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PLANNING BOARD COUNTY OF ALBANY

TOWN OF COLONIE

RETAIL STORAGE BUILDING
2069 CENTRAL AVENUE
BOARD UPDATE AND
APPLICATION FOR CONCEPT ACCEPTANCE

THE STENOGRAPHIC MINUTES of the above entitled matter
by NANCY L. STRANG, a Shorthand Reporter Commencing
on November 14, 2017 at 7:06 p.m. at The Public
Operations Center, 347 Old Niskayuna Road, Latham,
New York

BOARD MEMBERS:

- PETER STUTO, CHAIRMAN
- BRIAN AUSTIN
- LOU MION
- CRAIG SHAMLIAN
- STEVEN HEIDER
- SUSAN MILSTEIN

ALSO PRESENT:

- Michael C. Magguilli, Esq., Town Attorney's Office
- Joseph LaCivita, Director, Planning and Economic
Development Department
- Michael Tengeler, Planning and Economic Development
Department
- Nicholas Costa, PE, Advance Engineering and
Surveying
- Ryan Weitz, PE, Barton and Loguidice
- Nia Cholakis, Esq.
- Jaffer Khan
- Adam Leonardo

1 CHAIRMAN STUTO: It's 7:00 and we're going to get
2 started.

3 Welcome to the Town of Colonie Planning Board.

4 Joe, I see that we have a calendar in front of
5 us here.

6 MR. LACIVITA: Yes, as we do every time of the
7 year - at this time of the year, we always look at our next
8 year's calendar.

9 So, before you tonight is the 2018 calendar of
10 events for the Planning Board. You can see the yellow
11 highlighted are the ones that are not conflicting with any
12 other Boards or holidays or time off from the school
13 systems. Typically we just look at that. If we adopt it,
14 we put it onto our website for the upcoming year.

15 CHAIRMAN STUTO: Any Board Members have comments
16 on this?

17 Are you looking for a vote on the calendar?

18 MR. LACIVITA: Typically we do, Peter. I don't
19 know as to why, but we typically do.

20 CHAIRMAN STUTO: Do we have a motion on that?

21 MR. MION: I'll make a motion.

22 CHAIRMAN STUTO: Chief, do we have a second?

23 MR. HEIDER: Second.

24 CHAIRMAN STUTO: All those in favor say aye.

25 (Ayes were recited.)

1 All those opposed.?

2 (There were none opposed.)

3 The ayes have it.

4 MR. LACIVITA: Peter, the only other thing that I
5 had administratively is just to remind the residents that we
6 do have a Comp Plan meeting here tomorrow, November 15th at
7 6:00 p.m. in this room.

8 CHAIRMAN STUTO: Okay, thank you.

9 You ready for the agenda?

10 MR. LACIVITA: We are.

11 CHAIRMAN STUTO: Okay, the first item on the
12 agenda is Retail Storage Building, 2069 Central Avenue,
13 Board update and application for concept acceptance, raze
14 existing structures and replace with a 6,755 square foot
15 retail storage building and collective review of
16 neighborhood parcels.

17 Joe, do you have any comments on this?

18 MR. LACIVITA: Michael?

19 MR. TENGELER: It was here August 22 of this year
20 and it was tabled at that time.

21 The site is within the COR zoning district.
22 The Board has seen this recently as well as the nearby
23 parcels. At the last meeting you guys asked for certain
24 retailers to be disclosed at this meeting, as to the
25 clarification for this use and other functionality of the

1 site.

2 CHAIRMAN STUTO: Do you have any specifics on
3 that?

4 MR. TENGELER: The functionality of neighboring
5 parcels, details such as tree survey, turning radius,
6 maneuvering and a better idea of the type of tenant that is
7 proposed to the building.

8 There was some back and forth as to exactly
9 what kind of use was being proposed and such.

10 CHAIRMAN STUTO: There was that easement issue.

11 MR. TENGELER: We spoke about the easement.

12 I know that Jaffer is in the audience tonight.
13 He is a neighboring owner of a parcel that abuts this
14 parcel. There was discussion about the easement that is in
15 the Planning Boards' packets. There is a copy of the
16 easement.

17 CHAIRMAN STUTO: We will turn it over to the
18 applicant.

19 MR. COSTA: Good evening. My name is Nick Costa
20 and I'm with Advance Engineering and Surveying.

21 As Mike summarized the project, we were here
22 back at the end of August. There was some additional
23 information that was requested. We added some of the
24 information that was requested to the plans. We submitted
25 it back at the beginning of September. Here we are

1 tonight to go review -

2 CHAIRMAN STUTO: What of the information that we
3 requested didn't you add?

4 MR. COSTA: I think that we added pretty much all
5 of the information.

6 CHAIRMAN STUTO: Do you have a tree survey?

7 MR. COSTA: Yes, there are the three large trees
8 that are on the site and are shown on the site plan. If you
9 want me to, I can -

10 CHAIRMAN STUTO: No, we'll get to it.

11 MR. COSTA: The use is going to be a maintenance
12 facility storage of vehicle - maintenance vehicles that is
13 for the applicant. They are going to be storing their
14 maintenance vehicles at that location. That's for the
15 purpose of the new building.

16 Then, the truck maneuvering - we do have a plan
17 that shows the truck maneuvering. There are no issues
18 with the turning radius or space.

19 CHAIRMAN STUTO: In talking to Mike earlier, we
20 asked for a map of current conditions. That was not
21 provided. In other words, the map is not up to date. Also,
22 what I have been told is that the easement - the proposal is
23 not consistent with the easement. There may be some other
24 things.

25 MR. COSTA: I disagree with regards to the

1 existing conditions. The existing conditions - I think that
2 we show 20 Atwood. We show 2069 and we show 2071. I don't
3 know what else we need to show. They are all shown. All
4 three parcels are shown on the site plan. These site plans
5 have been submitted.

6 CHAIRMAN STUTO: Mike and Ryan, can you help me
7 with that?

8 Ryan Weitz is our Town Designated Engineer with
9 Barton and Loguidice.

10 MR. TENGELER: Ryan can speak further to this.
11 There were some small alterations made to the 20 Atwood
12 parcel and the 20 Atwood/2067 Central parcel. There is an
13 island that was removed and replaced. The site was not
14 approved for parking the way that it is shown on here. It
15 exists currently somewhat in that fashion, but inaccurately
16 in that fashion minus the island. It wasn't approved through
17 our office for any changes and I know that Jaffer is
18 claiming that some of it affects his property, as well.

19 We tried working with both owners of the
20 property, trying to take a laid-back approach - try to
21 work it out between themselves. That has gone on for a
22 couple of years now. You will remember when Jaffer came
23 in two or three years ago. It was decided at that time to
24 take the same attitude as we have been taking which is a
25 private civil matter - you guys just work it out.

1 CHAIRMAN STUTO: Right. We don't want to get
2 involved in a civil litigation between two private parties.

3 The depiction to be accurate as to current
4 conditions and as to what your legal rights are.

5 Why don't you go ahead with presentation?

6 MR. COSTA: I would like to answer that. The
7 depiction on that map is accurate is the way that it exists
8 today. If you were to go out to the site, that's what you
9 would see.

10 CHAIRMAN STUTO: Do either of you disagree with
11 that?

12 MR. WEITZ: Yes. One item - if you went out on
13 the site today, there is a parking island that straddles the
14 property line on the avenue side that is no longer existing.

15 The interconnection to the former Earl Avenue
16 is not as it exists on the site. So, it doesn't reconcile
17 with the filed easement that is filed at the County
18 Clerk's office. So, those was are three outstanding issues
19 that do not reconcile with existing conditions or the
20 filed map.

21 MR. COSTA: I would like to clarify that. What is
22 shown on there is what exists out there in the field today.
23 What you are talking about is what existed formerly before
24 work was done at the site. The driveway was right here
25 formerly (Indicating). Then, the parking in here has been

1 modified. I think that out in the field, that is what is
2 out there today.

3 This is a site that is located at 2069. The
4 application is for 2069 Central Avenue and it is for
5 removing an existing building and adding a 6,755 square
6 foot building and associated access drive and parking and
7 circulation area.

8 There were, as I mentioned earlier - we did
9 show the three trees. There is one large multi-stem tree
10 here and then there are two large trees in the back. Those
11 are existing. Again, the site plan does show that rear
12 area will be landscaped with evergreens and a solid vinyl
13 fence that now exists along the property that is 2071 --
14 that will be continued across the rear of the lots that
15 are Lisha Kill. That fence would be extended. It's a
16 vinyl fence. I think that we have some pictures.

17 This is the existing building (Indicating).
18 This is Earl Avenue and as you go toward the rear, this is
19 on 2071 and 2069. This is going to get removed and this
20 is a rear view toward Central Avenue from the former Earl
21 Avenue. Again this is the building that is going to get
22 removed (Indicating). This is the proposed building.
23 That is the existing house that is at the rear that is
24 also going to be removed and replaced with the proposed
25 building.

1 That is the fence and this is six foot
2 (Indicating). It is a six foot vinyl fence that exists on
3 2071. This is going to get extended along the property
4 line - the common property line of the Lisha Kill lots and
5 2069.

6 The site will meet the greenspace. There is
7 about 37% green that is being proposed. It's being
8 developed, like I said, for maintenance vehicles and
9 storage that the applicant has and needs a place to store
10 them out of the elements. This is a good location.

11 There are other properties that are owned by
12 the applicant.

13 This is the fence that exists along the rear of
14 the property line. Those are the two trees that exist out
15 there. This is another view of it, looking at the house.
16 That rear wooded fence is going to get replaced with the
17 vinyl fence - six foot vinyl fence.

18 Again, if there are any other questions or
19 comments.

20 CHAIRMAN STUTO: I'll ask our Town Designated
21 Engineer, which is Barton and Loguidice, Ryan Weitz -

22 Ryan, can you give us your comments on this
23 project?

24 We will take public comment as well.

25 MR. WEITZ: Yes, thank you, Chair.

1 On August 14, we issued a comment on the
2 concept submission at that time.

3 As the applicant had stated, there was a
4 supplementary submission received by the Town of September
5 1st where the use was indicated in a revised narrative as
6 well as the three trees discussed being shown on the plan.
7 Those were the two items submitted.

8 There were a number of our other comments that
9 were made throughout our letter of August 14th that we
10 reviewed the last time that we were here on this project
11 and remain outstanding to be addressed when the project
12 proceeds.

13 In terms of the discussion had by the Planning
14 Board in August regarding this project, it was discussed
15 that a tree inventory was desired. Three trees have now
16 been indicated on the plan.

17 The truck turning diagrams are not shown on
18 this iteration of the plan. It sounds like there is
19 another sheet that may have those on them.

20 CHAIRMAN STUTO: Nick, do you want to speak to
21 that? I see that you are reacting to what he is saying.

22 MR. COSTA: I do have that. There was some
23 confusion as to what would be utilized for vehicles. There
24 was some worry or concerns that trucks wouldn't be able to
25 get in and out of the rear of the site.

1 CHAIRMAN STUTO: Those has been submitted to the
2 Department?

3 MR. COSTA: I apologize. That was not submitted
4 with the package but you can see that there is plenty of
5 room for what I would term a box truck to make that
6 movement. That's probably the largest truck that would be
7 utilized in the site, if it even utilizes the site.

8 CHAIRMAN STUTO: I'm just going to point out and
9 would like to point it out politely. If we ask for
10 something, it needs to be submitted before you get on the
11 agenda so that we can review it. Our engineer hasn't had a
12 chance to review it.

13 MR. COSTA: Understood.

14 CHAIRMAN STUTO: Thank you.

15 MR. MAGGUILLI: You said that the tree survey
16 that the Planning Board asked for is on this map that you
17 submitted?

18 MR. COSTA: Yes. There are three large trees. We
19 talked about locating the large trees.

20 MR. MAGGUILLI: This is what you are proposing as
21 your tree survey; these three trees on this map?

22 MR. COSTA: That's what we understood -- the
23 large trees. The rest of the trees are not -

24 MR. MAGGUILLI: Were those added after the last
25 revision of 3/10/17?

1 MR. COSTA: Yes, these were added at the end of
2 August. We went out and located them.

3 CHAIRMAN STUTO: How come it's not noted in the
4 revisions?

5 MR. COSTA: We were here in front of you on
6 August 22nd, I think. We went out in the field and located
7 that and had it back to the Town on September -

8 CHAIRMAN STUTO: But you didn't make a note on
9 the rendition, right?

10 MR. COSTA: That was our omission.

11 CHAIRMAN STUTO: Ryan?

12 MR. WEITZ: Thank you.

13 The other comments that were discussed by the
14 Board in August primarily discussed the interconnection
15 and the relationship of all the parcels here; the cross
16 access and the depiction of the easement.

17 The Board packet presented tonight - towards
18 the end there is a copy of the recorded easement. By
19 comparison to what is shown, there is some sort of
20 disagreement there. It's been stated now that the actual
21 cross access to Earl Avenue, 2069 was shifted at some
22 point. However, the way that it's depicted in the filed
23 easement is not reconciling with what is depicted on the
24 plan. That remains outstanding.

25 There was a discussion about unauthorized

1 removal of greenspace at 20 Atwood and some other
2 alterations that occurred there that came up in the
3 Board's discussion at that point.

4 Just to clarify, on September 1st, the revised
5 site plan and the revised narrative were circulated and
6 those items were not discussed on those revised documents.

7 CHAIRMAN STUTO: Can you repeat that last
8 statement that you just made?

9 MR. WEITZ: Those items that we just discussed
10 were not addressed in that revised narrative.

11 CHAIRMAN STUTO: Can you address the easement?
12 That is a relatively serious issue.

13 MS. CHOLAKIS: Good evening, Board. I'm Nia
14 Cholakis and I'm Vice President and Corporate Counsel for
15 Rosetti Development Companies, the applicant.

16 First, I guess with respect to the easement --
17 the easement - we have been discussing this easement for
18 two years. I was here before this very Board two years ago
19 in December and one time prior to that when Mr. Khan was
20 here before this Board asking for waivers.

21 At that time, I provided copies to the Board
22 and provided copies to the PEDD. At that time on December
23 2, 2014 the Board specifically said, and I quote: "The
24 easement issue was something that the Planning Board isn't
25 involved in. That's really between you and the other

1 party."

2 CHAIRMAN STUTO: But our engineer is telling us
3 that the drawings are not consistent. So, we are getting
4 professional advice.

5 MS. CHOLAKIS: But we are here tonight for
6 concept acceptance on 2069 Central Avenue. We're not here
7 about 2067. We're not here for 20 Atwood. We're not here on
8 2071. We're here for 2069 Central Avenue.

9 Based on my review and based on what I have
10 heard and based on what I have reviewed in the meeting
11 minutes from the last meeting, which I was not present,
12 this site meets all the criteria for concept acceptance.
13 We're not even here for final. We have gone through a lot
14 of engineering just to get to the point of concept
15 acceptance.

16 This matter was reviewed by the DCC in
17 September and October of 2016. It's taken us 14 months -

18 CHAIRMAN STUTO: Because you're not making
19 correct submissions. We're not taking the blame for that.

20 MS. CHOLAKIS: Everything that is on the site
21 plan -

22 CHAIRMAN STUTO: We've pointed out some of the
23 mistakes already.

24 MS. CHOLAKIS: Everything on the site plan
25 accurately depicts what we are proposing.

1 MR. MAGGUILLI: Nia, are you representing that
2 this easement has nothing to do with your submission
3 tonight?

4 MS. CHOLAKIS: I absolutely do. The easement is
5 a private matter. We have been in litigation for well in
6 excess of two years. If the Town of Colonie would like to
7 be impleaded as part of the law suit, we would be happy to
8 include you. Back in 2014 this Board told me when I came to
9 discuss this about Mr. Khan's submission and how his parking
10 arrangement was inconsistent with my rights under the
11 parking easement - this Board told me that this was a
12 private matter and it was for me to work out with the other
13 party. That's what we are doing. We're in the process of
14 litigation.

15 MR. MAGGUILLI: But don't you need this easement
16 for this project to work?

17 MS. CHOLAKIS: I do not. I absolutely do not.
18 Why do I need this easement to work?

19 Nick, do I need this easement to work for the
20 purposes of 2069?

21 MR. COSTA: No.

22 MR. MAGGUILLI: Then why is it in front of us?

23 MS. CHOLAKIS: There is a question. I have no
24 idea. Somebody thinks that it's important. The Board has
25 brought this up and has brought up violations at 2090

1 Central Avenue, a property that we no longer own. There are
2 certain things that the Board decides that they think are
3 relevant and important and frankly I don't see it that way.

4 For example, there are sheds at 2084 Central
5 Avenue that we have complained about. Nobody has done
6 anything to enforce those regulations.

7 Mr. Khan was approved for 37 cars on his lot
8 and on a regular basis he has in excess of 50 cars. We
9 have pictures.

10 Mike, you and I have sat down and we have
11 looked at those pictures. The Town has issued two orders
12 to remedy or notices of violation. He then takes the cars
13 off the lot. Mike Tengeler goes and he inspects the
14 property and he sees that there are 37 cars on the lot and
15 then the day after he brings the cars back. We have
16 constant enforcement issues here.

17 If there are violations, this Board doesn't
18 have the authority to deal with those violations. If the
19 PEDD wants to cite me a violation, I would be happy to
20 appear before Town Court and deal with those violations.

21 So, the fact that we are even talking about
22 2069 Central Avenue is irrelevant to this issue.

23 CHAIRMAN STUTO: That's the address that is on
24 our agenda.

25 MS. CHOLAKIS: That's because somebody in the

1 PEDD put that. We have an application for concept
2 acceptance for 2069 Central Avenue.

3 We have been fighting with the Planning
4 Department for well in excess of 14 months to get this
5 matter pushed forward so that we can get some resolution
6 of this site. This site, not the next door site. Yes, we
7 have litigation currently pending. He sued us. We sued
8 him. Let the Court decide. This is not an adjudicative
9 body for what is going on with the parking easement at 20
10 Atwood and 2067 Central.

11 MR. MAGGUILLI: Nia, let me ask you this: What
12 would happen if you lose the Court case?.

13 MS. CHOLAKIS: If I lose the Court case, let's
14 see - Mr. Khan has sued us -

15 MR. MAGGUILLI: Just as it applies to your
16 application for concept acceptance.

17 MS. CHOLAKIS: There is no issue. There is no
18 issue. There is no issue and I'll tell you why.

19 MR. MAGGUILLI: I'm just trying to understand.

20 MS. CHOLAKIS: Let me give you the basic
21 underlying facts of the lawsuit.

22 MR. MAGGUILLI: Because I see this easement as
23 what brings you access to the property.

24 MS. CHOLAKIS: No, it doesn't.

25 MR. MAGGUILLI: Grantor is hereby granted -

1 MS. CHOLAKIS: No, it doesn't -

2 MR. MAGGUILLI: - their successors and assigns
3 forever the perpetual right of way and easement cross
4 through and over the paved portion of the grantor's property
5 as more particularly described. Said easement of right of
6 way shall be for ingress and egress by the grantees, agents
7 or servants, employees, invitees, including parking those
8 carved portions as used for ingress and egress.

9 MS. CHOLAKIS: So, we're talking about 2069
10 Central Avenue. On 2069 Central Avenue - we have access
11 directly from Central Avenue at this juncture which is the
12 former abandoned Earl Place (Indicating).

13 With respect to 20 Atwood, which is this
14 building back here (Indicating) at 2067 Central Avenue
15 which is Mr. Khan's building, Atwood Avenue is a dedicated
16 Town road. So, we can access 20 Atwood by way of Atwood
17 Avenue and then come in this way and park (Indicating).
18 There is no issue.

19 I'm not a judge, but I can tell you that you're
20 looking at an easement and there is an easement. Is this
21 an exclusive easement or is it a non-exclusive easement?
22 I don't think that any court is going to tell me that I
23 don't have that easement. I certainly don't need it for
24 2069 Central Avenue and that's what we are here tonight
25 on. We are here for concept acceptance on the stuff that

1 is shaded here in green. We're not here dealing with
2 anything having to do with 2069 Central Avenue or 2067
3 Central Avenue, excuse me - or 20 Atwood. It has nothing
4 to do with why we are here. That's what we have been
5 trying to say at many Board meetings, private meetings
6 with members of the PEDD, private meetings with the Town
7 Attorney's office - that's what we have been trying to
8 convey for all of these months.

9 The underlying action between Mr. Khan and our
10 office is as follows: Mr. Khan has sued us for monetary
11 damages for what he claims to be an unauthorized
12 permission - an authorized removal of trees. So, that can
13 be monetized -- and, for taking out the island that has
14 been put back. That's basically the thrust of his lawsuit.

15 Our lawsuit is for declaratory judgment so that
16 he can be told where he can and cannot park. He parks
17 display vehicles in the parking easement that have no
18 license plates on them and they stay there all day long,
19 other than if somebody wants to come in and look at it and
20 then they slap a dealer plate on it and they take it out
21 for a test drive. He frustrates our ability to be able to
22 have our tenants park in these spots because the cars
23 don't move all day. Even if it's a non-exclusive easement,
24 I still have the right to have people come and go and be
25 able to park. When the cars sit there all day long, I

1 don't have that ability.

2 So, that's the thrust of our lawsuit against
3 him - is to have a Court decide whether or not he just
4 displays vehicles there, or whether or not the vehicles
5 have to come and go, or whether or not it's exclusive
6 versus non-exclusive. So, again, that's what is pending.
7 I don't think that the Town, based on my discussions,
8 wants to be involved in that.

9 Based on what I just read to the Board of the
10 Planning Board meeting minutes from December of 2014, the
11 Town took the position at that time that this was a
12 private matter and that it was not going to get involved.
13 Here we are two and a half years later and apparently they
14 want to get involved because somebody else is asking them
15 to get involved.

16 So, that's my position at this point.

17 MR. MAGGUILLI: Nobody is asking the Town to get
18 involved. We just want to clarify that this parking easement
19 is necessary to you to obtain approval of this project -
20 even concept acceptance -

21 MS. CHOLAKIS: No, it's not.

22 MR. MAGGUILLI: Because you need the parking.

23 MS. CHOLAKIS: No, I don't. The parking that we
24 are talking about pursuant to the parking easement is on 20.

25 MR. MAGGUILLI: The microphone has a sound level.

1 MS. CHOLAKIS: I'm getting excited. I apologize.

2 This parking easement is over here (Indicating)
3 in the white at 2067 Central Avenue. This is my project
4 up here at 2069. The parking will be fully contained on
5 2069.

6 Nick, is that correct?

7 MR. COSTA: That's correct.

8 MS. CHOLAKIS: So, any parking that I need to
9 service 2069 will be wholly contained on 2069 Central
10 Avenue.

11 MR. LACIVITA: Michael, just for your
12 understanding as well - one of the things that happened with
13 one of the submissions, as was early on in the process of
14 why it's taking so long, is that submissions came into the
15 Planning Department and this Board saw it and they started
16 to see an interaction based on the plans that were submitted
17 between the parcels. I know that Nia is looking for
18 exclusivity as to the one parcel and the action only on
19 that. These parcels were designed to show pavement
20 extensions onto the Atwood parcel and also access points to
21 the other parcel. So, that's how they started looking at it
22 and rightfully so because we always look at cross access.
23 That's why we started looking at all three parcels
24 holistically.

25 CHAIRMAN STUTO: Ryan, when you made the

1 statement that this proposal is inconsistent with the
2 easement, can you be more specific? Do you agree with Ms.
3 Cholakis?

4 MR. WEITZ: What I am looking at in comparison is
5 the easement that was filed and provided in the Board packet
6 compared to what is depicted on the plan. As that is shown,
7 it doesn't line up.

8 CHAIRMAN STUTO: Specifically what?

9 MR. WEITZ: Specifically the meets and bounds of
10 that and perhaps it's something that could be clarified
11 through the addition of metes and bounds.

12 CHAIRMAN STUTO: Are you talking about parking or
13 access or what?

14 MR. WEITZ: One of the items that was requested
15 by the Board was to have the existing conditions accurately
16 shown for the concept plan. As you can see here, and please
17 correct me if I am seeing this wrong, the property line is
18 there. The easement line goes like this (Indicating).

19 This is the easement map that has been provided
20 that has been filed. It almost appears that the easement
21 line follows this curbing. There is some sort of
22 discrepancy and perhaps that can be explained.

23 CHAIRMAN STUTO: Okay, answer that and does it
24 impact the application before us?

25 MR. COSTA: The easement that is shown on there

1 is the easement that was given to us from the surveyor that
2 prepared the mapping for 20 Atwood. That's how we depicted
3 it. He also is the one that did the description that is
4 attached.

5 MR. MAGGUILLI: The Town has to go by the file.
6 You haven't followed the metes and bounds of the filed
7 easement and that was not shown on your plan. Are you not
8 bound by that?

9 MR. COSTA: I agree with you that it needs to be
10 what is shown.

11 MS. CHOLAKIS: Either way, it has nothing to do
12 with this application.

13 MR. MAGGUILLI: This Board cannot approve a plan
14 that doesn't accurately reflect the existing conditions. you
15 understand that, correct?

16 MS. CHOLAKIS: The existing conditions for the
17 property in question - the existing conditions for the
18 properties next door -- I don't know where, pursuant to what
19 you are suggesting that the existing conditions on adjoining
20 properties that have no impact on this application -

21 CHAIRMAN STUTO: The property has no legal
22 connection to the other property.

23 MS. CHOLAKIS: Zero.

24 CHAIRMAN STUTO: You agree with that?

25 MS. CHOLAKIS: They are two totally different tax

1 parcels.

2 CHAIRMAN STUTO: And no easements that impact
3 each other.

4 MS. CHOLAKIS: And no easements that impact each
5 other, correct.

6 MR. WEITZ: The one comment I would make is that
7 here we are looking at - it says the site plan for 20
8 Atwood. The way that the cross access is illustrated on
9 here would occur on that easement. That is not what is shown
10 on here. How that relates to the property line and that
11 easement - that is how this would interplay with this
12 project. If this was constructed as such, which would be
13 different from the approved site plan for 20 Atwood, then a
14 cross access would not have to go over that easement. If it
15 was constructed in conformance with the approved site plan,
16 it would have that access and it would go over that
17 easement.

18 CHAIRMAN STUTO: So, they are closing over that
19 opening. Is that what you're saying, or no?

20 MR. WEITZ: Closing off this opening?

21 CHAIRMAN STUTO: The cross access from the Atwood
22 property to the subject property tonight. It would be closed
23 off on that drawing?

24 MR. WEITZ: As is shown on this, it is over that
25 easements and not on the 20 Atwood property. So, yes, this

1 was not shown but depicted on the approved site plan for 20
2 Atwood. There was an access point here over that easement,
3 illustrated on that approved site plan (Indicating).

4 CHAIRMAN STUTO: Okay, I will ask the applicant
5 to reconcile that.

6 MR. COSTA: The reason why that was relocated was
7 because it functions much better than what was formerly just
8 a narrow path to get in and out of the parking area. That is
9 being shifted. It is not being eliminated. It is being
10 shifted.

11 MR. LACIVITA: Does that encumber the existing
12 applicant who has access to that? If that is shifted off
13 the parcel, would that encumber him? That's my looking at
14 it.

15 MR. MAGGUILLI: Nick, we are just trying to
16 understand.

17 MR. COSTA: Right.

18 MR. MAGGUILLI: Looking at the map that you have
19 submitted -

20 CHAIRMAN STUTO: Is it the same property - the
21 cross connection - as is on the approved plans?

22 MR. WEITZ: No, it is not.

23 MR. COSTA: The comment is that connection is not
24 necessary. We can close that off on 2069 and still have
25 access.

1 MS. CHOLAKIS: It is for convenience purposes.

2 MR. COSTA: It's what Joe mentioned before.

3 CHAIRMAN STUTO: But you are saying that it is
4 not on the easement, right? Who is the property that they
5 have the connection on there?

6 MR. WEITZ: As is shown on the plan, it is on the
7 property of Rossetti - 20 Atwood.

8 CHAIRMAN STUTO: Do you have the right to close
9 off the other property if it is on another approved plan -
10 close off the other cross connection?

11 MR. TENGELER: If it's part of the valid site
12 plan, as I would understand it, unless I am told
13 differently.

14 CHAIRMAN STUTO: That's the issue that they have.
15 You are closing off a cross connection that is on the
16 approve site plans in the Town of Colonie.

17 MR. WEITZ: That currently is a gravel road. It
18 was a treed area. It was high grass in that area. It was
19 never a paved access up and through there.

20 CHAIRMAN STUTO: But it is on the drawing.
21 Somebody help me resolve that.

22 MR. TENGELER: As the plans were approved for 20
23 Atwood, it was shown on the 2067 property. They looked at
24 the easement that they supplied. It is shown on the 2067
25 property. There are alterations made to the site. As being

1 proposed, the curb cut is now shifting from 2067 -

2 CHAIRMAN STUTO: Which is a better plan with the
3 changes that they have made? To whose detriment are they?

4 MR. TENGELER: It depends on this easement. If
5 they are fighting over the easement and access and
6 everything -

7 CHAIRMAN STUTO: I don't have a clear picture of
8 this. Does anyone have a clear picture?

9 Ryan, what do you think? Is anyone
10 disadvantaged by moving the cross access easement? Do we
11 keep them both there?

12 MR. WEITZ: As far as disadvantage or benefit, I
13 can't answer that as I am not privy to the decisions that
14 were made in 2014. From what has been presented, there was a
15 curb cut from this easement (Indicating). There was paved
16 access from this easement to Earl Avenue on the easement
17 filed on the 2014 approved site plan. It is no longer in
18 existence. If that provided a benefit - if that was
19 included in the easement language, I can't speak to that but
20 there is that shift. There was an access point there that no
21 longer is there.

22 CHAIRMAN STUTO: Anybody else have anything to
23 say at this point?

24 Do you Ryan? Then, we will hear from the
25 public. I assume that the neighbor is here.

1 MR. WEITZ: I have nothing else at this point,
2 Mr. Chair .

3 CHAIRMAN STUTO: We have limited public
4 discussion on this item. We are going to have a vote on the
5 last one.

6 Is there anyone who would like to speak on this
7 project from the public?

8 MR. KHAN: My name is Jaffer Khan. I own the
9 property at 2067 Central Avenue, which is shown on the map.

10 CHAIRMAN STUTO: Can you trace it with your
11 finger?

12 MR. KHAN: Sure. It's right here (Indicating).
13 This is my property right here.

14 CHAIRMAN STUTO: The cross access easement that
15 we were just talking about - the cross access connection
16 that we were just talking about.

17 MR. KHAN: My property is all this (Indicating).

18 CHAIRMAN STUTO: You care about the cross access
19 up at the top?

20 MR. KHAN: Yes, I do care. I was here at the
21 last meeting that the Board had and I objected to that as
22 well.

23 CHAIRMAN STUTO: You want to keep the one that is
24 on the current drawings?

25 MR. KHAN: First of all I want to make sure -

1 this drawing is not accurate.

2 CHAIRMAN STUTO: I want to talk about the cross
3 access or curb cut.

4 MR. KHAN: I want to keep it the way I have it
5 now.

6 CHAIRMAN STUTO: With respect to that access -
7 just that access part.

8 MR. KHAN: Yes.

9 CHAIRMAN STUTO: Do you understand my question?

10 MR. KHAN: Not really.

11 CHAIRMAN STUTO: Ryan, can you help me with my
12 question? Can you show them what I am saying?

13 MR. WEITZ: This is the property line. This is
14 showing access over the property of 2067 - year property.
15 This is showing access over 20 Atwood which is not your
16 property.

17 MR. KHAN: I want to keep it the way I have it.

18 CHAIRMAN STUTO: You tell me why so we can
19 understand? It's just that one particular item.

20 MR. KHAN: So, I can get in and out. That is my
21 property. I have a right to use it.

22 The next thing that I want to point out is also
23 this plan does not reflect what is on -- I sent you the
24 pictures and if you look at the pictures, it does not
25 reflect at all what the property looks like today.

1 Second, the easement that they have is between
2 2067 Central Avenue and 20 Atwood Avenue. It has nothing
3 to do with the 2069. The problem is that they are trying
4 to get access across over the easement area through where
5 it falls onto my property and my property cannot serve any
6 other properties other than 2067 Central and 20 Atwood.

7 CHAIRMAN STUTO: You're putting your connection
8 on Rossetti property, correct?

9 MR. WEITZ: Yes, that's where it is showing now.

10 MR. KHAN: I want to make sure that -

11 MR. MAGGUILLI: The easement has nothing to do
12 with 2069.

13 MR. KHAN: The easement has nothing to do with
14 the 2069.

15 CHAIRMAN STUTO: The applicant is agreeing with
16 that.

17 MR. KHAN: If I see anything or any traffic
18 coming across from 2069 toward my property or using any of
19 that property, I do have a problem with that.

20 CHAIRMAN STUTO: Then, you want to cut off that
21 opening because cross access allows people to drive through
22 to get to the street through commercial property. That's
23 the purpose for those openings.

24 MR. KHAN: But it does not exist right now. That
25 is what my problem is. Last time I was here, the way that it

1 should of been on the property is not the way that it is
2 now. That's why I took those pictures for you to take a look
3 at.

4 CHAIRMAN STUTO: There is an existing cross
5 property access, but it is not reality. It is just in the
6 approved drawings?

7 MR. TENGELER: Correct. This is the last approval
8 that we have for 20 Atwood.

9 CHAIRMAN STUTO: You want that opened, or not?

10 MR. KHAN: I want it the way I had it before.

11 CHAIRMAN STUTO: You're going to have more
12 cut-throughs.

13 MR. KHAN: What do you mean?

14 CHAIRMAN STUTO: You're going to have more people
15 accessing through your parcel.

16 MR. KHAN: That's the only access to my parcel
17 and if they need to use it -- it's not a two-way road. It's
18 just a back parcel. It's not a main road or anything.

19 CHAIRMAN STUTO: But if somebody is coming out of
20 2069 and if that opening is re-created or created in
21 accordance with the drawings, people coming from 2069 or
22 accessing 2069 could go through your property and cross
23 through there.

24 MR. KHAN: Right.

25 CHAIRMAN STUTO: So, you want that opened up?

1 Just on this narrow issue.

2 MR. LEONARDO: By shifting that over, that takes
3 it off of your property and puts it on our property. Right
4 now they are claiming that access is here (Indicating). We
5 are shifting it off of there and putting it on our property.
6 Anyone who comes from 2069 and drives through is not on your
7 property. They are on our property. By shifting that over,
8 it becomes our traffic. Your property line is here
9 (Indicating). Anyone who comes through here and cuts
10 through is going to be on our property. If you leave it
11 where it is, now that cut-through comes in on your property.

12 MR. KHAN: Right now that's not even the way that
13 it is. It's all parking that they have created in that area.
14 That entrance is closed now anyway because that's why you
15 guys created the parking.

16 MR. LACIVITA: Even based on Adam's description,
17 he even articulated the fact that he said with the existing
18 curb cut or the access at this point - they are shifting it.
19 So, they are going to be shifting the access.

20 As I look through the easement language here,
21 it is for ingress and egress along with parking. You are
22 going to have that access coming back and forth. That's
23 not a true existing condition -

24 CHAIRMAN STUTO: They are arguing and no one is
25 disputing it - that is not for the benefit for 2069, right?

1 That's for the benefit of the Atwood property.

2 MR. KHAN: Correct.

3 MR. MAGGUILLI: The applicant and the adjoining
4 owner both stating that this easement has absolutely nothing
5 to do with 2069.

6 MR. LEONARDO: We own the former Earl Avenue.
7 You can just close it.

8 MR. MAGGUILLI: You can redo the map and take off
9 what you show on 20 Atwood and leave it. Why was it on
10 there in the first place?

11 MR. LEONARDO: It was requested to be on there.
12 We didn't have it on there. It was requested by the
13 Planning Board to be put on there.

14 CHAIRMAN STUTO: We like the cross access. You
15 are an engineer and you are giving us the recommendation.

16 MR. MAGGUILLI: So, nobody wants cross access.

17 MR. WEITZ: If it's agreeable for everybody to
18 have that is the proposed condition - that shifting -- but
19 what remains unclear is the sheet labeled ANA - the existing
20 conditions plan is showing that access over 20 Atwood and
21 not 2067 Central Avenue. There is some sort of either an
22 inaccuracy on this plan, or there is a deviation from the
23 approved site plan. Maybe that could be fully explained so
24 that the existing condition represent what is there and then
25 what is proposed is on the concept plan.

1 MS. CHOLAKIS: My proposal would be as follows:

2 CHAIRMAN STUTO: Can you explain why the existing
3 conditions do not appear correct.

4 MS. CHOLAKIS: I do not know.

5 CHAIRMAN STUTO: That's what I'm trying to get
6 to.

7 MS. CHOLAKIS: That's fine. It makes it much more
8 difficult because of the fact that 2071 and 20 Atwood and
9 2067 Central Avenue are on this plan at all. Had it not been
10 on this plan at all, it would just be looking at 2069
11 Central Avenue and you would have been seeing the proposed
12 access point between 2069 and 20 Atwood wholly on the
13 property of 20 Atwood, then there wouldn't be this
14 confusion.

15 CHAIRMAN STUTO: There was an approved access
16 point.

17 MS. CHOLAKIS: No, the approved cross access
18 point is really from Atwood. The fact that there might be
19 something on that document - that easement that was filed
20 many years before Mr. Khan and we purchased the property is
21 also inaccurate because the old Earl Avenue was at a
22 different typographical elevation than the driveway and
23 parking lot at 20 Atwood and 2067 Central Avenue -- there is
24 no way anybody would have traversed that access point. This
25 access point that is on the access easement -- there is no

1 way that anybody would have traversed it. It's not the same
2 elevation.

3 CHAIRMAN STUTO: I hate to tie up the whole night
4 on this.

5 MR. MAGGUILLI: You are all bound by this
6 easement that was filed in 2003.

7 MS. CHOLAKIS: That's okay. We are okay with
8 that.

9 MR. MAGGUILLI: You can't say that this easement
10 has no effect.

11 MS. CHOLAKIS: It has no effect.

12 MR. MAGGUILLI: By its expressed terms, heirs
13 successors and assigns -

14 MS. CHOLAKIS: It has no affect on 2069; zero.

15 MR. WEITZ: In addition to the easement from
16 2003, that same cross access is shown on the approved site
17 plan for 20 Atwood that was approved August 29, 2014 - that
18 same access point over the easement and not over 20 Atwood
19 as shown on the site plan.

20 MS. CHOLAKIS: That inures to my benefit as a
21 grantee of that easement.

22 MR. TENGELER: So, what Ryan was getting to was
23 because the approval showed it on 2067, this would be new
24 work done to 20 Atwood. There is work being done at 20
25 Atwood from what was last approved to what is being proposed

1 now.

2 MR. COSTA: As requested for the cross access.

3 MR. TENGELER: But there is work being done at 20
4 Atwood, as being proposed with this project. If they are
5 moving the curb cut from what was previous approved for 20
6 Atwood, which had the curb cut completely on 2067 and now
7 the curb cut is being moved to 20 Atwood, the site
8 statistics are changing for 20 Atwood. The access is
9 changing for 20 Atwood. That's work being done to 20 Atwood
10 that was never approved and never reviewed by the Planning
11 Department or the Planning Board. That's where Ryan was
12 going.

13 CHAIRMAN STUTO: It's beyond our function to
14 repair all that. We are handed a very confused pile of
15 interesting information.

16 MR. MAGGUILLI: It's my understanding that you
17 wanted to be put on tonight. You come before the Board with
18 a map that shows the property in the condition that it
19 exists today. We all agree that this map does not show all
20 the property that exists today; is that correct? Is that a
21 correct statement?

22 MS. CHOLAKIS: I'm not sure of the answer to that
23 question. I will respond to one thing and that is that you
24 said that the Board requested the existing conditions and I
25 didn't see anywhere -- again, I was not at the last meeting.

1 I saw nothing in the meeting minutes of the August 22nd
2 Board meeting that made that request. That request came out
3 of the Planning Department because -

4 MR. MAGGUILLI: How do you expect this Board to
5 approve plans that don't show what exists at the property?

6 MS. CHOLAKIS: It does with respect to 2069. It
7 is completely factually accurate with respect to 2069.

8 With respect to the cross access - I will give
9 you an example.

10 On 1210 Troy Schenectady Road - we came in with
11 that application and that was cross access also. You did
12 not require that 1202 Troy Schenectady Road submit a site
13 plan, but it was shown on the site plan application for
14 1210. We showed where the new proposed access point was
15 going to be. That's exactly the same circumstances we
16 have here.

17 The 2069 application that is pending before
18 this Board is accurate. There is a proposed access point
19 right here proposed - not existing conditions -- I guess
20 I'm agreeing with that from everything that Nick is
21 telling me. That is proposed. It is exactly the same type
22 of process we went through on the redevelopment plan at
23 1210 Troy Schenectady Road.

24 CHAIRMAN STUTO: The minutes do read - and I will
25 read it -- I hate to do this because we are wasting a lot of

1 peoples' time.

2 The Planning and Economic Development
3 Department has received an application in regards to the
4 above referenced site. The site plan submitted does not
5 indicate a current proposed state of the site. Also, the
6 application does not indicate greenspace statistics and
7 the number of parking spaces that are required to be
8 disclosed. This information is required in order for the
9 office to facilitate the review for proposed tenant
10 expansion of the above referenced property. Please
11 address these conditions in a timely manner so that we may
12 facilitate the review required.

13 MS. CHOLAKIS: Of 2069 Central Avenue. That is
14 the site.

15 MR. LEONARDO: The parking conditions and green
16 space -- that is all on there for 2069.

17 MS. CHOLAKIS: That was being requested and
18 that's what we had provided.

19 CHAIRMAN STUTO: So, those are existing
20 conditions on that.

21 What about that cross connection?

22 MR. WEITZ: I guess, Chair, if I may, the
23 question would be - and maybe it's a simple answer. Is this
24 pavement area shown on 20 Atwood existing or proposed? It
25 sounded like it was proposed to be moved. Ignoring 2069 all

1 together, 20 Atwood to 2067 -- is any work proposed here?

2 MR. COSTA: The connection. The new drive.

3 MR. WEITZ: So, there is work proposed here on 20
4 Atwood.

5 MR. COSTA: Yes.

6 MR. WEITZ: So, I guess this is shown on the
7 existing conditions plan. So, that would need to be revised
8 and then this work would need to be clearly called out as
9 proposed work. If any other work is proposed in this area I
10 think as previously shown that would also be on the concept
11 plan. It would be clearly called out that would be on the
12 property of 20 Atwood and 2069.

13 CHAIRMAN STUTO: So, you're saying that it
14 doesn't have enough information?

15 MR. WEITZ: It is not entirely clear. From the
16 discussion tonight it sounds like there is work proposed on
17 20 Atwood, but revised site plans could clearly show what
18 exactly is existing and proposed and that would help inform
19 the Planning Board.

20 CHAIRMAN STUTO: Nick, could you address that?

21 MR. COSTA: Yes. Ryan is correct. That is a
22 proposed shifting of the driveway. So, it would have to be
23 constructed when 2069 is developed. That is also something
24 that could be addressed at the detailed drawing - the next
25 step where we would be going to the preliminary final

1 drawings.

2 CHAIRMAN STUTO: What does the Department and TDE
3 recommend with respect to that cross connection?

4 MR. TENGELER: Ryan is the engineer, but I always
5 know existing conditions refers to the last approved
6 existing condition on the site. If someone comes into a
7 site and changes a site, that is not what the existing
8 condition is - the existing condition in real time.

9 CHAIRMAN STUTO: Do you agree with that, Ryan?

10 MR. WEITZ: Yes.

11 CHAIRMAN STUTO: So, you're not showing the
12 currently approved cross connection. That's the issue that
13 they're saying. That should be shown as an existing
14 condition.

15 MR. COSTA: It needs a label. This is the
16 existing driveway. It just needs a label to say proposed
17 driveway.

18 CHAIRMAN STUTO: He is saying the one that is on
19 the drawing now - on the neighbor's property and not on your
20 property. They're saying that the absence of that doesn't
21 reflect the existing conditions.

22 MR. COSTA: But it is shown.

23 MR. LEONARDO: It's on there as a dashed line.

24 MR. TENGELER: In 2014 when it was approved,
25 there was a tree shown on the 20 Atwood property. There are

1 aerials that go back that are in the Board's packets that go
2 back that show greenspace and more than what is shown on the
3 site. Again, there was just confusion as to what is the
4 existing conditions, are the existing conditions being shown
5 and was this what the Board had requested.

6 CHAIRMAN STUTO: We can't tell unless you tell
7 us.

8 MR. WEITZ: From what was stated on the record by
9 both property owners, it would appear that the shifting of
10 that cross access, 20 Atwood, is agreeable to both of the
11 property owners.

12 MR. SHAMLIAN: That's not what he just said.

13 CHAIRMAN STUTO: We will give him another chance.

14 MR. MAGGUILLI: Is that shown on the map?

15 MR. WEITZ: We are looking at the concept plan
16 here. So, this is the proposed conditions. The existing
17 conditions do not show the cross access as was shown on the
18 approved site plan from 2014. That would be an existing
19 condition that should be reflected on that sheet to
20 differentiate - to clearly show that.

21 MS. MILSTEIN: So, Mike, you need the existing
22 condition as well as any proposed changes to it on the plan
23 and it's not on there.

24 MR. WEITZ: That's correct. That's whether it
25 was discussed at the August meeting or not, that's a

1 requirement of the Code.

2 CHAIRMAN STUTO: Let's leave that issue aside for
3 now. I think that we have all the facts out.

4 Mr. Khan, you can finish your comments and it
5 has to be with this application and not your lawsuit.
6 That's irrelevant. Stick with the parts that are relevant
7 to this application.

8 MR. KHAN: First of all, this is the second time
9 that the current plans are not being shown correctly the way
10 that it exists. So, this is the second time that we are in
11 front of the Board.

12 Second, shifting of the curb or the cut -

13 MR. MAGGUILLI: Direct your comments to the Chair
14 and don't interrupt and let him speak.

15 MR. KHAN: That's it. The shifting of the curb -
16 that is something that would probably need to be discussed
17 between myself and Rosetti if they are interested in -

18 CHAIRMAN STUTO: No, that's our public meeting
19 tonight.

20 MR. KHAN: Right now, I'm not agreeing on that.
21 I want to proceed the way that we had it. That should be
22 shown on the plan and it is not.

23 CHAIRMAN STUTO: You can visualize it. So, you
24 don't have an opinion until you see it in a drawing.

25 MR. KHAN: I know how it looks but nobody else

1 knows how it is - the public. Since it's a public meeting,
2 I think that it should be shown to the public.

3 CHAIRMAN STUTO: What other comments do you have
4 on this?

5 MR. KHAN: All this -

6 CHAIRMAN STUTO: That's not part of this
7 application.

8 MR. KHAN: Then I guess that would be the only
9 comment that I would have. Also, I want to make sure that -

10 CHAIRMAN STUTO: Your points may or may not be
11 heard in the sense that we may not agree with you that they
12 have to bring in the revised drawing. So, you're really not
13 giving us an opinion on whether you want that shifted or you
14 don't want that shifted.

15 MR. KHAN: No, I'm not giving you an opinion on
16 that.

17 CHAIRMAN STUTO: You said that you want to see a
18 drawing of it before you make a decision. That's what you
19 said.

20 MR. KHAN: It would help if you had a drawing for
21 the public but it's not -- I'm not here to give you an
22 opinion on that, but that's my right to stay the way that it
23 is.

24 CHAIRMAN STUTO: So, you want to make sure that
25 they construct and make sure that there is an opening

1 between your property and Earl Avenue, which may encourage
2 more traffic through your property.

3 MR. KHAN: Well, only the traffic for the 20
4 Atwood and not any of the other traffic.

5 CHAIRMAN STUTO: It could encourage traffic from
6 2069 Central Avenue.

7 MR. KHAN: Then that would be a problem.

8 CHAIRMAN STUTO: So, would you want the opening
9 there or not? That is the question.

10 MR. KHAN: Well, I can't really answer that
11 question.

12 CHAIRMAN STUTO: That's an answer. We'll leave
13 that issue aside.

14 Do you have any other comments?

15 MR. KHAN: No, other than that; no.

16 CHAIRMAN STUTO: Any other members of the public
17 want to speak on this project?

18 (There was no response.)

19 Anyone from the Board?

20 I have said enough.

21 MR. MION: Michael, did you bring up issues on 20
22 Atwood that things had been done that shouldn't have been
23 done and that weren't approved?

24 MR. TENGELER: Yes, I think that we discussed
25 that the proposed plan doesn't match what was approved on

1 the 2014 plan; absolutely.

2 MR. MION: Let's just go with 20 Atwood - in the
3 back there where the concrete was and where the loading
4 docks were there on the other building -- was there
5 greenspace that was taken out of there? Did they fill it in
6 with concrete? What did they do?

7 MR. TENGELER: It would appear to be based on the
8 2014 approved plans that shows a maple tree on the 20 Atwood
9 parcel. The elevations that we pulled from the Stormwater
10 Management office - it went back 10 years.

11 MR. MION: So, one more time - explain what
12 bearing would that have on this action tonight.

13 MR. TENGELER: It's an example of how 20 Atwood
14 is in violation of what was approved, but other than the
15 fact that it's not memorialized on the site plan -- but it
16 is in violation of what was approved.

17 CHAIRMAN STUTO: Nick?

18 MR. COSTA: I just want to point out that
19 recently a portion of Aurora was abandoned and that portion
20 of Aurora is going to be incorporated into 20 Atwood to help
21 the greenspace situation that might have been lost.

22 MR. MION: You're acquiring all of Aurora?

23 MR. COSTA: Just to the center line. The portion
24 that is along the rear property line of 2069 and 20 Atwood
25 is going to become part of 20 Atwood.

1 MR. LACIVITA: Would that be a net zero impact,
2 Nick? Do you know off-hand?

3 MR. COSTA: I think that it would be an increase.
4 You're going to have at least 25 feet by 600 feet.

5 MR. MION: Nick, we've been sitting here for an
6 hour so you probably mentioned this at the beginning. Did
7 you move the building up?

8 MR. COSTA: No.

9 MR. MION: You did not move the building up.

10 MR. COSTA: We looked at it, but we couldn't make
11 the building work because we need that area for stormwater
12 management. You wanted to move it closer to Central Avenue.
13 We need all the room that we can get on that piece between
14 2071 and 2069 because we are doing the stormwater management
15 for both 2071 and 2069. If we can tweak it as we do the
16 hard design, we'll certainly do that. Right now, the
17 numbers don't allow us to show it six or eight feet closer
18 to Central Avenue.

19 MR. MION: Getting back to the tree issue - it's
20 going to leave the trees up and then add a couple more. Is
21 that what you are going to do?

22 MR. COSTA: No. Because of the grading that has
23 to be done, the trees are going to be gone - those three
24 large trees. In fact, the first tree - the multi-stem tree
25 that is shown right here, that was part of the approval for

1 2071 because there is a detention basin that's being created
2 there. So, that's going to be gone. What happens is that
3 there is a large elevation difference between here
4 (Indicating) and the rear of the site and this area right
5 here has to stay pretty much flat right to the back of the
6 building. So, at the back of the building we are going to
7 have to make up that grade to the fenceline. So, that's why
8 those trees are not going to be able to remain.

9 MR. MION: What about the mature trees going
10 toward New Shaker? Are those coming out? I see you're
11 putting more in. That's what it looks like to me.

12 MR. COSTA: The majority of those are going to
13 stay.

14 MR. MION: Those are already there. Those are the
15 ones that we already see there.

16 MR. COSTA: Yes. Everything behind it, which is
17 Aurora - that's all going to remain.

18 MR. MION: But you're going to acquire that part
19 of Aurora.

20 MR. COSTA: Yes, 25 feet of it. I think that's
21 already been done. It just happened this week. It happened
22 in July but it just got recorded.

23 MR. AUSTIN: I think that the issue, beside the
24 crossing -- the fact that you guys have both come up to us
25 and said that not everything is right. As far as asking for

1 the truck turning plan, you can draw it on paper. Anybody
2 could draw that on a piece of paper, I guess. It hasn't
3 been submitted to the Planning Department, so we don't have
4 any engineer review on that. So, that's an issue.

5 A few other things were brought up as far as
6 having all the I's dotted and the T's crossed and it's
7 just not there and that's what we wanted. You both admit
8 that at different times. So, that right there is enough.
9 I think that will stop this progression, at least for a
10 little bit - table it.

11 The other thing with the cross connection - I
12 understand Mr. Khan's concern about a cross connect and
13 not having people come out to this property, but there is
14 a potential connection to the car wash which I believe is
15 going to be connected with you guys. So, anyone who is
16 getting their car washed and sees traffic on Central
17 Avenue might say I don't want to sit in that traffic and
18 try to cut down through Atwood and cut down through your
19 property. So, you really can't prevent people from cutting
20 through your property. There is just no real way to
21 prevent that other than having some sort of a pass which
22 would be impossible to do. You can't do that. If they want
23 the cross connect, you are going to have to deal with
24 people coming through your property that you are probably
25 not going to want to have that might not be customers of

1 your business. You could close that off. I think that is
2 something that they are going to do. Your litigation could
3 be settled right here.

4 My biggest concern has been answered. I think
5 that's fairly clear to all of us.

6 MR. COSTA: Just a quick note: This project and
7 2071, when they were done, they were reviewed by DOT and
8 they were also reviewed by CDTA and they both have come out
9 favorably. Actually, they were really happy to see the cross
10 connections that are shown on the map because they feel that
11 it will help in closing off that other drive that is
12 currently existing at 2071. They felt that was really good
13 to do that.

14 CHAIRMAN STUTO: Because why?

15 MR. COSTA: Because it was too close to the
16 intersection.

17 CHAIRMAN STUTO: Susan and Chief, you have any
18 comments?

19 (There was no response.)

20 MR. COSTA: I think there are letters of record
21 that DOT issued and CDTA.

22 CHAIRMAN STUTO: That they recommend changing
23 that?

24 MR. COSTA: Yes.

25 MR. HEIDER: I'm not going to rehash the whole

1 thing. The one thing that has not been talked about: You
2 make note that you are not talking about 20 Atwood. You
3 have almost 200 feet of 20 Atwood. Yet, you are showing no
4 real plan about that.

5 You should probably show your truck turning
6 plan placed at 20 Atwood in the back.

7 MR. COSTA: No.

8 MR. HEIDER: Then you should show that 10 foot
9 landscaping coming down the entire length of Earl, because
10 you don't need it because of that 20 Atwood.

11 MR. COSTA: The planned way it is shown is coming
12 in with the truck and then backing in -

13 MR. HEIDER: So, you don't need the entrance
14 coming in from the back of 20 Atwood.

15 MR. LEONARDO: There's across easement for 20
16 Atwood to access -

17 MR. HEIDER: No, I am talking about coming into
18 the loading docks of the back of 20 Atwood. That 200 feet
19 of black top is going to be contiguous to your 2069.

20 MR. LEONARDO: Right, so there is a cross
21 easement. So, 20 Atwood can access their overhead doors.

22 MR. HEIDER: What I'm saying is that your trucks
23 are also going to be serving 20 Atwood, but they will be
24 serving through that new road coming in. So, you should be
25 showing that truck turn for 20 Atwood.

1 MR. COSTA: They will have similar turning
2 movement.

3 MR. HEIDER: I guess then that is the reason for
4 the size of that parking lot - from 2069.

5 CHAIRMAN STUTO: Mike, did you have a comment?

6 MR. MAGGUILLI: You're talking about Atwood and
7 everything else and on August 22 -- you are here before the
8 Board. The Board expressly asked you to do essentially
9 three things.

10 On August 22 the Board requested the last time
11 that the circulation plan - the internal circulation plan
12 showing the interconnection between adjacent parcels, how
13 vehicles might potentially move in and move out of the
14 site and in particular how truck traffic might move and
15 with an and throughout the site. I think that's how we got
16 into the Atwood and putting 20 in here because the Board
17 specifically asked you to show the internal circulation
18 plans.

19 A little later, at the same Board meeting they
20 asked you for two more things. They asked you to provide
21 them -- also, the application does not indicate green
22 space statistics and the number of parking spaces are
23 required to be disclosed. The information is required in
24 order for the office to facilitate the review for the
25 proposed tenant.

1 Have you provided that? Do we have the green
2 space statistics?

3 MR. COSTA: For 2069?

4 MR. MAGGUILLI: For 2069.

5 MR. COSTA: Yes.

6 MR. MAGGUILLI: And then the number of parking
7 spaces - where do you have that?

8 MR. COSTA: It's on the site plan - the concept
9 plan.

10 MR. MAGGUILLI: This was done on August 22nd. I
11 have a plan that is revised the last time on March 10th.
12 Where's the revision showing what they were asking you for?

13 MR. COSTA: If you look at the concept plan -

14 MR. MAGGUILLI: Please show me. I'm not trying
15 to give you a hard time.

16 By looking at this plan, this is the
17 information that you provided on March 10, 2017. So, how
18 can this be responsive to what they asked for on August
19 22, 2017?

20 MR. COSTA: I believe this is 20 Atwood and not
21 2069.

22 MR. TENGELER: That language is in regards to 20
23 Atwood.

24 MR. MAGGUILLI: Did they comply with all that
25 language?

1 MR. TENGELER: Yes.

2 Amongst other things, Member Milstein asked for
3 an investigation of any violations on any of the adjoining
4 sites.

5 MR. MAGGUILLI: Is there anything else that was
6 requested on August 22nd?

7 MR. TENGELER: Turning radius, tree survey, a
8 better idea of what type of tenant is proposed, a better
9 description of 20 Atwood and an investigation of any
10 violations on any of the adjoining sites, which includes
11 Jaffer's site as well.

12 CHAIRMAN STUTO: What does staff recommend that
13 we did tonight? We have a sketch plan review, but also an
14 application for concept acceptance. What is your
15 recommendation?

16 MR. TENGELER: There were a lot of questions that
17 were asked at the last meeting and it doesn't seem like
18 everything has been addressed. We have asked for things in
19 the past. We try to help the neighbors work everything out
20 as to the adjoining parcel. It doesn't seem like we have the
21 information that was requested.

22 MR. LEONARDO: I think the only thing that wasn't
23 given that was requested is the turning radius on 2069,
24 which is the adjoining properties which is irrelevant.

25 MR. TENGELER: The Board asked for it. They

1 asked for a comprehensive look at all the property.

2 MR. LEONARDO: We have no violations though.

3 MR. TENGELER: And you disclosed that there has
4 been work close to 20 Atwood. So, I think that's why the
5 Board is asking for it.

6 MS. CHOLAKIS: The Planning Department is one of
7 the parties that may issue violations. If there are
8 violations, send them to us. There are no violations. So, if
9 you want to issue violations -

10 MR. TENGELER: I don't want to issue violations.

11 MS. CHOLAKIS: But if they are asking whether or
12 not violations exist, then that is something that the Town
13 Planning Board could provide. We have no violations. I can't
14 provide something that does not exist.

15 MR. MAGGUILLI: Do we have a written statement
16 from you as part of the application that attests to the fact
17 that you referred to - that there are no violations?

18 MS. CHOLAKIS: It wasn't something that I was
19 asked to provide.

20 MR. MAGGUILLI: Just answer the question, Nia.
21 Do we have something in our packets that says - that
22 addresses that question and says there are no violations?
23 Is there something to that effect?

24 MS. CHOLAKIS: I'm not aware of anything in your
25 packet.

1 MR. MAGGILLI: Thank you.

2 MS. CHOLAKIS: But I will reiterate that this
3 application has nothing to do with violations on other
4 properties, even if they do exist, which they don't.

5 MR. LACIVITA: Is there still common ownership
6 between the three parcels?

7 MS. CHOLAKIS: Affiliated relationship.

8 MR. LACIVITA: But you own the affiliation,
9 correct?

10 MS. CHOLAKIS: I'm sorry, which three parcels?

11 MR. LACIVITA: The 2069, 2071 and 20 Atwood; they
12 are all affiliated?

13 MS. CHOLAKIS: Yes, they are all affiliated.

14 MR. LACIVITA: We had a similar situation when
15 you think of the old Bowler's Club when it came to
16 accessibility, cross access and all of that. My
17 recommendation is that if we want to move forward is the
18 Land Use Law allows the Planning Department to bring
19 something before the Town Planning Board at any point in
20 time when it's minor if there are site violations on 20 and
21 the applicant did the harm to themselves by showing how they
22 are all interrelated and come in and say this one big
23 parcel. We then cut up the three projects along the way. The
24 applicant argued that 2069 should have been a minor when we
25 bring Stewarts before it, we used them as a major. They

1 argued that because of the size of the parcel. I think they
2 all interact amongst themselves, but if we can look
3 specifically at 2069 and offer a concept conditioned upon
4 successful response to - and bring it back for the Board
5 before they go forward to final -- we have to at least allow
6 the applicant, in my mind to go forward. Granted, they
7 haven't answered the questions and I always asked them to
8 answer the questions. I have stayed out of it. I think that
9 if we can get them to be hard fast, these are what we have
10 to answer - give them the conditional concept and allow them
11 to go forward to get to that point and if we can -

12 CHAIRMAN STUTO: So, we will get an interim
13 report before final application.

14 MR. LACIVITA: Absolutely. It's only offering a
15 suggestion.

16 CHAIRMAN STUTO: Do we have a motion for
17 conditional concept acceptance based upon the terms that Joe
18 just stated.

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

20 MR. HEIDER: Second.

21 CHAIRMAN STUTO: All those in favor?

22 (Ayes were recited.)

23 All those opposed.

24 (There were none opposed.)

25 They ayes have it.

1 Can you make a list of things and if they are
2 not answered, don't come back.

3 MR. LACIVITA: Absolutely.

4 CHAIRMAN STUTO: Thank you.

5 (Whereas the above entitled proceeding was concluded
6 at 8:02 p.m.)

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CERTIFICATION

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I, NANCY L. STRANG, 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.

Dated: _____

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