

1 PLANNING BOARD COUNTY OF ALBANY

2 TOWN OF COLONIE

3 *****

4 STEWART'S SHOP
19 FULLER ROAD
5 APPLICATION FOR FINAL APPROVAL
AND ENVIRONMENTAL DETERMINATION

6 *****

7 THE STENOGRAPHIC MINUTES of the above entitled matter
by NANCY L. STRANG, a Shorthand Reporter Commencing
8 on November 27, 2018 at 7:40 p.m. at The Public
Operations Center, 347 Old Niskayuna Road, Latham,
New York

9

10 BOARD MEMBERS:
PETER STUTO, CHAIRMAN
11 BRIAN AUSTIN
LOU MION
12 CRAIG SHAMLIAN
STEVEN HEIDER
13 SUSAN MILSTEIN
KATHY DALTON

14

15 ALSO PRESENT:

16 Kathleen Marinelli, Esq., Counsel to the Plannin
Board
17 Joseph LaCivita, Director, Planning and Economic
Development Department
18 Chris Potter, Stewart's
Paul Goldman, Stewart's
19 Joseph Grasso, RLA, CHA
Michael C Magguilli, Esq., Town Attorney
20 Steve Geurds
Kathryn Walter
21 Terri Haywood
Lay Yip
22 Dick Bovee
Bob Ott
23 Rosemary Lazarro

24

25

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1 CHAIRMAN STUTO: We will let the next applicant
2 get set up.

3 Stewart's Shop, 19 Fuller Road, application for
4 final approval and environmental determination, 3,726 square
5 foot mini-store with three gas pumps.

6 Joe LaCivita, would you like to introduce this?

7 MR. LACIVITA: Sure, Peter. This has a
8 long-standing review by the Board and the Planning Department
9 and the Town's departments as well. We started back with DCC
10 October 14, 2015. We went to sketch plan in the early part of
11 January 2016. It went before the Planning Board for Board
12 updates along the way. November 22, 2017 it went to concept
13 where we tabled that decision and asked the applicant to make
14 some adjustments to the site. Concept was then granted May
15 28, 2018 and we are here tonight for a review for a review of
16 final approval request.

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

19 MR. POTTER: Good evening. I'm Chris Potter from
20 Stewart's. I'll just go through some of the changes that we
21 have made to the plan since the concept acceptance on May 22.

22 One of the issues that was raised was whether the
23 fuel tanker could circulate through the lot. So, we did
24 perform that simulation at the old Kmart on Route 2 where
25 there were a number of members from the Town there, which was

1 successful. It did show that the fuel tanker could circulate
2 through the lot as shown on our plans.

3 With this plan there was concern that the tanks
4 were so close to the residents. They were up in this area
5 here (Indicating). We have relocated them down to this area.
6 So, they go from 40 feet to 80 feet from the residents now.
7 By doing that, the fuel tanker now comes off of Fuller Road
8 onto Katherine - into the Katherine Road entrance and would
9 sit in this location where it drops and then exits out onto
10 Fuller Road. So, the movement would be different.

11 As part of our approval, we would be willing to do
12 this truck simulation again with this configuration on the
13 site if we were granted approval. We would go ahead and
14 demolish the buildings that are on the site which will allow
15 us to then actually drive the trucks through as this would be
16 developed as shown here (Indicating).

17 The other issue that was brought up was vapor
18 recovery. They want us to look into Stage II vapor recovery
19 when the cars are fueling. We submitted a letter addressing
20 that and you should have received a copy of that. What it
21 basically says is: New York State stopped requiring this
22 legislation of the systems in 2011. They have provided
23 direction for installing Stage II systems because vehicles
24 have an on-board refueling data recovery system themselves,
25 so it's a redundant measure. It's not required. What we do

1 have is a Stage I vapor recovery which is used during the
2 fueling of the tanks by the tanker. So, any vapors that
3 escape get trapped and go back into the truck and at that
4 time when they go back, the vapors are then released at the
5 port where they are burned off. There are no vapors on site.

6 The third was you wanted us to revisit Option B
7 which was the layout which added the additional exit onto
8 Fuller Road behind the building to allow small box trucks to
9 get off the road and circulate around the building. We put
10 that back in there.

11 The other issue is landscaping and lighting. We
12 have an 8 foot vinyl fence along the whole property line next
13 to the residential zone, as well as a row of arborvitaes. We
14 did add some additional arborvitaes along Katherine Road to
15 help with any headlights from vehicles that would be pulling
16 out the Katherine Road driveway without blocking any
17 residents on the other side of Katherine.

18 We had provided a lighting plan which shows no
19 light spillage onto the residential pieces on the site.

20 The parking spaces - 16 through 21 in this area
21 (Indicating) - there was a request for coming up with some
22 banked parking. We have moved these spaces and they would be
23 developed, if they are needed in the future.

24 Then, the other item that was requested was our
25 hours of operation. We submitted in our narrative originally

1 requesting a 4:00 a.m. to midnight. The hours currently are
2 4:30 a.m. to 10:00 p.m. We like the 4:30 a.m. open time to
3 remain and we are willing to reduce the closing time to 11:00
4 p.m.

5 We also would be willing to restrict deliveries. I
6 know that we had restrictions with our refuse pick up from
7 7:00 a.m. to 7:00 p.m. It is something that we would be
8 willing to do with deliveries, also.

9 MR. GOLDMAN: Good evening. My name is Paul
10 Goldman and I am from Stewart's.

11 Again, I think the TDE has written that it is a
12 Type II action under SEQR. That is presumed not to have a
13 significant impact on the environment. That is an important
14 distinction. The SEQR review or the environmental review
15 concluded that because under the regulation where we are
16 under a 4,000 square foot commercial building. I think that
17 is pretty clear.

18 The key thing that I want to bring us back to when
19 we had sketch plan is that is a permitted use. We are not
20 asking for anything other than that which we are entitled to.
21 Convenience stores are a permitted use of the zone. When we
22 had the truck simulation, I was there also was some of the
23 members of the Planning Board and it worked very easily and
24 obviously Chris has said we can verify that once the
25 buildings are knocked down.

1 In terms of the area variance discussion, I want
2 to kind of put that on the table. That's really not properly
3 before this Board.

4 Mr. LaCivita explained the process on that when we
5 were here the last time. I would also argue that it is
6 untimely. I would submit to the Board under Town Law 267C-1
7 that a challenge to the grant of those variances would have
8 to have been made within 30 days. It's really not properly
9 before the Board.

10 We have spent \$1 million on the site based on the
11 area variances. We have gone forward in good faith and I
12 think we deserve some kind of discussion about final approval
13 or a final vote. I appreciate everyone's efforts.

14 Stewart's worked very hard here. We have moved the
15 tanks 40 foot and try to add some buffering. I think we can
16 do that as good neighbors.

17 I just wanted to say that I'm just going to give a
18 copy of the Town Law 267.

19 CHAIRMAN STUTO: You can give it to our attorney.
20 I think we understand. Kathy is our attorney.

21 MR. POTTER: So, one of the issues that was
22 brought up was the ability to get homeowners insurance within
23 1,000 feet from a gas station. There are several gas stations
24 that are currently within 1,000 of a neighborhood. There's a
25 mobile station on Central Avenue that has 30,000 gallons of

1 storage. There's another one that is 26,000. There is one on
2 Fuller Road that is 22,000. There is the Penske location
3 that's over 32,000 gallons of storage. Those all encompass
4 the whole entire neighborhood. There is already existing two
5 storage facilities within the 1,000 feet of a neighborhood.
6 That issue exists today before we would be there.

7 MR. GOLDMAN: We have a listing of customers who
8 are in favor of the project. We just want to give that to the
9 Board.

10 CHAIRMAN STUTO: Okay, if you give us one, we will
11 pass them down. Thank you.

12 Is that the end of your presentation for now?

13 MR. GOLDMAN: I think that's it, Mr. Chairman.

14 CHAIRMAN STUTO: This is up for final approval and
15 this has been thoroughly reviewed by our Town Designated
16 Engineer. Again, it is CHA with Joe Grasso.

17 Joe, I know you have a letter.

18 MR. GRASSO: We do have a letter dated November 20
19 in your packets and I'm going to go through that.

20 Chris, do you have a full set of the site plans
21 with you? The reason why is the truck circulation diagrams
22 that were included in the site plan - - there are two of them
23 and I think they are important. I think they are very clear.
24 I know you have tried to walk through, but if you have both
25 of those plans - because they are for different vehicles and

1 they are very different movements. The movement has changed
2 from what had been considered before.

3 I think it is important that the Board understands
4 exactly the intent for how both deliveries and a fuel tanker
5 would move through the site and exit the site.

6 So, if you could just go through this, Chris?

7 MR. POTTER: Sure. Like I said, by moving the
8 tanks, the fuel tanker would have to make a different
9 movement than what was originally proposed. Originally, we
10 were going to come in from Fuller and circulate through the
11 lot and then exit onto Katherine. With the new location, it
12 would have to come in from Fuller Road onto Katherine. It
13 would enter through the Katherine Road driveway, sit in this
14 location to drop their fuel and then exit out onto Fuller.
15 That would be for the fuel tanker only.

16 MR. GRASSO: And the frequency of that,
17 approximately?

18 MR. POTTER: About three times a week.

19 With these two options, it would be a smaller
20 truck. This is a WB-40 which would allow those box trucks
21 which people were concerned about parking in the median
22 currently. It would allow them to enter from Fuller Road. It
23 would allow them to park on the side of the building here
24 (Indicating), as well as out behind the building, go into the
25 store and get what they have to get and then exit out the

1 exit only onto Fuller Road. It just depends upon what
2 direction they come from.

3 MR. GRASSO: So, this would be product deliveries?

4 MR. POTTER: Correct.

5 MR. GRASSO: Thanks.

6 I'm going to go through our letter. We actually
7 broke our letter up. There are 16 items and we broke it down
8 into Planning related comments and then some technical
9 comments.

10 The technical comments are more engineering
11 related and things that are easily addressed by the applicant
12 as they go through another iteration of this design review.

13 In terms of some the things that we wanted to make
14 sure the Planning Board is aware - in response to the
15 concerns raised by the Planning Board and the neighborhood
16 regarding the concept review, they have revised the access
17 onto Katherine Road to restrict all rights-out. So, our
18 letter specifically mentions restricting the right turns for
19 trucks and that's how it is designed. The weight is
20 physically configured and the way it is being proposed is it
21 would be a restriction for all vehicles. So, that was
22 something that we had discouraged because if residents in the
23 neighborhood frequent the site and they go there, we would
24 like them to be able to use Katherine Drive to take a right
25 out to go backm rather than have to go out to Fuller Road.

1 Although, Fuller Road is a full-access curb cut. So, they
2 could make a right onto Fuller and then obviously a right
3 onto Katherine. That is not our preference, but the plan was
4 revised to force that type of movement in response to
5 previous concerns. Obviously, it is signed specifically so
6 that trucks would not be allowed to make that movement at
7 all.

8 They are proposing a widening of Katherine Drive
9 from the curb cut out to Fuller Road to 30 feet to
10 accommodate the movement and improve and widen that section
11 of road because there will be additional traffic on it.

12 So, the site plan includes an exit only access to
13 Fuller Road, which was previously presented to the Planning
14 Board as Option B during the conceptual site plan review. It
15 was something that had been discouraged by Albany County
16 Department of Public Works, because their preference is that
17 there would be one full-access curb cut onto Fuller Road and
18 one full-access curb cut onto Katherine Drive. In response to
19 the concerns that were raised, that additional one-way out
20 access was provided.

21 We think that is a nice feature in that if trucks
22 had the inclination to stage along Fuller Road. Remember, we
23 did that detail truck count study which said it doesn't occur
24 a lot for the existing Stewart's, but there are certain
25 occasions - I think it was for a week or so that we counted.

1 This gives them a spot for those trucks to pull off of Fuller
2 Road and stage within the site so they are not parked in the
3 center median of Fuller Road. So, I think that is an
4 important change to the plan since we saw that concept.

5 They mention moving the fuel tanks that had been
6 40 feet from the line. It is now 80 feet and we think that is
7 an improvement to the site plan.

8 There is a lot of traffic control signage which
9 had gone through multiple rounds of review, both with the
10 Planning Board and our office. That is something that we will
11 need to get concurrence on from Albany County that some of
12 the signage would be installed along Fuller Road, which is
13 under the control of Albany County.

14 There are improvements to Katherine Road and that
15 is a Town Road so those improvements need to get reviewed by
16 the Department of Public Works. Conceptually, they were on
17 Board with the widening of the road and I know the applicant
18 is willing to build it to commercial road standards to make
19 sure that it can handle the amount of traffic. So, that's the
20 way it is designed. So, we don't expect any hangups there,
21 but there is some additional review by the Town that is going
22 to be required.

23 They have a very extensive landscaping plan. Chris
24 didn't really touch on it, but I think it is important. As
25 well detailed in the plan, I think it is very, very

1 extensive. I think it is important to try to separate the
2 commercial use from the residences back on Pinehurst and
3 Katherine.

4 They are also proposing an 8 foot high white vinyl
5 fence along the northern property line. I think that is an
6 important feature, too. Eight feet is a tall fence that
7 provides a solid screening and yet when you landscape in
8 front of it, I think that it helps improve the aesthetics.

9 CHAIRMAN STUTO: I'm going to ask the applicant to
10 put the colored site plan up for everybody's benefit. Thank
11 you.

12 MR. GRASSO: The Board should weigh in on the
13 height of the fence. I think 8 feet can be somewhat imposing
14 for the height, but it is along the residential property
15 line. It is meant to try to screen lights, sounds and views
16 towards the site. It is obviously well landscaped on the
17 commercial side to break up the fence. I think that is
18 something that the Board may want to weigh in on.

19 Lastly, although the applicant's counsel touched
20 on it regarding the SEQR review, the applicant had provided a
21 short EAF not knowing exactly how the Town would classify it.
22 The Town Attorney's office has classified this as a Type II
23 Action. It is less than the 4,000 square-foot threshold and
24 that is the threshold established by the state who wrote the
25 SEQR laws that we go by. It says a commercial project less

1 than 4,000 square feet - there is an an expectation that they
2 are not going to result in any environmental impacts.
3 Therefore, a SEQR review is not required.

4 CHAIRMAN STUTO: Is there a memo from the Town
5 Attorney? I see there is a proposed Resolution which normally
6 with a Type II, you just stop.

7 MR. GRASSO: Exactly. So, I wasn't sure if it had
8 to be memorialized by the Planning Board as part of our
9 documentation, so I did draft the Resolution. That was
10 something that we had talked to the Planning Department on.
11 *You can speak to that, Joe.

12 There are other technical comments like I
13 mentioned. We think the applicant would be able to address
14 those as part of another round of site plan revision. We will
15 leave it at that.

16 CHAIRMAN STUTO: We have residents to hear from.
17 Does anybody want to speak before we turn it over to the
18 residents?

19 (There was no response.)

20 Steve Geurds.

21 MR. GEURDS: As far as banking the 16 to 21 spots
22 on the plan, is there more time on that? How long before they
23 can go back and build parking spots there? Is it automatic,
24 or do they have to come back before the Board?

25 CHAIRMAN STUTO: Get all your questions out and we

1 will do our best that we can to address them.

2 MR. GEURDS: That's my first one. When do they
3 have to come back to the Planning Board to put in the
4 additional parking spots?

5 Secondly, I'm going to correct the gentleman from
6 Stewart's. It's actually a HUD regulation.

7 MS. MARINELLI: I'm just going to mark this as
8 Geurds Exhibit 1.

9 (Geurds Exhibit 1 was marked for identification.)

10 MR. GEURDS: This is Geurds Exhibit 2, then.

11 (Geurds Exhibit 2 was marked for identification.)

12 I only have one copy of that, unfortunately.

13 MS. MARINELLI: Okay, I will market and then pass
14 it down.

15 MR. GEURDS: According to HUD and this is from HUD
16 handbook and this can be found on page 491. There is 1,000
17 pages and I wasn't going to print all of them.

18 In regard to stationary storage tanks, it says:

19 If the subject property line is located within 300
20 feet of an above ground or subsurface stationary storage tank
21 with a capacity of 1,000 gallons or more of flammable or
22 explosive material, the property isn't eligible for FHA
23 insurance and the appraiser must notify the mortgagee of the
24 deficiency of MPR, minimum property requirements or the
25 minimum property standards as found by HUD.

1 This includes domestic and commercial uses as well
2 as automotive service station tanks. So, we are automatically
3 in a zone that is deficient by FHA standards. This affects 18
4 residential properties on the west side of Fuller Road; 2, 4,
5 6, 8 and 10 Katherine; 3, 5, 7, and 9 Katherine; 2, 4, 6, 8,
6 and 10 Pinehurst and I believe 1, 3 and 5 Pinehurst. So,
7 there are 18 properties whose lines are within 300 feet of
8 this storage tank and who will not be able to sell their
9 house to someone who is seeking an FHA loan. This is an
10 economic hardship for the community. I am asking on behalf of
11 my 18 neighbors, if I can do that, that you consider the
12 economic impact to our properties before granting final
13 approval. Is it the good of one versus the good of many? I
14 don't know how this normally works. Is there consideration
15 for any economic impact on our end?

16 I don't think 4:30 is a reasonable amount of time
17 since Stewart's is now moving closer to our neighborhood.
18 They were in an office area before and they are now moving
19 with multiple property lines with it - that are residential.
20 They are single-family homes. I think 4:30 is a little bit
21 early. I would be in favor of 5:30. I don't know if the 11:00
22 hour really bothers me much, but I would like to see that
23 readdressed.

24 Those are all my questions.

25 CHAIRMAN STUTO: Okay, thank you.

1 I don't know the answer to the banked parking. We
2 have banked parking a lot, but I don't recall us ever using
3 it.

4 MR. LACIVITA: To be quite honest with you, I have
5 yet to see a banked parking project that asked for additional
6 parking. I would say if we approve it as banked parking for
7 future use, they would have to go through an internal review
8 through the departments to make sure the increased storm
9 water has been calculated.

10 CHAIRMAN STUTO: Do they have to come back before
11 the Planning Board?

12 MR. LACIVITA: I'm going to defer that to our Town
13 Attorney.

14 MS. MARINELLI: I would think that if that was a
15 conditional approval, they would have to come back before the
16 Board.

17 MR. GRASSO: From an engineering perspective,
18 banked parking is pretty common. We make sure that it is
19 documented and that it is still zoning compliant if it gets
20 built. Obviously if it results in less green space, they
21 document that. They do address the drainage and the storm
22 water management as if it was built. So, all of that is all
23 built-in. So, there's nothing else that physically needs to
24 change. They do normally need to notify the Town and let the
25 Town know that there is a need - substantiated need. I don't

1 know if it is an environmental review, but I don't think it
2 has ever come back to the Planning Board - to do another
3 re-review of that, but I agree with Kathleen. If it is
4 something that is important for this one, then we can specify
5 that as part of a condition to make sure that if they wanted
6 to build those additional six spots, they would be subject to
7 additional site plan review by the Planning Board.

8 CHAIRMAN STUTO: Thank you. Can we come back to
9 hours of operation? What is the 4:30? Is that delivery or
10 hours of operation?

11 MR. LACIVITA: That was delivery, correct?

12 MR. POTTER: No, that would be hours of operation.
13 That's what time we currently open - at 4:30 a.m.

14 CHAIRMAN STUTO: And that is 4:30 to?

15 MR. POTTER: That's 4:30 a.m. to 11:00 p.m.

16 CHAIRMAN STUTO: Do we have normal retail hours?

17 MR. LACIVITA: No, we have other operations with
18 similar uses that are like this. We even have 24-hour uses.

19 CHAIRMAN STUTO: It is within the Board's
20 prerogative to narrow that down, though. I don't know how
21 anybody else feels.

22 MR. POTTER: We originally requested 4:00 a.m. to
23 midnight. So, our compromise was to go to 4:30 a.m. We could
24 keep our opening time that is what we currently have and
25 close an hour later.

1 MR. GRASSO: How about other Stewart's stores?
2 What is the range of hours?

3 MR. POTTER: That would be 4:00 a.m. to midnight.

4 MR. GRASSO: They are open at 4:30 a.m.?

5 MR. POTTER: That 4:00 to 5:00 range is the open
6 time.

7 CHAIRMAN STUTO: Well, if anybody on the Board
8 wants to bring that up, they can.

9 MR. POTTER: If I can just touch on the parking?
10 We originally showed this parking here to meet the parking
11 requirements. I don't know that we necessarily need this much
12 parking. That's why we were in favor of showing that as
13 banked parking. I think we are okay with the number of spaces
14 that are shown. We probably will not need that. We did
15 account for that in our calculations.

16 CHAIRMAN STUTO: Kathryn Walter.

17 MS. WALTER: I am a county resident, but I'm also
18 a parent of children who attend the University of Albany. The
19 way I got involved in this whole issue with Stewart's - - if
20 I had known it was an issue, I probably would have been here
21 sooner.

22 It is a dangerous place where it is right now.
23 That parking area is unsafe. It is so close to the curb into
24 the road. I frequent businesses along their. That is a scary
25 place to go by, whether I am parking there or I'm driving.

1 Both of my children are at the university. We happen to
2 frequent Stewart's. We like what they have. We like their
3 idea of their fast foods. I don't want my children stopping
4 there at night. The lighting is horrible. I had no idea that
5 there was another option and that we had this place until
6 recently. We have this very unsafe parking. If any of you
7 have gone there -

8 MR. HEIDER: Are you talking about the existing
9 store?

10 MS. WALTER: Yes. That is unsafe. I am struggling
11 that there is a question about moving it when you see how
12 unsafe that parking lot is.

13 MR. HEIDER: You are speaking in favor of this.

14 MS. WALTER: Yes, I apologize. When I see that
15 option, I'm very troubled. I see cars almost getting into
16 accidents when they are pulling in and out of there. I think
17 moving the business that has the potential to be very good
18 and is very good for Colonie and other areas - it's not like
19 they are not allowed business or they are very noisy. It's
20 just a place to pull in, get something to eat, get something
21 to drink and go on. When you have people doing that in their
22 existing place, it becomes a real danger.

23 CHAIRMAN STUTO: Okay, do you have any other
24 points?

25 MS. WALTER: No.

1 CHAIRMAN STUTO: Okay, thank you.

2 Terri Haywood.

3 MS. HAYWOOD: I have copies for the Board.

4 MS. MARINELLI: I will make this Haywood 4.

5 (Haywood 4 was marked for identification.)

6 MS. HAYWOOD: This is on my window. This will be
7 aware that 8 foot wall will be. This is written the middle of
8 a neighborhood.

9 My name is Terri Haywood and tonight a lot of the
10 neighbors couldn't be here, but they have asked me to
11 represent them and speak to you this evening on their behalf.
12 I'm representing 36 neighbors that have already petitioned
13 against the project.

14 I do want to address some of things that were
15 said. First, I want to read some facts.

16 We bring to the Board's attention that this
17 proposed site lacks the necessary variances that were
18 erroneously approved as they did not follow the Town of
19 Colonie's own written requirements initially of following a
20 submission for an area variance, the applicant shall provide
21 written notice of the public hearing to all owners -

22 CHAIRMAN STUTO: Ma'am, do you propose to read the
23 whole thing?

24 MS. HAYWOOD: Yes, I have 2 1/2 pages here and as
25 opposed to talking and ad libbing -

1 CHAIRMAN STUTO: Okay, go ahead.

2 MS. HAYWOOD: To all owners whose properties are
3 located partially or wholly within a 250 foot distance from
4 the perimeter of the subject parcels proposed for a variance.

5 This is what 250 feet is in all directions of the
6 property and not just 19 Fuller Road. This is who should have
7 all been noticed in all directions - the perimeter, written
8 right and Colonie's own planning regulations - 250 feet.
9 Those are your own regulations, which we repeatedly presented
10 this fact to the Board. All requirements as stated at the
11 previous Board meetings -

12 CHAIRMAN STUTO: Ma'am, I'm going to stop you on
13 one point. I know it gets repeated and counsel for Stewart's
14 has made a point and we have asked our counsel to look at it.
15 I believe we have looked at it before.

16 Kathleen, would you mind responding to that
17 particular issue?

18 MS. MARINELLI: I did look at this and as counsel
19 to Stewart's indicated, if residents had a problem with the
20 procedures followed by the Zoning Board and the decision of
21 the Zoning Board, they had a certain time period in which to
22 appeal that decision to the Supreme Court of the State of New
23 York.

24 MS. HAYWOOD: We had -

25 CHAIRMAN STUTO: Ma'am, she's talking.

1 MS. HAYWOOD: So was I when you interrupted me.

2 CHAIRMAN STUTO: Ma'am, I'm going to be civil to
3 you and I'm going to continue to be civil to you, but you do
4 have to respect the prerogative that I can run the meeting. I
5 don't want to keep bringing up points if we can address them.
6 So, I'm interrupting you and I try to do it politely so that
7 we can get our counsel to address that in a timely manner.

8 MS. MARINELLI: In addition to the timeliness
9 issue, the Zoning Board and the Planning Board are concurrent
10 agencies of the Town. The Planning Board has no authority to
11 make determinations as to whether or not the Zoning Board
12 acted properly or not. You are in the wrong forum. The proper
13 forum is the Supreme Court. So, you keep arguing that the
14 Zoning Board acted improperly. It is not properly before the
15 Planning Board.

16 MS. HAYWOOD: We did not know that it was granted
17 in January or February. We didn't found out and only through
18 rumors until June about it.

19 CHAIRMAN STUTO: There's still nothing we can do
20 about it. So, it's out of our hands to even consider that.

21 MS. HAYWOOD: It is something that need to be
22 addressed. A whole neighborhood is being jeopardized and
23 sacrificed to being exposed to health and safety concerns, as
24 well as financial losses as our home values go down and
25 limits our selling abilities by limiting our buyers who

1 cannot obtain FHA mortgages due to the proximity of a gas
2 station. Everybody doesn't have to have a FHA mortgage, but
3 in this day and age you try to sell your house to who you can
4 and it severely limits who we can sell our houses to.

5 This will be the fourth gas station within a two
6 block area.

7 The main concern also with the error in granting
8 the area variances is that the variance goes with the land
9 which means our neighborhood will forever be saddled with
10 these restrictions. If you cannot obtain an FHA mortgage, as
11 they believe it is too risky for them to cover, is that not
12 proof enough that it is risky and dangerous to all of us that
13 live here?

14 As stated in the conclusion of the New York State
15 Zoning Enforcement Guidelines: Effective zoning enforcement
16 prevents or corrects violations of the Zoning Law and
17 therefore effectuates zoning's basic purposes: to protect the
18 general health, safety and welfare of the citizens of the
19 municipality. The Zoning Law is only as good as its
20 enforcement. Without proper enforcement, zoning consists
21 merely of words on paper. When a violation comes to the
22 attention of a Zoning Enforcement Officer, it is critical
23 that the enforcement process began. Enforcement action can be
24 taken whenever a Zoning Law or ordinances violated, or a
25 condition attached to an approval granted by a municipal

1 board is not met.

2 We are just common citizens. We don't have law
3 degrees. We don't have access. Nobody was saying to us well,
4 you know you can do? You can do this. No, we had to Google
5 and look and come in and find out how we could best protect
6 our health, our neighborhood and our financial well-being.
7 Nobody told us that we could do anything. We have been left
8 to our own devices.

9 In New York's highest court, the precedent *Otto v.*
10 *Steinhilber* in 1939 imposed a three-pronged set of
11 requirements for the grant of a variance. The three-pronged
12 test required that the landing question cannot yield a
13 reasonable return if used only for a purpose allowed. The
14 plight of the owner is due to unique circumstances and not to
15 the general conditions in the neighborhood.

16 CHAIRMAN STUTO: Ma'am, I am just pointing it out.
17 I'm going to let you finish reading it, but you're talking
18 all about variances. This Board is not going to consider
19 whether the variance was valid or not. You can continue.

20 MS. HAYWOOD: These are precedents that can be
21 brought still to a court with precedents is set for the way
22 variances were granted.

23 MR. LACIVITA: Can I just ask a question? As
24 citing legality - with not being an attorney, are we going to
25 allow that to happen? The reason that I ask, Peter, is that

1 she is citing legal content here about the use. The use is
2 allowed in the zoning district. The variances were granted
3 for setback issues.

4 CHAIRMAN STUTO: I think there was a use variance
5 granted, as well.

6 MS. HAYWOOD: There are area variances.

7 MR. LACIVITA: They are set back variances.

8 CHAIRMAN STUTO: I thought the pumping of gas was
9 one of the variances.

10 MR. LACIVITA: No, it was the canopy setback - the
11 100 foot setback.

12 CHAIRMAN STUTO: Okay. I want her to get it off
13 her chest. You could submit it on the record, but if you want
14 to read it, that's fine. We will include this, but that's
15 fine. I don't want you to feel like you were deprived of
16 having your say. Please go ahead.

17 MS. DALTON: I think what Joe just said bears
18 repeating that we are willing to allow you the time to talk,
19 but we are on record as not necessarily agreeing or accepting
20 the validity of any of precedents is that you are citing.

21 MS. HAYWOOD: Okay, then that's a legal matter.

22 MS. DALTON: That's right and we are not lawyers.

23 MS. HAYWOOD: Before final approval is granted - -
24 when variances are sought, a property owner must show a
25 variance is necessary to allow the enjoyment of a reasonable

1 financial return on the property. The owner must show that
2 the proposed use of the property will not change the spirit
3 of the neighborhood or infringe on the neighboring property
4 owners right, use or enjoyment of his own land. That is what
5 the crux of the matter is.

6 For all these reasons we ask you to look and read
7 what should have been known and enforced with a ton of
8 Colonie's zoning regulations as well as the New York State
9 guidelines variances have been passed out, it seems to me, in
10 this Town lately pretty freely. The developers have the upper
11 hand while homeowners are no longer living in the
12 neighborhoods they chose to live in. Now it seems that
13 developers are allowed to reshape our Town, our neighborhoods
14 as well as our lives. We are the ones that are at the mercy
15 of lax zoning. One day it may be your neighborhood. All we
16 ask for is nothing more than the Town guidelines be adhered
17 to.

18 When a store encroaches a third of the way into a
19 small less than 20 house neighborhood and needs variances, it
20 obviously is not a good choice for anyone.

21 The point with the variances is that when they
22 bought that property they knew exactly what it was and they
23 had to get variances to conform this. Never mind these
24 neighbors, us, that are living right here. You may have done
25 studies, but you haven't lived there for nine years and seen

1 the number of big moving trucks, vans and other vehicles the
2 park in the access road behind Stewart's. I have all kinds of
3 pictures. Sometimes there could be 10 straight trucks back
4 there and four or five more are over there. There is not
5 going to be enough parking for those big however long major
6 moving trucks in here. They're still going to be parked here.
7 They're going to be all over. You've always got a pull into
8 the median. This is a single lane right here. You are running
9 two blocks from Central. By the time you accelerate coming
10 down Central, you've got cars pulling in here.

11 Katherine Road is rated 4 tons. Yes, the Colonie
12 law says that service trucks can be allowed. Do you think
13 really that when it was written that it was written for
14 continual use of oil tankers and everything? The road has
15 collapsed twice. A pickup truck weighs three tons. That road
16 has collapsed twice and it was meant for every day things.
17 Colonie has certain roads that have a four-ton limit. What
18 are the rules and regulations for if they're not going to be
19 addressed?

20 The picture - these are neighbors. There is no
21 traffic on the street. This affects us. The things that Mr.
22 Stuto said and Mr. Shamlian said - - both of you were
23 addressing other issues and what you were saying applied to
24 this and trying to put an apartment building or squishing
25 something in. They are trying to put a square peg in a round

1 hole here. They're trying to make this fit in the
2 neighborhood. There are people living here and a neighborhood
3 with lives. We are having a residential thing. We all like
4 Stewart's. No one has a problem. This is not the right place.

5 I suggested to Chuck Marshall that the Camelot
6 area - - I would love to see Stewart's succeed. I would love
7 them if they were down work Camelot is. He purposely chose
8 this site knowing all its drawbacks and setback. Camelot is
9 on a two-lane highway. All the big trucks can come in on
10 Railroad Avenue. We've got trucks from the Thruway and the
11 Northway and Railroad Avenue. If you had it down by where
12 Camelot used to be by the light, you've got cars coming up
13 and you've got a two-lane highway. They made the mistake when
14 they chose this site. They could make money hand over fist
15 from the truckers coming off the Northway if they use
16 Camelot.

17 I tried calling Chuck Marshall a year and a half
18 ago and he wouldn't answer my messages. They chose the wrong
19 spot. I don't think the neighbors should be paying the price
20 because they paid \$2 million for this.

21 The guy that lived in the apartment building here
22 couldn't be here tonight. He ended up being sick. Evidently,
23 they notified the owner of the building but he had 30 days to
24 get out of the building. Nobody was even notified when they
25 pushws this through.

1 If you are talking about buildings on Route 7 and
2 everything else in the apartment buildings, this is a tiny
3 little road. You could sit on your front porch for an hour
4 and maybe see two cars come by. Now were supposed to have 130
5 cars an hour.

6 It may be a permitted use, but when did Colonie
7 stop caring about its every day working people?

8 I am 63 years old. I come home and I maintain this
9 little place. I don't want it a main thoroughfare. I don't
10 want to look out my window and look at that picture and see
11 the wall of China here. They may have the right, but I have
12 the right to do a lot of things, but it doesn't make it
13 morally or ethically right. Like I said, to grant a variance
14 when they don't need to be if they had chosen a different
15 site. They made a mistake. We are being asked to pay for
16 their mistake. They went down to where Camelot is, they
17 wouldn't need anything. They could have every truck in Town
18 being able to go there.

19 CHAIRMAN STUTO: Okay, I am going to ask you to
20 wrap up or make your final points. We have all these comments
21 on the record, right, Kathleen?

22 MS. MARINELLI: Yes, have them.

23 CHAIRMAN STUTO: Thank you

24 MS. HAYWOOD: Thank you.

25 CHAIRMAN STUTO: Lay Yip.

1 MS. YIP: Good evening. I hope everyone had a nice
2 Thanksgiving. I'm sorry that this is actually before the
3 Planning Board with the uncertainty and the lack of clarity
4 on the whole variance issue.

5 I hate to do this, but I'm just putting on record
6 that the last meeting that we had May 22, 2018 Mr. Joe
7 LaCivita clearly stated on the minutes in the record that the
8 subject parcel that was used was 19 Fuller Road. This project
9 consists of five parcels and not just 19 Fuller Road. What we
10 are really saying is in terms of not having the appropriate
11 variances is that they have the variances for 19 Fuller Road
12 and not the other for which is 1 Katherine, 27 Fuller, 29
13 Fuller and I think 1 or 3 Pinehurst. That's the whole
14 variance argument that we really presented to the Board for
15 consideration.

16 In terms of the project, the FHA mortgage issue -
17 the insurance issue, it is really a serious issue for this
18 neighborhood because this neighborhood is middle or low
19 income or low housing pricing - under \$200,000 with an
20 average of \$150,000. So, most of the people that are buying
21 homes in this area are first-time homebuyers. As a matter
22 fact, one of the homes right on Pinehurst which is 3
23 Pinehurst, sold it to a first time home buyer and honestly
24 that owner said I'm selling because Stewart's is going right
25 across from me. Granted, thank God, they sold it prior to the

1 situation. Otherwise, the new buyers would not have gotten
2 it. That is really a serious matter for this neighborhood in
3 terms of economic hardships that we will be going through. I
4 really want to address that.

5 It's really just the gas station - the fuel
6 storage tanks that is causing that to be an issue. One of the
7 propositions that we did give to Stewart's was to eliminate
8 the gas station so that everybody could be happy. That is
9 still something that we really hope that they would consider.

10 I think I'm pretty much wrapped up aside from -
11 this exit here is very, very close to Pinehurst. Pinehurst is
12 a very narrow road that barely fits two cars going in
13 opposite directions. It can't. If I'm pulling out of
14 Pinehurst, another person on Fuller trying to turn in cannot
15 turn in. Another egress, within 10 feet - - I'm not sure how
16 many feet away it is - to have another egress out of that
17 area - that's extremely dangerous for anybody out of
18 Pinehurst. It's going to be a blind spot for residents of
19 Pinehurst coming out and it's just way too close. I think
20 that entrance and egress should really be reconfigured or
21 somehow figured out. That's way too close to another oncoming
22 street.

23 That's really it. Thanks.

24 MS. DALTON: Ma'am, can I ask a question? Part of
25 what is presented to us is that there are three other gas

1 stations there and the neighbors themselves have said we
2 don't understand why there needs to be another one when there
3 are already some here. So, I get that. If those gas stations
4 are already there, then you already have the FHA problem.

5 MS. YIP: No, it's 300 feet. It is not 1,000 feet.
6 That is incorrect by their claim. The FHA is 300 feet and not
7 1,000 feet. This will cause the 300 feet, actually. Again,
8 I'm not going to quote the law, but it's on the website. It
9 was something that was actually on the records that I
10 presented two meetings ago about.

11 CHAIRMAN STUTO: Dick Bovee.

12 MR. BOVEE: I am Dick Bovee and I live at 4
13 Dorland Road, a half a block away from the existing and one
14 block away from the proposed. My wife is a Fuller, so the
15 family has lived on the street for 100 years. We live in the
16 old home that was part of the farm. We know the area.

17 We are tired of empty buildings. There are more
18 going up for sale, as we speak. It takes away from the resale
19 value of your home if you still have empty buildings and we
20 have had some empty for over a decade.

21 I think Stewart's has proven to be a good
22 neighbor. I have seen them build many places in the Town and
23 other Towns and they have done very well. They take care of
24 their property.

25 When it comes to a fuel tank, my backyard is right

1 next to Penske's tank. When I bought the house from my
2 mother-in-law, I got insurance and I continue to renew it and
3 it is very competitive. It is competitive with anybody that
4 is in the market today.

5 The lady that talked about the existing - - it is
6 dangerous and this is going to be much better and the access
7 points certainly will help the flow of traffic on Fuller
8 Road.

9 CHAIRMAN STUTO: Thank you.

10 Bob Ott.

11 MR. OTT: Hi, I live at the very last house on
12 Katherine Road. My concern is when they first came to you
13 about this proposal, was the proposal done - we are only
14 going to do this with a gas station? In other words, when
15 they wanted to move the store, did they say the store and the
16 gas station, or just the store or what? Was it ever
17 considered that just the store would be there or not the gas
18 station?

19 CHAIRMAN STUTO: If you can get all your questions
20 out, we will try to answer them.

21 MR. OTT: When they came here, did they ask -

22 CHAIRMAN STUTO: I understand the question. Do you
23 have any other questions or comments?

24 MR. OTT: One other thing is: I have been here two
25 other times about the location of the sign. Now, if They are

1 going to go through with this thing, I want to know where the
2 sign is going to be located. Is it going to be in the corner
3 of Katherine, or is it going to be up at the cut?

4 CHAIRMAN STUTO: Okay, thank you. Is that it?

5 MR. OTT: Can somebody give an answer?

6 CHAIRMAN STUTO: Yes, if you take a seat, we will
7 go over them and address the questions.

8 Joe, you know the application that came in, right?

9 MR. LACIVITA: Right from the onset of the DCC,
10 the Development Coordination Committee meeting, it was always
11 proposed that this site had the convenience store and the gas
12 use. It was never one or the other.

13 CHAIRMAN STUTO: Where is the sign supposed to be
14 located?

15 MR. POTTER: We have a building sign, as well as
16 our freestanding sign out by the corner. It was mentioned of
17 moving in closer. We did slightly and there is a 15 foot
18 setback that is required for that sign. So, it can only be
19 moved slightly toward the building.

20 What we originally proposed here - we have reduced
21 it significantly from our first application that we made. We
22 had four dispensers and now we only have three. We had a
23 rental on this parcel, as well as our building up one point
24 in time which we removed. We have scaled back.

25 CHAIRMAN STUTO: Are there any new residents that

1 would like to speak?

2 That is the end of my list, here.

3 MS. LAZARRO: Hi, my name is Rosemary Lazzaro and
4 I own 32 Fuller Road. It is a commercial building. It is
5 Metropolis Vintage. It is diagonally across Katherine from
6 Stewart's - the proposed Stewart's.

7 I speak in favor of the store that's going in
8 there because look at the properties that are there now. They
9 are vacant. What was there before? A barroom in a
10 prostitution den, as we all know. Stewart's and what they do
11 around Town - - they do a pretty good job. They make the
12 property values, I think, go up. I think it's going to be a
13 plus for the neighborhood. An empty vacant lot where those
14 buildings that are there now - those decrepit buildings that
15 are there now are going to do nothing for the property values
16 for the people. Those are the things that are going to bring
17 down the property value. Thank you.

18 CHAIRMAN STUTO: Any other new speakers that want
19 to speak?

20 (There was no response.)

21 We're going to close down the public hearing part
22 of this in turn it over to the Board.

23 MR. GOLDMAN: I just want to bring up one thing on
24 the insurance. I had addressed it in my December 20 letter to
25 the Board. It's not a prohibition. FHA charges credits. You

1 can get a loan. It is a disclosure item to an appraiser. That
2 was contained in my letter. I just want to make sure that was
3 brought up.

4 MR. GEURDS: I object, if I am allowed. It says
5 that properties are not eligible for FHA insurance. We are
6 not talking about homeowners insurance. Were talking about
7 mortgage insurance. If you can't get mortgage insurance, you
8 can't get the loan. I'm going to disagree with the attorney.

9 I don't know if my lack of a JD has any lack of
10 credibility.

11 CHAIRMAN STUTO: Okay, we are not just going to
12 have a free-for-all. You have made your point.

13 MR. GEURDS: You didn't address my concern before.
14 Is the good of the 18 residents -

15 CHAIRMAN STUTO: Every Board Member is going to
16 have to answer that in their heart. That's just a subjective
17 question. That's not an engineering or factual question.
18 Thank you.

19 MR. MAGGUILLI: Peter, may I?

20 CHAIRMAN STUTO: Sure.

21 MR. MAGGUILLI: Michael Magguilli, Town Attorney.

22 First I would like to say that the Town is very
23 appreciative and understands and knows the hard work that
24 this Board and Stewart's has put into this project over the
25 years and all the work that you've both put into this to try

1 to minimize the effects and the impact on the neighborhood.
2 All that work shows.

3 The Town has tried to minimize the effect to
4 reduce the impact and to make it so this project would fit
5 into this neighborhood. Even though with everything that you
6 have done and everything that Stewart's has done, the Town
7 still has some concerns about the intensity of the proposed
8 use and the impact that intensity will have on the immediate
9 neighborhood. That comes from the particular nature of the
10 location of this parcel and the residents around it.
11 Particularly, the nature of Katherine Street which there are
12 some spots that are only 24 feet wide and Pinehurst, which is
13 also a very narrow road. There is also the fact that Katherine
14 Street is built over an old pond and there is some concerns
15 about the stability of that road and what could happen with
16 the impact of continued use.

17 We know that Stewart's has really tried and has
18 tried to comply with everything that the Board has requested.
19 The Town has requested that they reduce the number of pumps.
20 We thought that having three stations was too much. Look at
21 all the conditions that if this was approved that would have
22 to be put in; no turn here, no turn there. Somebody is going
23 to have to enforce that. That's going to be hard to do.

24 When Fuller Road is backed up and there are cars
25 bumper-to-bumper, people are trying to get out of Stewart's,

1 I think they will go on Katherine Road. I think they will go
2 down Pinehurst. They're not going to wait for hours while
3 Fuller Road clears. That is a concern that I think the Board
4 should have. The main concern is the impact on the neighbors.
5 This is, I believe, a very intensive use as proposed. I know
6 the Board has done everything that it can to try to minimize
7 the impact, but the impact is still there. Thank you.

8 CHAIRMAN STUTO: Thank you.

9 Susan?

10 MS. MILSTEIN: I have expressed my concerns and
11 doubts about this project and they continue. I am really,
12 really concerned about the impact on the neighborhood. You
13 have these extremely narrow roads of Katherine and Pinehurst
14 and I'm concerned about the trucks. I have seen the trucks
15 that are already parking on Fuller Road. There was this huge
16 enormous truck that never would be able to fit into that
17 parking lot.

18 To their credit, Stewart's is wonderful and I can
19 talk about the accolades. It is wonderful and it is great. It
20 does a fabulous business, particularly with truckers in that
21 area. I'd don't see that area handling the trucks. I am
22 concerned about the proximity because it is such a close
23 tight residential area. I'm concerned about how close these
24 gas pumps are to the residents. I think it is a safety
25 concern and I'm greatly concerned about that.

1 I can see traffic going down Katherine Road,
2 Pinehurst and people find out it's not the access they
3 thought, but it's still going to be increased traffic. I'm
4 concerned about the hours in this neighborhood with its close
5 proximity with the lighting. Instead of 4:00, they are
6 willing to do 4:30 until 11:00. Those are too many hours.

7 Again, if you took away the gas pumps, maybe it
8 would be a different story. As long as there are gas pumps, I
9 am not in favor of this project.

10 CHAIRMAN STUTO: Who else wants to speak?

11 Chief?

12 MR. HEIDER: I have a couple comments.

13 Terry, to your comment about 12 feet in back of
14 the store, I am sure that Stewart's will be more than happy
15 not to put up any more fencing than they have to. That's
16 something that could be negotiated with them.

17 As far as the color the fence, I'm not crazy about
18 eight-foot white stockade fences. To me they are very, very
19 loud. There are a lot of different colors now that are
20 available and I would hope that you would try to make some
21 kind of deal with the neighbors as far as coordinating and
22 picking out a color.

23 I said this at the last meeting. When the Fuller
24 Road House was open, there were 200 cars back there. People
25 urinating all over the parking lot. People having sex all

1 over the parking lot. Drunks coming in and out and all over
2 your neighborhood. I don't think this is worse than that.

3 At the end of the day, I have never seen a
4 landscape plan as intensive as this put forth by developer to
5 try to make the neighbors happy. It cost money to put it in
6 and it cost money to maintain it. In five years those
7 arborvitae's will be so big you won't even know Stewart's is
8 there. I know from taking a ride around tonight, as a matter
9 fact the lighting in the parking lot - down lighting is
10 required by the Town and you can't even tell the edge of the
11 parking lot because it's so dark. *At the end of the day, as
12 far as the real estate goes, this place has been chain linked
13 and abandoned and falling apart for probably two or three
14 years.

15 My daughter tried buying a house on Pinehurst and
16 there were multiple bids on that house within the last year.
17 *As far as the real estate goes, I don't see where people are
18 having problems selling their house there now. It has been no
19 secret that this is going to be a Stewart's. It is no secret
20 that this thing is a mass of abandoned buildings on a road
21 that doesn't have to be.

22 CHAIRMAN STUTO: Does anybody else want to speak?

23 MR. AUSTIN: I'm looking at measuring on my phone.
24 Some of the measurements between the house on the corner of
25 Pinehurst and Fuller. I believe it is 15 Fuller and the

1 existing Sunoco station. It's just over 300 feet. So, that's
2 pretty close and that's one of the houses that is right next
3 to the proposed Stewart's. The existing Sunoco station on the
4 corner is now much further away than the concerns of the FHA
5 loans - - it's not a whole lot different than having an oil
6 tank in your yard, if you had an oil tank. You have to go
7 through some of those procedures.

8 I had an oil tank in my old house. When we sold
9 the house, we had to fill it in or whatever. I think it was
10 an additional oil tank - that's what it was. So, there are
11 some details there, but to point out some of these legalese
12 things - we are not lawyers. We just aren't. I respect
13 counsel for Stewart's and I especially respect counsel for us
14 and I believe counsel for us is working very hard. I also
15 respect the comments from our Town Attorney's office.

16 I think that this project has gone through an
17 amazing transformation from when we first sought.

18 Like the Chief said, it was a lot different before
19 and this is a lot different in a positive way. I think
20 Stewart's has done a lot in the Town with the things they put
21 up. Their competitors are also doing a lot and we're going to
22 see them a little bit later. There are some really very nice
23 landscaping and very nice architecture and they are redoing
24 many of their existing buildings and putting a lot of money
25 into our Town. I think taking this particular property and

1 redoing it and making it a safe Stewart's rather than the one
2 down the road - - I have been to that one too, and that's an
3 interesting place to go visit, to say the least.

4 Get some of those trucks off Fuller Road and out
5 of the middle of the road. I think that's a great idea and I
6 think Stewart's has really worked very hard to try to make
7 concessions. That being said, I'm not sure. We will wait and
8 see.

9 MS. DALTON: There are compelling arguments on
10 both sides. I want to start by acknowledging that I have
11 heard and listened and weighed them all. That said, I'm going
12 to go back a little bit to some of the things that have been
13 said in some of the things that were presented in the
14 paperwork because I would like to put them on the record.

15 They have been considered and I want to look
16 particularly at the letter that we got on the Planning
17 Board's authority and fiduciary responsibilities with regard
18 to ensuring that we were considering neighboring properties
19 that shall be protected against noise, glare, or other
20 objectionable features. Again, objectionable features as
21 pointed out tonight are different to different people. Some
22 of your neighbors, the objectionable feature is that the
23 property as it currently exists as an eyesore and a drain on
24 existing property owners and decreases the value of that
25 neighborhood. There are also points made that were

1 objectionable to your neighbors was the fact that they don't
2 feel safe with the existing Stewart's in the existing
3 neighborhood as it stands with its lack of development. So,
4 when I am being asked to vote against a property based on
5 health, safety and other unquote objectionable concerns,
6 right here amongst your neighbors and right here the things
7 that have been brought out are that nobody has proven to me
8 that it will be more unsafe than it is now. No one has proven
9 to me that your property values will be further decreased
10 from what they are when you are in an unsafe neighborhood
11 with abandon properties that are unattractive.

12 Some of the other things - exposing to lighting,
13 noise, patrons, traffic - all of those things are existing
14 conditions. So, when I consider them, what we have done on
15 the Planning Board is try to make all of those things better
16 with this current plan which has changed again considerably
17 from the plan that was first given to us. We have improved
18 issues with regard to lighting. I shouldn't say we. Stewart's
19 has improved issues related to safety and usage and density
20 and traffic patterns. They have put a lot of money into that
21 to be responsive. I think that for what they have to work
22 with, they've done a really good job.

23 Unlimited hours of operation - again, not true.
24 There are limited hours of operations and essentially they
25 are asking for another hour over what they have now from

1 10:00 to 11:00 at night. So, that's not an accurate part of
2 this letter. At the end of the day, it's a very difficult
3 decision.

4 I want to be clear and on the record that
5 everything that has been presented to me is what I am
6 considering as we go forward. I guess I will leave it at
7 that.

8 CHAIRMAN STUTO: We're getting pretty close to
9 vote, I think. Since everybody else is getting on the record,
10 I will as well.

11 I'm not going to belabor or repeat the points, but
12 I think I would tend to vote no on the project based upon
13 everything that I have heard both today and in the past. I
14 agree with Susan and I agree with the points made by the Town
15 Attorney and on the basis of the rationales there, that's why
16 I intend to vote no.

17 MS. MILSTEIN: As an attorney, I'm not sure about
18 the 19 Fuller Road in the notification process and whether
19 the other property should have been included. I don't know
20 that. It is something that should be considered. It is one
21 more factor but is not the controlling factor at all.

22 CHAIRMAN STUTO: Anyone else want to make
23 statements before we conclude this?

24 (There was no response.)

25 With respect to the environmental, I'm going to

1 propose this is my opinion - that the Town Attorney and the
2 department and our Town Engineer agree that this is a Type II
3 and we don't need to adopt a Resolution. No further action is
4 necessary.

5 MR. GRASSO: That's right.

6 CHAIRMAN STUTO: So, with the environmental, there
7 is nothing else that needs to be done.

8 Are there any waivers? There are no waivers here,
9 right?

10 MR. GRASSO: No, they eliminated all the waivers.

11 CHAIRMAN STUTO: I do have to help formulate the
12 next action, which is to vote on final approval and we
13 normally say subject to all the conditions set forth in the
14 meeting tonight, the Town Designated Engineer's letter and
15 all the comments made by the Town Departments.

16 I'm not going to make the motion. Are there any
17 other conditions that anybody who might be inclined to make a
18 motion?

19 MR. HEIDER: Peter, I think the times - the hours
20 of operation should be a condition of approval.

21 CHAIRMAN STUTO: Specifically, what?

22 MR. HEIDER: At a minimum, what they have
23 suggested of the 4:30 a.m. to 11:00 p.m.

24 CHAIRMAN STUTO: Does anyone have any further
25 thought on that - the hours of operation?

1 (There was no response.)

2 So, it is 4:30 a.m. to 11:00 p.m. unless someone
3 has a different opinion.

4 MS. DALTON: I think it should be part of the
5 Resolution, though.

6 CHAIRMAN STUTO: Okay, so that will be a
7 condition. Were there any other conditions that were brought
8 up?

9 MR. LACIVITA: The only condition that was brought
10 up was if they in fact decide to put in the pavement that
11 might be banked, it has to come back for a review.

12 CHAIRMAN STUTO: So, that was the other
13 conditioner was brought up. Is there a consensus on that?
14 Let's say this way: Is there any objection to that?

15 (There was no response.)

16 Anything else?

17 (There was no response.)

18 Does somebody want to make that motion, as so
19 stated?

20 MR. MION: I will make that motion, as so stated.

21 CHAIRMAN STUTO: Okay, Lou made the motion. Do we
22 have a second?

23 MR. HEIDER: I'll second.

24 CHAIRMAN STUTO: Chief Heider seconded it. We will
25 take a vote. All those in favor, say aye.

1 MR. MION: Aye.

2 MS. DALTON: Aye.

3 CHAIRMAN STUTO: I would like to vote no, on the
4 record.

5 MS. MILSTEIN: No.

6 MR. SHAMLIAN: No.

7 CHAIRMAN STUTO: So, there are three negative
8 votes and four affirmative votes. The ayes have it.

9 (Whereas the above entitled proceeding was
10 concluded at 8:20 p.m.)

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CERTIFICATION

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: _____

NANCY L. STRANG
LEGAL TRANSCRIPTION
2420 TROY SCHENECTADY RD.
NISKAYUNA, NY 12309

