

1 PLANNING BOARD COUNTY OF ALBANY
2 TOWN OF COLONIE

3
4 *****
5 AN UPDATE REGARDING THE PROPOSED WAL-MART
6 SUPERCENTER
7 LOCATED AT 2, 4, AND 6 AUTOPARK DRIVE
8 *****

9 THE TAPED AND TRANSCRIBED MINUTES of the above
10 entitled proceeding BY NANCY STRANG-VANDEBOGART
11 commencing on September 14, 2010 at 8:49 p.m. at the
12 Public Operations Center
13 347 Old Niskayuna Road, Latham, New York 12110

14 BOARD MEMBERS:

- 15 CHARLES J. O'ROURKE, CHAIRMAN
- 16 MICHAEL SULLIVAN
- 17 TIMOTHY LANE
- 18 LOUIS MION
- 19 PAUL ROSANO
- 20 MICHAEL SULLIVAN
- 21 PETER GANNON
- 22 ELENA VAIDA, Esq., Attorney for the Planning Board

23 Also present:

- 24 Debbie Alderman
- 25 Jeff Baker, Esq., Boght Area Neighborhood Association
- Kevin Bette, Columbia Development
- Chris Bette, Columbia Development
- John Brodeur, Doucet and Associates
- Mark Burdyl
- Victor Caponera, Esq.

1 Jean Chesney
2 Maryann Cummings
3 John Fayhey
4 John Gorzki
5 Marie Henry
6 Tom Johnson, Barton and Loguidice
7
8 Gloria Knorr
9 Nancy Krugler
10 Joseph LaCivita, Director, Planning and Economic
11 Development
12 Jerry McCamey, Bergmann and Associates
13 Janice Methe
14 Tim Nichols, Albany County Legislator
15 Barbara Numrich
16 Kathy Ordway
17 Clemente Parente, Wolford and Associates
18 Ken Perkins
19 Alan Pritchard
20 Bill Sarafin
21 Alexandra Serra, Wal-Mart Corporation
22 Bob Sweeney, Esq.
23 Chuck Voss, Barton and Loguidice
24
25

Legal Transcription

Ph 518-542-7699 Fax 518-831-1710
www.albanylegaltranscription.com

1 CHAIRMAN O'ROURKE: The last item on
2 tonight's agenda, which is the Wal-Mart Lots
3 2, 4 and 6 Autopark Drive. It's a 186,517
4 square foot retail center. They are looking
5 for some waivers and they are looking for
6 concept acceptance.

7 Doucet and Associates is who will be
8 presenting.

9 Joe doesn't have anything to bring us up
10 to speed on.

11 Victor, if you would?

12 MR. CAPORNERA: Thank you very much
13 Mr. Chairman. For the record, my name is
14 Victor Caponera. I'm one of the attorneys for
15 Wal-Mart.

16 I'm going to introduce the folks that are
17 with us tonight. Bob Sweeney is here. Jerry
18 McCamey, who is here from Bergmann, and we
19 have John Brodeur, who is our engineer. We
20 have Alexandra Serra, from Wal-Mart and Amy
21 Guinn, who most of you know.

22 I'll just get started and do a quick
23 scenario of where we are.

24 Mr. Chairman and members of the Board, as
25 you indicated, these are Lots 2, 4 and 6

1 Autopark Drive.

2 This slide here shows more what we're
3 talking about (Indicating). What we're
4 proposing to the members of the Board now is
5 to utilize property that has been previously
6 developed and currently developed.

7 This is a picture that was taken in the
8 1960's (Indicating). It's pretty hard to
9 acclimate yourself, but what you see here is
10 the building that's down on the left and
11 that's the Nemith building - Lincoln Mercury.
12 In fact, the Nissan building isn't there yet.

13 On the upper left corner, you'll see the
14 old outdoor drive-in theater. That is
15 basically part of parcel 4 and 6. The little
16 building on the left is the smaller building.

17 Again, this is a photo shot circa 1960
18 and you can see on the top is the Northway.

19 This is a photograph that was taken in
20 the 1990's. If you look up on top, you'll
21 still see the remnants of the outdoor theater.
22 You have the film room, and in the upper
23 left-hand corner you'll see the large screen.

24 If you move down, you can see that large
25 building that's about 15,000 square feet.

Legal Transcription

1 That's the former Grand Slam building. That's
2 currently being used for Nemith. The building
3 that's right in front of you there is 950,
4 which is an office building.

5 As we know in 2005 the Town enacted the
6 Comprehensive Plan. This zone is an HCOR zone.
7 When our project initially submitted in 2007,
8 the property was zoned Business E. On
9 January 4, 2007, when the Town rezoned the
10 entire property - not only this area but the
11 entire town - it went to an HCOR zone. That's
12 Highway Commercial Office Residential.
13 Basically, the HCOR zone, where this property
14 is, is essentially the same as what was
15 allowed in the Business E Zone, which is what
16 we're proposing.

17 Before we submitted our plan in 2007, we
18 submitted a plan for a minor subdivision
19 modification where we were going to merge lots
20 2, 4, and 6 Autopark Drive and eliminate the
21 lower portion of the cul-de-sac at the end of
22 Autopark Drive.

23 Myself and John Brodeur met with the
24 Development Coordination Committee, which is
25 known as the DCC committee. That meeting

1 happened in May 2007. Obviously, it was
2 comprised of the various departments of the
3 Town. John Brodeur, our engineer, made
4 modifications to the proposal, at the time, to
5 address the recommendations and suggestions of
6 the DCC committee. After that DCC meeting on
7 May 30, 2007 we received their comments, we
8 submitted our revised plans and that was all
9 done at the December 2007.

10 As the Board knows, we've had multiple
11 meetings. The last one was June 22, to be
12 exact, at which time the Board concurred with
13 the Town's designated engineer's findings that
14 the Wal-Mart traffic with mitigation
15 improvements will work. Essentially that's a
16 quick synopsis of where we are.

17 What I'm going to do right now is turn
18 this over to John Brodeur, our engineer, and
19 he's going to walk you through our site plan
20 and introduce you to what we are proposing.

21 MR. BRODEUR: Good evening. My name is
22 John Brodeur. I'm a professional engineer with
23 Doucet and Associates and we are Wal-Mart's
24 engineers for the site portion of the Wal-Mart
25 project in Colonie, New York.

1 I'd just like to start by saying that
2 we're going to run through the various slides
3 that are fixed slides. We're going to show you
4 the revised plans. They've been revised since
5 the original submission. They were revised in
6 July of this year in order to address comments
7 by various town departments as well as the
8 Town Designated Engineer.

9 These slides show what is currently
10 planned and we will later follow that up with
11 virtual simulations. Those are basically 3-D
12 models, which render the site from various
13 points of view, as if you're coming up the
14 on-ramp to the Northway, heading north.
15 Various aspects will give you a much better
16 perspective of the project.

17 At any point in time, if anyone has any
18 questions, feel free to stop us and ask.

19 I'm going to start with the basic overall
20 orientation of the building. When we began
21 this project, we met with Town Officials and
22 discussed the best orientation of the
23 building. Due to the fact that there is very
24 little view of the site from Route 9, roughly
25 eight to 10 feet of elevation -

1 CHAIRMAN O'ROURKE: Sir, I'm going to
2 have to interrupt you on that point.

3 Who were the officials that you met with
4 in regard to the orientation of the building?

5 MR. BRODEUR: They were the various town
6 departments at the time and part of the DCC
7 meeting.

8 CHAIRMAN O'ROURKE: Which one? The Sewer
9 Department?

10 MR. BRODEUR: They were all there, to
11 tell you the truth.

12 CHAIRMAN O'ROURKE: During the DCC
13 meeting?

14 MR. BRODEUR: It happened at various
15 meetings throughout and leading up to the
16 DCC -

17 CHAIRMAN O'ROURKE: What dates?

18 MR. BRODEUR: I don't have the dates as
19 to when we met.

20 CHAIRMAN O'ROURKE: But you just said
21 that it wasn't the actual DCC. Was it at the
22 DCC or was it after that, sir?

23 MR. BRODEUR: No, it was prior to the DCC
24 meeting. We met with various town officials. I
25 know that they met with the Planning

1 Department and the Engineering Department at
2 the time.

3 CHAIRMAN O'ROURKE: The Planning Board is
4 the only one that can approve orientation of
5 the building, in terms of land use.

6 MR. BRODEUR: It was not approved. That's
7 why, at this point in time -

8 CHAIRMAN O'ROURKE: So, it's conjecture.

9 MR. BRODEUR: It was the preferred
10 orientation, but it was not approved.

11 CHAIRMAN O'ROURKE: Preferred by?

12 MR. BRODEUR: By the town officials at
13 the time.

14 CHAIRMAN O'ROURKE: So, it was discussed.

15 MR. BRODEUR: It was not approved. That's
16 why we're requesting a waiver.

17 CHAIRMAN O'ROURKE: I just had to point
18 that out because that's an important point.

19 MR. BRODEUR: Understood.

20 So, basically, due to the elevation
21 differential on the existing buildings, which
22 screen the site to Route 9, we orientated the
23 building due to fact that the Town at the
24 time - the administrators of the various
25 departments - brought up the shopping center

1 across the way, which would be the Latham
2 Retail Center and it has a Target. At the
3 time, they did not prefer that particular view
4 from the Northway where you look into the back
5 of the store and you see the loading docks and
6 the various business aspects.

7 CHAIRMAN O'ROURKE: Sir, I'm going to ask
8 you to stay project specific. Again, they
9 approved it to face the Northway. So, if they
10 weren't happy about what the prior
11 administration had done, it really doesn't
12 have any significant impact on your
13 presentation to these folks tonight. So,
14 please stay project specific.

15 MR. BRODEUR: Okay. So, in order to
16 facilitate their best view from the Northway,
17 which is the view which the greatest number of
18 people will see the store, we have this site
19 position with the orientation that you
20 currently see before you with the façade
21 facing the Northway.

22 I'll move on to access points.

23 The main access point utilizes Autopark
24 Drive with the elimination of the cul-de-sac
25 at the end of the street. By eliminating the

1 cul-de-sac at the end of the street, we
2 facilitate bringing in the main traffic
3 towards the rear of the parking lot, which
4 allows people to filter in from the back of
5 the site and it minimizes the number of
6 conflicts with pedestrians at the front of the
7 store. It helps people find their spot before
8 they ever make it to the front of the store.
9 As you might imagine, the front of the store,
10 with the large striped areas, happens to be
11 where the majority of the pedestrians cross.

12 We've placed the truck access to the rear
13 of the store and we've done this in order to
14 facilitate a separation between pedestrian,
15 customer, and the truck route, to minimize the
16 number of conflicts that would be found
17 between trucks entering the site and customers
18 entering the site. The trucks would come in
19 and they would have two various truck spins.
20 That would allow the trucks to come in, spin,
21 and leave in the same direction.

22 The last point is that secondary access
23 point to the rear of the store. We were asked
24 to put that in during the DCC process. It is a
25 one-way connection point to allow office park

1 users the ability to leave the office park,
2 and access the light. That light would be
3 proposed at the end of Autopark Drive. During
4 the submission for conceptual plan, the
5 Planning Department requested that we make
6 this a two-way access point. As such, we've
7 made it a two way access point on this updated
8 site plan. We understand the concerns of the
9 secondary access and the point of the
10 secondary access is strictly to provide
11 emergency access and egress in case something
12 happens on Autopark Drive. There was a fire at
13 the end of Century Hill Drive which blocked
14 off access to people leaving the site. This
15 point will allow, in case of emergency,
16 emergency vehicles to get onto the site, as
17 well as allow people to filter off the site.
18 If it's desired that this entrance is gated
19 and blocked off, we can provide that, such
20 that emergency vehicles and maintenance
21 vehicles are the only ones that have access to
22 and from.

23 This is basically a slide showing what
24 we've done to facilitate pedestrian access on
25 the site (Indicating). You can see that we've

1 provided a sidewalk, which leads up to the
2 connector area to Century Hill Drive. We have
3 not provided a sidewalk to Route 9 due to the
4 fact that there isn't currently any pedestrian
5 access along Route 9. From what we're told by
6 the state, there is not a plan. In order to
7 eliminate leading people to a dead end and
8 encouraging people to cross the street, we
9 feel that it's the safest to not provide that
10 access to a sidewalk.

11 You can also see that we have closed off
12 this first drive in the original plan, where
13 we proposed to dump that aisle into the access
14 point closer to the intersection. At the
15 request of the Planning Department, we closed
16 that off.

17 This slide shows the overall plan.
18 Comparatively speaking, what we have done is
19 reduce the number of islands and increase the
20 width, per the recommendations of the Planning
21 Department in order to better facilitate
22 sustainable plan growth. The islands went from
23 four to eight feet wide and we have increased
24 the amount of landscaping to 5.8 percent
25 interior landscaped islands. That exceeds the

1 five percent requirement.

2 The overall greenspace is 36.7 percent on
3 the site, which exceeds the town requirements
4 of 35 percent. Overall, the drainage from the
5 site follows the current topography. The site
6 is higher than the front. Water drains, in all
7 of the vestibule areas towards the back of the
8 parking where it's collected into a large
9 basin, which is proposed in this area
10 (Indicating) and will meet the Phase II
11 standards.

12 We have the virtual simulations here.
13 We're going to start as if you're going north
14 on the on-ramp. The purpose of this slide is
15 to show the existing plants that the existing
16 owner, Mark Nemith planted several years ago.
17 This is in conjunction with new plantings. The
18 view from the on-ramp is very minimal.

19 FROM THE FLOOR: What exit is this?

20 MR. BRODEUR: This is the on-ramp heading
21 north.

22 CHAIRMAN O'ROURKE: This is coming from
23 Alternate 7.

24 MR. BRODEUR: You can see the light poles
25 from the site and the background. Of course,

1 this is slower than you would be going in your
2 car; but we thought that it was important.
3 Again, you can still see the light poles from
4 the parking area. You can see the existing
5 trees that Mr. Nemith has planted, as well as
6 those we have supplemented.

7 That is the existing basin, the new
8 basin, and the new Anjio Dynamics building. As
9 you can see, it's a very short window.

10 Now, we're going to be going south on the
11 Northway. That will be your best view of the
12 site. As you can see, you don't see the
13 business areas. You see the façade and the
14 main parking area where you can see the screen
15 with additional plantings as well.

16 The next animation is north on Route 9.
17 You have 950 and the various other buildings
18 that screen the view. That's looking straight
19 down and you can see the back of the store
20 there. Again, the view is very minimal. I'll
21 show you that we've planted a significant
22 number of trees along the rear of the building
23 at the top of the slope, as well, in order to
24 buffer the view.

25 FROM THE FLOOR: That's Autopark Drive.

1 Where is the secondary access road that you're
2 talking about putting in?

3 CHAIRMAN O'ROURKE: Sir, let him do their
4 presentation and we'll get to the public
5 hearing. Thank you.

6 MR. BRODEUR: Now, west on Autopark
7 Drive. This is heading down Autopark Drive.

8 One thing that I'd like to point out is
9 that we've put a curb into the truck dock and
10 we've added this decorative wall in order to
11 minimize the view into the truck dock area. I
12 think that you see that, due to that curve,
13 the landscaping breaks up any real view
14 straight down into it. We've added a
15 significant amount of plantings as well as
16 extended berming along the side of the
17 building, in order to reduce the scale of the
18 building and help to meet the intent of the
19 HCOR guidelines.

20 MR. CAPONERA: John, what is the age of
21 those trees?

22 MR. BRODEUR: The age of the tree shown
23 there is, I believe, at five years.

24 One thing that I wanted to do with this
25 is basically show the original submission from

1 2007. You can see the number of plantings
2 shown on the original plan, versus the amount
3 of plantings that we've added on this revised
4 plan. In trying to address the comments of the
5 HCOR, we have created a large area of
6 plantings to break up the mass of the building
7 along Autopark Drive. We've added the berming
8 in various other aspects including the curb
9 drive to basically break up the mass of the
10 building and break up the view of the back of
11 the store. We've also added that four foot
12 high retaining wall, which - sorry, I mean a
13 decorative wall in this area with evergreens
14 behind it, again, to try to screen the
15 building from Autopark Drive.

16 That's all I have. I'm going to hand it
17 over to the architects.

18 MR. MCCAMEY: Good evening. I'm Jerry
19 McCamey, Senior Quality Architect with
20 Bergmann and Associates. We are the architects
21 for the project. I'll be guiding this project
22 from conception to completion for Wal-Mart and
23 Bergmann and Associates.

24 I do appreciate the opportunity to
25 present this project to the Townspeople. This

1 is a concept that we have spent a good amount
2 of time developing, and it's one that we're
3 really proud of. It's one that we really hope
4 the Townspeople can come to embrace and will
5 also be proud of.

6 When we went into this project, there
7 were many, many items to consider. The basic
8 premise is to conform with the intent of the
9 HCOR guidelines, promote sustainable
10 architecture, and deliver a positive shopping
11 experience for our customer.

12 This slide shows that variable roof
13 heights, changes of materials, changes of
14 colors, and the design of the arched elements
15 from the vestibule across the wall to the
16 pedestrian area. These features have helped
17 bring the building up so that it will be
18 perceived as multiple buildings clustered
19 together, instead of the typical big box,
20 which we are all trying to avoid.

21 This is a closer view that, once again,
22 more clearly indicates how the façade
23 composition breaks the building down into
24 smaller distinct portions.

25 You can see the market pharmacy area on

1 the left, the recycle center and then we have
2 the vestibule entrance and the grocery side of
3 the store. Here are two vestibules, the wall,
4 and the public promenade area. Then we head
5 down into the general merchandise entrance.

6 As you can see here, we have used
7 extensive amounts of concrete. What we are
8 trying to do is to bring this building down
9 more to a human scale instead of a 20 or 30
10 foot tall building with blank walls. You can
11 see that we have varied heights. We added
12 canopies and different windows and
13 demonstrations. We really got this down to a
14 human scale. We're using an oversized brick,
15 that when you use an oversized brick on large
16 expansions, it once again, brings things down
17 into the human scale.

18 This is an example of an arch wall
19 element. We have one similar to this on the
20 opposite end of the building to use as a
21 feature to help break the building down. Also,
22 you can see that we're using decorative
23 fencing and the idea here was to help create
24 this inviting atmosphere when you walk into
25 the project.

1 This is our outdoor living area
2 (Indicating).

3 The HCOR guidelines also require the use
4 of parapets or flat roof buildings. We thought
5 that just two sides made no sense so we have
6 exceeded the parapets on all four sides of the
7 building.

8 This slide helps indicate and you can see
9 the tops of the high walls and the lower roof
10 areas. You can see all the glass and the
11 various portions of the building help to
12 clearly break up the building. Right here,
13 we're showing our meeting the HCOR guidelines.

14 On the next side, this is really here for
15 one purpose. If you look at this building, you
16 normally would see the rooftop buildings.
17 We've extended the parapets on all sides of
18 this building so that the mechanical equipment
19 is not visible from the ground. The mechanical
20 equipment is behind a wall of brick and
21 decorative masonry. It's an open masonry
22 product and that is to, once again, meet the
23 HCOR guidelines.

24 On the next slide is our market/pharmacy.
25 The concept that we've used is the focus of

1 the pedestrian areas. Most people realize that
2 we have a lot of store services and back house
3 areas so you're really limited with the
4 visibility that you could bring to the street.
5 Obviously, we don't want glass looking into
6 the meat coolers and the kitchen areas. In our
7 pedestrian areas we have used a lot of
8 recessed glass. We've used covered walkways
9 and canopies. Basically, the two-way
10 visibility is going into public areas. Once
11 again, it's somewhat limited because of the
12 fact that you can see here that we have
13 pedestrian bollards and covered walkways to
14 make this open and inviting atmosphere for the
15 store.

16 This is the other end of the arched area.
17 Here is the arched canopy and the arched
18 vestibule (Indicating). It starts this façade
19 running across the store and we have a
20 pedestrian access area. You can see, once
21 again, that we've used windows that are
22 slightly recessed. We use sliding doors so
23 that they do not open out into the public way,
24 so that they do not infringe on pedestrians.
25 We have safety bollards in front of the doors.

1 We have benches, and we have pedestrian
2 amenities. So, once again, this is kind of the
3 anchor of the other end of our pedestrian
4 walkway.

5 This is basically the movement of our
6 pedestrian area out front. You can see from
7 the left vestibule, you can see the covered
8 canopy that runs across the arch of the
9 grocery entrance. It comes into a public area
10 where we have the landscaped planter and the
11 iconic trees and some low landscaping and the
12 bench areas.

13 Wal-Mart being an American company, very
14 proudly flies the American flag in this
15 pedestrian plaza and you can see the lighted
16 bollards along the way and well marked access.
17 In this area, also, we have all pedestrian
18 amenities and all the covered walkways
19 (Indicating).

20 On this next slide, this is a little bit
21 where we go outside the box. This is part of
22 the pedestrian promenade we're looking into
23 where you can see the planters and the
24 landscape area. This area also opens into back
25 house areas. Because we are in that pedestrian

1 promenade, and we are trying to keep a certain
2 rhythm, we have window place openings in this
3 area to help break up the rhythm of just a
4 flat wall. That would help us, a little more,
5 conform to the intent of the HCOR guidelines.

6 Here is a night shot (Indicating). Once
7 again, after the day ends the store takes on a
8 different feel altogether. The store at night
9 is very warm and very inviting. The walk has a
10 very appropriate amount of parking lot
11 lighting. We use cut off fixtures so that
12 there is no light spilled over. The vestibules
13 are softly lighted. Basically, in the parking
14 lot, you know that you're going to the
15 market/pharmacy, or you know that you're going
16 to the general merchandise entrance.

17 As you can see when you're approaching
18 the building in the public area, it's lighted
19 at night. You can see the sconces on the
20 walls. You can see the lighted bollards. The
21 only entire illuminated sign is on the
22 building. It's entirely illuminated with LED
23 lighting. It's about 53 percent more efficient
24 than the normal lighting.

25 We have some back lighted signs here and

1 once again they are illumined. We have
2 indirect lighting that washes the underside of
3 our canopy. We have the lighted bollards.
4 These are safety bollards. They do not have
5 lights. This is for the occasional person who
6 is trying to drive through the store and we
7 like to stop them there instead of half-way to
8 the back of the store.

9 In general, this is our concept. The
10 concept has provided this warm and inviting
11 environment to the customer, to give you a
12 building that obviously is big box retail.
13 We've broken it down into elements and
14 components to really make it more inviting and
15 more of a pedestrian nature.

16 The next two slides - this is about
17 sustainability. Wal-Mart is not just doing a
18 nice store here, when it comes to energy
19 efficiency and making smaller carbon
20 footprints and all the buzzwords for
21 sustainability, these guys are great.

22 They utilize a daylight harvesting
23 system. The skylights actually can reduce
24 energy usage up to 73 percent. The skylights
25 are tied to lighting sensors. When the clouds

1 move over, the lights brighten up. When the
2 sun comes out, it allows the lights to cut
3 down. We use high efficiency rooftop units.
4 There are white roofs to bounce the light.

5 We have a system for our plastic and
6 wrappers that go to recycling systems. They do
7 not go into the landfills. I think that we've
8 saved 180,000,000 pounds of trash going into
9 landfills in the last few years.

10 On this next slide we move inside the
11 store. We use LED lighting in our coolers.
12 It's 53 percent more efficient than the
13 regular lighting. We have the concrete instead
14 of using the floor finish that generally
15 generate a lot of volatile organic compounds
16 when you put them down. We use a concrete
17 system. Also, you don't have to use chemical
18 cleansers to clean this, so we're not dumping
19 more junk back into the sanitary system. In
20 the bathrooms, we're using water savers in the
21 toilets and urinals and we're using sites that
22 have had previous use.

23 Wal-Mart donates a large amount of food.
24 They're scheduled to donate 1.1 billion pounds
25 of food to local food banks and I don't mean

1 expired old garbage that no one wants. This is
2 food that is well before expiration dates.
3 This does go to local food banks.

4 Also, there is occasional food from the
5 grocery store that does happen to spoil and we
6 have a new system of sealed containers that
7 instead of filling up the landfill, they go to
8 composting groups. We'll be setting that up.
9 I'm not sure who locally handles that. This is
10 a new system. Our goal is eventually zero
11 waste from the stores.

12 I guess, basically, we have designed a
13 concept that hopefully the community can
14 embrace, but one in which the tenant really is
15 a good neighbor to the community. Thank you.

16 CHAIRMAN O'ROURKE: Chuck, before I let
17 the Town Designated Engineer who has worked
18 closely with this project speak, I just want
19 to take two seconds and for those who haven't
20 been to the Planning Board before and don't
21 understand how we operate, I just want to give
22 you a few thoughts.

23 When they talk about HCOR, Highway
24 Commercial Office Residential Zoning, it's a
25 zoning that actually binds this Board, as well

1 as the major site plan review.

2 So, Chuck, if I could just take a couple
3 minutes and read this in?

4 This is directly out of the Town of
5 Colonie Land Use Law.

6 Highway Commercial Office Residential,
7 otherwise known as HCOR, design and
8 development standards for Highway Commercial
9 Office Residential have been created to
10 facilitate pedestrian connections between
11 commercial areas as well as with adjoining
12 neighborhoods, while providing improved
13 vehicular circulation and safety and enhanced
14 aesthetics.

15 The following policies are organized in
16 four categories; site organization, site
17 design, architectural design and multifamily
18 residential design. In general, the standards
19 reflect recommended or encouraged design
20 standards that are intended to promote the
21 goals of the district and should be
22 implemented to the fullest extent practical.
23 Whereas, standard includes the words "shall"
24 or "must" it is integral to the goals of the
25 district and is mandatory. However, the

1 Planning Board may waive these standards to
2 the extent that it deems necessary in order to
3 secure reasonable development of the site.

4 So, again, it is broken down into site
5 organization and I'll be quick here.

6 "A. Buildings must present their main
7 facade and entrance toward the street.
8 Buildings should be oriented parallel or
9 perpendicular to the public sidewalk and allow
10 for parking in the rear or side of the
11 proposed structure.

12 B. A minimum frontage build-out of 80
13 percent is recommended to create a
14 near-continuous facade along the sidewalk.
15 This frontage may consist of a combination of
16 the building and a small landscape fencing
17 made of wrought iron, common brick or some
18 other natural material."

19 As all of you have seen, the building
20 that this Board approved with Fresh Market,
21 it's that type of landscaping along that
22 frontage, which I'm sure everybody likes
23 compared to what was there.

24 "On a minor road, the maximum setback
25 shall be 20 feet. On a major road, the maximum

1 setback shall be 25 feet.

2 On a lot containing more than one
3 building, the maximum setback requirement
4 shall apply only to the building located
5 closest to the front lot line.

6 On a lot containing an existing building,
7 the maximum setback requirement shall not be
8 mandatory. However, any new construction
9 should comply with the intent of the maximum
10 setback provisions as far as is practical."

11 Landscape requirements - There are many
12 all the way through and it goes to new
13 streets, site design, site lighting, all these
14 things are mandated by the Land Use Law. It is
15 very particular and to the point in this
16 district, what this Board has to look at in
17 each particular project. Although waivers can
18 be asked for as long as they prove to this
19 Board that the intent of the design standard
20 has attempted to be met, we can waive those
21 standards.

22 "The Planning Board may waive these
23 standards to the extent that it deems
24 necessary in order to secure reasonable
25 development for the site. In such cases, the

1 applicant must establish that there are no
2 practical alternatives to the proposed waiver
3 that would conform to the standard and the
4 Planning Board shall issue a written findings
5 statement stating the extent of and
6 justification for the waivers."

7 The next point, that I'd like to just
8 briefly touch, is the major site plan review
9 and what we, as a Board, are charged with
10 looking at with regard to looking at these
11 things.

12 The purpose of major site plan review is
13 to allow the community to properly integrate
14 uses based on their characteristics or the
15 special characteristics of the area in which
16 they are to be located; to accommodate growth
17 that will have a harmonious relationship with
18 the existing or the permitted use of
19 contiguous land and of adjacent neighborhoods,
20 without creating adverse effects; and to
21 ensure that the health, safety, welfare,
22 comfort and convenience of the public is fully
23 considered; and to promote consistency in the
24 development of the Town of Colonie with the
25 goals and objectives of its Comprehensive

1 Plan.

2 The general review criteria that we have
3 to look at are traffic access and roads.

4 Actually there are 16 individual things;
5 frontage on the streets - they are all covered
6 by law.

7 "Screening and landscaping - All
8 structures and recreational parking, boating,
9 public and other service areas shall be
10 reasonably landscaped.

11 Lighting - All site lighting shall be
12 designed and installed so as not to illuminate
13 adjacent properties or highways.

14 Location and dimension of buildings - The
15 location, arrangement, size and design of the
16 buildings, lighting and signs shall be
17 compatible to each other and with the site as
18 a whole.

19 Sufficient separation between buildings
20 shall be maintained to ensure adequate access,
21 circulation, light, air and solar access."

22 The other part is general requirements.

23 "Site development proposals shall conform
24 in all respects to this chapter and the other
25 laws and ordinances of the Town of Colonie as

1 well as conforming to the Town official
2 highway map, if any, and to any Comprehensive
3 Planning documents, other plans or maps as may
4 be adopted by the Town Board.

5 Site development proposals shall conform
6 to the design guidelines contained in this
7 chapter."

8 So as you can see, we, as a Board, have
9 certain legal requirements upon us in terms of
10 the Land Use Law and any particular project,
11 but certainly this one in particular.

12 Because I know that there will be some
13 questions that the Board, and certainly I,
14 will have in regard to the presentation just
15 made by the applicant, I would like to let
16 Chuck Voss, who is our Town Designated
17 Engineer with Barton and Loguidice, go over
18 the project and what he found.

19 MR. CAPONERA: Mr. Chairman, before Chuck
20 goes, we weren't quite done.

21 CHAIRMAN O'ROURKE: I apologize.

22 MR. CAPONERA: That's all right. We have
23 just a couple more slides.

24 Sorry, Chuck.

25 One of the things that I just wanted to

1 show is the property taxes that would occur
2 should this project be approved. I don't think
3 that it's necessary to go through the whole
4 scenario. You can see in the green what the
5 projected tax assessed values would be. We
6 have all these numbers from the Assessor's
7 office in the Town of Colonie. So, the town
8 taxes would go up from \$4,600 to \$41,000. The
9 school taxes, you can see at the end of the
10 day, total taxes are \$750,000 or thereabouts.

11 This is the creation of additional jobs.
12 This also reflects the average wage of the
13 associates of Wal-Mart and of course the 401K.

14 This is a figure that shows that Colonie
15 and Latham residents spend over \$7,000,000 a
16 year at Wal-Mart outside of Colonie. Of
17 course, as our Supervisor has indicated, the
18 state of the Town is reflected here
19 (Indicating).

20 MR. VOSS: Thank you.

21 Initially, our involvement with the
22 project began a year and a half ago. We were
23 tasked, as the Chairman noted earlier, to look
24 at the concept review submissions provided by
25 the applicant. Included with some of those

1 early applications, were documents submitted
2 by the applicant which included everything
3 from comments from early 2007 and 2008. We
4 looked at the application in August of this
5 year. There were many color renderings. There
6 were many additional items that were looked
7 at.

8 The Traffic Impact Study Statement was
9 provided by Creighton Manning in June 28, 2007
10 for the area. The draft impact study was
11 provided by Bergmann and Associates. The SEQRA
12 form, which is the long environmental
13 assessment form, submitted by Mr. Caponera,
14 and the technical traffic update to the GEIS
15 of Route 9 was updated on January 14, 2009.

16 What we had intended with our review,
17 that the Board now, has is to carry forth
18 comments from our October 14, 2009 review and
19 if you compare those two letters, you'll see
20 that we brought forth many of the comments
21 that we've raised from thereon. Specifically,
22 we looked at traffic comments.

23 There were Town of Colonie Planning
24 comments that the Chairman touched upon a few
25 minutes ago. We also summarize many of the

1 comments by the Town of Colonie departments;
2 Latham Water, Pure Waters comments, and
3 initially, the Office of Stormwater
4 Management. There were additional comments
5 provided by CDTA early on in the process.
6 Certainly the Planning and Economic
7 Development Department had additional
8 comments. There were additional comments
9 submitted, dated September 3rd of this year,
10 which we incorporated in their entirety
11 because they were appropriate.

12 There were additional comments from the
13 Albany County Planning Board. There was a 239
14 Referral Notification sent to the County
15 Planning Board, dated February 21, 2008. It's
16 on file and I believe the Board Members have
17 it.

18 Again, this was in working with the
19 design standards of the HCOR district and how
20 they apply to this project.

21 I'd just like to summarize quickly two of
22 the primary issues that we brought on early in
23 this process. This is in addition to the
24 waivers, which I believe that the Chairman
25 will get into in a few minutes with the rest

1 of the Board. They were items "four" and
2 "five" of our cover letter. This related to
3 parking requirements and access to the site.

4 The site is predominately surrounded by
5 private roads; Autopark Drive and Plaza Drive.
6 There are private driveways as well. There are
7 easements. The question that we have for the
8 applicant is to provide more information.
9 Other easement rights are in place to ensure
10 that the proposed access to and from the site
11 would be granted. If access easements are not
12 in place, how would the site be accessed from
13 Loudon Road/Route 9? I believe that the
14 applicant is prepared to address these issues.
15 However, we wanted to bring that to the
16 Board's attention as it may affect the site
17 layout.

18 Additionally, the parking issues and
19 access in and out of the parking lots - we
20 raised that issue as well. That certainly had
21 the waiver issues.

22 C.J., if you like, I can touch on those.

23 CHAIRMAN O'ROURKE: I think that
24 certainly before we would even get to looking
25 more into the concept, I think that the

1 waivers have to be discussed. Without the
2 waivers, the project can't move forward.

3 MR. VOSS: The following issues and
4 waiver requests submitted by the Board were
5 discussed with Planning and Economic
6 Development and I'll read those now.

7 The following waivers from the Board are
8 requested:

9 "A. A reduction in the number of required
10 parking spaces from 933 to 842. The department
11 supports this request and recommended further
12 reduction to the total number of parking
13 spaces.

14 B. The 9.5 foot wide standard parking
15 space is not consistent with maximum allowed
16 width of 9 feet. The applicant proposes a
17 9.5 foot width. The department recommends a
18 maximum parking width of nine feet.

19 Item 2: The following waivers from the
20 Board are requested to require findings from
21 the Board stating the extent of the
22 justification for each.

23 A. Permit parking within a 40-foot
24 building setback along Autopark Drive. The
25 department does not support this waiver to

1 address the first row of parking,
2 approximately 35 spaces, closest to Autopark
3 Drive be eliminated.

4 B. Since the initial concept submission,
5 the code regulating interior greenspace was
6 revised in August of 2008 from a 5 percent
7 requirement to 20-square foot landscaped
8 island for each parking stall. An interior
9 greenspace island, as defined in the HCOR
10 design standards is an area that has at least
11 75 percent of the perimeter abutting parking
12 area pavement. Using the standard
13 16,840 square feet of interior greenspace is
14 required and only 8,656 square feet is
15 proposed. The department does not support this
16 waiver in the HCOR design standard."

17 CHAIRMAN O'ROURKE: There is one other
18 waiver.

19 MR. VOSS: The initial waiver was
20 building placement. The Wal-Mart building does
21 not orient the main façade of the entrance
22 toward Autopark Drive. The I87 Northway ramp
23 does not constitute a front yard since it has
24 a considerably limited access highway and not
25 a street by the Land Use Law definition.

1 So, what we have, essentially, is that we
2 met with the applicant twice. Again, in August
3 of this year, if you go over prior comments,
4 the applicant had submitted to us, and I
5 believe to the Town, two letters addressed our
6 prior October 14th comments, as well as the
7 current comments that we have before us.

8 In a letter dated July 23 from Doucet and
9 Associates, primarily addresses the traffic
10 issues and many of the site issues and many of
11 the landscaping issues. Then we had a letter
12 of August 18 from Bergmann and Associates
13 which primarily addressed the Town
14 Comprehensive Plan issues and the County
15 Planning Board, as well.

16 CHAIRMAN O'ROURKE: Thank you, Chuck.

17 Mr. Caponera, in light of what Mr. Voss
18 has just spoken about in regard to a waiver, I
19 think that it's paramount to this project if
20 you want to discuss the waivers that you guys
21 are asking the Board for.

22 MR. CAPONERA: Absolutely. I'm going to
23 have John Brodeur go through the comments and
24 explain our position on this and we'll go
25 through this quickly.

1 CHAIRMAN O'ROURKE: Great. Thank you.

2 MR. BRODEUR: Would you like to start
3 with the new traffic issues that you've
4 raised?

5 CHAIRMAN O'ROURKE: Let's start with the
6 waivers.

7 MR. BRODEUR: First, we're requesting a
8 reduction in the number of parking spaces. We
9 have reviewed the Town's requirements and feel
10 that we can adequately address the needs of
11 Wal-Mart's customers' parking by reducing the
12 number of spaces to what we have proposed.

13 CHAIRMAN O'ROURKE: And honestly, we have
14 offered other applicants similar parking
15 waivers and probably would be in favor of even
16 further reductions in those parking waivers. I
17 won't speak for the entirety of the Board, but
18 that's been the Board's position on other such
19 projects.

20 MR. BRODEUR: And we can look into
21 further reductions as well and see how that
22 will impact operations.

23 The 9.5 foot wide parking space - it's
24 our interpretation that we do not need a
25 waiver for that, in that the size that is

1 given does not state a maximum size of nine
2 feet. It's a typical size of nine feet. Due to
3 that reason, we are not requesting a waiver. I
4 do know that the Planning Department has
5 stated that they do need one. It's our
6 interpretation that we do not. I guess we
7 would have to discuss that with the Board to
8 see if they agree with our interpretation that
9 it's not a maximum size. It does state a
10 maximum 24 foot drive aisle, but doesn't state
11 a maximum nine foot wide stall.

12 It's Wal-Mart's experience in several
13 stores across the country that customers
14 prefer a 9.5 foot stall in order to help them
15 facilitate getting into their cars a little
16 bit easier and that's why we requested the
17 9.5.

18 CHAIRMAN O'ROURKE: I believe that it's
19 our contention that the nine foot aisle width
20 reduces the amount of run-off and rainwater
21 and impervious soil and that's been across the
22 Town. We've implemented nine feet. Whether or
23 not the maximum is in or not, that's the way
24 that it's viewed.

25 MR. BRODEUR: In order to expand on that,

1 if we were to take the Town's standards of
2 5.0, which would be approximately 91 spaces
3 more than we currently proposed, and we use
4 the nine foot standard, we come up with
5 roughly just over 14,700 square feet of
6 impervious area. By adding that one-half
7 square foot of reducing the parking ratio to
8 what we are proposing, 842, we've actually
9 decreased the amount of impervious area by
10 7,100 and change.

11 CHAIRMAN O'ROURKE: No, because it's not
12 half a square foot.

13 MR. BRODEUR: It's not half a square
14 foot. It's half a foot over 18 feet.

15 CHAIRMAN O'ROURKE: So, it's nine square
16 feet.

17 MR. BRODEUR: Correct, which over those
18 842 spaces, roughly is just under 7,200 square
19 feet less impervious area than if we were to
20 meet the town's standards which we would ask
21 the waiver from. If we met the Town standards
22 of 5.0 there would be 14,700 and change worth
23 of impervious additional area. We're proposing
24 to reduce that number by 7,200.

25 CHAIRMAN O'ROURKE: Right, well, we're

1 looking to reduce the paving and the parking
2 and we told you that we'd give you the waivers
3 in conjunction with that.

4 MR. BRODEUR: It's an operations issue
5 that I'll have to defer to Wal-Mart to get an
6 answer on that. It's something that we can
7 look into.

8 CHAIRMAN O'ROURKE: What we are going to
9 do is go back to the waivers and we're going
10 to have each of the Board Members weigh in on
11 each, open it to the public on that specific
12 waiver, comment specific to the waivers and
13 then vote on those waivers. We can't even get
14 to concept without having the waivers in
15 place.

16 MR. CAPONERA: You want us to finish -

17 CHAIRMAN O'ROURKE: We're going to go
18 back to the parking reduction.

19 MS. VAIDA: Excuse me. Before we start,
20 we wanted to put something else on the record
21 regarding Mr. Paul Rosano, one of our members.

22 We looked over the Code of Ethics and we
23 don't feel that his prior relationship with
24 Wal-Mart in any way violated the rules of
25 ethics, but Mr. Rosano did want to disclose

1 that to the Board and the public and he wanted
2 to make a statement regarding that.

3 MR. ROSANO: I have a statement, so I
4 just want to take a second to read it to you.

5 I want to disclose that I was employed by
6 Wal-Mart from 1993 to 2004. For the past six
7 years I have had no dealings, either
8 personally or financial, with Wal-Mart. I
9 hereby affirm that there is nothing from that
10 experience which would impair or affect my
11 independence of judgment. I will act fairly
12 and impartially in considering Wal-Mart's
13 application before us tonight.

14 CHAIRMAN O'ROURKE: Thank you, Paul.

15 So, again, what we're going to do is go
16 back to the initial one - the parking
17 reduction.

18 Peter, do you have specific questions?

19 MR. GANNON: I just have a comment on the
20 parking reduction. I think that I understand
21 why the requirements are in place, but it
22 seems as though each time we look at one of
23 these project individually, it seems like an
24 exorbitant amount of parking. I don't even
25 think that 842 even gets us to where I would

1 like to see us. It's a step in the right
2 direction. I support the reduction and I would
3 be on Board with a further analysis to
4 determine what the actual needs are that
5 Wal-Mart would determine is suitable for the
6 location, and then bring us that analysis for
7 the Board to consider in the future to
8 determine. Every time you get one of these,
9 all I think of is Kmart on Route 2. I hope
10 that Wal-Mart never meets the same fate as
11 Kmart and the Sear's corporation.

12 CHAIRMAN O'ROURKE: Peter, to the point,
13 please.

14 MR. GANNON: Well, it is to my point that
15 it's an awful lot of parking to look at.

16 I have the same concerns with the excess
17 number of parking spaces for all the same
18 reasons. Anything that could expand the
19 existence of the greenspace, I would support.
20 I'd like the applicant to take a look at the
21 reduction of size of parking spaces.

22 For the building placement and the
23 percentages, those are the guidelines that the
24 residents of this town and the leaders of this
25 town have had significant input into. We're

1 bound to stick by them, and I support sticking
2 by them 100 percent.

3 As far as weighing in on those, I don't
4 think that I would be in any position, unless
5 there was an extreme circumstance, to support
6 waivers for either one of those that were
7 inconsistent with the Comp Plan.

8 MR. SULLIVAN: Are we just commenting on
9 parking?

10 CHAIRMAN O'ROURKE: Just asking questions
11 on the parking waiver.

12 MR. SULLIVAN: I have no question on
13 them. I'm not opposed to reducing the number
14 of spaces to 842.

15 CHAIRMAN O'ROURKE: Thank you.
16 Tim?

17 MR. LANE: I presume that they go hand in
18 hand. There's the square footage issue and you
19 want the width for your customer safety -

20 MR. BRODEUR: Basically, to help getting
21 into their car easier without.

22 MR. LANE: So, the reduction has an
23 effect on that. If we did 9 feet, you'd have
24 933 spaces, which is an excess of space that
25 you don't need.

1 MR. BRODEUR: That's correct.

2 MR. LANE: I have no problem with that.

3 CHAIRMAN O'ROURKE: Thanks.

4 Lou?

5 MR. MION: I have no problem with the
6 reduction at all.

7 CHAIRMAN O'ROURKE: Paul?

8 MR. ROSANO: No.

9 CHAIRMAN O'ROURKE: Anybody in the
10 audience have any specific questions regarding
11 reducing the parking requirements?

12 Yes, sir?

13 MR. BAKER: My name is Jeff Baker and I'm
14 an attorney with Young Sommer here in Albany.
15 We represent the Boght Area Neighborhood
16 Association, which are the neighbors who are
17 the most directly impacted by this project.

18 I understand that you want comments
19 specifically on the parking -

20 CHAIRMAN O'ROURKE: If you have questions
21 regarding the waiver that they're asking for
22 in the reduction of the parking spaces.

23 MR. BAKER: Let me start off with just an
24 initial point on that. I'm sure that I'll get
25 the opportunity later to expand upon it.

1 Legally, you cannot entertain any
2 question about a waiver of design standards
3 because you haven't done anything on SEQRA and
4 that is part of the commitments and the
5 decisions that you are making on this project.

6 Let me just finish this, if I may
7 Mr. Chairman.

8 You can't take the question of a waiver
9 of a parking lot in a vacuum. It's all lumped
10 together. My specific question -

11 CHAIRMAN O'ROURKE: We are not dealing
12 with SEQRA at this time, sir. They are
13 independent -

14 MR. BAKER: No, they're not. You cannot
15 take an action and give it approval and start
16 to waive some of your design standards until
17 you have completed the SEQRA process because
18 that gives you the information on the overall
19 impacts of the project.

20 Related to the parking itself that's
21 being asked for the reduction, Mr. Chairman,
22 you made the proper question. The issue of the
23 size of the parking stalls is related to the
24 question in the reduction of the parking lots
25 and spaces, which we certainly support as

1 small of a parking lot as is reasonably
2 necessary to reduce run-off of impervious
3 surfaces. So, what that reduction in numbers
4 should be is an open question. All you can say
5 at this point is yes, we support a reduction.
6 It's impossible for you to say that you
7 support a reduction down to 833, 856, or
8 whatever number.

9 CHAIRMAN O'ROURKE: Right. This is
10 concept level, sir.

11 MR. BAKER: Your concept level goes to
12 the fundamental flaws of the whole process.
13 You have to date, your concept level approval
14 that you're engaging in now. The details that
15 have been in the application materials that
16 I've been able to review have not been
17 completed. The full application materials are
18 not available at the Town Hall. They are so
19 beyond the level of detail of the concept of
20 your design standards that are embodied in the
21 zoning law. You're getting down to levels of
22 landscaping and façade design, which are
23 certainly appropriate things to talk about.
24 Those are final site plan designs under your
25 own code and it makes us too far down the road

1 for an approval of this project for the
2 environmental review.

3 This wonderful presentation put on by
4 Wal-Mart left out the biggest issue that this
5 project presents. There was not a word about
6 traffic and the impact. The issues residing
7 around the parking lot and the design of the
8 building -

9 CHAIRMAN O'ROURKE: Sir, I'm going to
10 have to interrupt you. This is not where the
11 meeting is going and I'm not going to allow
12 you to take over the meeting; whether you
13 believe yourself to be right in the format or
14 not.

15 This Board determines SEQRA farther into
16 the project than concept; when the application
17 is complete. The application is not complete.
18 So, you're factually incorrect in what you are
19 telling the taxpaying residents of this town.
20 So, if you don't have any specific question
21 regarding the waiver that they are seeking in
22 regard to a reduction in the parking
23 requirements of the Town of Colonie in regard
24 to the Land Use Law, I would ask you to please
25 go back and take your seat.

1 MR. BAKER: That's fine, but are you
2 going to be taking comments tonight on the
3 concept approval, itself?

4 CHAIRMAN O'ROURKE: If we get there, we
5 may. Without the waiver, they can't go through
6 on concept.

7 MR. BAKER: The only other comment that I
8 would make regarding this specific waiver that
9 you're bringing up now is the objection to the
10 fact that this notice for this meeting did not
11 identify what the waiver was for, and did not
12 provide the information. The information was
13 not available at any time with the application
14 materials from the applicant, with regard to
15 asking for what waivers and providing the
16 supporting information. So, it's impossible
17 for the people to comment on this. I will hold
18 the rest of my comments to later.

19 CHAIRMAN O'ROURKE: Thank you, sir.

20 Anyone else have a question regarding
21 this variance?

22 Yes, Mr. Nichols.

23 MR. NICHOLS: Thank you.

24 I agree with Mr. Baker. I don't think
25 that there is enough information. I would

1 encourage you not to take any action on this
2 waiver until you yourselves have an
3 opportunity to fully understand what all the
4 ins and outs are. Just like this gentleman
5 just said, you didn't know what all the
6 details were with respect to this waiver until
7 five minutes ago.

8 There are people that have been sitting
9 here now since 7:00 and we still haven't had
10 the chance to talk about the full project. I
11 would just ask that you do not take any action
12 tonight on the waiver issue.

13 CHAIRMAN O'ROURKE: Okay, before I get
14 fooled the third time, is there anyone that
15 has a question specifically to the reduction
16 in the parking?

17 MR. NICHOLS: Do you have information
18 about the pollution that people are going to
19 have to endure; yes or no?

20 CHAIRMAN O'ROURKE: I do not. Do you have
21 the information, Tim?

22 MR. NICHOLS: No.

23 CHAIRMAN O'ROURKE: Well, the Board is
24 looking for information so if you don't have
25 it, I don't have it. Possibly the engineers

1 might have it.

2 MR. BURDYL: Mark Burdyl, Pollock Road,
3 Latham.

4 When you guys calculated the nine-foot
5 width for the stall, is that based upon an
6 average width for a car and how wide the doors
7 open? In other words, a four-door car versus a
8 two-door car?

9 CHAIRMAN O'ROURKE: I honestly cannot
10 answer that. I don't know how the
11 determination at nine foot was based. Counsel
12 was looking at it. It is a state standard that
13 it's nine foot. I don't know that to be true,
14 but that's my understanding.

15 MR. BRIDELL: Is it your understanding
16 also that is the maximum or the minimum width?

17 CHAIRMAN O'ROURKE: My understanding is
18 that it's maximum.

19 MR. LACIVITA: C.J., if I may? Article 10
20 General Regulations, Section 190-47 talks
21 about parking.

22 CHAIRMAN O'ROURKE: "Parking dimensional
23 requirements. The dimension of a typical
24 parking space under this section shall be nine
25 feet by eighteen feet."

1 MR. LACIVITA: And that shall go to the
2 design standards.

3 CHAIRMAN O'ROURKE: Correct. That's a
4 design standard in the Land Use Law.

5 It will be modified as deemed necessary
6 by the Planning Board to ensure
7 adequate -- so that's why you need a waiver.

8 Did I get to Paul on the parking in
9 reduction of spaces?

10 MR. ROSANO: Nothing at this time.

11 CHAIRMAN O'ROURKE: Chuck, I have a
12 technical question. Can this Board vote on a
13 waiver without the SEQRA being adopted or do
14 we have to postpone them until final?

15 MR. VOSS: I think I would refer to
16 counsel on that one. I don't mean to pass the
17 buck along. It's my understanding - and I'm
18 not exactly sure how the code addresses that -

19 CHAIRMAN O'ROURKE: Okay, so what we'll
20 do is - we're not going to vote on it. We are
21 going to poll the Board.

22 MR. VOSS: I think that would be
23 appropriate.

24 CHAIRMAN O'ROURKE: We will poll the
25 Board, in regard to the waivers that they need

1 to go to concept, and then we'll go back to
2 you, Mr. Caponera, and you'll understand how
3 the Board feels about the waivers going
4 forward until the SEQRA determination is
5 looked at. Again, as we move SEQRA further
6 into the process, I think that it may be an
7 issue. I don't want to open it to any
8 difficulties.

9 Peter, in favor of parking reduction?

10 MR. GANNON: As a general idea, I'm in
11 favor of reducing the parking, yes.

12 CHAIRMAN O'ROURKE: Mike?

13 MR. SULLIVAN: Yes.

14 CHAIRMAN O'ROURKE: Tim?

15 MR. LANE: It's consistent with what we
16 have done in the past.

17 CHAIRMAN O'ROURKE: Lou?

18 MR. MION: Yes.

19 CHAIRMAN O'ROURKE: Paul?

20 MR. ROSANO: Yes.

21 CHAIRMAN O'ROURKE: And I vote yes.

22 Parking space width - polling the Board.

23 Peter?

24 MR. GANNON: Again, reduction is good for
25 me, yes.

1 CHAIRMAN O'ROURKE: Keeping to design
2 standard or not - keeping it to nine and a
3 half.

4 MR. GANNON: Yes.

5 CHAIRMAN O'ROURKE: Mike?

6 MR. SULLIVAN: I would approve a waiver
7 to nine and a half.

8 CHAIRMAN O'ROURKE: Tim?

9 MR. LANE: I would approve a waiver to
10 nine and a half.

11 CHAIRMAN O'ROURKE: Lou?

12 MR. MION: I would keep it at nine.

13 CHAIRMAN O'ROURKE: Paul?

14 MR. ROSANO: Nine is good.

15 CHAIRMAN O'ROURKE: I vote nine, as well.
16 Four to two on the poll.

17 Parking within the setback. They're
18 looking for the waiver for parking.

19 I'm sorry, Mr. Caponera, would you like
20 to explain to us why you would like that?

21 MR. CAPONERA: We had a meeting on
22 August 10th. When I say we, I mean myself, Joe
23 and Chuck was there and we discussed this
24 issue. I thought that we had it resolved,
25 because if you look at the proposal, it's a

1 combination of 2, 4 and 6.

2 On Lot 2 there is an existing building.
3 That building is close enough to
4 Autopark Drive so that none of our parking, as
5 proposed, is really important to keep this
6 building setback. Again, I would defer to your
7 Town Designated Engineer who can comment on
8 that, but we did have quite an exercise over
9 that. In the end, we came to a meeting of the
10 minds.

11 CHAIRMAN O'ROURKE: I would tend to
12 disagree because I wish you had included me in
13 the meeting, because as I look at it -

14 MR. CAPONERA: I think that
15 unfortunately, because of other circumstances
16 we couldn't do that.

17 CHAIRMAN O'ROURKE: With regard to Lot 2,
18 the lots are not joined as of yet.

19 MR. CAPONERA: No, they are proposed to
20 be joined under our application.

21 CHAIRMAN O'ROURKE: Right, so you can't
22 take the setback off an existing building and
23 use it for another lot that you're putting a
24 brand new building on.

25 MR. CAPONERA: We're talking about a

1 proposal for lots 2, 4 and 6 as one. We have
2 an application before the Board that merges
3 those three lots. Under that merger, that
4 would become one lot. I understand what you're
5 saying.

6 CHAIRMAN O'ROURKE: It's actually quite
7 plain in the HCOR under the Land Use Law
8 S190.41 Building Placement Subsection V. "On a
9 lot containing an existing building, the
10 maximum setback requirement shall not be
11 mandatory. However, any new construction
12 should comply with the intent of the maximum
13 setback provisions as far as is practicable."

14 My strict interpretation of that law is
15 that they're too insignificant. A carwash at
16 the top of Autopark, in a reasonable man's
17 terms, has nothing to do with an 180,000
18 square foot Wal-Mart. That's my
19 interpretation.

20 MR. CAPONERA: When this proposal first
21 started, there was parking all along here
22 (Indicated). When we had the DCC meeting, the
23 suggestion was to take these and eliminate
24 these parking spots, which we did. In so
25 doing, when we drew the line at the meeting on

1 August 10th, obviously this was set back. I
2 think that the discussion is the first row
3 parking right there. This is what we're
4 talking about (Indicating).

5 I did briefly go through the statute as
6 you were reading it too, C.J. This is the row
7 that we're talking about right here
8 (Indicating).

9 MR. BRODEUR: That was the same
10 conclusion that I came from the meeting with.
11 It was brought up and Mike Lyons said that it
12 was more in-line with a lot that contained
13 more than one building, that the maximum
14 setback requirement shall apply only to the
15 building located closest to the front lot
16 line.

17 CHAIRMAN O'ROURKE: I understand. I think
18 that Mr. Lyons just didn't read number "five".
19 Because it says, however, any new construction
20 should comply with the intent of the maximum
21 setback provisions as far as this project. I
22 think that it was just something that may have
23 been missed at that meeting.

24 MR. SWEENEY: May I, Mr. Chairman?

25 CHAIRMAN O'ROURKE: You may, Mr. Sweeney.

1 MR. SWEENEY: Thank you, very much.

2 I'm Bob Sweeney and I'm also an attorney
3 with the Wal-Mart team.

4 I just want to go to the heart of this
5 whole thing that we really haven't talked
6 about yet, and that's intent. What's the
7 intent of having your parking setback from the
8 road? That's so you don't have pavement off to
9 the road so that people traveling on the road
10 aren't looking at the fronts and backs of cars
11 right next to the road.

12 We have gone to great lengths to show you
13 our landscaping and berming plan along
14 Autopark Drive to screen the property line
15 from Autopark Drive. That's the intent here.
16 It's important to talk about 40 feet and
17 whether the building applies legally or not on
18 the line. But really, the intent here is to be
19 set back far enough and screened enough so
20 that your parking lot isn't hanging over the
21 public road. That's really what we have tried
22 to do here with the landscaping and the
23 berming. So, I certainly think that it's
24 within the Board's discretion based on the
25 intent - and that's the key.

1 CHAIRMAN O'ROURKE: I agree, but that's
2 why a waiver is required.

3 MR. SWEENEY: And arguably there is a
4 lease that's been -- I won't say agreed to,
5 but arguable it doesn't apply to this. Under
6 the circumstances and in an effort to meet the
7 intent, we would request that the Board
8 favorably consider a waiver. This is not an
9 encroachment on the public sensibility of
10 driving down Autopark Drive. It is, arguably,
11 not necessary for a waiver and whichever way
12 you go on that, I think that it's
13 inappropriate for a waiver on the intent
14 issue, which is the heart of the whole thing.

15 MS. VAIDA: If I may, Mr. Sweeney, I
16 don't agree with you at all in terms of the
17 waiver. I think that it is very clear in the
18 Land Use Law that the last provision that
19 Mr. O'Rourke read is the one which would
20 control the situation here. I think that you
21 would need to get a waiver and in order to get
22 a waiver, you need to show the Board that
23 there is no other practical alternative to the
24 proposed waiver, in order to conform to the
25 standard. I don't think that you've actually

1 shown that or even talked about that so far in
2 this presentation.

3 MR. SWEENEY: Obviously, our point is
4 that we would like to reduce a number of
5 parking spaces, as much as we can. Wal-Mart is
6 noted for building extra parking spaces but
7 we're not here to build more parking spaces
8 than we need. We have to build enough parking
9 spaces to reasonably operate their store and
10 they have 4,000 stores and they have a feel
11 for how many parking spaces are needed so that
12 they can have enough, but not too many.

13 MS. VAIDA: Right, but I don't think that
14 the parking spaces were really the issue. What
15 we're talking about seems to be one of the
16 major issues - is this location of the
17 building and the setback requirements.

18 CHAIRMAN O'ROURKE: Well, this is the
19 first portion of that.

20 MR. SWEENEY: My answer to that is "take
21 off some more parking spaces".

22 CHAIRMAN O'ROURKE: Mr. Brodeur is your
23 engineer and he can answer that better than we
24 can. We're not engineers.

25 MR. SWEENEY: I think that Victor just

1 pointed it out on the plan that if there is no
2 waiver and it's determined that we're not
3 meeting the intent, then the answer is that
4 you get to take out another row of parking.

5 Going back to what I was saying, it's
6 Wal-Mart's intent to reduce the number of
7 parking spaces as much as they can, provided
8 they have what they need to reasonably operate
9 their store. They need to accommodate their
10 customers. If this project is approved, I
11 think that the Board wants it to be a success
12 and it will pay its taxes and have people
13 happily shopping there and they're not going
14 to be if there aren't enough parking spaces.
15 Nobody wants them to have too many parking
16 spaces.

17 The Counsel's comments - she disagrees
18 with the legal argument that "a waiver is not
19 required" and that "a waiver is required". If
20 a waiver is not granted, than we have to
21 reduce more parking spaces and that goes to
22 counsel's point that practically we need the
23 parking spaces. We've pushed it down as far as
24 we can, but while practically we need the
25 waiver, that's the basis for that and I think

1 that we need the guidelines to insure that
2 we're not exposed to the public roadway with
3 that area of parking.

4 CHAIRMAN O'ROURKE: Okay, we're going to
5 open it to the Board.

6 Pete, do you have questions that you need
7 answered on this or clarification?

8 MR. GANNON: No clarifications needed.

9 CHAIRMAN O'ROURKE: Mike?

10 MR. SULLIVAN: No.

11 CHAIRMAN O'ROURKE: Tim?

12 MR. LANE: No.

13 CHAIRMAN O'ROURKE: Lou?

14 MR. MION: No.

15 CHAIRMAN O'ROURKE: Paul?

16 MR. ROSANO: No.

17 CHAIRMAN O'ROURKE: Polling the Board,
18 would you be favor Peter, of allowing the
19 parking within the setback?

20 MR. GANNON: As an isolated issue, no.
21 But in conjunction with some of the elements
22 of number one, I think that there is some room
23 to talk about things. Alone, I don't see the
24 need for it. Based on Counsel's recommendation
25 or advise, there needs to be a demonstration

1 of that.

2 CHAIRMAN O'ROURKE: Mike?

3 MR. SULLIVAN: No.

4 CHAIRMAN O'ROURKE: Tim?

5 MR. LANE: Nay.

6 MR. MION: Nay.

7 MR. ROSANO: Nay.

8 CHAIRMAN O'ROURKE: And I'd go nay, as
9 well.

10 In polling the Board, they do not favor
11 the parking within the setback requirements as
12 stated in the Land Use Law.

13 The next one is interior greenspace.

14 We're just polling the Board and then we
15 will open it up for further conversations. I
16 just want the applicant to know where they
17 would stand in regard to the waivers.

18 MR. KEVIN BETTE: I just have one thing
19 that I want to say and throw out. If you're
20 talking about Autopark Drive, that's a private
21 drive -

22 CHAIRMAN O'ROURKE: I'm not even there
23 yet.

24 MR. KEVIN BETTE: I kind of agree with
25 the point that you can't drill down to detail

1 until you understand the whole concept. I
2 think that one of the things that folks want
3 to understand is the concept. I have a lot of
4 questions on the concept, but I think that it
5 would be helpful -

6 CHAIRMAN O'ROURKE: This is a very
7 detailed project and I take offense to the
8 attorney that doesn't think that we pour over
9 this, but I certainly have a huge
10 understanding of this project and it's been in
11 the works. What we have to do first before it
12 can even move to concept is - there are some
13 issues with the waivers that they are seeking.
14 That's why I've decided to take it this route.

15 If you would, Mr. Brodeur, you can talk
16 about interior greenspace.

17 MR. BRODEUR: I'd like to pull up the
18 slide again on how we calculated interior
19 greenspace.

20 CHAIRMAN O'ROURKE: I think that we're
21 all set that you have the number -

22 MR. BRODEUR: I want to show how we
23 calculated our percentage of interior
24 greenspace.

25 Basically, I'm not sure how Mr. Lyons

1 calculated it. The first time that we saw this
2 calculation was late yesterday afternoon. The
3 way that it's specifically calculated in our
4 experience, is that the entire area, including
5 the access drives, are included in the
6 calculations, such that it allows all the
7 interior islands to be included as well.

8 CHAIRMAN O'ROURKE: And not to interrupt
9 you and not to be a wise guy, but the Land Use
10 Law is very specific about this.

11 MR. BRODEUR: It is very specific. One
12 thing I disagreed with and what I think that
13 he might have done was, he stated that an
14 interior greenspace island at the HCOR design
15 standards is an area that has at least
16 75 percent of its perimeter abutting the
17 parking area; not the parking stall, but the
18 parking area. In a parking area, it's the
19 entire parking lot, including all of the
20 access drives, front, rear and side.
21 We've included that in all those. Other than
22 that, there would be no way to use the
23 existing end cap island, which is not a
24 standard that I've seen. It's our professional
25 opinion, as professional engineers, that it's

1 included in the parking area.

2 CHAIRMAN O'ROURKE: As the Town
3 Designated Engineer - and you both being
4 engineers, Mr. Johnson and Mr. Voss - would
5 that be your professional opinion as well?

6 MR. JOHNSON: Just for the Board's
7 benefit, I'm not a professional engineer.

8 MR. VOSS: I have not seen the
9 requirements, and I have not read through the
10 requirements.

11 MR. BRODEUR: I have this reiterated from
12 Mr. Lyons. These aren't our numbers. Again, we
13 have interior landscaping of 19,518 square
14 feet which is 5.8 percent interior
15 landscaping; not the 8,866. Again, I'm
16 assuming that he may not have included those.
17 You have read it in the context of the parking
18 stall. It doesn't say parking stall. It says
19 parking area. We've included this whole
20 perimeter. We chopped it off here so we did
21 not include the access drive leading into the
22 site. We did not include any of this area, nor
23 this area (indicating). We included only the
24 areas pertinent to parking and parking
25 circulation.

1 CHAIRMAN O'ROURKE: What's the square
2 footage that you came up with?

3 MR. BRODEUR: That was 19,518 square
4 feet.

5 CHAIRMAN O'ROURKE: Somebody is going to
6 have to look at the definition of "parking
7 area".

8 You've been very busy, Mr. Caponera.

9 MS. VAIDA: The argument that you're
10 making - is this submitted on paper?

11 MR. BRODEUR: No. We submitted within our
12 papers that we meet and exceed the
13 requirement.

14 MR. CAPONERA: Just to clarify,
15 Ms. Vaida, that was answered in the 7/22/10
16 letter.

17 CHAIRMAN O'ROURKE: But all it says is
18 that we meet -

19 MR. CAPONERA: And we exceed it.

20 CHAIRMAN O'ROURKE: Which there is a
21 discrepancy between what the Planning
22 Department says and the Doucet letter.

23 MS. VAIDA: It would have been helpful if
24 you had explained why you disagreed.

25 MR. BRODEUR: Honestly, the first time

1 that we saw this comment was yesterday at
2 4:00. Again, I've dealt with this issue in
3 every jurisdiction -

4 CHAIRMAN O'ROURKE: Joe, why is that? Why
5 are they hearing about that at 4:00 yesterday?

6 MR. LACIVITA: I can't answer that.

7 CHAIRMAN O'ROURKE: How did you find out
8 at 4:00 yesterday?

9 MR. CAPONERA: I got a letter back from
10 Mr. Voss dated September 10th.

11 MR. VOSS: C.J., we faxed the review
12 letter that had incorporated comments from the
13 Department of Planning and Economic
14 Development.

15 MS. VAIDA: Wasn't that substantially the
16 same as the 2008 comments?

17 CHAIRMAN O'ROURKE: No, the parking was a
18 new issue.

19 MR. VOSS: Our review letter that I went
20 through - we had incorporated Michael Lyons'
21 comment letter from September 3rd to this
22 Board. His recommendation about the parking
23 calculations were in there.

24 CHAIRMAN O'ROURKE: We'll talk further
25 about it, but you representing the Town as the

1 Town Designated Engineer, your firm, you
2 should be able to answer what the parking area
3 is. Are they compliant or aren't they
4 compliant? This isn't a forum for this, but
5 certainly these folks are out here paying
6 their taxes. We need to have these answers
7 when we come to a forum like this.

8 To the last point, if you want to go to
9 the waiver on building placement?

10 MR. BRODEUR: The waiver on the building
11 placement -

12 CHAIRMAN O'ROURKE: That's a new one. I
13 found that one today.

14 MR. BRODEUR: You mean the orientation?

15 CHAIRMAN O'ROURKE: Yes. Explain to me
16 your thought process.

17 MR. BRODEUR: The thought process was, again,
18 to provide the best use of the site of
19 development that we're proposing. We looked at
20 alternatives with the site orientated toward
21 the street. The intent of the HCOR guidelines
22 appears to be more of an urban environment. In
23 discussions with the Planning Department, they
24 agreed.

25 CHAIRMAN O'ROURKE: Sir, are you saying

1 that it's not zoned properly?

2 MR. BRODEUR: No. It's the intent of the
3 HCOR guidelines to have more of an urban -

4 CHAIRMAN O'ROURKE: I don't think that
5 you're at liberty to say what the intent of
6 that is.

7 MR. BRODEUR: That's my opinion. In
8 reviewing the standards, that's what several
9 of the design requirements appear to indicate.
10 In keeping with the surrounding area and
11 basically best utilizing the view, most of the
12 money goes into the front architecture. We
13 orientated the site in this manner, as well as
14 to provide the safest and best access for our
15 customers. We looked at orientating it in
16 other directions, and basically in strict
17 accordance with the HCOR guidelines.

18 If we set that 25 feet off Autopark
19 Drive, the shortest walk from 88 spaces to the
20 GM vestibule would be approximately 400 feet.
21 The shortest walk to the grocery vestibule
22 would be roughly 630 square feet. In
23 accordance with ADA, we felt that this was the
24 best orientation to provide the shortest
25 access for all customers. Essentially, we're

1 trying to provide the shortest way for the
2 people that have the most difficult time
3 getting to the front door.

4 CHAIRMAN O'ROURKE: So, are you saying
5 that your project can't meet the requirements
6 of the HCOR?

7 MR. BRODEUR: No. My point being that we
8 felt that we met the intent of the HCOR
9 guidelines by reusing the site that was
10 previously developed and orientating it in a
11 manner which, at the time, was preferred by
12 the Town Officials, as we discussed it with
13 them back in the DCC meeting.

14 CHAIRMAN O'ROURKE: I'm sorry that the
15 prior officials misled you, but I read this
16 very plainly.

17 "Site organizations - buildings must
18 present their main façade and entrance toward
19 the street."

20 I don't know how the Land Use Law could
21 be any plainer. I don't understand.

22 MR. BRODEUR: I can't argue that. That
23 particular statement doesn't state exactly
24 what you're saying. It also states that the
25 Board may waive the standards in order to

1 secure reasonable development of the site.

2 CHAIRMAN O'ROURKE: You have to show us a
3 reasonable practical alternative. You have to
4 present to us that there is no other way to
5 develop this site. We didn't come to you and
6 say, fit your Wal-Mart here. You're supposed
7 to be proposing to us. You have to meet the
8 laws of the Town of Colonie. These folks pay
9 their taxes. We can't say, don't pay your
10 taxes. Everybody has to follow the rules and
11 regulations.

12 Yes, Mr. Sweeney?

13 MR. SWEENEY: Thank you.

14 The standard really is not "any other
15 alternative", but "no practical alternatives".
16 Once again, it's an intent issue and
17 practical alternatives. The building - if you
18 turn it to face Autopark Drive, you would have
19 your truck docks on the 87 northbound ramps -

20 CHAIRMAN O'ROURKE: But that's an
21 engineering issue. That's not an issue for
22 this Board.

23 MR. SWEENEY: Unless you're weighing
24 practical alternatives and if this Board wants
25 the front façade of the building, with all the

1 architectural effort that Jerry talked to you
2 about, to face Autopark Drive where nobody is
3 going to see it, as opposed to putting your
4 best face forward toward the Northway where
5 there isn't a lot of view of us -- but that's
6 where if the world is going to see it, that's
7 where they're going to see it. If you block
8 that as a practical alternative, facing
9 Autopark Drive, it's just non-thinking to a
10 standard that is waiveable, if you're looking
11 to secure reasonable development of the site.
12 I'm sure that this Board wants to do that and
13 they don't want their truck docks on the
14 highway ramps. They don't want the side of the
15 building towards the Northway and they don't
16 want the front of the building towards
17 Autopark Drive, which is not going to be a
18 major thoroughfare in any case, except for
19 Wal-Mart traffic and some of the office park
20 traffic. If you're looking for reasonable
21 development of the site, this is the
22 orientation that makes sense and practical
23 alternatives give you the results. So you'd be
24 adhering to a design guideline - strictly to
25 adhere to it and not because it's the best

Legal Transcription

1 orientation. I haven't heard, and can't
2 imagine an argument that a better orientation
3 of the building is to the north on Autopark
4 Drive. You've heard some problems with that,
5 which is you have to put your parking on the
6 side and in the back and that's where your
7 shoppers would have to go. They would have to
8 walk around the side of the building.

9 I think that John's right with some of
10 these guidelines. There were folks that were
11 expecting that they were going to turn the
12 Town of Colonie into Saratoga Springs and a
13 walking village where the buildings are on the
14 sidewalks and the parking is around that. In a
15 location like this, that doesn't make a lot of
16 sense.

17 CHAIRMAN O'ROURKE: So you're arguing
18 that it's not zoned properly?

19 MR. SWEENEY: Absolutely, positively not.
20 It's zoned properly. As you've heard, it's
21 been zoned that way since 1959. There is
22 nothing wrong with the zoning. This is a
23 design guideline.

24 CHAIRMAN O'ROURKE: No. Those are design
25 standards.

1 MR. SWEENEY: In order to secure
2 reasonable development for the site. The
3 design guideline on this site is blind -

4 CHAIRMAN O'ROURKE: Well, that would be
5 your argument. My argument, again, because
6 when I came across all this stuff at 2:30 in
7 the morning last night, I didn't see a waiver
8 being asked for in regard to this. I had to
9 dig through 11 different layers today to say,
10 why aren't they asking for a waiver? They have
11 to have a waiver. Now, tonight, Mr. Sweeney,
12 you're saying yes, you're right, we need a
13 waiver. A waiver was never asked for by the
14 applicant in regard to the orientation. Am I
15 correct?

16 MR. SWEENEY: No, you're not.

17 CHAIRMAN O'ROURKE: You mention it in the
18 Doucet report -

19 MR. BRODEUR: That was dated July 23rd and
20 not last night. We requested the waiver then.

21 CHAIRMAN O'ROURKE: Last night is when I
22 came across it in your document. This Board
23 gets this material a week before this meeting.

24 MR. BRODEUR: We submitted in July and we
25 resubmitted it on August 14th the Planning

1 Department because they specifically requested
2 that we push our meeting in August back so
3 that they could get you the material with
4 adequate time to review it.

5 CHAIRMAN O'ROURKE: Again, all I can do
6 now is poll the Board or ask the Board if they
7 have questions specific to the building
8 orientation -

9 MR. CAPONERA: I would like to say also
10 that this wouldn't be the first time that the
11 Board has had to grant this waiver. The one
12 that comes to my mind is where I go by four or
13 five times a day, which is on the corner of
14 Albany Shaker and Everett. You know the new
15 office building that's by Crisafulli?

16 CHAIRMAN O'ROURKE: Yes.

17 MR. CAPONERA: The front of that building
18 does not face Albany-Shaker Road. The front of
19 that building faces the back. It's in a zone
20 which requires the same standard. Obviously,
21 this Board had to have granted a waiver on
22 that.

23 CHAIRMAN O'ROURKE: That is a different
24 type project.

25 MR. CAPONERA: I'm just saying.

1 CHAIRMAN O'ROURKE: A medical office
2 building certainly isn't 170,000 square foot
3 retail project.

4 MR. CAPONERA: You're still talking about
5 a statute -

6 CHAIRMAN O'ROURKE: You're right. We have
7 the ability to make that waiver. That's a
8 given.

9 MR. CAPONERA: This wouldn't be the first
10 time that the Board granted that.

11 CHAIRMAN O'ROURKE: It would be the first
12 time on a big box.

13 MR. LACIVITA: To that point, C.J., that
14 building at Loudon Square that they're talking
15 about actually carried the façade around the
16 front.

17 CHAIRMAN O'ROURKE: He's right, in terms
18 of the entrance.

19 Peter, do you have a question in regard
20 to the building orientation?

21 MR. GANNON: After my colleagues have
22 their say, I think that I'd like to hear from
23 Counsel as to whether or not - what exactly
24 we're bound by from the Land Use Law, from the
25 Comp Plan, and from the code that was

1 presented to us tonight, as to what we have to
2 base this on.

3 MS. VAIDA: With a copy of the applicable
4 section of the Comprehensive Plan that talks
5 about the intent of these types of districts,
6 you can get the flavor for what kind of
7 development is supposed to happen there and
8 what is trying to be encouraged by the
9 Comprehensive Plan and the Land Use Law. These
10 sections were developed to be consistent with
11 that as part of that intent. When you look at
12 the standards, which are set forth in our Land
13 Use Law, Mr. O'Rourke already read them to you
14 and how they're organized and what the
15 standards are. I think that maybe it's
16 problematic to be doing things as isolated as
17 waivers. Maybe that wasn't a good idea, but it
18 seems pretty clear that the standard of review
19 is that they have to show that there is no
20 practical alternative to the proposed waiver
21 and conform to the standard.

22 MR. GANNON: The Board hasn't seen that
23 yet, at least to my knowledge.

24 MS. VAIDA: It's their burden to show
25 that to us and convince us of that fact. I'm

1 not sure about Autopark Drive and what he's
2 saying about that, but the section that we're
3 talking about wants the main building front to
4 face the street. I think that part of that is
5 to encourage pedestrian traffic, there should
6 be sidewalks as opposed to having it face the
7 highway. Those are things that you're supposed
8 to take into consideration in determining
9 whether or not to grant the waiver.

10 CHAIRMAN O'ROURKE: Mike, polling?

11 MR. SULLIVAN: Polling or asking
12 questions?

13 CHAIRMAN O'ROURKE: Either way.

14 MR. SULLIVAN: I have no questions, and I
15 would say no to the waiver.

16 CHAIRMAN O'ROURKE: Okay. Tim?

17 MR. LANE: Well, it seems that they do
18 need to show a practical alternative. It just
19 doesn't seem clear to me whether Autopark
20 Drive or the Northway would constitute a
21 street.

22 CHAIRMAN O'ROURKE: No. The Land Use Law
23 is - if it gets accepted by the Town that
24 would be considered the street. I87 cannot be
25 considered a street.

1 MS. VAIDA: And that would be whether
2 it's accepted or not.

3 MR. LANE: Right. It doesn't matter if
4 it's a private road.

5 MS. VAIDA: Well, the highway wouldn't be
6 considered a street.

7 CHAIRMAN O'ROURKE: But again, the
8 dedication would have to be accepted because
9 it would have to be on a town road. This
10 project has to be on a town road.

11 MR. LANE: Then I would have to see a
12 practical alternative.

13 CHAIRMAN O'ROURKE: Mr. Mion?

14 MR. MION: I agree with Tim. I'd want to
15 see a practical alternative.

16 CHAIRMAN O'ROURKE: Paul?

17 MR. ROSANO: No.

18 CHAIRMAN O'ROURKE: I would say
19 absolutely not. In my opinion, it's very cut
20 and dry. Buildings must present their main
21 façade and the Land Use Law says that in this
22 HCOR district - that with the words "shall" or
23 "must", it has to be followed. Granting a
24 waiver would not be appropriate.

25 With that said, that's where the Board

1 would stand on the waivers as presented today.

2 Do you guys have anything further with
3 your concept submittal?

4 MR. BRODEUR: No.

5 CHAIRMAN O'ROURKE: Chuck do you have
6 anything in regard to the concept?

7 MR. VOSS: No.

8 FROM THE FLOOR: Are you taking questions
9 from the audience about the waivers?

10 CHAIRMAN O'ROURKE: No. I will open it up
11 for everything in regard to this project.

12 FROM THE FLOOR: Didn't you do the
13 waivers first?

14 CHAIRMAN O'ROURKE: We already did. You
15 may talk about whatever you want to talk
16 about. We're going to open it up to the
17 public.

18 The speaking rules are going to be three
19 minutes and they are going to be timed. One
20 opportunity will be afforded, per person, to
21 speak. We are going to time that.

22 FROM THE FLOOR: I don't know that the
23 traffic problem on Route 9 and Autopark Drive
24 has fully been addressed. I know that they
25 provided for a second access road and this

1 access road is primarily in one central area.
2 That access road could be made to go to other
3 parts of Colonie.

4 Autopark Drive could come to Route 9. I
5 think that the intersection of Route 9 and
6 Route 9R is a real traffic nightmare. People
7 want to get out there and take a left. I think
8 that the real solution for this would be to
9 require a developer to build an access road
10 right over Route 9 and have it connect to
11 Delta Drive which currently connects to
12 Route 9R. There is a lot of vacant land in
13 this area. They could build that access road
14 over Route 9, and that would connect to
15 Columbia Street Extension and Route 9R. They
16 could do that without having to create any
17 kind of exit onto Route 9. I've noticed in
18 other places developers have been required to
19 do that and I don't believe that this would be
20 unreasonable.

21 Waynesboro Mall has an access road to
22 connect to Route 7. It's over really rugged
23 terrain.

24 That would be a reasonable solution to
25 this.

1 CHAIRMAN O'ROURKE: Thank you.

2 Just to clarify that, sir. If this
3 project would to go forward, the applicant
4 understands that they would have to put into
5 place all traffic improvements to mitigate the
6 traffic that this project would create.

7 FROM THE FLOOR: I also noticed they did
8 not give any figures from the traffic study.

9 CHAIRMAN O'ROURKE: There was a full one
10 year traffic study on this project.

11 Mr. Sweeney, would you like to answer?

12 MR. SWEENEY: I just want to make that
13 point, Mr. Chairman. With this evening's
14 presentation, we focused on the concept plan
15 for the site. The Chairman just noted the
16 traffic study. For the people in the audience
17 who haven't been here at the various meetings
18 over the last year, we did spend a year on
19 traffic before we were allowed to advance to
20 the concept. We didn't present traffic tonight
21 because that's not the point of this evening.

22 There are multiple traffic reports and
23 efforts by the Town Designated Engineer to
24 review and comment. A whole slew of roadway
25 improvements are necessary for this project to

1 mitigate its traffic impacts, and I know that
2 some or a lot of you, weren't here for all of
3 that. That is all in the record. We did spend
4 a year on it. We didn't do it tonight and I
5 don't want you to feel that we're not showing
6 you something about the project. There has
7 been an awful lot of time and effort on that.
8 I'm sure that we'll get back to it, obviously,
9 before the end of this process. I just wanted
10 to make that clear.

11 CHAIRMAN O'ROURKE: And just to fill the
12 audience in on the way that the traffic was
13 handled. They have developed the traffic to a
14 point that they have proved to the Town
15 Designated Engineer that the traffic in this
16 site specific area can be mitigated to a point
17 that the roadways and the improvements -- Tom,
18 you want to take over and explain where I'm
19 going here?

20 MR. JOHNSON: That's correct,
21 Mr. Chairman. Mr. Sweeney did say that a
22 traffic study has been under evaluation for
23 over a year. Barton and Loguidice, the Town
24 Designated Engineer, has spent a lot of time
25 reviewing all the assumptions and traffic

1 models. We went back and forth numerous times
2 and had changed items, draft models and draft
3 analyses. After about a year, we have agreed
4 to the findings of the traffic study that were
5 numerous improvements to the roadway network,
6 and that the impacts would be mitigated.

7 CHAIRMAN O'ROURKE: Now, that doesn't
8 mean the State of New York is going to agree
9 with those, because it is a state road. You
10 can certainly ask any questions that you'd
11 like, but the traffic has been mitigated to a
12 point right now that it is in the state's
13 hands. At the point that we do receive
14 feedback, we, as a Board, will develop a
15 statement of findings that then will be
16 presented back to the public.

17 Just quickly in regard to any of the
18 mitigating improvements that the Town
19 Designated Engineer spoke about - if this
20 project were to go forward, Wal-Mart would
21 have to do those improvements before any store
22 were to open. So, all the improvements to 9,
23 9R, Old Loudon and the entirety of the area
24 would have to be done by the applicant prior
25 to opening the store. They have a long way to

1 go before that, in my humble opinion.

2 What I'd like to do now is get to the
3 list of folks that signed up to speak tonight.
4 I'm going to go right in that order.

5 Kathy Ordway, 8 Cloverfield Drive,
6 Loudonville.

7 MS. ORDWAY: I just wanted to say that I
8 polled many of my neighbors in my neighborhood
9 and they said that they would like this
10 Wal-Mart to go in. They don't like going up
11 the road to Halfmoon or to Crossgates to shop
12 at Wal-Mart. I thought that you should have
13 that information.

14 CHAIRMAN O'ROURKE: We appreciate that.
15 Thank you.

16 Debbie Alderman, 10 John Street, Cohoes.

17 MS. ALDERMAN: I have a question. I have
18 been at most of the meetings for the project.
19 The one question that I have right now is who
20 pays for the road improvement?

21 CHAIRMAN O'ROURKE: Wal-Mart. Let me
22 clarify that. Wal-Mart would be responsible
23 for doing all those improvements that were
24 deemed by the Town Designated Engineer to
25 mitigate the traffic before the store would

1 open. I'm just using a number of five million
2 dollars as an example. Let's say it cost them
3 five million dollars. Part of their expense is
4 what is considered GEIS mitigating funds.
5 They're developing in an area that requires
6 them to pay for the amount of roadway use that
7 their project would create.

8 So, let's just say that their portion of
9 that is 3.5 million dollars. Well, they spent
10 five million to build the improvements. The
11 Town would then owe them 1.5 million as we get
12 further developments in that GEIS area. We
13 would then be paying the applicant back over
14 time. I hope that makes sense to you.

15 FROM THE FLOOR: So, that's going to cost
16 us money for the road.

17 CHAIRMAN O'ROURKE: All development cost
18 the taxpayers money; just so you know.
19 Anything in that GEIS area is 80 percent paid
20 for by the developer, and 20 percent paid for
21 by the taxpayer. You pay anyway.

22 MS. ALDERMAN: What about the proposed
23 road going by the Starlite?

24 CHAIRMAN O'ROURKE: There is no proposed
25 road at this present time.

1 MS. ALDERMAN: That's a real expense that
2 I wouldn't want to pay.

3 CHAIRMAN O'ROURKE: Nor would I.
4 Janice Methe.

5 MS. METHE: I have a little bit of
6 concern, in general, because there are an
7 awful lot of empty spaces that have been
8 around here in Colonie. It would be nice to
9 see those kinds of things fill up a little
10 bit. Latham Circle mall is one that is so
11 empty. Instead of utilizing that, they're
12 opening up all these other areas here. Maybe
13 they should be building up some of those areas
14 that are vacant.

15 The roads of 9 and 9R that I drive every
16 day - unless you drive it every day, you have
17 no clue about getting through that traffic.

18 We need a lot of good improvement for the
19 sidewalks. We wanted them as kids - to have
20 sidewalks and we never had sidewalks in
21 Colonie. It would be nice to see some bike
22 paths. We'd love to see some smart traffic
23 lights to help mitigate these problems first
24 before we go and open up new expansions.

25 The Planning Board used to make sure that

1 this would all be preplanned and Colonie was
2 very much in the know. As a child, I remember
3 hearing that Colonie had a lot of progressive
4 fore thinking and they made sure that they
5 planned so that the Town let the developers
6 know that they need to make sure that
7 everything is taken care of, so that the
8 taxpayers don't have to pay. I'm not so sure
9 that this project has been as carefully
10 planned and is as transparent. I'm just
11 finding out about all of this now and I hear
12 that there has been years of planning.

13 CHAIRMAN O'ROURKE: Can I ask you, how
14 could we make it known for you?

15 MS. METHE: I think that any type
16 exposure on your website, even getting it
17 out -

18 CHAIRMAN O'ROURKE: It's always posted on
19 the website, ma'am.

20 MS. METHE: Not in great detail.

21 CHAIRMAN O'ROURKE: Bill Sarafin,
22 525 Columbia Street.

23 MR. SARAFIN: I sat through all of the
24 traffic presentations and I still have major
25 concerns. I live up near Route 9R and it's

1 horrendous trying to get out on Route 9. The
2 taxpayers spent multimillion dollars on that
3 Exit 6, which makes traffic flow much better
4 into Latham Farms and into the existing
5 Wal-Mart. I'm a customer there. I would like
6 to see it remain there and keep the greenspace
7 where it is and eliminate any possibility that
8 our neighborhoods are going to get flooded
9 with extra traffic. The commuting hours right
10 now is terrible.

11 CHAIRMAN O'ROURKE: Thank you.

12 Jeff Baker.

13 MR. BAKER: Jeff Baker for the Boght Area
14 Neighborhood Association. I'd like to spend my
15 three minutes talking about the SEQRA process.
16 I don't understand how you are proceeding on
17 this in relation to the Boght Area GEIS. It
18 seems to be somewhat in limbo.

19 SEQRA requires all agencies to take the
20 environment into account as early as possible
21 in the planning process. You don't put SEQRA
22 off until the end. You do this at the
23 beginning because that's what our process is.
24 You can shake your head, Mr. Chairman, but
25 that's the law. The fact of the matter is that

1 you have to do an environmental impact
2 statement, and issue a positive declaration if
3 there is a potential for a single adverse
4 environmental impact caused by the project.
5 The fact that there has been over a year of
6 discussion with town engineers over the
7 traffic and that has allegedly resulted in
8 possible mitigation, is by definition a
9 potential adverse environmental impact. You
10 are required for the GEIS to be done so that
11 the public can be involved in the process so
12 that they can see the results and they can get
13 their own experts and they can understand what
14 is going on and there is a consideration of
15 the alternatives. Then you would also engage
16 in the multifaceted aspects of the project
17 that are relative.

18 When you had your discussions on the
19 waivers, you all raised the question. We don't
20 know how all this works in relation to
21 anything else. We don't know because the
22 setbacks on the buildings haven't been
23 provided. A proper GEIS would weigh all the
24 information out, the reports, and the
25 comments. It would be available for the whole

1 public to review. The law requires that an
2 environmental impact statement be posted on
3 the web so that everyone has access to the
4 information.

5 As I said before, when I went yesterday
6 and talked to Mr. LaCivita, I appreciated his
7 willingness to meet with me and give me
8 information. He's been very generous with his
9 time and I said, "can I see the final of the
10 application for Tuesday night's meeting?" He
11 said, "sure". He gave me the file and it was
12 almost empty. The Bergmann report is not in
13 there. The comment letters from Mr. Voss
14 aren't in there. The years of reports and
15 things that you have been reviewing are not
16 there. You said before that you cannot do your
17 SEQRA determination until the application is
18 complete. By law, an application is not
19 complete until a determination of significance
20 has been made, that you either issue a neg dec
21 or an EAF.

22 Mr. Sweeney is clearly establishing a
23 framework here that takes you to a neg dec.
24 You're not doing a service to the public by
25 addressing the SEQRA later or to the

1 applicant.

2 CHAIRMAN O'ROURKE: I'm sorry, your time
3 is up.

4 MS. VAIDA: If I could just try to
5 respond to your concerns.

6 First of all, this is concept level. It's
7 just a chance for the applicant to present to
8 the Board and the public the basic concept and
9 the intent on how they want to develop the
10 land so that they can get some feedback from
11 the Board as to whether their project is going
12 to likely pass, if there is changes that the
13 Board would like to see so they don't waste a
14 lot of time and money on the project that may
15 never go through. Part of the concept
16 application is a SEQRA Part 1. The
17 environmental assessment form is part of that
18 package and it was completed and the Board
19 Members all have that. This process is the
20 process where we gather information to try to
21 determine whether we will be making the
22 positive declaration and in order to do that
23 we have to have more information. This is just
24 a very preliminary part of the site plan
25 review process.

1 MR. BAKER: Well, since you've spent
2 years on it, I think that it's more than a
3 preliminary.

4 My question is: "When are you going to
5 make that determination? More importantly,
6 shouldn't you be completing the Boght Area
7 GEIS, which is looking at the cumulative
8 impacts of all of the projects that are being
9 proposed in this area and evaluating the
10 improvement that is going to be necessary for
11 Route 9 so that we can go forward to a site
12 specific EAF?"

13 CHAIRMAN O'ROURKE: I don't fully
14 disagree with what you're saying. We certainly
15 attempted to get the GEIS done in June. There
16 was some conflict among the Board that wanted
17 it to go back to the technical committee. The
18 GEIS has gone on for two years. I don't
19 dispute the fact of what you're saying in
20 regard to the totality of the development,
21 necessarily, and that it has to be looked at
22 in its entirety. I don't dispute that. We have
23 found more problems with SEQRA being done at
24 concept than what we have moved to now by
25 moving it further into the process. It allows

1 the applicants to move forward with the
2 project and not have the ability to be set in
3 stone with SEQRA until their big engineering
4 costs come up, which is only fair. They still
5 fill out Part 1. In the meantime, we have
6 somebody in the Attorney's office that the
7 Supervisor has set up. They hold the SEQRA
8 directly in the Attorney's office. So, trust
9 me, we're on top of SEQRA.

10 Mr. Sweeney knows this Board well enough
11 that he'd never get away with a neg dec on a
12 project like this. I almost take that as an
13 insult that you'd even comment something like
14 that.

15 MR. BAKER: I can see you being set up.
16 If Mr. Sweeney were intending to go forward
17 with a neg dec, he would have been demanding
18 it because it would have facilitated his
19 project to start the EAF about a year ago -

20 CHAIRMAN O'ROURKE: There are still too
21 many questions with this, sir.

22 MR. BAKER: With all due respect to the
23 Board on the SEQRA issues, the pizzeria where
24 you issued a neg dec, it's a Type 2 action. It
25 was less than 4,000 square feet. You don't

1 have to go through SEQRA for that.

2 CHAIRMAN O'ROURKE: Sir, that's enough.
3 If you have difficulties with this, please go
4 to the Attorney's office. Rebekah
5 Kennedy - you can contact her in the
6 Attorney's office in the Town and have any
7 SEQRA discussion that you want. I'm not going
8 to allow his forum to continue in regard to
9 SEQRA. I certainly understand it well enough.
10 I don't have your expertise, but I understand
11 it well enough to know what I'm talking about.
12 Do me a favor and contact Rebekah Kennedy in
13 the Attorney's office at your convenience and
14 she'd be more than happy to speak to you at
15 further length for SEQRA.

16 MS. VAIDA: I just also want to make it
17 clear regarding the traffic study. There was a
18 traffic study done and our engineer has the
19 opinion that it mitigates the traffic, but
20 that doesn't mean that the impact of traffic
21 can't be considered in determining this
22 application. It's still an issue.

23 CHAIRMAN O'ROURKE: Jean Chesney.

24 MS. CHESNEY: I have very little to say
25 at this point. My mother is falling asleep.

1 FROM THE FLOOR: I'm 84 years old. I want
2 this store built before I die.

3 MS. CHESNEY: I have to disclose that I
4 am a former associate in the Wal-Mart Company.
5 I was there for 10 years. I started the store
6 up in Ticonderoga, so I know what the goal is.
7 I understand what has to happen.

8 My concern with this lovely plan is that
9 it wasn't here a year ago when I saw it. You
10 had this plan for a whole year and now we're
11 finding out that it's got to be turned. Is
12 this something new that you just found? Was
13 this just not discussed a year ago?

14 CHAIRMAN O'ROURKE: I found it at 2:00 in
15 the morning last night.

16 MS. CHESNEY: So, it's something that has
17 come out of the blue.

18 CHAIRMAN O'ROURKE: It is my
19 understanding that our Town Designated
20 Engineer knew August 10th.

21 MS. CHESNEY: I saw this plan a whole
22 year ago. There was no discussion about it not
23 being orientated right. I think that it was
24 probably because of Autopark Drive and that
25 being the big issue.

1 CHAIRMAN O'ROURKE: I think that before
2 it got to orientation, I think that before we
3 kind of got into some concept, there was the
4 traffic. I'm not so sure that it was fully
5 looked at. We're lucky that we have some
6 people looking at things here.

7 MS. CHESNEY: When we were talking about
8 the Latham store, we are so limited to being
9 able to have the grocery side because of the
10 way that Latham Farms is set up. Because of
11 Hannaford, we have to go up to Halfmoon.

12 CHAIRMAN O'ROURKE: That point could be
13 argued.

14 MS. CHESNEY: Clifton Park is the store
15 that I have to go to now. I resent the fact
16 that I have to spend money in Saratoga County.
17 My only other alternative in Albany County is
18 Crossgates, and there's no way I'm going
19 there.

20 CHAIRMAN O'ROURKE: They're spending a
21 lot of money in this Wal-Mart now. They could
22 put grocery right in there.

23 MS. CHESNEY: They can't expand to a
24 grocery and pharmacy.

25 CHAIRMAN O'ROURKE: Ma'am, that is

1 factually incorrect.

2 MS. CHESNEY: Have you seen the contract?

3 CHAIRMAN O'ROURKE: This isn't relevant
4 to the project, but just factually speaking,
5 I've had lease attorneys look at that lease
6 and they can absolutely put grocery in that
7 present location - absolutely.

8 MS. CHESNEY: That's not what I was told.

9 CHAIRMAN O'ROURKE: All I'm giving you is
10 the factual information. Again, it's not
11 really relevant to this project. I just want
12 the facts.

13 I'm sorry ma'am, but your time is up.

14 MS. CHESNEY: Thank you, very much.

15 CHAIRMAN O'ROURKE: Mr. Sweeney.

16 MR. SWEENEY: Just a clarification on the
17 building orientation. Here it is in 2007 and
18 here it is in 2009. It wasn't July 23, 2007
19 and it wasn't last week. There was a wavier
20 issue from the beginning. We had the same
21 discussions for a long time.

22 This is part of the October 14, 2009 -

23 CHAIRMAN O'ROURKE: But it's before us
24 now, so that's really insignificant.

25 MR. SWEENEY: This is not a new issue.

1 It's essentially new because we didn't bring
2 it up until recently. It's been part of the
3 project from the beginning. I'll resubmit the
4 Latham Farms documentation that I submitted a
5 year ago.

6 CHAIRMAN O'ROURKE: That's irrelevant.
7 It's irrelevant to this project.

8 MR. SWEENEY: It's inaccurate based on an
9 opinion from some other attorney.

10 CHAIRMAN O'ROURKE: It's from the leasing
11 company that leases the space to Wal-Mart.
12 It's from their attorney.

13 MS. VAIDA: This is really irrelevant to
14 this.

15 MR. SWEENEY: Have you talked to
16 Hannaford?

17 MS. VAIDA: I don't think that we should
18 engage in this discussion.

19 MR. SWEENEY: It is relevant because
20 that's what driving the project.

21 CHAIRMAN O'ROURKE: Okay, next on the
22 list, Marie Henry, 9 Green Acres.

23 MS. HENRY: I don't have much to say
24 except that I would like the store for my own
25 convenience. I go now to Clifton Park because

1 I get cheaper stuff. It's the same thing, but
2 it doesn't cost as much as Price Chopper and
3 Hannaford. If it was closer it would be more
4 convenient. That's all. I don't have any
5 argument for anyone. I'm just saying that for
6 me, I'd like the store.

7 CHAIRMAN O'ROURKE: Thank you, ma'am.
8 Maryann Cummings, 7 Dunsbach Ferry.

9 MS. CUMMINGS: I live about a mile away
10 from the project and I'm all for it. Anything
11 that we can do to bring more taxes in is going
12 to help us.

13 If you go down Route 9 right now, there
14 are so many empty businesses - this is really
15 going to help to generate more activity. If
16 you go to the Clifton Park Wal-Mart, there are
17 new buildings being built around that
18 Wal-Mart. There is a lot of activity there.
19 They are generating it and they're generating
20 people coming in there. That's a prime piece
21 of property and everybody is looking at it. If
22 it's not Wal-Mart, it's going to be something
23 else.

24 I like Wal-Mart because they beat
25 everybody else's prices, they take all the

1 coupons and it's convenient. Everything is
2 right there for me.

3 CHAIRMAN O'ROURKE: Gloria Jean Knorr,
4 426 Albany-Shaker Road.

5 MS. KNORR: It's nice to have an
6 opportunity to talk three minutes. The Town
7 Board meetings are the same.

8 I support Mr. Tim Nichol's comments and
9 Mr. Baker's. I attended almost every Town
10 Comprehensive Plan meeting and it emphasized
11 the quality of life and becoming proactive
12 about economic development. Minimizing the
13 traffic congestion is important. Many
14 residents have expressed, through the public
15 outreach process, over the amount of large
16 scale development in the community. The United
17 States is selling fewer products around the
18 world and spending more on cheap imported
19 goods. It's an imbalance that hurts the job
20 market at home and it means that the economy
21 is even weaker than previously thought. Chain
22 stores like Wal-Mart destroy small businesses
23 as they spread across the country. There are
24 other entrepreneurial dreams dashed. The new
25 monopoly doesn't reduce prices unless it's

1 safe to raise them. Consumer prices also tell
2 very little about the health of this society,
3 its optimism, and sense of possibilities.
4 Chain stores bring dead end service jobs.
5 Politician's foundations and chambers of
6 commerce and the free enterprise blow kisses
7 at small businesses, but they get between the
8 sheets with the monopolies. It's cozy that
9 way.

10 What we need to promote is our economic
11 stability together with our expanding
12 technologies sector along with the fact that
13 we have pockets of concentrated small unique
14 and independent businesses. Government at all
15 levels, civic groups, and business
16 organizations should double efforts to
17 promote, support and encourage the businesses.
18 Small businesses are the key to our future and
19 economic and business success. For any metro
20 area to thrive in, it needs youthful energy
21 and optimism. I oppose the Wal-Mart project on
22 Route 9.

23 CHAIRMAN O'ROURKE: I'm sorry ma'am. Your
24 three minutes are up.

25 MS. KNORR: I will continue at the Town

1 Board meeting.

2 CHAIRMAN O'ROURKE: Thank you.

3 Mr. Fahey.

4 MR. FAHEY: I was hoping that this whole
5 project would be on the table from beginning
6 to end so that everybody would have a shot at
7 speaking all about it.

8 CHAIRMAN O'ROURKE: It is, but we would
9 be here until Friday.

10 MR. FAHEY: I know. I have been to most
11 of the meetings regarding traffic -

12 CHAIRMAN O'ROURKE: Everything is on the
13 table. You can talk about anything you want.

14 MR. FAHEY: I think that the general
15 public needs to see this project - the concept
16 and know what's going on. These people don't
17 know what's going on with the traffic
18 situation.

19 CHAIRMAN O'ROURKE: If they had called,
20 maybe they'd know.

21 MR. FAHEY: I was glad to see Wal-Mart
22 put some testimony up there on the record
23 about the assessment. There were some towns
24 that have had some very negative experiences
25 with the lawsuits, and looking to have

1 assessments reduced. I think that in Halfmoon
2 they were looking for 50 percent.

3 In response to what was said, I believe
4 that this project is going to serve as a
5 magnet, a hub, if you will, for future large
6 scale retail in that immediate area. There is
7 plenty of room to develop space across
8 Route 9. If you don't believe me, listen to
9 what the Business Review said from last week.

10 Burlington Coat Factory doesn't want to
11 leave Latham. They need 70,000 square feet.
12 Their spokesperson said one possibility would
13 be near the proposed Wal-Mart Supercenter on
14 Autopark Drive. That's 70,000 more square
15 feet.

16 At the next meeting you guys are going to
17 listen to an application for a 300,000 square
18 foot building directly across the street from
19 Wal-Mart. That area up there has consistently
20 been built out with business. I don't see how
21 Wal-Mart is going to help that picture up
22 there at all. I don't think that Wal-Mart fits
23 there.

24 There is about eight Wal-Mart's within
25 10 miles of the Town of Colonie. At least five

1 of those are supercenters and the one in
2 Crossgates is refuted to be the largest in the
3 world.

4 This project just doesn't fit. It doesn't
5 fit with Colonie. It doesn't fit the plan for
6 the future, both in the immediate area and the
7 Town as a whole. It just doesn't fit, and to
8 quote a famous trial, "If it doesn't fit, you
9 must acquit."

10 I just think that a no vote against it is
11 a vote for the future of Colonie. Thank you
12 for your time.

13 CHAIRMAN O'ROURKE: Thank you, Mr. Fahey.
14 We certainly appreciate your attendance at
15 every meeting.

16 John Gorzki, 16 Overlook Avenue.

17 MR. GORZKI: I go to the tennis club down
18 here and when I leave the tennis club to take
19 a left to go north on 9, I can't do it. When I
20 get gas at the Hess station across the street,
21 I want to take a left to go south on 9 and I
22 can't do it. I don't see how new roads can
23 possibly help that if you can't take lefts out
24 of these places in either direction.

25 As far as the taxes go, these people are

1 saying how they bring so much revenue into the
2 Town. I agree with Mr. Fahey, they'll protest
3 it as soon as the building goes in here.

4 Secondly, taking taxes away from the
5 building that they're going to be
6 closing - that's not the tax revenue that
7 they're going to bring in here.

8 They say that they're going to create
9 jobs down here, but the jobs that they're
10 going to create here are the jobs that they
11 take away from Price Choppers and Hannafords.
12 I don't see what they're talking about.

13 CHAIRMAN O'ROURKE: I appreciate your
14 comments.

15 Barbara Numrich, 350 Old Loudon Road.

16 MS. NUMRICH: I don't have anything to
17 say. It's late.

18 CHAIRMAN O'ROURKE: Thank you.

19 FROM THE FLOOR: I need to make one
20 comment. The Wal-Mart project was at the end.
21 All of these people have left and the majority
22 of the people that come to these meetings have
23 been here when Wal-Mart is here. The project
24 is always at the end of the meeting. Why do
25 you keep everybody waiting during the first

1 part of the meeting?

2 CHAIRMAN O'ROURKE: The thinking goes
3 like this, sir. These meetings can go two
4 hours or six hours. If there are other
5 projects on, in sheer respect, I don't think
6 that it's fair to make other applicants to
7 wait six hours -

8 FROM THE FLOOR: But the majority of the
9 people are here for Wal-Mart. You should have
10 Wal-Mart on for a separate night.

11 CHAIRMAN O'ROURKE: And we will take that
12 under consideration. But certainly, if you
13 were building a building and you wanted to get
14 on the agenda and it was costing you \$30,000
15 and you had to get on the agenda, you'd want
16 to get on the agenda. You have to look at it
17 from both sides.

18 FROM THE FLOOR: I understand.

19 CHAIRMAN O'ROURKE: Yes, sir.

20 FROM THE FLOOR: From what this man just
21 said, you should tell people that Wal-Mart
22 isn't going to start until 8:00 so people
23 aren't waiting here all night long.

24 CHAIRMAN O'ROURKE: That is something
25 that can be done. That's proactive.

1 Alan Pritchard.

2 MR. PRITCHARD: Lots of my questions are
3 directed at Wal-Mart. I understand this
4 covenant with Hannaford with a big grocery
5 store. I gather that you must have spent a lot
6 of money on this move to this location because
7 you've been working on it for four years.
8 Maybe it's been a million dollars. I don't
9 know what you've spent, but I'm sure it was a
10 lot of money. I appreciate the fact that the
11 orientation that you show there is what you're
12 going to have to go with.

13 For myself, Latham Farms is much more
14 viable for me because it's one-way in and
15 one-way out. You're stuck with it.

16 I would like you to flush out what the
17 problem was with the location that you have
18 now. Right now, you're putting in coolers to
19 your store so you're kind of putting in
20 grocery already - more than what you've got
21 now at the Latham Farms location. You
22 remodeled the store many times over the years;
23 at least one or twice before. It's not a lot
24 of money, but you have spent a fair amount of
25 money and I don't know what your time frames

1 were or if you were going to be in here in
2 another two years or what it was. You've been
3 working on this project for four years anyway.
4 So, this is like a long-term project. It just
5 seems to me that if you started spending money
6 on breaking the covenant with Hannaford, buy
7 the property if you don't own it, you'd be far
8 ahead of the game because you could have built
9 a second floor like you have at Crossgates.
10 You would have made more profits. You've spent
11 a lot of money on this thing and you have
12 nothing to show for it. You probably have
13 another three or four years of grinding this
14 out. I don't know how long the covenant with
15 Hannaford is. I don't think it's to the end of
16 time, but I think that you should be working
17 on breaking the covenant with Hannaford so
18 that you can do what you want with that
19 location.

20 Can you answer my questions?

21 CHAIRMAN O'ROURKE: That's not really
22 relevant to the project.

23 MR. PRITCHARD: That's what driving the
24 project. I said that before.

25 CHAIRMAN O'ROURKE: If you'd like to

1 answer -

2 MR. SWEENEY: I'd be happy to speak. It's
3 in the Planning Board's record on the issue of
4 the Latham Farms property. I have just one
5 comment on it. It's not our covenant with
6 Hannaford. It's the landlord's covenant with
7 Hannaford that there won't be any other
8 grocery in the Latham Farms Shopping Center.
9 We've explained it to the Board and it's
10 documented in the record.

11 CHAIRMAN O'ROURKE: And the Board and the
12 attorney's don't agree with that finding.

13 MS. VAIDA: And it's irrelevant.

14 MR. SWEENEY: And I'll agree with Counsel
15 that it's irrelevant.

16 CHAIRMAN O'ROURKE: Randi Rosette,
17 670 Boght Road.

18 MS. ROSETTE: Thank you for your time.
19 When I heard people that are in favor of it,
20 the only thing that people said was it was a
21 convenience. I'm sorry, but I really question
22 that. It might be more convenient to go to
23 Latham Farms, but the bottom line is that
24 we're going to be made to tolerate a lot of
25 other things, like traffic.

1 When I moved here 25 years ago, I moved
2 here because I liked the character of the
3 neighborhood. It's busier there than it used
4 to be and more people drive down my street now
5 but when this goes in, if it goes in, there is
6 going to be more people going through our
7 neighborhood. And even though it supposedly
8 will be mitigated, we will still have traffic
9 issues.

10 Just one more suggestion - you guys are
11 so respectful but we have been to many, many,
12 many meetings and I think that we should have
13 had a separate meeting set aside for us, or
14 for just public input. The Wal-Mart team had
15 40 minutes to go through their presentation,
16 but many of these things have been reviewed
17 before. I want a chance for us to be heard.

18 There was something said about this being
19 on the website, but that's just an
20 announcement. There is no description on the
21 website.

22 CHAIRMAN O'ROURKE: Thank you, and thank
23 you for coming.

24 Anyone in the audience?

25 Yes, ma'am.

1 MS. KRUGLER: My name is Nancy Krugler
2 and I live at 49 Allenvue Road in the Boght
3 area. I'm not a member of this association or
4 whatever he's talking about.

5 I'd like to ask a representative of the
6 applicant to repeat what was the minimum
7 walking distance if you reorient the building.

8 CHAIRMAN O'ROURKE: Four hundred and
9 something.

10 MS. KRUGLER: Didn't any of you hear
11 that? If they reorient the building because of
12 some Land Use Law Comprehensive Plan
13 suggestion guidelines, that people would have
14 to walk at least 400 feet to get into this
15 building?

16 Mr. Hershberg said that he's building
17 houses for the aging population in the Town of
18 Colonie. I went to all of the Comprehensive
19 Plan meetings. Some of these were suggestions
20 like the connecting neighborhoods. I haven't
21 seen a project yet where a new neighborhood
22 coming in - where the existing neighborhood
23 wants to be connected to it.

24 CHAIRMAN O'ROURKE: You just saw it
25 tonight.

1 MS. KRUGLER: No, they did not want to be
2 connected.

3 CHAIRMAN O'ROURKE: There is a grass
4 path.

5 MS. KRUGLER: They all said no; they did
6 not want to be connected. Did you hear that
7 minimum of 400 feet? If you all did hear that,
8 how can you justify that?

9 CHAIRMAN O'ROURKE: We don't choose the
10 project ma'am.

11 MS. KRUGLER: I understand that, but
12 you're saying that the guidelines and the
13 standards -

14 CHAIRMAN O'ROURKE: No, the Land Use Law.
15 It's the law.

16 MS. KRUGLER: But there is opportunity
17 for a waiver.

18 CHAIRMAN O'ROURKE: The Board does have
19 that. That's up for discussion.

20 MS. KRUGLER: If you can justify the
21 minimum walking distance of 400 feet -

22 CHAIRMAN O'ROURKE: We don't pick the
23 projects and we don't do the engineering
24 ma'am. We can only judge projects as they come
25 before us.

1 MS. KRUGLER: So, they have to orient
2 themselves, according to you, to Autopark?

3 CHAIRMAN O'ROURKE: Ma'am, I'm not an
4 engineer. I don't work for Wal-Mart. I didn't
5 look at it. I don't know.

6 MS. KRUGLER: Suppose Wal-Mart doesn't go
7 in there? Let's suppose that it's a healthcare
8 facility. Would they have to orient themselves
9 to Autopark Drive?

10 CHAIRMAN O'ROURKE: They would have to
11 follow the design standards, yes, ma'am.

12 MS. KRUGLER: And the people would have
13 to walk 400 feet to get into the building?

14 CHAIRMAN O'ROURKE: Probably not if it
15 was a medical facility. It would probably be a
16 high-rise. I'm not a developer. Mr. Bette,
17 could probably speak to this. I know that he'd
18 like to speak next.

19 People in Anjio Dynamics don't have to
20 walk 400 feet, do they?

21 MR. KEVIN BETTE: No, they don't. Thank
22 you for giving me a chance. I'm Kevin Bette.
23 My brother Chris and I own the office park.

24 I just want to throw out some
25 observations from a planning perspective.

1 That's what we're trying to do here.

2 The proposed development here is massive
3 compared to the surrounding areas. We, being
4 neighbors, we feel that they haven't really
5 taken a look at what neighborhood they're
6 fitting the project into. What is proposed
7 here would be great in Florida or Texas. I
8 think that they have to worry about talking to
9 the neighbors. I think that's what everybody
10 here wants is to have some input.

11 The Comprehensive Plan that had millions
12 of hours spent on it had a different vision
13 for the site. So, when you read the
14 regulations and you say, "that doesn't make
15 any sense, they didn't contemplate this use on
16 that site". It was contemplated to be mixed-
17 use with residential retail and offices on a
18 smaller scale. That would compliment the
19 office park. So when you look at the planning
20 standard and say "that really doesn't make any
21 sense", it's because the neighbors really
22 spent a lot of time on the Comprehensive Plan
23 trying to say, "what fits here?" What we're
24 trying to do is land a giant spaceship in the
25 middle of an area that we're trying to attract

1 high tech office tenants. That's very
2 important to our community. You have to
3 understand how this project is going to affect
4 all that real estate around there.

5 The motel that's on Route 9, we all hope
6 gets upgraded to a nicer property and that was
7 proposed. Now, they're going to be devaluating
8 that property because you're putting truck
9 docks right behind it.

10 I'm for development because I'm a
11 developer, but I think what you need to do is
12 understand that the neighborhood that you're
13 going into is not planned properly.

14 The reduction of the parking spaces - we
15 did that, but here you have an isolated
16 parcel, so on December 22nd when everybody is
17 going there with the reduction of parking
18 spaces, where are they going to go? There's no
19 room.

20 We would be open to a lot of things with
21 Wal-Mart, but I don't trust you right now.
22 When you first came to me, I paid for the
23 temporary road, paid for the traffic
24 improvements, got a stormwater detention area
25 and so far your high paying attorneys have

1 threatened us and are suing us every time we
2 try to do something. So, I don't trust you
3 right now. I'd like someone from your company
4 to call me up and do some planning and do some
5 work with your neighbors, not your high paid
6 attorneys.

7 There's a lot that could be done very
8 well here. I'm not saying whether Wal-Mart
9 should go there or not, but you just do
10 everything that's good for you. That's all I
11 hear from the attorneys, is that they're going
12 to do what's good for them. I want to tell you
13 that all they want to do is sue me and all I'm
14 trying to do is a good job for the Town. So,
15 that's what you're dealing with. I don't trust
16 them.

17 I want someone from Wal-Mart to contact
18 us and work with all of us, not just go behind
19 closed doors. They still have a traffic
20 problem. The solving of the traffic problem
21 doesn't need to be solved.

22 CHAIRMAN O'ROURKE: I'm sorry, Mr. Bette,
23 your time is up.

24 Mark.

25 MR. BURDELL: Hi. Mark Burdell from

1 Pollock Road in Latham.

2 I heard some comments about world
3 economic conditions and all that type of
4 thing. I think that the important thing for
5 residents in this area, is that you have a
6 monopoly and the monopoly is Hannaford and
7 Price Chopper. You can't go in there and buy
8 anything at Hannaford or Price Chopper that
9 isn't within a few cents of each other. By
10 definition, that's monopoly pricing. We need
11 choices.

12 The people in Halfmoon have choices. They
13 have an Aldi, which is a discounter in the
14 grocery store area. They have the Wal-Mart
15 Supercenter, which is a discounter in the
16 grocery area. They don't have these traffic
17 problems that we have on Route 9 out there.
18 They just don't. I go up there all the time
19 because I don't like Latham Farms and the way
20 that their traffic patterns are configured. I
21 don't like the nine foot wide stalls because I
22 have a difficult time backing out into the
23 turn around areas. So, I like the idea of a
24 little wider 9.5 foot stall. I like the idea
25 that we'll have more price competition against

1 Price Chopper and Hannaford, combined. It will
2 be a good thing to go to. The old Wal-Mart
3 store would be a great landing spot for either
4 Burlington or J.C. Penny because that Latham
5 mall has to go. That place is a dump over
6 there. Those two stores have no place to go
7 right now.

8 I'm not a member of fancy tennis clubs
9 and I can't afford to go to that Fresh Market
10 out there because those are premium prices for
11 premium folks and we're not all premium folks
12 around this town. We need to get reasonably
13 priced products in a convenient area. So,
14 bravo for Wal-Mart.

15 If they want to change the design a
16 little bit, I personally think that the façade
17 should look at the Northway because we do have
18 Canadians coming down here and we have other
19 travelers who, in their travels, are looking
20 for stores that they know of. If they decide
21 that they need to buy something and we cover
22 this thing up, nobody will find it if they're
23 on the road. I know that I travel to
24 Massachusetts and Rhode Island and I'm always
25 looking for something that I'm familiar with

Legal Transcription

1 like Wal-Mart or a brand store because I don't
2 want to search around for three-quarters of an
3 hour to find a simple item that I need to buy.
4 Thank you, very much.

5 CHAIRMAN O'ROURKE: Ken Perkins.

6 MR. PERKINS: From Century Hill to 9 and
7 9R, unless you drive it every single day, you
8 have no idea what's going on. It's just a
9 free-for-all. The access road that comes out
10 over there (Indicating).

11 CHAIRMAN O'ROURKE: No, they proposed to
12 come out of 950, which is Mr. Nemith's office
13 building and one at Autopark.

14 MR. PERKINS: One-way in and one-way out.

15 CHAIRMAN O'ROURKE: No. They've made them
16 change it to two-way. It's the concept that
17 was presented this evening.

18 Mr. Bette?

19 MR. CHRIS BETTE: Chris Bette. The
20 question that we brought up earlier - have we
21 narrowed it any further? What will Autopark
22 Drive be - a public road? Will it continue to
23 be a private road? Ten years ago they
24 dedicated it to the Town, but the Town didn't
25 take dedication of it. I'd like to hear the

1 answer to that.

2 I'm concerned what they charge their as
3 their secondary access. Naturally, I think
4 that most patrons will find the back door
5 access to Route 9. They're going to see where
6 they came in and use our driveway to get over
7 to Century Hill Drive to get out to Route 9
8 and I don't think that's fair, that we become
9 the secondary access for the Wal-Mart parcel.

10 CHAIRMAN O'ROURKE: Actually, I haven't
11 gotten to my notes yet, but we're going to let
12 the people go over it. I have substantial
13 notes with regard to that. I talked to Chuck
14 on this in July, shortly after your open
15 development was approved and wanted to make
16 sure that the second means of egress - that
17 the folks at Wal-Mart understood that they
18 needed a second means of egress to the site
19 and Plaza Drive is now a private road. So,
20 whether Mr. Nemith cuts a swath across his car
21 dealership and tries to make additional right
22 of way requests to other people to connect,
23 they're going to have to come up with a second
24 means of egress to the site. They can't use a
25 private road, in my opinion.

1 MR. CHRIS BETTE: How are we going to
2 regulate that?

3 CHAIRMAN O'ROURKE: I'm not sure
4 Mr. Bette. We're not to that point yet, but it
5 certainly won't be a Jersey barrier placed in
6 the center of the road.

7 At this point, for this project to go
8 forward at all, it would have to be an Offer
9 of Dedication, which I have to be careful of
10 how I word this because there is already an
11 Offer of Dedication on the property. There is
12 an amended subdivision sitting in limbo.
13 Honestly, I'm not an attorney, but there is a
14 lot of legal issues in regard to that road.
15 One issue is whether or not the Town even
16 wants it. We haven't accepted the Offer of
17 Dedication. So, I'm not sure if the Town wants
18 it. That would be the Town Board's decision to
19 make. It would certainly be upon
20 recommendation from this Board, I would
21 imagine. There is no guarantee that the Town
22 wants the road. Like you said, we haven't
23 taken it for 10 years. For a retail
24 development like this to happen, there would
25 have to be two ways. Either apply for open

1 development or have footage on a town road.

2 There are smart attorneys here and those
3 lots aren't merged yet. That is still Lot 2.
4 I'm not sure. Those are the things that the
5 attorneys are going to have to answer, as this
6 process goes forward. I wish that I could give
7 you a concrete answer, but unfortunately, I
8 think that's difficult to do, Mr. Bette.

9 MR. PARENTE: I'd just like to briefly
10 comment. My name is Clemente Parente and I
11 represent Wolford Associates. They own the
12 land upon which the Wal-Mart is proposed. I
13 really had no intension of speaking. I was
14 just observing. But Mr. Bette's direct comment
15 warrants a full explanation on the record.

16 We were and continued to try to work with
17 our neighbor. Months ago, they came to us with
18 a proposal and I worked with his attorney for
19 weeks on a proposal, whereby we would exchange
20 easements on Autopark Drive and Plaza Drive.
21 He came to us because it was a necessary
22 requirement of the Zoning Board of Appeals in
23 one of their pending applications in February.

24 I had that document signed by my client
25 with me. On the day that it had to be signed -

1 because he needed it that night -- I think
2 that it was February 17th. I'm not positive.
3 That document was delivered with Mr. Nemith's
4 signature. Mr. Bette was supposed to sign it.
5 He went to the Zoning Board of Appeals and it
6 turned out not to be influential in the
7 decision that they made. So, he no longer
8 wanted to sign it. It became unimportant at
9 that point. We had an agreement and now he's
10 disparaging my client and disparaging me and
11 all the attorneys. The truth of the matter is
12 that we worked out an agreement. We had an
13 understanding and my client signed it. He
14 renegeed and then he sued us. We didn't sue
15 him. He sued us. We're defending the lawsuit
16 and that's where we are.

17 CHAIRMAN O'ROURKE: Shortly after that,
18 you put the Jersey barrier in the middle of
19 the road.

20 MR. PARENTE: That's not true.

21 MS. VAIDA: Again, I'm not sure this is
22 relevant.

23 MS. SWEENEY: Mr. Chairman, I think that
24 it's fair and let me make it clear that
25 Wal-Mart has not sued Mr. Bette or First

1 Columbia. Wal-Mart has never threatened to sue
2 Mr. Bette or First Columbia. I know we heard
3 that tonight and it's just not true. We're
4 more than willing to talk to neighbors,
5 including Mr. Bette, and he invited me to. I
6 was at his office yesterday morning doing just
7 that. I'll do it tomorrow and I'll do it the
8 next day and any other day that he's willing
9 to sit down with us. We're more than willing
10 to do that.

11 We have conformed the project to the
12 requirements of other people and the thoughts
13 and wishes of other people. We're very
14 cooperative and willing to do that. As I said,
15 the offer is open and it will be anytime and
16 anyplace. There is no lawsuit. Wal-Mart has
17 not sued anybody or threatened to sue anybody.
18 I don't know where that came from or why it
19 was said. There's an issue of lawyers and we
20 heard that about six times.

21 CHAIRMAN O'ROURKE: But there is
22 litigation.

23 MR. PARENTE: There is litigation. First
24 Columbia sued Wolford Associates, the owner of
25 the property. Wal-Mart did not sue anybody. If

1 that's what you heard, that's untrue.

2 MR. KEVIN BETTE: Because of their
3 project, they tried to stop the Anjio Dynamics
4 people from moving into my building. They
5 tried to block off the access road. Bob, you
6 didn't threaten to sue me because you told me
7 that the detention basin is at the end of the
8 cul-de-sac and that you'd sue me if I create
9 any problems for you.

10 MR. SWEENEY: That's not true.

11 CHAIRMAN O'ROURKE: All I know is that as
12 I look at the facts regarding some of these
13 issues on page 47 of the initial Wal-Mart
14 presentation, Mr. Caponera does state that
15 Wal-Mart planned to pay for the connection
16 road between Autopark and Century Hill. That,
17 I know is in the record and I know for a fact
18 that they didn't pay for it. First Columbia
19 paid for it. So, those are the facts.

20 MR. SWEENEY: In order to say these
21 things, we have to be accurate about it. It's
22 absolutely true that in 2007 Wal-Mart offered
23 to pay for the connector road between Autopark
24 and Century Hill Drive. Let's be accurate.

25 After that point in time, Anjio Dynamics

1 came up on their radar screen. They had to get
2 the road in there so they built it. It's not
3 like Wal-Mart reneged on -

4 CHAIRMAN O'ROURKE: I didn't say that
5 anybody reneged. These are the facts.

6 MR. SWEENEY: There has been four
7 agreements drafted -

8 CHAIRMAN O'ROURKE: This is really
9 irrelevant to the project.

10 MR. SWEENEY: If we're going to hear
11 inaccuracies from different sources -

12 MR. KEVIN BETTE: Listen, we don't trust
13 anything that you have to say to us. You sue
14 anybody whenever things don't go your way.
15 You'll do anything possible to protect your
16 interests. That's your attitude.

17 CHAIRMAN O'ROURKE: Okay. Yes, sir.

18 FROM THE FLOOR: Under this plan with
19 traffic mitigation, is there a plan to make a
20 one-way section of Old Loudon Road to a
21 two-way again?

22 CHAIRMAN O'ROURKE: No. That did not pass
23 muster. That road will stay one-way.

24 FROM THE FLOOR: The other thing is there
25 is no reason that a side entrance couldn't be

1 put into the building for handicapped parking
2 so people wouldn't have to walk 400 feet.

3 CHAIRMAN O'ROURKE: Absolutely, and
4 that's why I said that it's an engineering
5 issue. Certainly the Super Wal-Mart that is in
6 Crossgates has multiple entrances. Again,
7 these are engineering issues. We're not
8 engineers. We can only do site specific
9 determinations on these projects.

10 Anyone else?

11 MR. BAKER: Who owns the property -

12 CHAIRMAN O'ROURKE: I'm sorry, sir.
13 You've already spoken.

14 MR. GREESON: I'd like to know who
15 actually owns the property and who represents
16 who? My question is what Mr. Baker said.
17 Answer the question.

18 MR. CAPONERA: The signature is
19 Mr. Nemith. He's a member of Wolford
20 Associates. He's also a member of
21 4 Autopark Drive, LLC.

22 MR. BAKER: But the owner is listed as
23 4 Autopark LLC, and not Wolford Associates.
24 They are a separate corporation.

25 MR. CAPONERA: Just to comment, when I

1 made my presentation on March 25, 2007, as you
2 all know - I don't know if all your Board
3 Members know - the road that is now known as
4 Plaza Drive is the connector road. It was
5 supposed to be a public road. It's supposed to
6 be dedicated to the Town of Colonie. That was
7 the premise upon which this whole thing was
8 held. I believe that it's in the minutes of
9 the approval that was granted to the developer
10 of the Anjio Dynamics building, that it be a
11 public road. Since that time, obviously it's
12 now a private road. That was pulled away.
13 Remember, it was going to be a public road and
14 any amount of money that was spent to build
15 that road by whoever built it - whether it was
16 Wal-Mart or these folks, that was going to be
17 a credit of the mitigation fee. That's when it
18 was going to be a public road.

19 CHAIRMAN O'ROURKE: Possibly.

20 MR. CAPONERA: Not possibly. That's what
21 was discussed and said by Bob Mitchell who
22 was, at that time, the head of Engineering and
23 Planning Services.

24 CHAIRMAN O'ROURKE: I don't know that to
25 be factual.

1 MR. CAPONERA: I'm just telling you what
2 I was told.

3 CHAIRMAN O'ROURKE: This isn't relevant.

4 MR. CHRIS BETTE: You wouldn't turn over
5 Autopark so you couldn't make it a public
6 road. You wouldn't turn over Autopark as a
7 dedicated street.

8 MR. CAPONERA: It was always our intent
9 to turn over Autopark as a public road.

10 As Bob said, he's willing to discuss this
11 at any time.

12 CHAIRMAN O'ROURKE: Okay, we're going to
13 end this discussion.

14 Do you have further questions, Peter?

15 MR. GANNON: I'm all set.

16 CHAIRMAN O'ROURKE: Mike?

17 MR. SULLIVAN: No questions.

18 CHAIRMAN O'ROURKE: Lou?

19 MR. MION: No questions.

20 CHAIRMAN O'ROURKE: Paul?

21 MR. ROSANO: No.

22 CHAIRMAN O'ROURKE: I have multiple
23 questions.

24 In the application, the pedestrian
25 accommodations don't seem to fit the intent of

1 the Land Use Law. Can somebody explain the
2 pedestrian accommodations?

3 MR. BRODEUR: I'm going to read the HCOR
4 guidelines.

5 "The design and development standards of
6 the Highway Commercial Office Residential,
7 HCOR, have been created to facilitate
8 pedestrian connection between commercial areas
9 as well as in addition, joining neighborhoods
10 while providing vehicle circulation."

11 If you look at the surrounding area,
12 there are no residential neighborhoods in the
13 surrounding immediate area. There are no
14 pedestrian connections at any of those
15 residential areas. There is currently no
16 connections to any other surrounding areas.
17 So, the intent of the HCOR guidelines were to
18 provide pedestrian access to interconnecting
19 areas. There is no surrounding connection
20 areas.

21 We've provided one to Plaza Drive in the
22 event that there is a choice to build a
23 sidewalk, but we can't make him.

24 From what we've been told, there is no
25 intent from the DOT to provide pedestrian

1 access, at this time, along Route 9. So, as a
2 professional engineer, I would not encourage
3 dumping pedestrians into a major traffic
4 corridor with nowhere to go.

5 Therefore, we've met what we feel is the
6 intent of the HCOR, which is to provide
7 intercirculation within the neighborhoods,
8 which we felt was the office park next door.

9 CHAIRMAN O'ROURKE: Sir, are you familiar
10 with this CDTA memo and guidelines that
11 they've asked for?

12 MR. BRODEUR: I know that we had been
13 working with CDTA and that's why we had
14 provided the bus route off-site within
15 Autopark Drive.

16 CHAIRMAN O'ROURKE: But they said that
17 they did not think that what you offered was
18 enough, sir.

19 MR. BRODEUR: Then, no, I did not receive
20 that. I'd like a copy of that.

21 CHAIRMAN O'ROURKE: We can get a copy of
22 that for you.

23 MR. LANE: They were looking for
24 18 months of subsidy to get the route
25 generating passengers.

1 MR. BRODEUR: We were talking sidewalks -

2 CHAIRMAN O'ROURKE: No, I'm talking both.

3 If this project were to go forward and they
4 put a light at Autopark, they're going to ask
5 for a bus stop. CDTA right now wants a
6 turnaround over to Old Loudon and then to make
7 a U-Turn and then a bus stop. You're saying
8 that you're not familiar with that?

9 MR. BRODEUR: No, I've not received that.

10 MR. LANE: There was a counter offer, but
11 they said that it was insufficient.

12 CHAIRMAN O'ROURKE: You guys offered them
13 a set fee. You guys offered them a one-time
14 fee and they said no way. They said that it
15 was insufficient.

16 Anyway, my question is then, for you not
17 to provide pedestrian access because of safety
18 issues, we're going to be asking CDTA to bus
19 people into an unsafe condition?

20 MR. BRODEUR: If you look at the plan
21 that we submitted, there is a bus stop with a
22 bus shelter.

23 CHAIRMAN O'ROURKE: Right, but CDTA has
24 said that the pilot program - that your
25 contribution portion is insufficient.

1 MR. BRODEUR: I know. You keep repeating
2 that, but these gentlemen are the ones that
3 met with them and that's not their
4 recollection.

5 MR. SWEENEY: Mr. Chairman, they never
6 said that to us. If you have a letter, we'd
7 like to see it, but they never said that to
8 us.

9 CHAIRMAN O'ROURKE: It was a response
10 letter.

11 It was to Mr. Michael J. Lyons.

12 MR. BRODEUR: Is that a recent one?

13 CHAIRMAN O'ROURKE: September 2, 2010.

14 MR. BRODEUR: I did notice that in the
15 comment letter, but we did not receive that
16 letter.

17 CHAIRMAN O'ROURKE: "The retail proposal
18 must be required to subsidize direct transit
19 services to the site with a bus stop on-site
20 with a dedicated ongoing funding stream, if
21 direct transit service is desired by the Town.
22 The service should be reasonable in terms of
23 routes and frequency to serve employees and
24 customers and it be in operation for a
25 sufficient period of time to establish the

1 transit market potential; usually 12 to 18
2 months. For CDTA to incorporate the pilot
3 service, they would need a minimum threshold
4 performance of 15 passengers per hour of
5 service and it must be achieved.

6 Page 9 of Doucett and Associates' letter
7 dated July 23, 2010 to Donald Fletcher
8 indicates that the developer would be willing
9 to provide a one-time fee for the operation of
10 the shuttle that would come off of Route 9
11 into Autopark Drive, to provide on a trial
12 basis ridership for those persons utilizing
13 the businesses on Autopark Drive. This is an
14 insufficient commitment for CDTA to be
15 involved in a pilot service. The shuttle and
16 the frequency needs to be reasonable for both
17 employees and customers or it will not be
18 used."

19 We will provide you a copy.

20 MR. BRODEUR: Yeah, that would be great.
21 We have not heard that and that's now where we
22 were.

23 CHAIRMAN O'ROURKE: Well, Doucett and
24 Associates was aware of it as of July 23rd.

25 MR. BRODEUR: No, I responded based on

1 meetings -

2 MR. SWEENEY: It was presented to -

3 CHAIRMAN O'ROURKE: Don Fletcher.

4 MR. SWEENEY: We did not get that
5 response.

6 CHAIRMAN O'ROURKE: We'll get into it.
7 It's just one of the things that bothered me
8 in the project. How are you going to build a
9 super Wal-Mart and not have sidewalks? It just
10 didn't make sense to me.

11 MR. SWEENEY: On the CDTA issue, the
12 reason that we're talking about support from
13 the group - and this is in writing - because
14 CDTA's first comment was that there isn't
15 enough ridership to support bus service there.
16 Wal-Mart's operations are in agreement with
17 that. We won't generate enough bus ridership
18 to have bus service into the site. We're still
19 working on it. The reason that we're talking
20 about having to pay for public transportation
21 is because we don't have enough bus riders.
22 That's why we're there. Obviously we have that
23 September letter and we haven't seen it. So,
24 we'll be happy to go right back to them.

25 CHAIRMAN O'ROURKE: The façade facing

1 Autopark - it specifically states in the Land
2 Use Law that blank and windowless walls are
3 strongly discouraged. Can you talk to the
4 Board about that wall?

5 MR. MCCAMEY: The intent of the
6 guidelines was to provide a clear sideline for
7 pedestrian areas into the building. If you had
8 glass on that side, you'd be looking into a
9 cooler, or into a freezer, or into a kitchen.
10 For the most part I think that everyone that
11 has been in grocery stores of any kind - that
12 your general services happen around the
13 perimeter of the store and you shop from
14 within.

15 What we did try to do was add an arch
16 element as a decorative block wall around it.
17 We did some elements that help break up this
18 feature. It was also a request that if we were
19 to do this and we were to heavily landscape
20 that area -

21 CHAIRMAN O'ROURKE: Who did that come
22 from?

23 MR. MCCAMEY: It's in one of the response
24 letters. I don't remember which agency asked
25 for it. In our response letter we stated that

1 we would provide the landscaping to help break
2 up the element of the wall.

3 CHAIRMAN O'ROURKE: So, I'm to understand
4 that not only are you looking for a wavier
5 that you don't want to face Autopark, you want
6 a blank wall to face Autopark.

7 MR. MCCAMEY: It's not a blank wall.

8 CHAIRMAN O'ROURKE: Sure it is. Are you
9 aware of the design standards in the HCOR?

10 MR. MCCAMEY: I am aware of those.

11 CHAIRMAN O'ROURKE: Does that façade meet
12 those?

13 MR. MCCAMEY: No.

14 CHAIRMAN O'ROURKE: Okay, thank you.

15 This says that the lighting should be no
16 higher than the roofline or 18 feet, whichever
17 is less. Can you explain to the Board why your
18 lighting is higher?

19 MR. BRODEUR: I don't believe that the
20 lighting plan has been submitted. At this
21 point in time, it's not part of the conceptual
22 plan process.

23 CHAIRMAN O'ROURKE: You answered it on
24 page 18 of your response letter.

25 "It is Wal-Mart's preference to use their

1 standard 42 foot mounting height for this
2 project to reduce the number of light poles
3 and allow for more uniform landscape planning
4 throughout the parking area.

5 MR. BRODEUR: It is their preference. The
6 HCOR guidelines are very specific. The comment
7 was very specific, but the comment didn't
8 necessarily go along with the requirements in
9 conceptual plan approval.

10 CHAIRMAN O'ROURKE: Maybe I'm not
11 understanding it properly. I thought that this
12 was somebody explaining to you that the lights
13 can't be more than 18 feet and your answer was
14 well, Wal-Mart's preference is to use a
15 42 foot. That's how I read it.

16 MR. BRODEUR: That's correct.

17 CHAIRMAN O'ROURKE: So, you know that
18 Wal-Mart can't use their 42 foot lights.

19 MR. BRODEUR: We understand that. You do
20 have the ability to waive that and at a future
21 date when a lighting plan would be submitted,
22 we would ask for a waiver. However, we could
23 adjust the light poles, if required.

24 CHAIRMAN O'ROURKE: In terms of the
25 application, I'm to believe that these plans

1 that have been submitted are substantially and
2 significantly different from the first plans
3 that were submitted.

4 Would I be correct in saying that, Chuck?

5 MR. VOSS: Yes.

6 CHAIRMAN O'ROURKE: So, when I look at
7 the site plan application signed by Mr.
8 Nemith, probably filled out by Mr. Caponera,
9 it says "8/17/10 updating the previously
10 submitted 12/20/07 application". There is no
11 provision for updating previously submitted
12 plans. So, this would be a new application.

13 MR. CAPONERA: No, that's not accurate. I
14 think that we discussed that at the meeting
15 and it was suggested by Mike Lyons, I believe,
16 that we update because the plan was slightly
17 different. I think that Chuck said it was
18 substantially different.

19 CHAIRMAN O'ROURKE: That name is coming
20 up a lot. I don't know why he's not here
21 tonight.

22 MR. CAPONERA: I'm just saying that's the
23 discussion -- and Chuck you were at the
24 meeting, too. We had discussed making
25 sure - Joe mentioned it, too - that everything

1 was exactly the same that is before this Board
2 right now, tonight. In an effort to figure out
3 how to do that, the suggestion was to update
4 the narrative and update the application. The
5 application is updated, but it's not
6 substantially different than what was
7 previously proposed.

8 CHAIRMAN O'ROURKE: Absolutely.

9 MR. CAPONERA: I don't think so.

10 MR. LACIVITA: I think that one of the
11 things that came out of that meeting was that
12 the project was not ready. The project was not
13 ready during the course of that meeting. So,
14 it was my intent that was going to be pulled
15 off of the meeting where it had been
16 previously scheduled and obviously it should
17 not be here tonight because it's still not
18 ready. That's the point that I tried to get
19 across to Mr. Caponera. I never said that some
20 of the allegations that they're saying here
21 today. It's continued that Mr. Lyons' name is
22 being brought up and trying to make him into a
23 scapegoat here. The project is not ready.

24 CHAIRMAN O'ROURKE: To me, I think that
25 with the wait of the public and this Board and

1 the effort, my plan is to bring this to a vote
2 this evening. They certainly would have any
3 recourse provided in the land use.

4 MS. VAIDA: If I may clarify with Victor?
5 When this project was brought up, it was
6 November of 2008. It's my understanding that
7 the Board took no action. Can you tell me what
8 happened?

9 MR. CAPONERA: On March 25, 2007, the
10 Board did not take any action. The Board made
11 certain recommendations. The Board weighed in
12 on various issues pertaining to the location
13 of the building, and the facing of the
14 building towards the Northway. It was my
15 recollection that most of the Board Members
16 felt that it was appropriate and that's why we
17 moved forward on the location of the building
18 facing I87, the Northway, and various other
19 issues.

20 CHAIRMAN O'ROURKE: So, Wal-Mart didn't
21 want it faced at the Northway.

22 MR. CAPONERA: Yes, they did. That's why
23 it was proposed that way.

24 MS. VAIDA: Just so that we understand
25 procedurally -- then in the interim, you've

1 been working with the Town regarding
2 modifications that needed to be made, other
3 issues such as traffic?

4 MR. CAPONERA: The biggest thing was the
5 traffic. That's what really - when we got back
6 into the Board, the traffic was the main
7 issue.

8 MS. VAIDA: So, now the project is being
9 resubmitted, I guess. Would that be correct?

10 MR. BRODEUR: The site plans - and I wish
11 that we could put them up side by side - but
12 the original application of site plan, under
13 no definition could you call it a substantial
14 revision. What's different on them is
15 additional landscaping and a few other items
16 in response to comments from the Town's
17 Designated Engineer, and from the Town's
18 departments. They're all in the B & L letters
19 and the changes that we made were in response
20 to that.

21 It has never been the precedent of this
22 Board when an applicant responds to
23 suggestions from its consultants or from Board
24 Members and puts it on the plan, that it is a
25 new application. I don't think that you want

1 that as a precedent.

2 MS. VAIDA: I don't disagree with you. I
3 don't think that it's a new application and in
4 looking at the Land Use Law, I think that
5 there was no action taken on the original
6 concept approval application. Modifications
7 and discussions have been going on for the
8 last couple of years and now it's back before
9 us with some of those modifications, I assume.
10 So, the modified plan is being resubmitted for
11 review, but it is in a sense procedurally,
12 according to the Land Use Law, for review as
13 described above under the initial approval
14 process. So, it went to the PED Department and
15 they reviewed it and they put it on the agenda
16 for us to review and that's where we are
17 tonight.

18 MR. BRODEUR: I think that I would agree
19 with you.

20 MS. VAIDA: Okay.

21 MR. SWEENEY: We responded with comments
22 where it was appropriate to show the response
23 on the plans that we did.

24 I'm concerned about the Chairman's
25 comment that there are substantially

1 significant differences in that this is a new
2 application.

3 MS. VAIDA: I think that when he says new
4 application, it's because there was no action,
5 in a sense, taken originally. So, this is the
6 first time now that I'm hoping that we'll be
7 taking action on your application on concept
8 approval.

9 CHAIRMAN O'ROURKE: I have confirmation
10 from the Town Designated Engineer that in his
11 opinion, it's significantly and substantially
12 different than the original proposal.

13 MR. BRODEUR: Again, I wish I could put
14 the town plans up side by side because it's
15 going to be hard to call out substantial and
16 significant changes from one to the other.

17 MS. VAIDA: I think part of the concern
18 is that there was an argument made, from
19 Mr. Caponera, that one of the requirements
20 didn't have to be fulfilled because your
21 original application was in 2007.

22 CHAIRMAN O'ROURKE: That's correct. It
23 was the landscaping.

24 MS. VAIDA: As I'm sure you know, is not
25 a valid argument. That's why you bring things

1 to the Board for concept acceptance. It is to
2 go over the concept and to make changes, if
3 need be, and the fact that maybe there was a
4 change in the design standards, or whatever
5 standard it was, in the interim. That's the
6 way that it is.

7 MR. CAPONERA: I understand completely.

8 MR. VOSS: C.J., if I could just add that
9 in saying that the application is
10 different - it certainly is different. There
11 is far more information that we have now that
12 we didn't know of a year ago, when I
13 personally wasn't involved with this project.

14 However, the waiver issues came to light
15 only in our August meeting, essentially. We
16 actually formalized those with the comments
17 from the Planning Department. I think that
18 significantly altered the impact of how this
19 project was going to proceed forward. Maybe
20 that's what C.J.'s thought are - yes, there are
21 some significant issues now that weren't
22 necessarily there prior.

23 MR. BRODEUR: I'm not sure that
24 necessarily makes a difference.

25 MS. VAIDA: No, it doesn't make a

1 difference.

2 CHAIRMAN O'ROURKE: With regard to one of
3 the waivers request, it doesn't.

4 MS. VAIDA: I don't think that's
5 something that they're hanging their hat on.

6 CHAIRMAN O'ROURKE: Can somebody explain
7 to me the Army Corp - the discharge of water
8 under the Northway and that easement that John
9 Dzialo references as the written approval of
10 the drainage easement for Deed Book 2551,
11 Page 748?

12 MR. SWEENEY: With that reference, I'm
13 not sure that I can address it directly
14 because I'm not looking at it. With the Offer
15 of Dedication and the proposed dedication
16 documents that are filed with the Town, there
17 is also a legal description filed for the
18 relocation of that easement? I think this is
19 what you're talking about.

20 CHAIRMAN O'ROURKE: That's right.

21 MR. SWEENEY: That's with the Autopark
22 Drive dedication documents. I have a copy with
23 me. I know that they're in your file.

24 CHAIRMAN O'ROURKE: I did not see it in
25 the file. If Counsel could get a copy of that?

1 MR. SWEENEY: Absolutely.

2 CHAIRMAN O'ROURKE: The building
3 elevations - I don't see how anyone could
4 conceive them to be consistent with the design
5 standards.

6 On page 6 of the EAF, it says that
7 400 jobs are going to be generated. Can
8 someone explain to me the 400 jobs?

9 MS. SERRA: I'm Alex Serra, Wal-Mart
10 Public Affairs. I can clarify that. Of that
11 385 jobs, 85 new jobs will be new jobs.

12 CHAIRMAN O'ROURKE: So, you just
13 misunderstood the question?

14 MS. SERRA: I did, and I apologize.

15 CHAIRMAN O'ROURKE: No problem at all.
16 I'm just trying to clarify. It says how many
17 new positions will be created.

18 MS. SERRA: New positions will be 85.

19 CHAIRMAN O'ROURKE: Thank you.

20 The SEQRA document that you guys filled
21 out with regard to the stream corridor - can
22 someone explain those issues?

23 MS. VAIDA: I think that there was a
24 question because the SEQRA submittal doesn't
25 mention anything about any stream being on the

1 property, or any wetlands being on the
2 property, but you applied for a federal permit
3 to dump something in the stream - some fill.

4 MR. BRODEUR: I can honestly say what
5 happened during the course of the project was
6 that we were working direction with the Corp
7 At the point that the application was filed, I
8 did not fill that out, but I understand that
9 more than likely at that point in time our
10 wetlands scientist did not feel that they were
11 jurisdictional streams. They felt that it was
12 a drainage ditch and there was no other water
13 source. We went through an extensive process
14 with the Corp and ultimately determined and
15 came to an agreement on what we saw in the
16 Corp permit.

17 MS. VAIDA: What about the wetlands?

18 MR. BRODEUR: The same issue there. Those
19 were jurisdictional wetlands.

20 MS. VAIDA: You should probably amend
21 your environmental assessment form.

22 MR. KEVIN BETTE: Were you aware that we
23 have a right to that basin at the bottom of
24 the cul-de-sac? Were you aware of that?

25 CHAIRMAN O'ROURKE: Mr. Bette, you're

1 actually out of order.

2 MR. KEVIN BETTE: We were denied
3 preliminarily because the Corp told us that
4 there were wetlands there.

5 CHAIRMAN O'ROURKE: Understood. That's
6 why we were asking the questions.

7 MR. BRODEUR: This basin is shown on our
8 plan.

9 MR. KEVIN BETTE: The Corp told us that,
10 and that's why we couldn't discharge there.

11 You need to understand what's going on in
12 the neighborhood here.

13 CHAIRMAN O'ROURKE: Mr. Brodeur, a
14 question for you - you keep mentioning in your
15 response letter that there is a separate
16 letter from the contract architect in regard
17 to the points that Doucet and Associates'
18 letter failed to answer. Do you have a copy of
19 that letter? Nobody seems to have one.

20 MR. BRODEUR: Yes, we do. It's also
21 referenced in the TDE's review documents.

22 CHAIRMAN O'ROURKE: Again, so you don't have
23 anything that directly answers the questions
24 that you state that's previously been
25 addressed. Those haven't been addressed.

1 MR. BRODEUR: It's related to the
2 building and the architectural design.

3 CHAIRMAN O'ROURKE: Right, and I did see
4 this document. I have this document, but
5 again, it doesn't answer, in its entirety, the
6 questions that you say will be answered by
7 him. I just want to point out a couple to you.

8 The compactor screening rules - it
9 doesn't show them as extended, or how you're
10 going to extend them?

11 MR. BRODEUR: As far as we know, the
12 compactors are fully screened.

13 CHAIRMAN O'ROURKE: It just says that the
14 compactor screen walls must be extended to
15 cover the entire area.

16 MR. MCCAMEY: Our response to that is
17 that we will comply. We'll be happy to run our
18 screen walls from the compactor.

19 CHAIRMAN O'ROURKE: Same thing with shed
20 roofs provided over bike racks.

21 MR. MCCAMEY: We did not see that anyone
22 was going to be able to access this site with
23 a bicycle.

24 CHAIRMAN O'ROURKE: In addition, there is
25 roughly a four foot high berm from Autopark

1 Drive and a six-foot elevation change from the
2 proposed grade of the landscaped area to the
3 building finished floor.

4 MR. BRODEUR: If you look at the grades
5 along Autopark Drive, there is variation.
6 Where it's higher, we bermed it. Where it's
7 lower, this elevation grade has a
8 differential.

9 CHAIRMAN O'ROURKE: Awnings should be
10 made or covered by canvass or plastic. Metal
11 roof covered awnings are not permissible.
12 There appears to be metal plastic awnings in
13 the renderings.

14 MR. MCCAMEY: We have a covered canopy
15 walkway. We no longer have awnings over the
16 windows since the HCOR guidelines said that we
17 did not have to put awnings in. So, we omitted
18 awnings for the windows. We do have a
19 continuous covered wall plate.

20 CHAIRMAN O'ROURKE: Anybody else on the
21 Board or in the audience have anything?

22 MS. METHE: I don't understand. If the
23 concept has a lot of things that are new to
24 this, that in order for them to have that
25 approved, you would have to be able to agree

1 that's what the concept is. Without the
2 waivers - you haven't granted that.

3 CHAIRMAN O'ROURKE: No, they presented
4 their concept. They have options, depending on
5 which way the vote were to go. They have
6 options that they can do.

7 At this point, does anybody else have any
8 comments or questions?

9 MR. GANNON: Just to point out C.J., that
10 based on some of the minutes that we have
11 looked at that were included in our packet,
12 there does appear to be some ambiguity about
13 the employment numbers, overall.

14 Back in 2008 Mr. Giovenco claimed
15 retaining 150 employees existing and 150 new
16 hires. Now we're hearing a number of 400 with
17 300 existing employees. It's just the
18 ambiguity of the employment numbers.

19 MR. ROSANO: I want you to show me 300
20 people in that building.

21 MS. SERRA: Mr. Chairman and members of
22 the Board, I am happy to go back and look at
23 those numbers again. The new component of the
24 proposed store would include grocery which
25 would require approximately 85 new positions

1 to be filled. I'm happy to go back and get our
2 current numbers for you to give you a more
3 accurate number. But, my understanding is that
4 300 is the current number.

5 MR. ROSANO: A GM store is not going to
6 ever have 300 people, ever. I've been on staff
7 there twice. We never had 300 people there. I
8 would appreciate getting some accurate
9 numbers.

10 MS. SERRA: Absolutely. I would be happy
11 to submit those to the Board.

12 MR. ROSANO: Thank you. I appreciate it.

13 CHAIRMAN O'ROURKE: Okay, at this point
14 we're not going to make any action on the
15 waiver, but we are going to act on concept
16 tonight.

17 MR. SWEENEY: Mr. Chairman?

18 CHAIRMAN O'ROURKE: Yes.

19 MR. SWEENEY: Obviously, from the course
20 of discussion, we have been asked to produce a
21 number of things. We've identified some
22 ambiguities. The sense is really very clear
23 that the Board is looking for more
24 information, and in fairness we appreciate the
25 opportunity to do that - get our notes

1 together and maybe the transcript and make
2 sure that you have every answer to every
3 question that you have. So, we would request
4 that the Board defer on concept vote and give
5 us an opportunity. We had the engineer's
6 letter yesterday afternoon. We just heard a
7 number of these questions tonight. We would
8 like an opportunity to be sure that you have a
9 clear and solid record for concept vote. In
10 fairness, we would ask you to defer tonight
11 and schedule another public meeting and give
12 us the opportunity to clarify anything and
13 deliver all information that you'd like to see
14 on this.

15 MS. VAIDA: I understand what you're
16 saying. I really don't have a problem with
17 that. The only problem that I have with that,
18 Mr. Sweeney, is you're asking us to just hold
19 off on voting. The problem is I'm not sure
20 when we would be able to put this back on the
21 agenda. The other concern is this information,
22 even though it's 12:30, is fresh in our minds
23 now. I'm a little concerned if we put this
24 off.

25 MR. SWEENEY: What we would do is do what

1 we have done all along with the engineers. We
2 would state the question and provide an
3 answer, provide a document -

4 MS. VAIDA: I think that maybe what we
5 should do is find out maybe from the Board
6 Members -- I don't think that the answers to
7 the questions that have been asked - for
8 instance for the employment and how many
9 people are going to be employed -- I'm not
10 sure that is a determination for concept. It
11 would appear from the earlier discussions that
12 the waiver issues are more important and I
13 think that we have thoroughly discussed those.

14 CHAIRMAN O'ROURKE: Honestly,
15 Mr. Sweeney, in all fairness, we have been in
16 this process for a couple of years. This is a
17 conceptual plan that you guys presented to us
18 tonight. If the Board was to vote it down and
19 it's rejected, you may revise, resubmit
20 conceptual plans for the application, prepare
21 a final submittal and not pay attention to
22 what the Board says.

23 MR. SWEENEY: This really is the first
24 concept plan meeting -

25 CHAIRMAN O'ROURKE: That's not true. The

1 first time that you guys came to concept,
2 there were significant issues raised about
3 traffic which prompted the Board and the
4 Chairperson at the time, Jean Donovan, to say
5 they're right. There are traffic issues.
6 Before this comes back before this Board, the
7 traffic issues must be ironed out.

8 Now, I'm of the understanding that not
9 only were you taking care of your traffic, but
10 you were taking care of the other issues
11 involved with the flaws of that conceptual
12 plan, hence the significant term - what I term
13 to be significant differences between the two
14 plans. Am I right?

15 MR. SWEENEY: Absolutely, but the fact is
16 that traffic process came to an end in June
17 and we were invited back with our concept plan
18 and here we are -

19 CHAIRMAN O'ROURKE: Mr. Sweeney, you had
20 specific conversations with me and said,
21 "Mr. Chairman, we want to get this on. We want
22 to bring the concept to you."

23 MR. SWEENEY: Yes, we do.

24 CHAIRMAN O'ROURKE: So, now you want to
25 pull it back and not have this vote? I have to

1 understand what it is.

2 MR. SWEENEY: What it is - is exactly
3 what we heard here tonight. A number of
4 specific questions - we don't want the Board
5 uncomfortable on any particular issue or
6 feeling that they don't have the information.

7 CHAIRMAN O'ROURKE: Again, that doesn't
8 hamper you from resubmitting a different
9 concept.

10 MR. SWEENEY: In fairness, we would like
11 the opportunity to submit before the vote was
12 taken and not be forced into taking a vote
13 after hearing all of these questions in the
14 last 24 hours.

15 MS. VAIDA: Maybe we can find out from
16 the Board Members if there is any outstanding
17 issues in their mind that may need to be
18 answered before they vote on this tonight.

19 CHAIRMAN O'ROURKE: Peter, is there any
20 further information in regards to this?

21 MR. GANNON: I don't think that I need
22 any further clarification on what has been
23 submitted. That's all I'll say about that. On
24 the application, as is, I'm good.

25 CHAIRMAN O'ROURKE: Mike?

1 MR. SULLIVAN: I don't have any further
2 questions.

3 CHAIRMAN O'ROURKE: Tim?

4 MR. LANE: We do need some clarification
5 on the pedestrian accommodations and the CDTA.
6 He was going to look into what their plan was
7 in resolving that.

8 CHAIRMAN O'ROURKE: Would that be a
9 deal breaker for you?

10 MR. LANE: If it was - that and other
11 things. I mean, the orientation of the
12 building with all these other things -

13 CHAIRMAN O'ROURKE: That's what I'm
14 saying.

15 MR. LANE: If we take a vote now -- I'm
16 perfectly willing to do a continuance and give
17 them time.

18 CHAIRMAN O'ROURKE: Lou?

19 MR. MION: I agree with Tim on this one.

20 CHAIRMAN O'ROURKE: Paul?

21 MR. ROSANO: I'm ready to vote.

22 CHAIRMAN O'ROURKE: We are going to move
23 forward and we are going to take a vote on
24 concept.

25 I make a motion to decline concept for

1 the specific reasons that it does not meet the
2 HCOR district -

3 MR. SWEENEY: Mr. Chairman, before this
4 motion is finished, this is a big project.
5 It's important to all of us. We're asking in
6 fairness that we have an opportunity -

7 CHAIRMAN O'ROURKE: Mr. Sweeney, you've
8 had three years.

9 MR. SWEENEY: We were told to come back
10 for concept in June. We haven't touched
11 concept.

12 CHAIRMAN O'ROURKE: We have touched
13 concept.

14 MR. SWEENEY: The first meeting -- we got
15 your engineer's comments yesterday afternoon.
16 We got all your comments today.
17 Obviously - and I can get my notes and go
18 through 20 things that you asked about or
19 asked for and we would like the opportunity
20 and I think that it's only fair that we get
21 the opportunity to get that information to the
22 Board. You don't have to force it.

23 MS. VAIDA: Let me ask you this: We don't
24 have to force it, but if I understood from the
25 conversation earlier, you're not going to be

1 changing the footprint. You're asking for
2 waivers. You're not going to be making any
3 changes to your design standards, right?

4 MR. SWEENEY: We would have an
5 opportunity to evaluate that. We have
6 expressed our opinion architecturally and just
7 got a sense -

8 CHAIRMAN O'ROURKE: You've had that
9 opportunity. I know you know this law way
10 better than I do. If this vote were to take
11 place and it was not to go favorably to you,
12 you can resubmit it. I'm not inclined to give
13 it only because the conversations that I've
14 personally had, with both Mr. Caponera and
15 yourself, is that we want to get concept
16 before the Board. You've had your chance and
17 you've presented concept and a lot of things
18 came up and it looked like you guys weren't
19 ready. Maybe that wasn't a great decision. I
20 don't know. But it's been three years.

21 MR. SWEENEY: We've been doing traffic
22 for three years.

23 CHAIRMAN O'ROURKE: You just said it on
24 the record. I said, have you just done traffic
25 or have you done other work, and you said

1 there was other work done. Your landscape guy
2 wasn't doing traffic.

3 MR. CAPONERA: Tonight you took a straw
4 vote on our request for these waivers. We've
5 not heard this information before. Don't our
6 clients have a right to listen to what the
7 majority of the Board has to say on these
8 things?

9 MS. VAIDA: Those factors that are in the
10 concept plan that you submitted -- we needed
11 the Board to understand what would happen if
12 it was approved as you submitted it. We would
13 have to be granting you waivers -

14 MR. CAPONERA: I understand what you're
15 saying. You've already done a straw vote on
16 the relative waivers, but from what I'm
17 understanding, the waivers is an important
18 part of this whole project -

19 CHAIRMAN O'ROURKE: Well, it is to get to
20 final.

21 MR. CAPONERA: Correct, but this is the
22 first night that we've heard anything about
23 the waivers.

24 CHAIRMAN O'ROURKE: No, it's not. Hold
25 on. I've got the transcripts.

1 MR. CAPONERA: I'll read from the
2 June 22nd transcript from you.

3 "This form is just for traffic. Certainly
4 at some point you'll be able to discuss that
5 and we'll look forward to speaking on that
6 point -"

7 MS. VAIDA: Also, in all fairness, I
8 would assume you knew all along that you would
9 have to be getting waivers and you would have
10 started a long time ago making your arguments.

11 MR. SWEENEY: This is the first forum
12 that we have gotten clarity on those. We
13 listened to the reaction to the Board and we
14 are again. We are just requesting that the
15 Board give us an opportunity to consider those
16 comments, and respond to them before a vote is
17 taken.

18 CHAIRMAN O'ROURKE: Right in the minutes
19 of March 25, 2008 you guys go through and ask
20 for the waivers. You understand that there are
21 waivers. What do you mean?

22 MR. CAPONERA: This is the first time
23 that you've taken a straw vote on the waivers.

24 CHAIRMAN O'ROURKE: But we don't have to.

25 MS. VAIDA: We're not voting on the

1 waivers.

2 MR. CAPONERA: On March 25 of 2008, the
3 members of the Board then - you were on the
4 Board at the time, C.J., as I recall you were
5 the only one of the members of the Board that
6 didn't like the way that the building was
7 located.

8 CHAIRMAN O'ROURKE: That, among other
9 things.

10 MR. CAPONERA: Correct. But, based on
11 what that Board was telling me on
12 March 25, 2008, we like the way that the
13 building is located. We don't want the
14 building to look like what it looks like
15 across the street. We relied on that. Now
16 we're with a whole other Board. You're the
17 Chairman. This is the first time that this
18 Board has acted on that. It's different than
19 what we heard on March 25, 2008.

20 CHAIRMAN O'ROURKE: You'll have the
21 perfect opportunity to readdress these things
22 and resubmit, if the vote were not to go your
23 way.

24 MR. CAPONERA: I think that's a waste of
25 time. I think that there is an active

1 application before this Board. This is the
2 first time that you've voted on these waivers.

3 CHAIRMAN O'ROURKE: We did not vote on
4 the waivers.

5 MR. CAPONERA: You took a straw vote.

6 CHAIRMAN O'ROURKE: I polled the Board.

7 MR. CAPONERA: And the Board made it loud
8 and clear that if they were to vote on those
9 waivers, we weren't going to get most of them.

10 CHAIRMAN O'ROURKE: I think that's a fair
11 assessment.

12 MR. CAPONERA: Based on that, I think
13 that -- and I've done this for a few years,
14 not only in this municipality, but many
15 others -- that they have absolutely given up
16 their right to take what the polling of what
17 the Board says and go back and say, "okay, how
18 do you want to handle this? Do you want to
19 make amendments? Do you want to change this"?
20 We should be given that option.

21 MS. VAIDA: There is no other information
22 that the members need to make a decision
23 tonight. The majority felt that way. The other
24 thing is whether the waivers should have been
25 fully addressed in your application that we

1 had before us. We sort of had to go through
2 them ourselves to figure out all the waivers
3 that you're going to need and if there is any
4 reason submitted for the waivers, which is
5 really your job to make that easy for the
6 Board to try to figure out. I don't know what
7 the concern is here. You can resubmit.

8 CHAIRMAN O'ROURKE: There is recourse.
9 There is recourse through the Land Use Law, if
10 you don't like the determination that this
11 Board makes.

12 In my opinion, this has gone on
13 three years. There has been a ton of
14 information and a ton of time on both ends and
15 I'm going to make a motion to deny concept
16 acceptance due to the fact that it does not
17 meet the HCOR design standards in terms of
18 frontage, setback, and among other things the
19 building design standards do not meet.

20 Do I have a second on that motion?

21 Also, it is not consistent with the
22 Comprehensive Plan.

23 Do I have a second to that motion?

24 MR. ROSANO: I'll second it.

25 CHAIRMAN O'ROURKE: All those in favor?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Ayes were recited.)

CHAIRMAN O'ROURKE: Opposed?

(There were none opposed.)

CHAIRMAN O'ROURKE: We'll look forward to seeing your reapplication or something from the applicant. Thank you all for staying as late as you did.

(Whereas the proceeding concerning the above entitled matter was concluded at 12:50 a.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

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

NANCY STRANG-VANDEBOGART

Dated September 22, 2009