4           MR. MITCHELL: I can put a tail up there and measure  
5 it.

6           CHAIRMAN STUTO: We're asking a factual question and  
7 you said that you couldn't do it.

8           MR. BURKE: I said we didn't know what the length was  
9 because we never measured it.

10          MR. GRASSO: So, apparently it's 80 feet wide based on  
11 information shown on the map and that includes the 12.5 feet  
12 that's encumbered by the easement. So, that's why I'm  
13 establishing 80 feet as the maximum length. That's assuming  
14 that we can figure out how to put a fence in the easement  
15 that we don't normally support. We'll do it at 80 feet as  
16 well as five Canadian Hemlock trees.

17          MS. GOMEZ: I thought you said six.

18          MR. GRASSO: No, I said five Canadian Hemlock trees,  
19 eight feet tall and 10 feet on center.

20          CHAIRMAN STUTO: You're saying two alternative  
21 mitigation measures?

22          MR. GRASSO: At the discretion of the Planning Board.  
23 It's a chance for you to review it and decide which is more  
24 appropriate in terms of mitigation. That's an either/or.

25          CHAIRMAN STUTO: But it will be at our discretion.

1 MR. GRASSO: At your description. That could be your  
2 approval and he doesn't have to accept it. He can say after  
3 you make the motion and you approve it - he doesn't have to  
4 accept it. All I'm saying is that he has the opportunity.  
5 The relief that he has is not to move forward with the  
6 project. Or you can retool the application, whatever he  
7 wants. That could be the motion before the Planning Board.

8 CHAIRMAN STUTO: If he starts to pave then he agrees to  
9 the condition, is that what you're saying?

10 MR. GRASSO: If he moves forward with the approval and  
11 does the paving, he's agreed to that condition. He's  
12 exposed himself to either 80 feet of fence or five trees at  
13 the discretion of the Planning Board. Procedurally,  
14 remember that there is a complete SEQRA and then after SEQRA  
15 we do the waiver and site plan approval.

16 CHAIRMAN STUTO: So, we have to figure out a way to do  
17 that.

18 MS. MILSTEIN: We haven't even talked about the  
19 parking. We've been so busy with the fence, we haven't even  
20 gotten to the main issue.

21 MR. GRASSO: There is one waiver and that's parking in  
22 the front yard setback. The Resolution form has been passed  
23 out.

24 MS. MILSTEIN: But we haven't even had a discussion.

25 CHAIRMAN STUTO: They made that presentation. We can

1 open up that discussion.

2 MR. AUSTIN: I'm looking for plans here. On 10, your  
3 neighbors - do they have a fence? On the plans it says that  
4 they have a fence in the back of their yard that wraps  
5 around. So, they already have a fence right?

6 MR. LANE: You don't know what your neighbors have?

7 MR. LAWRENCE RUBIN: We see the side.

8 MR. AUSTIN: Then they have a side fence.

9 MR. LAWRENCE RUBIN: I assume, but I'm not sure.

10 CHAIRMAN STUTO: Does the Board have any questions on  
11 that? Do they understand what Joe is proposing?

12 (All Board Members agreed.)

13 CHAIRMAN STUTO: Do you want to talk about the more  
14 specifics of the parking and the waiver?

15 MS. MILSTEIN: What happens if we don't grant the  
16 waiver?

17 CHAIRMAN STUTO: There is no project if we don't grant  
18 the waiver.

19 MS. MILSTEIN: There is no way to get a proper amount  
20 of a setback?

21 MR. GRASSO: Just to clarify, the front yard gets  
22 established between Sand Creek Road and the Texas Roadhouse.  
23 All the parking right in her that exists was a waiver item  
24 because parking would be restricted in that area. Any more  
25 parking in this area requires a new waiver for parking in

1 the front yard setback between the building and Sand Creek  
2 Road.

3 MS. MILSTEIN: So, that whole parking lot is part of a  
4 waiver.

5 MR. GRASSO: That's right.

6 CHAIRMAN STUTO: It's another front yard parking  
7 setback.

8 MR. GRASSO: Or they'd have to move it over here or  
9 something like that; which they can't.

10 MS. MILSTEIN: The one that they taped over when they  
11 shouldn't have - that was part of it or wasn't part of it?

12 MR. GRASSO: That was not part of it. They put down  
13 gravel here in this area (Indicating).

14 MS. MILSTEIN: So, what did we approve before for this?

15 MR. GRASSO: You approved all the parking here behind  
16 the restaurant and in front of the restaurant, but not over  
17 in this area (Indicating). That was reserved for the future  
18 Phase III development.

19 CHAIRMAN STUTO: Any other questions on that layout of  
20 the parking or the waiver?

21 (There was no response.)

22 CHAIRMAN STUTO: Does everybody understand what Joe is  
23 proposing?

24 (All Board Members agreed.)

25 CHAIRMAN STUTO: Let me try to repeat it in a shorthand

1 way.

2 He's saying that we approve the pavement on the  
3 condition that obviously with the waiver if it's going  
4 to be approved, and on the condition that the developer  
5 has to comply with whatever we say in the future;  
6 either A, plant the trees as they proposed, which there  
7 is a certain number of trees or continue the fence  
8 through lot up to 80 feet.

9 MS. MILSTEIN: What happens when he doesn't do it?  
10 We're setting someone up for a lawsuit.

11 MR. GRASSO: If it's a condition of approval, the work  
12 will be done. There are procedures in place to make sure  
13 that the work gets done correctly.

14 CHAIRMAN STUTO: When is our next meeting, Joe?

15 MR. LACIVITA: December 3rd and then December 17th.  
16 Those are the next two meetings.

17 CHAIRMAN STUTO: We'll have them back on December 3rd  
18 and we can vote on that.

19 MR. LACIVITA: The paving?

20 MR. GRASSO: No, memorialize the decision regarding the  
21 appropriate mitigation.

22 MS. DALTON: So, I think that what we're looking at  
23 here is making a motion that we accept the proposal for  
24 paving the lot, we approve the waiver for the front parking,  
25 we establish a potential condition to include either of the

1 five trees or the fence pending additional review to be  
2 determined at the next meeting.

3 MR. GRASSO: That sounds like the appropriate motion.

4 MS. DALTON: That is my motion.

5 MR. GRASSO: We're not ready for that motion, but that  
6 would be the motion. I think that it would be good to take  
7 a straw poll just to make sure -

8 CHAIRMAN STUTO: I would like to hear from the  
9 developer before I vote on that. That's my opinion.

10 MR. GRASSO: There is a motion for consideration. Is  
11 it acceptable to you?

12 MR. BURKE: The motion is trees or a fence.

13 MR. GRASSO: The motion is approval of the parking lot  
14 conditioned on either of two forms of mitigation; one is  
15 five trees; two is 80 feet of fence. The Board will convene  
16 at the next meeting and make the determination what the  
17 appropriate mitigation is. The approval would be granted  
18 tonight on the site plan.

19 MR. BURKE: Okay.

20 CHAIRMAN STUTO: That's acceptable to you?

21 MR. BURKE: I think that my neighbor asked for 30 feet  
22 of fence. I don't know where 80 came from.

23 CHAIRMAN STUTO: I'll take responsibility for that.

24 MR. GRASSO: There was no set number. That was across  
25 their entire back property line. That's where I came up

1 with 80 feet.

2 MS. DALTON: Joe suggested that we put an upward limit  
3 so no more than.

4 MR. BURKE: So, if the Board went out there to view the  
5 property and saw that you only needed 10 feet of fence --

6 MS. DALTON: Then we say 10 feet.

7 MR. BURKE: Okay, that's appropriate.

8 MS. MILSTEIN: I don't know where you came up with five  
9 trees.

10 MR. GRASSO: I drew them on the plan. I looked at the  
11 photo and I'm looking at where the vegetation is and I'm  
12 looking at where the storm sewer easement is and I'm saying  
13 that five trees, eight feet tall, 10 feet on center. That's  
14 what they're going to look like. That's appreciable  
15 screening. So, any place that you're standing back here,  
16 obviously not within the storm sewer easement but any place  
17 else, you're going to be screened of the view of the Texas  
18 Roadhouse. That's how I came up with it.

19 CHAIRMAN STUTO: Did you want to speak Mr. Rubin?

20 MR. LAWRENCE RUBIN: You're free to go in the backyard  
21 as well.

22 CHAIRMAN STUTO: Thank you.

23 Does anybody have any objections of at least  
24 holding that thought and finishing up?

25 (There was no response.)

1           CHAIRMAN STUTO: Any comments or questions?

2           (There was no response.)

3           CHAIRMAN STUTO: SEQRA, do you want ot walk us through  
4 the SEQRA?

5           MR. GRASSO: Sure. It's an unlisted action. It's  
6 relatively simple. A short environmental assessment form  
7 was completed regarding the project competed by the Town  
8 Attorney's office. Like I said, it does not require a  
9 coordinated review and that the Town Planning Board is  
10 accepting lead agency status. The determination of  
11 significance which I'll read is based on the information and  
12 analysis above and any supporting documentation that the  
13 proposed action will not result in any significant adverse  
14 environmental impacts for the reasons supporting this  
15 determination above. That would be a motion for the  
16 Planning Board.

17           CHAIRMAN STUTO: Do we have a motion?

18           MR. MION: I'll make the motion.

19           MR. AUSTIN: And I'll second it.

20           CHAIRMAN STUTO: I'll vote in the positive on this on  
21 the condition that the terms that we're going to discuss --  
22 that we're going to revisit the visual screening from Lot 8.  
23 I'll leave it as simple as that. That's the only reason  
24 that I'm voting yes on this.

25           Any other comments or questions?

1 (There was no response.)

2 CHAIRMAN STUTO: All those in favor say aye.

3 MS. DALTON: Aye.

4 MR. MION: Aye.

5 MR. AUSTIN: Aye.

6 CHAIRMAN STUTO: Aye.

7 MR. LANE: Aye.

8 MS. GOMEZ: Aye.

9 CHAIRMAN STUTO: All those opposed say nay.

10 MS. MILSTEIN: Nay.

11 CHAIRMAN STUTO: Susan is recorded in the negative.

12 The next motion is on the front yard parking

13 waiver.

14 MR. GRASSO: And I'll read the Resolution that I passed

15 out before in support of the waiver and I will abbreviate

16 for the sake of time.

17 CHAIRMAN STUTO: I would like to say that I prefer to

18 vote yes on this only if we add some language that we're

19 going to screen Lot 8 in accordance with what we have said

20 on the record. Those are my thoughts on what I would like

21 incorporated into the Resolution. They talk about no

22 practical alternatives and all that stuff and I think that

23 should be a condition of this as well.

24 MR. GRASSO: And we can work on some language. I'll

25 read through the main body of it so that the salient points

1 are understood by the Board.

2 Whereas the applicant is requesting a waiver from  
3 the Town of Colonie Land Use Law related to parking  
4 being prohibited within the front yard with the front  
5 yard being defined as between the front building line  
6 and the front lot line.

7 Whereas the Town of Colonie Planning Board may  
8 waive these standards to the extent it deems necessary  
9 in order to secure reasonable development of the site.  
10 In such case the applicant must establish that there  
11 are no practical alternatives to the proposed waiver  
12 that would conform to the standard and the Board shall  
13 issue a written finding stating the extent and  
14 justification of the waiver.

15 And whereas the proposed layout and building  
16 placement was developed to accommodate future  
17 development on the site.

18 And whereas the master plan for the site shows the  
19 future building being situated along Sand Creek Road  
20 thereby making a majority of the on-site parking  
21 internal to the site and between the various  
22 establishments.

23 And whereas the applicant will construct a berm  
24 with landscaping and decorative fencing along the Sand  
25 Creek Road frontage.

1           Now, therefore be it resolved that the Board  
2 hereby finds that the extent of the requested waivers  
3 are not considered substantial.

4           And be it further resolved that the Board finds  
5 that the applicant has established that there are no  
6 practical alternatives to the proposed waiver that  
7 would conform to the standard, and that the waiver is  
8 necessary in order to secure reasonable development of  
9 the project site.

10          And be it further resolved that the Board hereby  
11 issues a waiver from the prohibition of parking within  
12 the front yard.

13          And be it further resolved that these waiver  
14 findings be a condition of site plan approval of the  
15 application and be kept in the project file in the  
16 Office of the Planning and Economic Development  
17 Department.

18          CHAIRMAN STUTO: I'd like to add a further resolve.  
19 That this approval is conditioned upon appropriate visual  
20 mitigation as discussed in the record tonight between Lot 8  
21 and the developed property.

22          MR. GRASSO: Resolved that this application be  
23 conditioned on securing mitigation between 8 Kenlyn Drive  
24 and the subject property consisting of either up to 5  
25 Canadian Hemlocks, eight feet high at 10 feet on center or

1 an 8 foot high white vinyl fence for a distance up to 80  
2 feet along the rear property line of lot 8 Kenlyn Drive.

3 MR. LANE: How about no more than 80 feet?

4 CHAIRMAN STUTO: He said "up to".

5 MR. GRASSO: I said "for a distance of up to 80 feet".

6 MS. MILSTEIN: What did you say about the trees?

7 MR. GRASSO: Up to five Canadian Hemlocks, eight feet  
8 high at 10 feet on center.

9 CHAIRMAN STUTO: I would like to say from the existing  
10 fence. It's not just along the back of their property.

11 MR. LANE: Why can't you skip over that -

12 CHAIRMAN STUTO: Because then you'll have a gap that  
13 you can see through.

14 MS. MILSTEIN: Or should we just put at the beginning  
15 point to the end of their lot?

16 CHAIRMAN STUTO: I would rather say that.

17 MS. MILSTEIN: Because otherwise if it's 81 feet,  
18 you're going to have a problem.

19 MR. GRASSO: I said beginning at the termination of the  
20 existing fence.

21 MR. BURKE: That has to be subject to. You could be  
22 imposing a condition of impossibility on me if the Town  
23 elects not to go through that 25 foot wide easement area, I  
24 can't comply. It's a legitimate point and I think that  
25 counsel recognizes that.

1           CHAIRMAN STUTO: Maybe we should table it.

2           MS. VAIDA: Do you know if the Town will grant that?

3           CHAIRMAN STUTO: Joe, do you know if the Town is likely  
4 to grant that?

5           MR. LACIVITA: It's going to take some time, Peter. I  
6 would ask that we would reconsider the tabling based on the  
7 need. The Land Use Law speaks to overflow parking lots that  
8 have the capability of using gravel parking lots.

9           CHAIRMAN STUTO: Joe, you're going into an whole  
10 different area that I don't want to go into.

11          MR. LACIVITA: I'm looking at it from a business  
12 perspective that if we table this and the asphalt plant  
13 closes -

14          CHAIRMAN STUTO: I've asked you a question. I'd like  
15 you to answer the question that I've asked you.

16          How is the Town likely to react to putting the  
17 fence over that drainage?

18          MR. LACIVITA: You're talking a 25-foot section and  
19 you're going to have to work through getting a stormwater  
20 easement. Yes, it's going to take some time. It will take  
21 some legalese. It all depends on how long it will take to  
22 get all that done.

23          CHAIRMAN STUTO: The approval of that - he can start  
24 paving before we get that approval. Do we get those kinds  
25 of approvals from the Town?

1 MR. LACIVITA: We do get a hold harmless, but it is not  
2 something that is done very quickly.

3 CHAIRMAN STUTO: But we don't have to do that before  
4 the pavement.

5 MR. LACIVITA: It does take some time but we could  
6 probably get it done.

7 CHAIRMAN STUTO: Thank you for answering the question.

8 MS. MILSTEIN: Can you just put a tree in there rather  
9 than a fence?

10 CHAIRMAN STUTO: They have a drainage pipe that goes  
11 right through there.

12 MR. MION: Why does it have to be in this when we're  
13 going to put it in the final motion?

14 CHAIRMAN STUTO: It doesn't have to be. I'm not voting  
15 yes unless it's in there. There may be other practical  
16 alternatives. That's how I feel about it. I don't want to  
17 give them a waiver for parking and not have it clear on the  
18 record that we're doing it only because they're going to  
19 mitigate the visual impact. That's my opinion.

20 MR. MION: But there is no visual impact with the  
21 parking.

22 CHAIRMAN STUTO: You can move to amend the motion.

23 MR. GRASSO: So, we have a modified Resolution. Do we  
24 have a motion for approval of it?

25 CHAIRMAN STUTO: Can you reread the sentence?

1           MR. GRASSO: "Be it resolved that this application be  
2           conditioned on securing mitigation between 8 Kenlyn Drive  
3           and the subject property consisting of ether up to five  
4           Canadian Hemlocks, eight feet tall at 10 feet on center or  
5           an eight-foot high white vinyl fence for a distance of up to  
6           80 feet along the rear property line of Lot 5 beginning at  
7           the termination of the existing fence."

8           CHAIRMAN STUTO: Any comments or questions on that  
9           motion?

10          MS. MILSTEIN: And it's from one point to the end line.

11          CHAIRMAN STUTO: I'm supportive of that. I don't know  
12          about everybody else. She is saying up to the end of their  
13          property line.

14          MS. MILSTEIN: We don't know if it's 80 feet -

15          MR. LANE: He already agreed to the 80 feet and now  
16          you're going to change the condition again.

17          CHAIRMAN STUTO: She's entitled to say it. She is  
18          saying to the end of the property. What's the difference  
19          between a foot and a yard? That's what she is saying.

20          MR. GRASSO: Is that your concern to make sure that we  
21          go to the end of Lot 8?

22          MS. MILSTEIN: Yes, because you estimate and you did  
23          the best that you could. I don't know if you know that it's  
24          exactly 80 feet. I don't want to find out that it's 80 feet  
25          and six inches and he stops.

1           MR. AUSTIN: I think that we're going to get ourselves  
2           in trouble here. We don't have enough details. What if  
3           it's 90 feet?

4           MS. MILSTEIN: You're right, that's the risk he has to  
5           take.

6           CHAIRMAN STUTO: These guys are engineers and they have  
7           drawings. They can do take offs depending upon the scale.  
8           We can take a recess and resolve that right now. You're  
9           talking a minimal amount of difference.

10          MR. GRASSO: I'm trying to keep this in the context of  
11          where we started. There was a concerned resident that came  
12          and asked for 30 feet of fence. I'm at 80 feet or five  
13          trees and considerable expense. We're trying to deal with  
14          the easement. I think that there is appropriate  
15          mitigation on the table for the Board for consideration.

16          MR. LANE: I don't think that we have to go beyond 80  
17          feet.

18          MR. MION: I don't think so, either.

19          MS. MILSTEIN: I won't go along with 80 feet.

20          CHAIRMAN STUTO: She wants it to the termination.

21          MS. MILSTEIN: I'm a lawyer and I see what happens when  
22          it's defined as 80 feet and they won't go that extra three  
23          inches or six inches.

24          MR. LACIVITA: You've also set the stage for Lot 10 to  
25          come in and say I want Mr. Burke to extend it down the next

1 lot.

2 MS. MILSTEIN: No, I said up to the lot line between 8  
3 and 10.

4 MR. TENGELER: What if 10 comes in at the next meeting?

5 CHAIRMAN STUTO: That's not a condition. I disagree  
6 with Joe and I disagree with Mike. That's not a condition  
7 that we're going to extend it to Lot 10.

8 MR. LACIVITA: If it's written down, then that's what  
9 we'll go to.

10 CHAIRMAN STUTO: It's too late for Lot 10.

11 MR. LACIVITA: It was possibly too late for Lot 8.

12 CHAIRMAN STUTO: There is an application to amend the  
13 site plan. We're here mitigating the impact on the  
14 neighbors. It's not too late and it's entirely appropriate  
15 to consider that.

16 MR. AUSTIN: Is that our responsibility to make that --

17 CHAIRMAN STUTO: It is 1,000 percent. That's what our  
18 job is. Whether you think that this is an appropriate use  
19 of that power, that's your opinion. That's what we do.

20 MR. AUSTIN: Is that after it's been done? Do you know  
21 what I mean? It's been done and finalized and the CO has  
22 been issued. Everything is done and now we're going back  
23 after the fact and saying --

24 CHAIRMAN STUTO: Joe Grasso says as long as there is a  
25 nexus between the application that's in front of us and the

1 limitation that we are proposing that it's an appropriate  
2 thing for us to do.

3 Susan, I'm going to entertain a motion on the way  
4 that you worded it.

5 MR. MION: I'll make the motion.

6 MS. DALTON: I'll second it.

7 CHAIRMAN STUTO: Discussion?

8 (There was no response.)

9 CHAIRMAN STUTO: All those in favor say aye.

10 MS. DALTON: Aye.

11 MR. MION: Aye.

12 MR. AUSTIN: Aye.

13 CHAIRMAN STUTO: Aye.

14 MR. LANE: Aye.

15 MS. GOMEZ: Aye.

16 CHAIRMAN STUTO: Susan, are you voting aye?

17 MS. MILSTEIN: Is that with my -

18 CHAIRMAN STUTO: No, it's not.

19 MS. MILSTEIN: Then it's nay.

20 CHAIRMAN STUTO: Susan is recorded in the negative.

21 MR. GRASSO: There needs to be a motion for site plan  
22 approval.

23 CHAIRMAN STUTO: Okay, who wants to state the motion?

24 I'll make a motion for site plan approval conditioned upon -

25 Joe, can you help me out? You just read it.

1           MR. GRASSO: Conditioned on securing mitigation between  
2           8 Kendlyn Drive and the subject property consisting of  
3           either up to 5 Canadian Hemlocks eight feet high at 10 feet  
4           on center, or an 8 foot high white vinyl fence for a  
5           distance up to 80 feet along the rear property line of Lot 8  
6           beginning at the termination of the existing fence.

7           CHAIRMAN STUTO: Such mitigation measure to be  
8           determined by the Planning Board at a subsequent meeting; as  
9           soon as we can get back and think about it.

10          MR. MION: Can we do that on the next meeting, Joe?

11          MR. LACIVITA: I'll make it on the next meeting. It's  
12          going to be a jammed packed meeting. We'll put it on.

13          MR. GRASSO: That's the motion.

14          CHAIRMAN STUTO: With what you said and with what I  
15          said.

16          MR. LANE: I'll make the motion.

17          MS. DALTON: I'll second it.

18          CHAIRMAN STUTO: Any discussion?

19          (There was no response.)

20          CHAIRMAN STUTO: All those in favor say aye.

21          MS. DALTON: Aye.

22          MR. MION: Aye.

23          MR. AUSTIN: Aye.

24          CHAIRMAN STUTO: Aye.

25          MR. LANE: Aye.

1 MS. GOMEZ: Aye.

2 CHAIRMAN STUTO: All those opposed?

3 MS. MILSTEIN: Nay.

4 CHAIRMAN STUTO: Susan is recorded in the negative.  
5 Congratulations.

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8 (Whereas the above entitled proceeding was  
9 concluded at 8:35 p.m.)

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CERTIFICATION

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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.

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NANCY STRANG-VANDEBOGART

Dated December 10, 2013

