

1 PLANNING BOARD COUNTY OF ALBANY  
2 TOWN OF COLONIE

3 \*\*\*\*\*  
4 DIBENEDETTO DANCE STUDIO  
5 13 SUNSET DRIVE  
6 AMENDMENT TO PREVIOUS SITE PLAN APPROVAL  
7 \*\*\*\*\*

8 THE STENOGRAPHIC MINUTES of the above entitled  
9 proceeding BY NANCY STRANG-VANDEBOGART,  
10 a Shorthand Reporter, commencing on  
11 December 20, 2011 at 7:08 p.m. at the Public  
12 Operations Center 347 Old Niskayuna Road,  
13 Latham, New York 12110

14 BOARD MEMBERS:

- 15 PETER STUTO, Chairman
- 16 MICHAEL SULLIVAN
- 17 LOUIS MION
- 18 TIM LANE
- 19 BRIAN AUSTIN
- 20 PAUL ROSANO
- 21 ELENA VAIDA, Esq., Attorney for the Planning Board

22 Also present:

- 23 Victor Caponera, Esq.
- 24 Joseph LaCivita, Director, Planning and Economic  
25 Development
- Michael Tengler, Planning and Economic Development
- Daniel DiBenedetto, DiBenedetto Dance Studio
- Nancy Bunker
- Robert Ensign
- John Tourtellott
- Lori Washburn
- Walter Woodka

1                   CHAIRMAN STUTO: Okay we'll call up the  
2 next item on the agenda. This is the  
3 DiBenedetto Dance Studio, 13 Sunset Drive,  
4 amendment to previous site plan approval  
5 presented by Victor Caponera.

6                   Joe or Mike, if you could give us some  
7 background. We saw this not too long ago.

8                   MR. TENGELER: The DiBenedetto Dance  
9 Studio at 13 Sunset Drive. This is an  
10 amendment to a previous site plan approval.  
11 They were before the Board on September 27<sup>th</sup> of  
12 this year where they were proposing an  
13 overflow parking lot in the rear of the  
14 building. This is in reference to some over  
15 parking on Sunset. Basically, there was some  
16 discussion with the Board - some suggestions  
17 given by the Board and some questions from the  
18 Board.

19                   Victor Caponera is here tonight to talk  
20 on behalf of Dan DiBenedetto and the dance  
21 studio.

22                   CHAIRMAN STUTO: Okay, how many parking  
23 spots are there now?

24                   MR. TENGELER: There are currently 16, I  
25 believe, on-site now.

1 MR. CAPONERA: Yes.

2 CHAIRMAN STUTO: They're conducting the  
3 Zumba classes which are generating quite a bit  
4 of parking and a use that exceeds the original  
5 approval.

6 MR. TENGELER: Correct.

7 CHAIRMAN STUTO: Mr. Caponera?

8 MR. CAPONERA: Thank you, Mr. Chairman.

9 Just as a matter of housekeeping, you  
10 were talking about the west end. Was that  
11 January 24<sup>th</sup>?

12 CHAIRMAN STUTO: That's what we're  
13 looking at tentatively on the calendar.

14 MR. CAPONERA: You also talked about the  
15 Boght.

16 CHAIRMAN STUTO: I don't know that we're  
17 going to do them on the same night, but we're  
18 looking to get those done. They're not on the  
19 calendar yet.

20 MR. CAPONERA: Good evening Members of  
21 the Board, members of the audience. I'm Victor  
22 Caponera representing Mr. DiBenedetto who owns  
23 13 Sunset Drive.

24 For everyone's knowledge, I represented  
25 Mr. DiBenedetto before he bought this property

1 and I represented Mr. DiBenedetto when he came  
2 before the previous Board for the approval to  
3 construct his dance studio back in 2002.

4 I was here the last time the Board took  
5 this matter up. Unfortunately, I wasn't here  
6 on behalf of Mr. DiBenedetto. I would like to  
7 go over parts of the narrative that I've  
8 submitted to basically give a historic  
9 background with what's going on and what  
10 happened.

11 There were a lot of good questions that  
12 were asked by the Board that I think I could  
13 answer, because I was involved with it through  
14 its inception.

15 To begin with, it's important to note  
16 that the property is a little over 2.1 acres.  
17 If you received your site plans you'll see  
18 that the property is rather an irregular  
19 piece. It's actually two triangles if you look  
20 at it. I have it outlined in yellow. One part  
21 of the building faces Sunset Drive. That's  
22 obviously shown in the site plan and the other  
23 part that actually faces Gaffer's Court is the  
24 other part of what I call a triangle.

25 Let me mention for the Board's

1           edification that when I came before the Board  
2           in 2002, I correctly stated then as I'll state  
3           now that Mr. DiBenedetto runs basically a  
4           private dance studio at this establishment. In  
5           so doing, he has private classes at this  
6           establishment and it's no different than it is  
7           now in terms of what 90 percent or 95 percent  
8           of his operation is - which is to work with  
9           smaller groups - 10 to 15, which is exactly  
10          what we said in 2002 and exactly what goes on  
11          there today.

12                        The facility was approved with 15 parking  
13                        spots and the hours of operation were  
14                        basically 9 a.m. to 10 p.m., six days a week.

15                        I'd also mention to the Board's knowledge  
16                        that if you look at the site plan, you'll  
17                        notice this property is in what's called a  
18                        highway commercial office/residential zone.  
19                        The entire piece is within what we call an  
20                        HCOR zone. That means that the property in an  
21                        HCOR zone doesn't allow single family  
22                        residential use. In order to get single family  
23                        residential use, or even a two family, you  
24                        need a special use permit. That's the Zoning  
25                        as of January 4, 2007.

1           Secondly, I'll mention that Sunset Drive  
2           is a public street and there are no signs on  
3           Sunset Drive that prohibit parking. We all  
4           know that you can do that legally, so long as  
5           you don't interfere with other property owners  
6           or park in front of hydrants and the like.  
7           When the Planning Board had its meeting - and  
8           I put down in my paper that it was October 11<sup>th</sup>  
9           and I think that it was in  
10          September - basically he stated that this is  
11          mostly used for private and semi-private  
12          instruction. However, in order to stay afloat,  
13          as we're all trying to do in this economic  
14          climate, Mr. DiBenedetto is allowing a Zumba  
15          class to go on which as I understand has more  
16          than 15 or 20 people. It can have up to 80  
17          people.

18                 Is that fairly correct?

19                 MR. DIBENEDETTO: Yes.

20                 MR. CAPONERA: Obviously, it's created  
21          parking issues and I'm told that there are a  
22          couple of neighbors; the resident at 9 Sunset  
23          and the resident across the street - directly  
24          across the street that have been bothered by  
25          this and has addressed this to Members of the

1 Planning Department; Mr. Tengeler and I think  
2 Mr. LaCivita. So, since that time - since the  
3 time that Mr. DiBenedetto was in here, he has  
4 called me back into the fray and asked me to  
5 give assistance in trying to work out a  
6 reasonable solution to this.

7 In so doing, we've hired Cotler  
8 Architects who were involved initially with  
9 the project and we've gone back and forth a  
10 multitude of times with Mike Tengeler. We've  
11 met on-site. We've looked at various ways to  
12 resolve this issue. I believe that we have  
13 taken care of that.

14 The other thing that I'll note for the  
15 Board is in an HCOR zone, you need a minimum  
16 of 20,000 square feet and this property, as I  
17 said, is a little over two acres. Also, you're  
18 allowed up to 18,000 square feet of entity per  
19 acre in an HCOR zone.

20 Also, under the code, under 190.41-A2  
21 entitled "On Street Parking":

22 "On street parking is encouraged where  
23 appropriate with build-outs on the sidewalk."

24 I'm just quoting from the Code.

25 Additionally, under 190.41-83F entitled "Off

1 Street Parking”

2 “Shared access points are encouraged and  
3 a single access to adjoining party lots or  
4 interconnection between adjoining parking lots  
5 is encouraged.”

6 It also talks about spill over parking  
7 which is exactly what we’re talking about here  
8 tonight. This Zumba operation is not an  
9 operation that goes on 100 percent of the  
10 time. It’s an operation that happens an hour  
11 twice a week and it may be happening  
12 potentially three times a week. It doesn’t  
13 happen all the time. That’s why you need spill  
14 over parking. Under the Code, it specifically  
15 states that when you have spill over parking,  
16 pervious materials are encouraged and could  
17 include grass pavers and gravel surfaces.

18 CHAIRMAN STUTO: Is spill over parking  
19 defined in the Code?

20 MR. CAPONERA: I didn’t look under the  
21 definition, Mr. Chairman. I would define this  
22 as a spillover because I know that I’ve used  
23 this same scenario in other applications  
24 before the Board. You have certain situations  
25 where you need spillover.

1           CHAIRMAN STUTO: I even consulted with an  
2 engineer - one of the TDEs - and you're not  
3 paying for it. They said an occasional  
4 parking, maybe twice a year or four times a  
5 year - it would be appropriate to have gravel.  
6 A couple times a week would be considered more  
7 than just spillover. That's my opinion. That's  
8 what I've been advised. That's where my  
9 orientation is right now.

10           MR. CAPONERA: Interesting. I know that  
11 recently the Board approved spillover parking  
12 for employees in another location in the Town  
13 and I know that's used more than twice a year.

14           CHAIRMAN STUTO: Can you be more specific  
15 on that?

16           MR. CAPONERA: Do you know what the  
17 address was, Mike?

18           MR. TENGELER: I believe it was the  
19 Scarborough's Restaurant on Old Niskayuna.  
20 There was a 12 car extension -- I don't know  
21 if you consider it spillover, per se, but it's  
22 a 12 car extension that went around the back  
23 of the lot that went through our office for  
24 administrative approval.

25           CHAIRMAN STUTO: Paved or unpaved?

1 MR. TENGELER: Unpaved.

2 CHAIRMAN STUTO: How big is the rest of  
3 the parking lot?

4 MR. TENGELER: I think around 16 spots  
5 roughly in the parking lot. There is another  
6 12 in the back that are unpaved.

7 CHAIRMAN STUTO: So, it's a relatively  
8 small percentage which is the spillover.

9 MR. LACIVITA: Very much so.

10 CHAIRMAN STUTO: That didn't come before  
11 this Board?

12 MR. LACIVITA: No.

13 CHAIRMAN STUTO: That's enough, Joe.  
14 Thank you.

15 MR. CAPONERA: So, as Mike indicated  
16 there are currently 16 parking spots. If you  
17 look at the site plan, those 16 parking spots  
18 are all located in the front of the building.  
19 So, what we have done is when we met with  
20 Cotler on site - there is a proposal to  
21 provide a one-way driveway that goes to the  
22 back of the property and the back of the  
23 property is substantially flat - to provide  
24 additional parking in the back. We've also  
25 worked with the Town, the Highway Department

1 and they've indicated that they have no  
2 problem or issue with allowing a curb cut to  
3 go onto Gaffer's Court to allow the parking to  
4 go in the rear and then go out Gaffer's Court  
5 onto Route 2. That is a provision that we feel  
6 is appropriate and will work very nicely in  
7 this situation. The bottom line is that it  
8 brings 62 parking spots on site.

9 CHAIRMAN STUTO: How many are paved?  
10 Currently there are 15?

11 MR. CAPONERA: There are 16.

12 CHAIRMAN STUTO: I just want to be clear  
13 and make sure we understand what's going on.  
14 Because if you have uses that attract 80  
15 people, we need how many spots total.

16 MR. CAPONERA: If you have 80 - it  
17 depends on how you want to go with this  
18 interpretation, but under 194E7K entitled  
19 "Private Club" One parking space is required  
20 for two persons of occupancy.

21 Now, you remember the last time there was  
22 a discussion about a 280 maximum occupancy in  
23 this building. A question was raised how did  
24 that happen?

25 CHAIRMAN STUTO: You can explain it and I

1 have also clarified it with Codes and the Fire  
2 people.

3 MR. CAPONERA: My understanding is that  
4 it's not so much a function of what goes on  
5 with the Planning Board as much as it is the  
6 size of the building and what the Fire Code  
7 allows for maximum occupancy.

8 CHAIRMAN STUTO: That doesn't mean that  
9 you're approved for those uses.

10 MR. CAPONERA: That's exactly correct.  
11 So, that was a discussion that was bantered  
12 around and nobody really had an answer. I  
13 think that is the answer.

14 What we're proposing, Mr. Chairman, and  
15 Members of the Board, is that given the fact  
16 that Mr. DiBenedetto doesn't -

17 CHAIRMAN STUTO: I want to stay on the  
18 number of parking spots. You're going to have  
19 the uses where 80 people come. You're going to  
20 add how many spots to the 16 that are already  
21 there?

22 MR. CAPONERA: We're going to have 62  
23 on-site.

24 CHAIRMAN STUTO: How many of those are  
25 paved?

1 MR. CAPONERA: There are 16 right now are  
2 paved.

3 CHAIRMAN STUTO: How many of them do you  
4 propose to be paved?

5 MR. CAPONERA: Okay, he's going to pave  
6 nine more and those would be located along the  
7 front and along the side, so you'd have a  
8 total of about 30-ish.

9 CHAIRMAN STUTO: That would be 25. Then  
10 62 minus the 25 that are paved -

11 MR. CAPONERA: 37. Okay anyway, you asked  
12 a question a moment ago and said, what is the  
13 required parking? It's whatever the maximum  
14 occupancy that the Board determines our  
15 proposal, as you can see in my narrative, is  
16 to reduce or cap the maximum occupancy in this  
17 building. This board is, in my opinion, within  
18 its power to do that. Our suggestion is,  
19 certainly 280 is crazy, 140 is crazy, 120 is a  
20 number that we feel we'll never go beyond. The  
21 requirement under the Code for 120 would be a  
22 minimum of 60 parking spots. Now, in addition  
23 to the 62 that we're proposing onsite, we also  
24 have a letter in the record from the  
25 Styczynskis that live across the street who

1 have offered six of their parking spots to be  
2 able to use. In addition, there is a property  
3 owner on Gaffer's Court that was here the last  
4 time.

5 I don't know if he's in the room right  
6 now because he had a presentation before the  
7 enlightened jurisdiction of the Sign Review  
8 Board right across the hall. He has an  
9 additional 10 spots that he has - as I walked  
10 in tonight - just offered to allow us. We were  
11 working on it earlier and he had some other  
12 business to attend to.

13 So, technically there is 62 onsite, 6  
14 offered just across the street from the  
15 Styczynskis and we have a letter that's on  
16 record, and an additional 10 that just off the  
17 cul-de-sac of Gaffer's Court.

18 CHAIRMAN STUTO: Are you going to get a  
19 permanent easement for those other spots - the  
20 10 and the 6?

21 MR. CAPONERA: I don't think that I can  
22 get an easement going across the street, but I  
23 can certainly get an agreement with Mr.  
24 Ensign. He can speak to that as he is here  
25 tonight.

1                   CHAIRMAN STUTO: You can get some kind of  
2 permanent easement on that property. Is that  
3 what you're proposing, or no?

4                   MR. CAPONERA: It depends on what  
5 Mr. Ensign is willing to do. Again, just for  
6 the record because I read a letter -

7                   CHAIRMAN STUTO: Can you indicate where  
8 Mr. Ensign's parking is being proposed? It's  
9 not indicated on the map.

10                  MR. CAPONERA: It's not shown on the map.  
11 We didn't have this discussion with Mr. Ensign  
12 until I was walking in here tonight. It would  
13 be located in this general area (Indicating)  
14 along Gaffer's Court.

15                  I'll note that I've walked the site. I'm  
16 sure every Member of the Board has been over  
17 there. I'm sure you've been on Gaffer's Court.  
18 Gaffer's Court is a pretty quiet street, based  
19 on my walking of the street. It's newly paved.  
20 There doesn't appear to be a lot going on over  
21 there other than people dumping garbage on my  
22 client's property, which happens with some  
23 regularity.

24                  We've also had discussions with the  
25 Police Department and they've verified the

1 same that sometimes some unusual things happen  
2 over there. By doing this, my opinion is that  
3 we're going to create more traffic. There is  
4 going to bring more cars on that road and  
5 hopefully none of the unusual items are going  
6 to continue to happen on that street. That's  
7 our proposal, Mr. Chairman, and Members of the  
8 Board.

9 CHAIRMAN STUTO: Let me ask a couple of  
10 clarifications just so that we understand it  
11 better and then we'll turn it over.

12 Your parking is going to touch Gaffer's  
13 and you proposed to have a right of way, or  
14 opening there, or permanent way to get on and  
15 off of Gaffer's both ways at all times,  
16 24 hours a day?

17 MR. CAPONERA: Correct.

18 CHAIRMAN STUTO: Two ways.

19 MR. CAPONERA: Absolutely.

20 CHAIRMAN STUTO: Where is the paved  
21 parking and where is the gravel part? I'm not  
22 sure if that's indicated on the map.

23 MR. CAPONERA: I don't believe that it's  
24 indicated, Mr. Chairman. The paved parking  
25 would extend beyond the pavement of Gaffer's

1 Court - I'll call it the roundabout - and  
2 extend into the parking area in the rear. In  
3 other words, it would be what is proposed to  
4 be paved.

5 CHAIRMAN STUTO: Where it says 37 new  
6 parking spaces?

7 MR. CAPONERA: Yes, where the cloud  
8 is - if you go right towards where the  
9 cul-de-sac is, the paving would lead into that  
10 area. That's ether area that we're proposing  
11 to have crusher run - what we call an  
12 impervious surface.

13 CHAIRMAN STUTO: I'm not understanding  
14 you - where the crusher run goes.

15 MR. CAPONERA: The crusher run would be  
16 in this area where the 37 new parking spots  
17 are.

18 CHAIRMAN STUTO: I thought you just said  
19 that was paved.

20 MR. CAPONERA: No. I said going into the  
21 parking lot. Off of Gaffer's Court would be  
22 paved.

23 CHAIRMAN STUTO: Where are the 25 new  
24 paved spots?

25 MR. CAPONERA: They would be located

1 along the front. There are not 25. There are  
2 currently 16 paved that you see there and then  
3 you have these other 10; so actually 26. That  
4 would all be paved.

5 CHAIRMAN STUTO: Where is this new light  
6 pole that says new gravel lot? That's another  
7 gravel lot that you are proposing with an in  
8 and out?

9 MR. CAPONERA: Yes. That's additional  
10 parking. Again, the pavement would extend off  
11 of Gaffer's into the parking lot so that there  
12 wouldn't be any crusher run or stone up to the  
13 area. It would be paved into the parking lot  
14 but not the parking lot, per se. What we are  
15 proposing would be crusher run.

16 CHAIRMAN STUTO: You're going to have two  
17 entrances on Gaffer's?

18 MR. CAPONERA: That's the proposal.

19 CHAIRMAN STUTO: I'm not an engineer. I  
20 don't know.

21 MR. AUSTIN: Mr. Caponera, are all the  
22 parking spots going to be striped too?

23 MR. CAPONERA: Yes, absolutely.

24 CHAIRMAN STUTO: You're going to stripe  
25 the crusher run?

1 MR. CAPONERA: Are you proposing to do  
2 that?

3 MR. DEBENEDETTO: You can't.

4 MR. CAPONERA: You wouldn't be able to do  
5 that. The ones in the front will be paved and  
6 the one in the back is not proposed.

7 CHAIRMAN STUTO: Okay, I'll turn it over  
8 to the Board.

9 Paul, are you ready for questions yet?

10 MR. ROSANO: I think I'd like to hear  
11 from the public first.

12 CHAIRMAN STUTO: Do you have more for  
13 your presentation?

14 MR. CAPONERA: Yes, a little bit more.

15 CHAIRMAN STUTO: Okay, I'm sorry. Please  
16 go forward.

17 MR. CAPONERA: So, I eluded to this a few  
18 moments ago but I just want to make this part  
19 of the record that the Planning Department has  
20 confirmed with the Town Highway Department - I  
21 should say the Town of Colonie Highway Safety  
22 Committee, as well as the Latham Fire  
23 Department that they have no problem with  
24 having the curb cut on Gaffer's Road. That's  
25 important because you need their input and

1           their basic approval, allowing the spillover  
2           parking to come into and out of Gaffer's  
3           Court. That is, for the most part, as I said,  
4           is a newly paved road which has only one  
5           residence on it. It's very private and pretty  
6           secluded. I mentioned that it's going to have  
7           additional traffic.

8                         We also can say that the owners of  
9           Maggie's Gift Shop at the corner of  
10          Route 2 and Gaffer's - that gentleman appeared  
11          at the last Planning Board meeting as well as  
12          Mr. Ensign who is here with us tonight.

13                        For the record, Mr. Ensign met  
14          Mr. DiBenedetto for the first time the last  
15          time they were here, which I think was in  
16          September. I think that there was some comment  
17          made that he's a friend of Mr. DiBenedetto. I  
18          spoke with Mr. Ensign as we walked in and he  
19          met him once the night that they met here.  
20          Obviously, they've talked. He, as I indicated,  
21          has absolutely no problem with the current  
22          proposal that would allow any spillover to  
23          park on the 10 or 12 spaces that he has along  
24          Gaffer's Court.

25                        I've sat and I've discussed this at great

1 length with Mr. DiBenedetto obviously to  
2 require all of this parking lot to be paved  
3 would be cost prohibitive to him. He's gotten  
4 quotes. The one that I have here in my  
5 possession is a quote from Leto and I believe  
6 that number came in before he added the  
7 additional spaces in this are right here  
8 (Indicating); close to \$37,000 to do the  
9 preparation work and to pave it.

10 The number is \$34,677 and this estimate  
11 is A. Leto Construction Company and it's dated  
12 10/20/11.

13 CHAIRMAN STUTO: To do what you're  
14 proposing?

15 MR. CAPONERA: No, to actually pave the  
16 entire area in the back. What we're proposing  
17 would be closer to \$40,000. If we could do  
18 what we are proposing, to pave the areas in  
19 the front, and to pave into and off of  
20 Gaffer's Court, to these parking areas and  
21 then use what we call crusher run would be  
22 about half that.

23 The bottom line here is that  
24 Mr. DiBenedetto is trying to continue his  
25 business. He's certainly struggling to do this

1 and I think that the proposal to have the  
2 maximum occupancy to 120 rather than the 280,  
3 which is up there -- and I physically went  
4 into the building and I physically saw it.

5 CHAIRMAN STUTO: That doesn't mean that  
6 you're approved for 280. That's your maximum  
7 fire capacity.

8 MR. CAPONERA: Absolutely, and that's not  
9 what we're looking for. We've never looked for  
10 that. My client is prepared to say that he'll  
11 cap it at no more than 120 at any time. I  
12 think that in discussing with Mr. DiBenedetto,  
13 I think that once a year he'll have a party or  
14 something and have more than 80 people there,  
15 but that's not anything that happens on a  
16 regular basis and that's my point. We're  
17 trying to do this in a very reasonable way to  
18 provide cross parking over on Gaffer's Court  
19 which will create a situation where cars won't  
20 have to park along Sunset Drive. I think that  
21 this would work very nicely. I think that's  
22 pretty much it.

23 CHAIRMAN STUTO: Would anyone on the  
24 Board like to speak before the public?

25 MR. ROSANO: Yes, I have a couple of

1 questions.

2 Victor, what were the added ones to the  
3 front of the location?

4 MR. CAPONERA: In the front of the  
5 building, Mr. Rosano, there are 16 spaces that  
6 are the closest to the building. If you look  
7 at the site plan, we propose to add 6 spaces  
8 closest to the road and four spots over by  
9 where the cul-de-sac is; that's an additional  
10 10.

11 MR. ROSANO: Now, you're taking up part  
12 of the berm?

13 MR. CAPONERA: I'm not sure if part of  
14 the berm would be taken out, but we would take  
15 out part of the grass that's there, yes.

16 MR. ROSANO: The drive on the right  
17 side - the drive is going to be one-way going  
18 in.

19 MR. CAPONERA: That's the proposal and  
20 I'll tell you why. I have discussed this with  
21 the owners of 11 Sunset, who are here tonight.  
22 I spoke with them just before we started. He  
23 and along with Mike Hanna own this property.  
24 It's an attorney and CPA firm. They've been  
25 there for a million years, I'm told, or

1           thereabouts.

2                       There was a discussion about drainage.  
3           Before this property was built, everything  
4           sheet drained onto this parcel and when it was  
5           built through some of puddling that happens  
6           over here (Indicating). We discussed this with  
7           Cotler about how to alleviate that and berm  
8           this up. Everything kind of drains over to  
9           this existing stormwater (Indicating), and  
10          that was a proposal. To make that a two way  
11          would probably cause more of a problem than it  
12          would solve for Mr. Hanna and his partner's  
13          property to the right. I had preliminary  
14          discussions with Mike Hanna about doing a  
15          shared access driveway here where everyone  
16          could use each other's. I believe that this  
17          parcel has about 14 spaces, but I guess  
18          basically due to an issue of potential  
19          liability issues, they opted not to do that.  
20          There was a proposal to have a rear access so  
21          that everyone could park. We also talked about  
22          putting some kind of a structure up here  
23          (Indicating), a fence to stop vehicles from  
24          going through. I was also told that during the  
25          time when the Vanilla Bean was in operation

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1           - and I don't know how many of you are old  
2           enough to remember that - that was a pretty  
3           busy little place. Cars were parked all over  
4           the place. I'm told that on occasion when you  
5           were coming down Gaffer's they went onto my  
6           client's property and drive right over and  
7           onto the Hanna parcel. That didn't make them  
8           very happy. So, they actually put a pole of  
9           some kind of a structure to keep that from  
10          happening. It's a pretty flat piece there. If  
11          you can get beyond the dumping of trees and  
12          stumps and stuff that is in that area, you can  
13          see how someone could potentially and in fact  
14          do that.

15                 MR. ROSANO: I want to go back to my  
16          original question. On the six in the front, I  
17          noticed that you have added a couple of trees  
18          to that berm. That berm, from my experience,  
19          has been a parking lot and it's the only other  
20          thing that I can call it. Are you going to put  
21          any kind of curbing in or something to stop  
22          people from double parking there? I guess  
23          you're going to have one row of six. What's to  
24          stop another row from backing up to that  
25          group?

1 MR. CAPONERA: You mean over here

2 (Indicating)?

3 MR. ROSANO: Yes. I don't want to see any  
4 parking on there.

5 MR. CAPONERA: I understand. We could do  
6 that; absolutely.

7 MR. ROSANO: I have more questions for  
8 later.

9 CHAIRMAN STUTO: Anybody else before we  
10 go to the public?

11 **(There was no response.)**

12 CHAIRMAN STUTO: The people who are  
13 interested in this project, can you just raise  
14 your hand so we can get an idea?

15 **(Several audience members raised their hands.)**

16 CHAIRMAN STUTO: Some of you I definitely  
17 remember your testimony. I'll try to get this  
18 right.

19 Okay, first is 11 Sunset; Walter Woodka.

20 You own a business next door, is that  
21 right?

22 MR. WOODKA: Yes.

23 CHAIRMAN STUTO: You don't live there.

24 MR. WOODKA: No.

25 My name is Walter Woodka and I own the

1 property next door with Mike Hanna. I have a  
2 couple of concerns. We have had problems in  
3 the past. Where the parking lot is going, to  
4 come out onto Route 7 from the proposed road,  
5 you're going to probably go right and you're  
6 not going to look left at the circle.

7 CHAIRMAN STUTO: Are you saying at  
8 Gaffer's?

9 MR. WOODKA: Yes.

10 MR. LACIVITA: They wouldn't be changing  
11 that at all.

12 MR. WOODKA: Because what is going to  
13 happen is that people in that parking  
14 lot - because we have a street light on  
15 Sunset, they're going to go over the lawn  
16 through our driveway and come out on Sunset.  
17 There is a street light to get out. That's one  
18 concern that I have.

19 CHAIRMAN STUTO: I see what you're  
20 saying.

21 MR. WOODKA: I'm there at night; up to  
22 9:00 at night during tax season and I see  
23 people come from the parking lot over and come  
24 out -- it's a mass exodus when they end the  
25 session. I've seen people and I've got

1 pictures where they come over the lawn on our  
2 driveway and leave.

3 CHAIRMAN STUTO: How would you say that  
4 the parking works now?

5 MR. WOODKA: Right now it's fine until  
6 tax season. Tax season, if we get snow, my  
7 parking lot is going to become -

8 CHAIRMAN STUTO: No, how does their  
9 parking work now?

10 MR. WOODKA: They're all over the street.  
11 When they leave, they'll go over the lawn.

12 CHAIRMAN STUTO: So, it's not good.

13 MR. WOODKA: Correct. It's not good.

14 We also have clients with trucks. So, I  
15 need the space. It's not that I'm selfish and  
16 I'd like to help the dance studio out, but if  
17 a man comes in with a truck with all his  
18 equipment -- during tax season, I have elderly  
19 clients coming in there for 5:00. With the  
20 parking lot getting smaller, it's just a  
21 matter of one of my clients hitting somebody  
22 or getting hit and they're going to come to me  
23 and say somebody hit my car.

24 In terms of our parking lot to the  
25 proposed parking lot a fence, a berm, some

1 trees, just to eliminate cars coming over our  
2 lawn.

3 MR. AUSTIN: I'm sorry. I didn't mean to  
4 interrupt but there is on the plans, if you  
5 take a look at the plans, it does call for a  
6 new solid fence.

7 MR. WOODKA: Which I just found out.

8 MR. AUSTIN: So that would maybe prevent  
9 that.

10 CHAIRMAN STUTO: The exit is in the back  
11 section.

12 MR. WOODKA: Then the other issue is that  
13 it might in the back there - at the end of the  
14 street - which you said you were going to put  
15 a street light or some kind of lighting - it  
16 gets active at about 9:00 at night. If you're  
17 going to put a proposed parking lot in, it's  
18 just going to extend the activity.

19 CHAIRMAN STUTO: There do seem to be  
20 lights on the plans. I don't mind you looking  
21 at this one if you want to share it with the  
22 neighbors.

23 MR. WOODKA: That was the only issue that  
24 I had was with the parking going over the lawn  
25 and down our driveway.

1                   CHAIRMAN STUTO: Are you referring to the  
2 back or on the side of your lot? The fence on  
3 this diagram appears to be on the back of your  
4 lot.

5                   MR. WOODKA: Yes, Route 9.

6                   So, a berm or a fence and that's fine.  
7 That's the only issue that I had.

8                   CHAIRMAN STUTO: Thank you.

9                   John and Terry Tourtellott.

10                  MR. TOURTELLOTT: Just very briefly,  
11 several members of our family go there during  
12 Zumba class. I think that it's a pretty  
13 beneficial program that they have over there.  
14 My only request is do whatever is reasonable  
15 to solve the problem. I think that we can  
16 agree that there is an uncomfortable situation  
17 there at best. It's a big benefit to the  
18 neighborhood and the people on that side of  
19 Town. It's just a parking lot, so I hope that  
20 it can get worked out.

21                  CHAIRMAN STUTO: Thank you.

22                  Lori Washburn, 9 Sunset.

23                  You look to be the next lot over from  
24 Mr. Woodka, correct?

25                  MS. WASHBURN: Right. My concern is first

1 of all, behind my lot you're putting a parking  
2 lot. I'm concerned about that. I just heard  
3 tonight that there is going to be lighting.  
4 That is a dark end of the street. It's a dark  
5 back field, and frankly I go out there with  
6 flashlights because there is activity going  
7 on.

8 If you're going to put a parking lot  
9 behind my house, I want a barrier because I  
10 don't want street lights shining into my  
11 backyard.

12 CHAIRMAN STUTO: You're residential?

13 MS. WASHBURN: Yes. I've been there 51  
14 years.

15 CHAIRMAN STUTO: If you look at the map,  
16 they're proposing a solid six-foot fence that  
17 ends about a quarter of the way onto your  
18 property. I don't know if you can see that.

19 MR. WASHBURN: I don't want to have car  
20 lights into my bedroom window and I don't want  
21 people staring at me if I'm sitting in my back  
22 yard. I don't feel safe right now in my own  
23 home. I park on the street. My side view  
24 mirrors are played around with. I've had my  
25 car broken into after one of the Friday night

1 parties. I can't walk down the street. They  
2 come down so fast that it's a dangerous  
3 situation. I've had two mirror accidents  
4 because of the cars parked all the way up to  
5 Pioneer Savings Bank and they can't see as  
6 they're pulling out. They park so close to my  
7 car one night, I couldn't even get out. It  
8 took me 10 minute to back up 15 or 20 times to  
9 make a three-point turn to get out of the  
10 front of my own house. It's very dangerous and  
11 I want the protection from what is going to go  
12 on in the parking lot. No matter what you say,  
13 there are going to be people that find a dark  
14 parking lot and they're going to use it for  
15 whatever they want.

16 CHAIRMAN STUTO: Thank you.

17 It is lighted and there is a fence that  
18 goes partially over your property. I'm not  
19 sure if it's adequate or not. Do you want to  
20 look at the map closer and tell us what you  
21 think?

22 Nancy Bunker.

23 MS. BUNKER: I would be here on this map  
24 (Indicating).

25 I've walked back here and it seems as

1           though there is really not as much space back  
2           here as shows up on the map. This is a very  
3           steep drop off here (Indicating). It really  
4           seems like a fairly narrow channel between 11  
5           Sunset Drive and the drop-off. You'd have to  
6           have the road, you'd have to have the fence,  
7           you have to have a certain amount of easement  
8           between the roads and the fence in terms of  
9           the snow plows. It's a little ambitious to  
10          have this much going on in this area because  
11          it doesn't seem like it's that wide of a  
12          stretch.

13                 We have had problems even within the last  
14          month. We did have someone towed from my lot  
15          because I'm trying to -- as the snow starts  
16          coming I'm going to have to be able to get a  
17          snowplow guy in and out of the property. He  
18          usually comes in the evening. Obviously, it's  
19          a pediatric practice. We have pregnant women,  
20          we have small children, we have elderly people  
21          bringing their grandchildren in. We cannot  
22          have ice or snow problems on my lot. I need to  
23          have a plow guy able to get in there. They  
24          need to plow every single spot. They need to  
25          be able to salt every single spot.

1                   CHAIRMAN STUTO: Is that your driveway at  
2 the end on the left?

3                   MS. BUNKER: That's where I am. So, we've  
4 had one person towed already within the last  
5 month or so. I guess it was the beginning of  
6 November. I had to interrupt the Zumba class  
7 last week.

8                   CHAIRMAN STUTO: Who did you have towed?  
9 A customer, or a patient of yours?

10                  MS. BUNKER: No, it was a Zumba student.

11                  CHAIRMAN STUTO: Towed out of your lot,  
12 is that what you're saying?

13                  MS. BUNKER: Towed out of my lot because  
14 they were parked in the lot and we can't have  
15 that as it gets closer to snow season.

16                  The other thing is they tend to block the  
17 entrance to my driveway so I had to interrupt  
18 the Zumba class a couple of weeks ago. I  
19 stopped everything and they sent the person  
20 out to move the car. It happens so often and  
21 I've not interrupted that many classes before,  
22 but they cannot be blocking everyone's  
23 driveway, which they have been doing.

24                  The concern also is that it's still very  
25 little parking and as you say, it's gravel.

1 Now the biggest problem is going to be in the  
2 winter when we have snow on either side of the  
3 road. It's a very narrow road and if you have  
4 snow piles on either side - the lawns are  
5 fairly small in this area, so they can't  
6 really put the snow on the lawns. The snow  
7 ends up piled up on either side of the street  
8 on a fairly narrow channel and you have people  
9 parking on both sides of the street. You  
10 cannot get a full-size car down there. You  
11 cannot get a snowplow down there. You cannot  
12 get a fire engine down there. You cannot get a  
13 tow truck down there. You cannot get a full  
14 size ambulance down there. You cannot even get  
15 a pickup truck or a utility vehicle down there  
16 because you have snow piles on both sides of  
17 the street. As I said, you have parking on  
18 both sides of the street.

19 We also noticed that last winter when the  
20 snow piles were there, they couldn't tell  
21 where people's driveways were, so they'd  
22 actually park in the street. They were  
23 blocking the entrances to people's driveways.  
24 So, we had a big problem last winter and I'm  
25 sure this winter we'll probably get the snow

1           that's going to come back. Obviously, if you  
2           get a truck down here, you're not going to be  
3           able to turn it around. So, if you have  
4           parking all along here (Indicating) have  
5           either a snow plow or tow truck come down  
6           here - they're not going to be able to  
7           maneuver here (Indicating) and they may not  
8           even be able to back up. You're going to end  
9           up with a complete gridlock where nobody can  
10          come into the street and nobody can leave the  
11          street because you have large trucks and snow  
12          plow for a tractor trailer which we sometimes  
13          get down the street and they will not be able  
14          to back up because it's so tight. So, you end  
15          up running the risk of having a complete  
16          blockage of this street. These parking spaces  
17          are gravel. The big problem will be when there  
18          is snow on the street, but nobody is going to  
19          want to park in a gravel parking lot in the  
20          winter when it's going to be icy. They won't  
21          be able to plow, the salt will not be  
22          effective in a gravel parking lot and the  
23          gravel will still be icy but the salt will  
24          slide between the gravel.

25                   Some of these are big dances where they

1           have formal gowns and high heels and some of  
2           the ballroom dance classes where the women  
3           will not be wearing sturdy shoes and they'll  
4           be hiking along this gravel area trying to get  
5           into and out of the dance classes. So, there  
6           are actually some safety issues for the  
7           dancers in bad weather when you're taking into  
8           effect a gravel parking lot. So, there are  
9           still a lot of issues that have really not  
10          been resolved about this. A lot of this  
11          parking is still kind of far away. You've got  
12          a little bit here, but if you need more, you  
13          have some way up here. Nobody is going to walk  
14          that far, especially in high heels. So, you're  
15          going to end up still parking on our property.  
16          I'm still going to have problems getting my  
17          plow guy in and out of the street. I don't  
18          think that the gravel is really going to be  
19          the solution to the problem. People are going  
20          to want to park where they feel safe. They're  
21          going to end up parking on the street and the  
22          problem is still going to continue.

23                 Zumba, I'm sure, is a great exercise. I'm  
24                 sure the women - it's good for them to do it,  
25                 but this may not be the proper venue for a

1 class as popular as the Zumba class. It's a  
2 very small area and this is a lot of the  
3 parking space will end up being very  
4 disruptive for the other two neighbors. I  
5 really have some trouble believing that you're  
6 going to have room for a fence and enough room  
7 for everyone to move around because the drop  
8 down the embankment is very close and I  
9 suspect would be very subject to erosion  
10 unless they got stabilized somehow. So, you've  
11 got cars and snowplows going here, but you've  
12 got the embankment here (Indicating) and  
13 you're going to have to plow the snow and  
14 you're going to have some washout down the  
15 embankment, so it's going to get potentially  
16 even more narrow.

17 CHAIRMAN STUTO: Those contour lines are  
18 going up hill, is that what you're saying?

19 MS. BUNKER: There is a drop off right  
20 here (Indicating). This is much lower. It's  
21 going down so you're going to end up having a  
22 lot of erosion and you could have damage from  
23 the snow plows and a fairly narrow passageway  
24 between the two parts of the lot. They're  
25 going to end up getting closer to 11 Sunset

1 Drive because of the erosion on this side.

2 CHAIRMAN STUTO: Very good comments.

3 Mike?

4 MR. SULLIVAN: I have a question.

5 Victor, you mentioned that you're going  
6 to cap - you suggested capping the maximum  
7 number of people to 120.

8 MR. CAPONERA: Correct.

9 MR. SULLIVAN: Would that be for the  
10 special events?

11 MR. CAPONERA: Correct.

12 MR. SULLIVAN: What would be done with  
13 the Zumba class? Would that still remain  
14 capped at 80 or do you have plans to -

15 MR. CAPONERA: There aren't any plans to  
16 increase it. We want to try to make this work  
17 as best as we can.

18 MR. SULLIVAN: Okay because I would be  
19 very concerned if the class were to grow to  
20 120. The class seems to contribute much more  
21 than the two to one ratio. Board Members had  
22 mentioned that there were 72 cars for 80  
23 students. So, I would not want to see that  
24 class enlarged.

25 MR. CAPONERA: I agree 100 percent.

1                   MR. SULLIVAN: My only concern, and Dr.  
2 Bunker hit on it, if that parking lot is not  
3 desirable, we're still going to have parking  
4 in the street. We're really not solving the  
5 problem. I know that we're trying to solve the  
6 problem that if it's not a safe environment or  
7 suitable for walking in the shoes that -

8                   MR. CAPONERA: Can I just comment on  
9 that? Let's just be honest. Ballroom dancers  
10 don't wear their spiked shoes walking. They  
11 wear boots. There is a changing room in there.  
12 Mr. Tengeler has seen it and I've seen it. You  
13 go in and that's where you take your boots off  
14 and you put your spikes or whatever the heck  
15 you're talking about. They're not going to be  
16 walking on any of this property with their  
17 high heeled shoes on. Let's just clear that up  
18 right off the bat.

19                   The other thing about where the Doctor is  
20 commenting about some structural issues - we  
21 had this designed by a professional. I would  
22 humbly say to the Board that you need to  
23 listen to what a professional architect says  
24 about what can and cannot be put back here.  
25 I'm not at all concerned about the workability

1 and the functionality of this.

2 MR. SULLIVAN: What can be done with the  
3 parking if after leaving the class, they can't  
4 get out of Gaffer's Court because there is no  
5 signal at the end of Gaffer's?

6 MR. CAPONERA: You're suggesting that  
7 they can't go right?

8 MR. SULLIVAN: No, they can't take a  
9 left, easily. My concern is that the parking  
10 lot will not be desirable. People will not  
11 park there if there is too much of a problem  
12 to exit after the class. If they come in on  
13 Sunset, park in the lot, leave after the class  
14 but wish to go east, they can't take a left  
15 then they will not want to park there. They  
16 will park on the road.

17 MR. CAPONERA: I would say to the Board  
18 that first of all, the proposal back here - I  
19 don't want you to think like it's some kind of  
20 rubble with people. It's going to be very well  
21 manicured, I presume and you can use other  
22 items of crusher run that binds itself so that  
23 there are not any crevices or anything like  
24 that.

25 Mr. DiBenedetto plows his own property,

1 just for the Board's edification. He's been  
2 going it ever since he's owned the property.  
3 There is a tremendous amount of storage  
4 capability on this property. Remember I stated  
5 to you that it's about 70 percent greenspace.  
6 As we all know, we only need 35 percent in the  
7 Town of Colonie. The Village of Colonie only  
8 requires 20 percent greenspace. This is 70  
9 percent greenspace. There is a plethora of  
10 space to put the snow. There isn't going to be  
11 an issue there. He is going to meticulously  
12 maintain this and he will require the people  
13 that are using his class to park there.

14 MR. SULLIVAN: Okay, you answered my  
15 question. My point is how do we make sure that  
16 is actually used?

17 MR. CAPONERA: That could be made a  
18 requirement that he do that. In fact right now  
19 he has I think maybe two people directing  
20 people as they come in to make sure that they  
21 don't interfere with anyone's parking lot and  
22 what have you on Sunset. And I will repeat to  
23 the Board what I said before. There is no  
24 prohibition on Sunset to parking on the  
25 street. I'm just saying that. I'm not saying

1           that we want to. I'm saying that we're giving  
2           the Board what I consider to be a very  
3           reasonable proposal to resolve this for  
4           spillover parking. I'm also stating to the  
5           Board that this doesn't happen all the time.  
6           It would be one thing if I came in and said  
7           every day there is a Zumba class for three  
8           hours a day and there are 80 people that are  
9           going to be parking there. There will be 70  
10          cars. It doesn't happen.

11                 MR. SULLIVAN: I think that the residents  
12           have demonstrated that it is a problem though.

13                 MR. CAPONERA: And that is exactly why we  
14           are making this proposal. There are two  
15           residents here that may have a problem.  
16           Everybody else that we talked to doesn't have  
17           a problem. For those two, we have come to the  
18           Board, spent thousands of dollars in putting  
19           together a proposal that will solve that  
20           problem. You've heard a great deal of talk  
21           about how narrow this road is and how when  
22           it's plowed, cars can't get down there. That's  
23           not Mr. DiBenedetto's problem.

24                 MR. SULLIVAN: Having cars on the road  
25           contributes to the problem.

1 MR. CAPONERA: Which is exactly why we're  
2 presenting to the Board what we are  
3 presenting.

4 MR. SULLIVAN: Which is why I want to  
5 make sure that they use the parking.

6 MR. CAPONERA: Absolutely, and you're  
7 absolutely correct. I would state that it  
8 would be a requirement that they use that.

9 MR. SULLIVAN: Okay, thank you.

10 CHAIRMAN STUTO: What do you think about  
11 the two curb cuts on Gaffer's? Can't that be  
12 designed with one curb cut? You don't think  
13 that's a conflict?

14 MR. SULLIVAN: I'm not as concerned with  
15 that as I am on the exiting Gaffer's with all  
16 these 80 students leaving at once, trying to  
17 exit and take a left off Gaffer's.

18 MR. LANE: They're all not going to be  
19 leaving by Gaffer's.

20 MR. SULLIVAN: If they're using the  
21 parking lot, they'll have to because it's  
22 one-way.

23 MR. LANE: They can't go back?

24 CHAIRMAN STUTO: No, it's all one way.

25 MR. CAPONERA: If you have a problem with

1           that, we can make it a two-way. I think that  
2           all you'd have to do is increase it by a foot  
3           or two to make it a two-way.

4           MR. SULLIVAN: I thought that someone had  
5           objected to that. I thought that was raised  
6           earlier.

7           MR. CAPONERA: There was a discussion by  
8           Mr. Hanna when I spoke to him on multiple  
9           occasions since the last time you were here  
10          discussing this and he had the concerns about  
11          the drainage and I was trying to accommodate  
12          him on that aspect of it.

13          MR. SULLIVAN: I would prefer to see the  
14          two-way.

15          MR. CAPONERA: I understand what you're  
16          saying but one thing is for sure, the folks  
17          here - the 20 spots are going to go out to  
18          Sunset. The other ones, typically you think  
19          they'd want to go out there - they can always  
20          take a right. It's not like they can't go  
21          left, but if you're more comfortable with a  
22          two-lane in this area so that they'd have that  
23          opportunity, I don't have a problem with that  
24          either.

25          MR. SULLIVAN: I would be because I think

1 without that option, if they can't take a left  
2 when they want; they're not going to park  
3 there.

4 MR. LANE: That pretty much settles my  
5 questions about the traffic. I agree with you  
6 about the gravel. I think it's not going to be  
7 so much an issue with melting so as far as the  
8 traffic, etcetera. Other than that, as long as  
9 they can cross through and that's not a big  
10 problem to do that, it works for me

11 MR. CAPONERA: We can do that. It's not  
12 that big of a deal.

13 MR. AUSTIN: I agree with Mike. I'd like  
14 to see that one-way become a two-way because  
15 that would give more opportunities or more  
16 options with people in the back to exit out  
17 the front - if they do want to go east and  
18 turn at the light on Sunset.

19 MR. CAPONERA: Consider it done.

20 MR. AUSTIN: That was easy.

21 I like the lighting. I like the fence. I  
22 like what you're doing in the back there. It  
23 all looks good on paper, but when you put a  
24 gravel crusher run parking lot, without  
25 striping, without lines, it's just going to be

1 a massive free for all. There is no definition  
2 of where people should park or whether people  
3 should go with the two curb cuts. There is  
4 actually a spot where it looks like it  
5 overlaps. Those two parking lots look like  
6 they overlap, so that they could actually  
7 cross over to the other parking lot without  
8 going to the curb cut or they can just cross  
9 over to the grass that might be in between  
10 those two parking lots.

11 MR. CAPONERA: I would like  
12 Mr. DiBenedetto to address that.

13 MR. DIBENEDETTO: We do have a solution  
14 to where you say people are not going to be  
15 sure where to park. It's simple. Wherever  
16 there is a parking spot, put a post. People  
17 know that they drive right up to that post and  
18 that's where they are supposed to be. That  
19 would solve striping. I don't have a problem  
20 doing that either. I don't have a problem  
21 putting the posts in and saying this is where  
22 you park. It's going to take a couple of times  
23 for them to become acclimated to it, but we'll  
24 have someone out there directing them, showing  
25 them. After you learn and you do it a couple

1 of times, it becomes second nature.

2 MR. AUSTIN: That sounds great. It seems  
3 like a former Board Member that I know - it  
4 looks like you're putting 10 pounds of sand in  
5 a five pound bag. You're trying to fit too  
6 many spaces where it just wouldn't be  
7 comfortable. It doesn't seem like it quite  
8 fits. There are spaces shoved in every which  
9 way.

10 MR. DIBENEDETTO: I guess the architect  
11 was trying to get the maximum number of spaces  
12 that he could get out of the land.

13 MR. CAPONERA: Plus, we didn't want to  
14 push it behind these parcels over here  
15 (Indicating) - at number nine. I told him when  
16 he was doing this to keep it as far away as he  
17 can, rather than pushing over to this area  
18 (Indicating). That's the reason that it looks  
19 the way that it looks.

20 You heard Mrs. Washburn talk about  
21 wanting to keep her sense of privacy. I will  
22 tell you that it's fairly wooded back here  
23 (Indicating). And to eliminate that would  
24 eliminate further privacies. So, that's one of  
25 the reasons that I had a design architect look

1 at this. By the way, I knew Mr. Holland and  
2 that is a quote that I used often.

3 MR. AUSTIN: I think that's all I had.

4 MR. MION: My concerns were the same that  
5 Mike brought up. I think I like what you're  
6 doing. I think that you're working to clear up  
7 the problem out there. I think that the  
8 biggest issue now is to get people that are  
9 going to your facility off the street. I think  
10 that to help that would be the people out  
11 there directing traffic. Hopefully that will  
12 work. I think that you're doing everything  
13 that you can do.

14 CHAIRMAN STUTO: I'll offer my comment  
15 now.

16 I'm sympathetic to you, the applicant, in  
17 the sense that he's trying to keep a business  
18 going, but I think that he has imposed on the  
19 neighbors too much. I think that more of these  
20 lots should be paved. Having 80 customers at a  
21 time, if you want to go with a two to one  
22 ratio, I think that there should be 40 paved  
23 parking spots. I'll be very specific on that.  
24 If you want to add more gravel for occasional  
25 overflow from that, that's my personal

1 opinion. I don't think that you're paving  
2 enough lots. I also agree that it looks like  
3 you have 10 pounds of sand in a five pound  
4 bag, the way that is laid out. I'm no  
5 engineer, but it just looks too cramped  
6 together. I agree that the two-way is a good  
7 idea. I guess those are my major comments. I  
8 think that you need more paving. I think that  
9 the layout could be done better. I wouldn't  
10 want to limit it to 120. I think that it's  
11 more than enough and I'd like to keep some  
12 restraint on that.

13 MR. LACIVITA: Can I offer something on  
14 the paving issue? From what I've seen in other  
15 municipalities and so on, especially in the  
16 northern part where you get a lot of snow, the  
17 entry paths into parking lots are typically  
18 the paved areas and the parking spaces  
19 themselves are actually gravel area. If you're  
20 looking at a specific calculation that Peter  
21 is talking about of 40 percent, you may be  
22 able to get the same amount of parking by  
23 having the plowed area where your people are  
24 coming in and then turning off - have that  
25 paved and leaving the actual parking spaces

1 gravel.

2 MR. CAPONERA: I see what you're saying.

3 MR. LACIVITA: They do that a lot in New  
4 Hampshire and Maine and in those types of  
5 areas. You actually will get probably a  
6 greater number of parking based on what Peter  
7 is looking for that way.

8 CHAIRMAN STUTO: I think that you're in  
9 the center of Latham and you should do it  
10 right. I think that it should all be paved. I  
11 don't have a lot of experience with that, Joe.  
12 Maybe they have good experience with it in New  
13 Hampshire. That's my opinion.

14 MR. LANE: I'm not sure why you would  
15 think it should all be paved.

16 CHAIRMAN STUTO: The striping, it's  
17 easier to pull out and it's less messy. There  
18 are very few examples of gravel lots.

19 MR. LANE: Why is there a concern? He  
20 does his own plowing. We're not doing it.

21 CHAIRMAN STUTO: Safety, mess. They are  
22 his customers and his neighbors.

23 MR. LANE: Why would it be more safe than  
24 the gravel?

25 CHAIRMAN STUTO: I think that it's easier

1 to maintain and easier to keep smooth and  
2 safe. I think that it should be done right.

3 MR. AUSTIN: Tim, I think that if you see  
4 all the stuff mentioned here and the open  
5 spaces in this area (Indicating) that's going  
6 to be the ground. That grass isn't even going  
7 to exist after a while. All that definition  
8 with the parking spots is great, but I think  
9 that it's going to be one big gravel pit.  
10 That's going to affect the parking, as well.

11 MR. CAPONERA: People have a vision of  
12 gravel and there is also - have you ever heard  
13 of limestone, or stone dust? I have a place up  
14 north and that's what we use and it's better  
15 than a driveway because it doesn't heave with  
16 the weather. It's a smooth and it's permeable.  
17 It allows for the drainage which is a  
18 suggested requirement under your Code when you  
19 have this kind of parking. When it's not used  
20 all the time, they are recommending that you  
21 do permeable pavement and I have to be honest.  
22 It's as smooth as this floor that I'm standing  
23 on. Again, I'm talking about the stone dust.

24 CHAIRMAN STUTO: I have a place up north  
25 as well. There are dirt roads and dust. It's a

1 mess and it's a maintenance issue. I've  
2 experience with it as well.

3 MR. CAPONERA: I'm just trying to provide  
4 a feasible economically reasonable way to  
5 solve everyone problem. I know that Mr.  
6 DiBenedetto is not in a financial position to  
7 pave this whole driveway or parking lot. He's  
8 been put in a pretty tough situation here and  
9 he's trying to accommodate the two folks on  
10 Sunset that have the concerns. We understand  
11 that and we've taken great strides to try to  
12 alleviate that.

13 MR. BUNKER: One of the concerns with the  
14 gravel is that if you have some patches of ice  
15 and some of the tires are on gravel and some  
16 of the tires are on ice and you start spinning  
17 the tires, then the gravel doesn't have  
18 anything for the cars to stick to so the car  
19 is going to be fishtailing a bit even when  
20 it's standing still. You're going to have  
21 pedestrians fairly close to the cars and  
22 you'll have the cars parked really close  
23 together, but once you start spinning the  
24 tires trying to get out of an icy rut, you're  
25 going to have the cars going back and forth

1 and bumping into each other and possibly  
2 hitting pedestrians.

3 MR. CAPONERA: As I mentioned before, Mr.  
4 DiBenedetto has maintained this parking lot.  
5 He has maintained it since he built the  
6 structure. I suspect that issue is a  
7 non-issue.

8 CHAIRMAN STUTO: He's maintaining it now,  
9 but he could sell the building.

10 MR. CAPONERA: If he sells the building,  
11 it's got to come back in with this Board if  
12 something else changes. You would have the  
13 opportunity to make a change at that point.

14 CHAIRMAN STUTO: For a change of an  
15 owner?

16 MR. CAPONERA: If it was a different type  
17 of operations.

18 CHAIRMAN STUTO: But if it's the same  
19 use -- or he may get tired of doing it or  
20 whatever.

21 MR. ROSANO: Just a couple of things,  
22 Victor. This is just housekeeping

23 When we first came here, if you had gone  
24 out and assisted the people with parking like  
25 you do now, you probably wouldn't be here

1           tonight. When this first started, the problem  
2           was that no one was going out directing people  
3           away from people's driveways and parking lots.  
4           So, I'll go back to my good neighbor speech.  
5           If you had been a good neighbor back in  
6           September, we wouldn't be here talking about  
7           this tonight.

8           MR. CAPONERA: Perhaps.

9           MR. ROSANO: Probably not.

10          The question that I have: How many days  
11          do we have Zumba a week?

12          MR. DIBENEDETTO: Two.

13          MR. ROSANO: What's to stop you from  
14          doing six?

15          MR. DIBENEDETTO: That would, in our  
16          opinion be more of a traffic jam.

17          MR. ROSANO: If you have the opportunity,  
18          Mr. DiBenedetto - if you have an opportunity  
19          tomorrow to increase the number of Zumba  
20          classes - say you get some more good luck.  
21          Would you do it?

22          MR. DIBENEDETTO: Probably not.

23          CHAIRMAN STUTO: But nothing would  
24          prevent him doing that.

25          MR. DIBENEDETTO: That's true. It

1           wouldn't prevent me, but if I increase the  
2           number of Zumba classes, then my own personal  
3           classes would suffer. So, I wouldn't have  
4           enough time for my own business.

5                     MR. ROSANO: I just want that on the  
6           record.

7                     MR. DIBENEDETTO: I do want to address  
8           the spinning of the tires and spikes on the  
9           gravel. How many times have we been in a  
10          parking lot that's paved that hasn't been  
11          plowed well or salted. Do you not spin your  
12          tires? Does your car not fishtail? It does.  
13          I've been doing commercial plowing since I was  
14          20 years old. I don't want to tell you my age  
15          but it's over 20 years. I've maintained  
16          parking lots - commercial lots for businesses  
17          and driveways. I know what plowing is. I know  
18          that I have to maintain it because if I don't  
19          I'm looking at liability if somebody does  
20          fall. So, I'm not insensitive to what has to  
21          be done. I plowed numerous driveways and  
22          parking lots with gravel or stone or dirt. My  
23          uncle at one time owned a big lot on Central  
24          Avenue where Price Chopper is now in Colonie.  
25          That was all his land. I used to plow his

1           roadways. That was dirt and stone. Once the  
2           ground freezes, it doesn't matter what's on  
3           there. It's pretty consistent when you plow  
4           it. If you want the lot plowed that's gravel,  
5           you have skid plates that go underneath the  
6           bottom of the plow. I'm sure some of you know  
7           that. That's how you stop from ripping  
8           everything up.

9           MR. ROSANO: The last thing is - the berm  
10          out front with the two pear trees, I'd like to  
11          see that increased to enough trees to  
12          eliminate any chance of someone parking out  
13          there.

14          MR. DIBENEDETTO: There are three trees  
15          there right now. We have a big boulder on one  
16          portion of it and a smaller boulder on the  
17          other side to help prevent drive through. I  
18          can do other things.

19          MR. CAPONERA: We can work with the  
20          department.

21          MR. ROSANO: That's what I'm saying.  
22          That's why I said it's a housekeeping issue.  
23          We can just add something there to absolutely  
24          guarantee that nobody is going to park there.

25          MR. CAPONERA: There is a picture right

1           there (Indicating).

2           MR. ROSANO: I've been there many times.

3           CHAIRMAN STUTO: I'm not sure how to move  
4 this forward. I'd like to see some  
5 redevelopment.

6           MR. AUSTIN: We're just talking about  
7 redesigning and in just looking at -

8           CHAIRMAN STUTO: You want to isolate the  
9 issues about what we're approving? Should we  
10 approve more than 80 feet? Anybody have an  
11 opinion on that? I think that it should be  
12 limited to that.

13          MR. LANE: The parking spaces?

14          CHAIRMAN STUTO: The use of the property.

15          MR. LANE: It's 280 now.

16          CHAIRMAN STUTO: No it's not. That's just  
17 for fire purposes.

18          MR. LANE: So you want to limit the  
19 classes to 80; that's what you're saying?

20          CHAIRMAN STUTO: Yes.

21          MR. AUSTIN: Class size is going to be  
22 120.

23          CHAIRMAN STUTO: They say that they have  
24 the occasional events.

25          MR. AUSTIN: So, the class size would be

1 80 and the event could be 120.

2 MR. LACIVITA: Let me see if I understand  
3 the problem here. The real problem exists when  
4 Zumba happens. That's usually a one to one  
5 driver. When you're looking possibly at the  
6 maximum capacity of 120 where that might be a  
7 ballroom event where you're going to get two  
8 people driving per car, your numbers will be  
9 lower; potentially.

10 CHAIRMAN STUTO: If you want to take his  
11 argument, they should have 80 parking spaces.  
12 He's proposing 62.

13 MR. LACIVITA: Right, but he has offsite.

14 CHAIRMAN STUTO: He's proposing that 25  
15 will be paved.

16 MR. LACIVITA: And he's got offsite  
17 parking as well to bring that up.

18 CHAIRMAN STUTO: That doesn't make me  
19 comfortable because those could go away in a  
20 day - the offsite.

21 MR. CAPONERA: Mr. LaCivita makes a good  
22 comment. How many times do you do these  
23 ballroom things?

24 MR. DIBENEDETTO: Currently, three maybe  
25 four times a year.

1           MR. CAPONERA: Okay, so three or maybe  
2 four times a year, he'll have a ballroom  
3 event.

4           CHAIRMAN STUTO: That's where the gravel  
5 is appropriate, in my mind. The gravel is  
6 appropriate for those four times a year.

7           MR. CAPONERA: In those cases, those  
8 people come as couples. I think that the  
9 highest time you've had 100 people there maybe  
10 120?

11          MR. DIBENEDETTO: We've reached 120 a  
12 couple of times.

13          MR. CAPONERA: You're talking about 60  
14 cars. They all come as couples.

15          CHAIRMAN STUTO: Joe is also saying that  
16 Zumba is one per one ration for car per  
17 customer.

18          MR. CAPONERA: I don't think that Zumba  
19 is one per one. According to the statute it's  
20 a two to one ration. For every occupancy, it's  
21 a two to one.

22          CHAIRMAN STUTO: And we can decide  
23 differently and make a different  
24 recommendation. The reality of the record and  
25 the reality of the testimony would suggest

1 that it's more than that.

2 I just want to add definition and give  
3 you direction.

4 MR. CAPONERA: I appreciate that. I  
5 really do.

6 CHAIRMAN STUTO: Even if we believe you,  
7 I'm trying to think of a way to structure it  
8 so that the normal limit is 80 and there may  
9 be an occasional limit of 120. Can we  
10 verbalize that in our approval? How would we  
11 define dance classes versus something else?

12 MS. VAIDA: You're talking about the  
13 party events?

14 CHAIRMAN STUTO: I'm trying to draw a  
15 distinction between what they're trying to  
16 describe that happens two to four times a  
17 year.

18 Special events - we'll try to come up  
19 with a definition because I think that they're  
20 coming back. Special events - no greater than  
21 six times a year. I don't know if you could  
22 live with that; 120.

23 MR. CAPONERA: Yes.

24 CHAIRMAN STUTO: Regular dancing; 80.  
25 The other Board Members can speak up.

1 MS. VAIDA: Do you need a Christmas  
2 dance?

3 MR. DIBENEDETTO: When we have our  
4 Christmas dance, our anniversary dance -

5 MS. VAIDA: Isn't that special events?

6 MR. DIBENEDETTO: Yes.

7 MR. CAPONERA: That's a 120. We're  
8 talking about the Zumba thing.

9 MS. VAIDA: Other than Zumba, what is the  
10 average size of a class?

11 MR. DIBENEDETTO: On Friday night dances;  
12 40 to 50. That's what we're averaging. That  
13 would fall way under.

14 CHAIRMAN STUTO: We've added some  
15 definition to that.

16 MR. MION: Maximum of 80 participants  
17 during normal business. A maximum of 120  
18 participants for special events, not to exceed  
19 six times per year.

20 CHAIRMAN STUTO: How many parking spaces  
21 and then paved versus gravel?

22 MR. CAPONERA: There is a requirement for  
23 a two to one ratio under the code. If you  
24 limit the maximum to 120 then you're required  
25 to have a minimum of 60.

1                   CHAIRMAN STUTO: I would suggest 40 paved  
2 and 20 gravel. That's my opinion. I could be  
3 overruled by the Board.

4                   You're okay with that layout up there,  
5 Mike?

6                   MR. SULLIVAN: I'd like to see it with  
7 one curb cut on Gaffer's and perhaps  
8 extend -- I know that you were trying to be a  
9 good neighbor and not encroach upon that but  
10 if a fence was provided, which it seems to be,  
11 I would think that you would have that area  
12 between the parking lot and the residential  
13 lots.

14                  MR. CAPONERA: It sounds like to me that  
15 you want us to go back and retool the parking  
16 in the back.

17                  MR. SULLIVAN: I would like to see that  
18 in a more of rectangle with a common aisle  
19 with an exit at the back.

20                  MR. LANE: I don't agree with that, to be  
21 honest with you. I have no problem with the  
22 gravel at all.

23                  CHAIRMAN STUTO: Why don't we gravel all  
24 the parking lots in the Town then? You do it  
25 right or you don't do it right.

1           MR. SULLIVAN: What about the paved aisle  
2 with gravel parking spots? That's what they do  
3 at the soccer fields. The soccer fields have a  
4 paved road at the end.

5           CHAIRMAN STUTO: Are they playing soccer  
6 in the winter now?

7           MR. SULLIVAN: No, but there is a  
8 considerable amount of traffic in there. It is  
9 wet and you can track it out a distance but -

10          MR. MION: Do you have any idea what it  
11 would cost to pave another 15 in the back?

12          MR. CAPONERA: We don't.

13          MR. DIBENEDETTO: We had the original  
14 estimate for 30 parking spaces at \$35,000.

15          MR. CAPONERA: For 35 parking spaces,  
16 from Leto it was about \$35,000.

17          MR. MION: We were just sitting here and  
18 looking. You have 25 up front and if you do  
19 another 15 in the back, you'd get two spaces  
20 on the side and then the rest is gravel.

21          CHAIRMAN STUTO: Mike is proposing  
22 something and it's not my best solution.

23                   Do you want to describe it to them?

24          MR. CAPONERA: I'll try to follow this  
25 visually.

1           MR. SULLIVAN: My suggestion would be to  
2 extend this fence and have one access off of  
3 Gaffer's here (Indicating). Have the aisle  
4 paved here and down the center here and have a  
5 rectangular here such that you have spaces  
6 here and here (Indicating). You'll have a  
7 common aisle that's paved and an aisle coming  
8 off of Gaffer's through here. This would be  
9 two-way and these spaces here could be crusher  
10 run. This would be extended as needed to get  
11 the appropriate number of spaces.

12           MR. LACIVITA: Dan, the cul-de-sac does  
13 not exist right now, correct?

14           MR. DIBENEDETTO: No, it's more like a  
15 rectangle.

16           MR. CAPONERA: It's not a cul-de-sac.  
17 It's a rectangle. I think that the cul-de-sac  
18 reflects the property line of the Town.

19           MR. LACIVITA: But you only have one  
20 access point coming off this parking lot;  
21 correct? That's really becoming a hammerhead.

22           MR. CAPONERA: Yes. Just so that everyone  
23 knows on the Board - that's a great point,  
24 Joe.

25           This cul-de-sac shows it as a cul-de-sac,

1 but it's really not a cul-de-sac. The road  
2 actually ends up here (Indicating), if you  
3 went back there. This just is the property  
4 line owned by - I presume that Gaffer's is a  
5 Town road. The access going to Gaffer's is one  
6 access point. You see what I'm saying? It gets  
7 a little confusing when you look at it. So  
8 there is only one access point into Gaffers  
9 and it just kind of joins there. I do see what  
10 Mike is suggesting in terms of trying to do it  
11 that other way and then do it horizontally - I  
12 should say rectangularly.

13 I have to offer this to the experts that  
14 are doing this. I understand what you're  
15 trying to accomplish and it makes sense.

16 CHAIRMAN STUTO: Do the residents have  
17 any questions or comments?

18 MR. ENSIGN: My name is Robert Ensign. I  
19 have property on Gaffer's Court. I spoke at  
20 the last meeting. It appears that there is a  
21 problem on Sunset and Dan is trying to fix it.  
22 I'm reiterating what I said before. If you  
23 don't do something before the snow flies,  
24 you're going to have bigger problems. Let him  
25 can put it in now while there is a window to

1 do it before winter - to alleviate some of it.  
2 If you bring him back in three weeks, you blow  
3 the window.

4 CHAIRMAN STUTO: It's not our fault that  
5 he didn't come back with a plan that was  
6 acceptable to us.

7 MR. ENSIGN: I'm not on Sunset, but I'm  
8 looking at a business owner that's trying to  
9 fix the problem. I'm looking at neighbors with  
10 concerns. I understand your concern. You want  
11 to do it the best way that it can possibly be  
12 done. It's in the middle of Latham. I kind of  
13 agree. But if the law says that you can use a  
14 permeable surface, who are we -

15 CHAIRMAN STUTO: There is porous pavement  
16 and we can, in our judgment, decide which is  
17 the best one that they use. The current  
18 proposal is that he just pave the driving  
19 parts and he can leave the actual parking  
20 spots as gravel.

21 MR. ENSIGN: If you can just approve some  
22 of this that everyone can agree on tonight,  
23 you'll alleviate the problems this winter and  
24 the neighbors will be happy.

25 CHAIRMAN STUTO: I don't see any

1 practical way to approve it tonight. I just  
2 don't know how to do it. It's an engineer  
3 problem that needs an engineer solution.

4 MR. ENSIGN: It's just you're opening up  
5 a door -

6 CHAIRMAN STUTO: We didn't open it up.

7 MR. ENSIGN: Things happen. No one  
8 purposely did anything.

9 CHAIRMAN STUTO: Understood, but don't  
10 say that we opened something up. I don't agree  
11 with that statement that we're opening  
12 something up. We're trying to fix it.

13 MR. WOODKA: It must be frustrating to be  
14 a small business in the Town of Colonie  
15 sometimes where the success of the operation  
16 is becoming the biggest problem. It doesn't  
17 seem like there is anywhere to get help except  
18 to show up once a month and get the feedback  
19 and come back -

20 CHAIRMAN STUTO: That's not true. We gave  
21 him feedback and we gave it to our staff and  
22 he came back with something less than what was  
23 suggested. We're very friendly with  
24 businesses; we try to be. We bend over  
25 backwards and we try to make ourselves

1 available. I disagree with that.

2 MR. CAPONERA: I understand what the  
3 Board wants. We're going to work to do this.  
4 I'm thinking out loud now. Obviously, the snow  
5 is coming but could we allow Dan to get an  
6 opening in here in the meantime and just maybe  
7 keep that plowed open for your people in the  
8 winter?

9 MR. DIBENEDETTO: If we could have them  
10 park back there now -

11 MR. CAPONERA: Temporarily until we get  
12 this thing resolved, because then we solve a  
13 substantial part of the problems by at least  
14 allowing a curb cut to get established and  
15 come back with a plan that the Board looks at  
16 or they could be satisfied with.

17 MR. LANE: It's too late for paving  
18 anyway.

19 MR. CAPONERA: You can't pave. They shut  
20 down last Friday, I think it was.

21 CHAIRMAN STUTO: I'm not opposed to  
22 temporary parking back there.

23 MR. CAPONERA: It alleviates a big  
24 problem and I think that if we can get the  
25 Board to give its okay, we can go ahead and

1 get that established.

2 CHAIRMAN STUTO: I need to know what  
3 you're suggesting that we approve.

4 MR. CAPONERA: I'd like you to allow us  
5 to get a curb cut off this rectangular area  
6 onto the back of the property and allow my  
7 client to at least get this an open area where  
8 people can park. He could probably flag it off  
9 right now in terms of stakes and things of  
10 that nature to just kind of define where it  
11 is, and he can have Cotler Architects get that  
12 staked out.

13 CHAIRMAN STUTO: Joe, are you allowed to  
14 do that as a minor site plan on a temporary  
15 basis?

16 MR. LACIVITA: You can actually do  
17 grading limits up to one acre under the  
18 stormwater regulations. He could actually  
19 apply for a grading permit on his own now, if  
20 he wanted to start the process to do some  
21 offsite parking here.

22 CHAIRMAN STUTO: Can you give him access  
23 to that road?

24 MR. LACIVITA: He can get that through a  
25 highway permit. This is a dedicated road. It's

1 not a private road?

2 CHAIRMAN STUTO: Gaffer's Court - if I'm  
3 a betting man, I'm saying that it's a  
4 dedicated street.

5 MR. LACIVITA: Then he could get a  
6 highway permit and could actually go through  
7 and get a grading permit and get all the  
8 stormwater erosion in and get the process  
9 moving now and even put a sub base in all  
10 under stormwater grading.

11 MR. TENGELER: We actually put this  
12 through all the Town Departments and actually  
13 that was one of the comments that the Highway  
14 Department did have was that a Town of Colonie  
15 Highway work permit would be the only thing  
16 needed for the tie in on Gaffer's Court.

17 MR. CAPONERA: So, he can get going on  
18 it, with your permission.

19 CHAIRMAN STUTO: I have no objection to  
20 that.

21 MR. CAPONERA: We'll retool this and you  
22 know we'd love to come back and you can look  
23 at this again.

24 MR. LACIVITA: We can't pave anyway. So,  
25 the key is to get something cleared so we

1 don't have the issue on Sunset and you can do  
2 that legally by getting a grading permit.

3 MR. LANE: So we don't have to vote on  
4 anything. We just can say okay, get the  
5 grading permit, he gets the curb cut -

6 MR. LACIVITA: He's able to do that by  
7 the standards currently in place.

8 CHAIRMAN STUTO: When do you think you'll  
9 turn around new plans?

10 MR. CAPONERA: I'll talk with Cotler  
11 tomorrow and show him what we got. I'd say  
12 within 10 days we could turn it around.

13 CHAIRMAN STUTO: We'll try to get you  
14 back on as soon as possible.

15 MR. CAPONERA: I'll work with the  
16 department. They'll get us on as soon as  
17 possible.

18 CHAIRMAN STUTO: Okay, then you have  
19 clear direction. Thank you.

20 MR. CAPONERA: Thank you very much for  
21 your time, everyone.

22

23 ***(Whereas the proceeding concerning the above***

24 ***entitled matter was adjourned at***

25 ***8:34 p.m.)***

**CERTIFICATION**

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

11  
12  
13  
14            -----  
15            **NANCY STRANG-VANDEBOGART**

16  
17  
18            **Dated January 12, 2012**

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