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CHILI PLANNING BOARD
December 12, 2006

A meeting of the Chili Planning Board was held on December 12, 2006 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson James Martin.

PRESENT: Karen Cox, John Hellaby, Dario Marchioni, John Nowicki, Jim Powers and Chairperson James Martin.

ALSO PRESENT: Keith O'Toole, Assistant Counsel for the Town; Jeron Rogers, Director of Engineering/Planning; Dennis Scibetta, Building & Plumbing Inspector; Pat Tindale, Conservation Board representative; Fred Trott, Traffic Safety Committee representative; David Lindsay, Town Engineer representative.

Councilman Schulmerich, Planning Board liaison, was also present.

Chairperson James Martin declared this to be a legally constituted meeting of the Chili Planning Board. He explained the meeting's procedures and introduced the Board and front table. He announced the fire safety exits.

JAMES MARTIN: We're modifying the agenda slightly. Under the Public Hearings, we have all Public Hearings tonight. The first Public Hearing we'll hear is the application of Niagara Carwash, owner care of John Munch.

PUBLIC HEARINGS:

2. Application of Niagara Car Wash, owner; c/o John Munch, 5 W. 10th Street, Erie, PA, 16506 for renewal of conditional use permit to allow a car wash at property located at 3270 Chili Avenue in G.B. zone.

John Munch was present to represent the application.

MR. MUNCH: Good evening. Address is 5 West Tenth Street, Erie, Pennsylvania. I'm here on behalf of Niagara Carwash. As you probably know, we were here for approvals and we're back for approval -- continuing approval of permit for conditional use. There haven't been any changes in circumstances since we opened the business. I submitted an application to the Board and submitted an as-built instrument survey showing just what we built and completed. I just want to make myself available to answer any questions.

JAMES MARTIN: How has the business been going?

MR. MUNCH: Pretty good. We got it opened a little late. Now, hopefully now that the winter is here, we'll get some more utilization and hopefully it will go well for us.

JAMES MARTIN: I will go to the Board at this time.

JIM POWERS: Do you have someone on there 24 hours a day?

MR. MUNCH: No. This is a traveling crew. So there is somebody there, either part-time or full-time person, every day, a couple times a day to make sure the trash is empty and the landscapers are keeping the grass cut or snow is plowed. It is monitored 24 hours remote from our office with several other locations. Probably if you have been by, you see all of the cameras. So we can monitor the whole site and we do, and we check in on it every couple hours.

JIM POWERS: The reason I ask, there have been some complaints about the radios blasting away at all hours, and it is somewhat disturbing to the folks back there behind the carwash.

MR. MUNCH: We do have a number posted on the door for complaints. I checked with my manager today. To date, no neighbor has lodged any complaints with us, so no one has told us about any problems. We have several of these locations in several towns, and we haven't had any neighbor complaints. Typically when people are pulling around, they're getting ready to go in the carwash and they roll their windows up if it is nice out. And this time of year it isn't. We don't have vending machines on the site to attract people to linger. That is for the purpose of not having it to be a nuisance.

JIM POWERS: If I lived on Rose Road or Springbrook or somewhere, I wouldn't walk down to see what the phone number is posted on your carwash to call if I have a complaint.

MR. MUNCH: Sure. But I mean anything that brings it to our attentions, we immediately call back and address it. We can't know unless they tell us. This is actually the first I have heard of it at any of our locations. I haven't had a complaint. As a matter of fact, we have several locations where the neighbors are much closer. When I was going for approval in the Town of Clay, for example, the people of the Town of Cicero said, "I'll volunteer to come in and tell them what a good neighbor you are and how well you keep the site and you keep everything under control and there haven't been any problems."

This is the first I have heard about anybody complaining about car radios.

JIM POWERS: Now you're aware of it.

MR. MUNCH: We did do sound checks on what we can control, and that is why the back doors go down during that -- the washes. Like every business, we do not have control over those that patronize us. I wasn't aware there was any type of dispute or problem with it. Anybody that brings anything to our attention, we would call them and try to address it. Anything we can control, we do, to try to be a good neighbor.

JAMES MARTIN: Dennis (Scibetta)?

DENNIS SCIBETTA: Yes.

JAMES MARTIN: You have records of formal complaints about noise on the location?

DENNIS SCIBETTA: There has been one complaint that was -- I'm not sure if it was logged in properly, or a proper complaint. There was a woman that called in a complaint that someone was using the vacuums with an -- approximately 9:30, 10 o'clock at night and the radios she had mentioned on several occasions, I believe was the complaint. But she did not file a formal complaint. There was none taken on the internet or a formal complaint registered. But there was a call in to us about this.

JAMES MARTIN: I believe when you were here before us before, we talked about noise being a potential problem. We're going to have a potential problem here in about five seconds when the train goes by.

(Laughter.)

MR. MUNCH: That is a little different situation where they would open the doors to use the vacuums. We do normally have the vacuums in the front where it is washed out by any radiant noise from the road, but in this particular case it was a request of the Board that we move the vacuums back further towards the houses, I guess you would say.

Usually they are in the front.

JAMES MARTIN: I think our thought process at that time was if we were generating a significant number of complaints from the neighborhood, for noise, that we were going to reserve the right to perhaps limit hours of operation so that after 11:30 at night until 6 in the morning or something there would be no operation of the carwash itself, and -- so that is basically why I think we need to understand totally what is happening, and I was hoping if there are some issues there, that we have some people from the neighborhood that may be able to formally address that. You know, one complaint that came in was for the vacuums. It wasn't signed. It wasn't a formal complaint. It is hard to work on anonymous complaints. You don't know where they come from. I think it is still a concern and we can probably discuss it further as the Board continues their process there.

KAREN COX: When you came in front of us, I -- I'm not sure which meeting it was. I looked at the final meeting. I couldn't find anything in the minutes, but I -- you presented a -- an elevation of the building.

MR. MUNCH: Yes.

KAREN COX: At that time I recall -- or one of the meetings somebody asked about neon on the buildings, and we were told there wasn't anything on the plan or on the elevation, and so I got to admit I was really surprised when I drove down Chili Avenue the first night and it was -- there was a ton of neon. I mean the reason behind our question that night was that the pizza place on the corner of Rose Road was something that caught us by surprise with their neon signage. So we had kind of made a decision amongst the Board to specifically ask that question.

So I guess I'm wondering -- the neon is up. I don't like it. But other people have said they like the way the building looks. When was the decision made to put the neon on the building?

MR. MUNCH: It has been on every building that we have done. It was in the photos we presented in the -- it was in our submission to the Town in the sign package. It said neon.

KAREN COX: I don't recall the photos were taken at night. It is hard to see the tubing on a daytime photo.

MR. MUNCH: Yes.

KAREN COX: And it was not shown on the elevation. So I guess my suggestion would be, if you were going to present this type of thing to another Board, that you would be clear and state there will be neon on the building.

MR. MUNCH: And maybe we should add some night pictures. It -- they don't -- we have taken night pictures. They don't always show up so great.

KAREN COX: Or just indicate on the elevation that there is going to be neon. Because I know if that had been on that elevation, there would have been a big discussion about it at the Board. So be honest. Perhaps it was a -- it might have been an oversight on your part, but all -- at least on my end, I kind of feel like we had the wool pulled over our eyes with the neon.

MR. MUNCH: The difficulty is when it is the first site in a market. I apologize. Like I said, we did these in Erie. After we did the first one, we didn't mention -- everybody could drive by and see it. I didn't have a way to do it. I apologize if people didn't realize that was the look of the building. We think it is attractive. We get a lot of compliments it is attractive. And we just got one approved in Clay. They all drove by. They drove by at night and they liked the way it looked. That is a little easier situation.

KAREN COX: Well, there have been a lot of people that I have talked to that say, oh, we really like the way it looks. It is a personal thing. But -- I don't live in that neighborhood, but if I did, I might be a little unhappy about the light spillage. Short of telling you to rip it off the

building, which I don't think you can do, I just would say next time be cognizant of that. That is all I have.

JAMES MARTIN: Just to comment on that, I did have the file pulled on the architectural plans that were submitted prior to the building permit being issued. Clearly it was delineated on those plans the neon wrapping of the building. Um, you know, that generated the building permit, and eventually a C of O was granted for the building.

But I agree with Karen (Cox), I think we weren't aware of the fact that, you know, based on the elevations that you submitted for us to look at and the pictures that we were going to have that neon wrapping around there. I know it is a nice art deco look. We have had compliments on the building. Don't misunderstand us. We have also had comments it is gaudy, those type of comments.

MR. MUNCH: I apologize. We weren't trying to hide anything. We're proud of the look and put an awful lot of money into the look for a carwash. It's -- we just tried to answer all of the questions that were coming in. We can miss things. It is easier, the second one in a market where we can say "go look at this one." And whether I was smart enough to put it all out there in my head or not, in my presentation, it's there, but -- so I apologize if it wasn't specifically brought up at the meeting. It was an oversight. We actually -- I know the looks of any building is a personal type thing. We put an awful lot of time in it. We love it. We hope everybody is going to love it who sees it, but obviously everybody is not. Any building. So my apologies if it wasn't made clear. We certainly weren't trying to hide anything. We were trying to put everything out there about the building and how it works and runs.

JOHN HELLABY: My sentiments as well. It is just a lighting issue. I would just ask you keep in mind during the course of maintenance and whatnot, if it becomes over-burdensome to keep it up, devise a way to scale it down. I know neon has a tendency of big maintenance issues over time. That is all.

JOHN NOWICKI: Is there any way to dull it?

MR. MUNCH: It is a gas in a tube system. When they fire it up, it is what it is. You know, that's why sometimes part of the -- I mean if they ever changed the schematic or anything, but as far as a way to go back in and change it, there really is not. We're always struggling because we're trying to find a system that -- just like when we did the Nighthawk lighting, that makes it nice and bright when you look at it, but does not bleed off the site. It has that advantage. It is like -- great when you look at and you can clearly see it, which from a business standpoint is necessary and important. But by the same token, it doesn't bleed off onto the adjacent properties. It has been good for us, our brand, our sort of look. I don't know that, geez, to rip it all off the building at this point would be obviously a big deal and change the whole branding and stuff, but there is not a way to dull neon that I'm aware of.

JOHN NOWICKI: Your reflective pavement also has a tendency to make the site whiter.

MR. MUNCH: We might have shot ourselves in the foot. It is more expensive to put concrete in.

JOHN NOWICKI: You might want to check that out based on the price of oil.

MR. MUNCH: At the time it cost us much more, but we thought we didn't want a spider lot, potholes, it will wear well, looked shaped up and clean and be that way for the customers.

JOHN NOWICKI: You were in in the wintertime, too, you had to get that in. The asphalt plants were closed.

MR. MUNCH: All the ones we're building now, we're doing the concrete because it looks better and wears better. The first one we did a couple with asphalt. It is hard to do repairs because the good time to wash cars is a good time for repairs, when the sun is shining.

JOHN NOWICKI: Have you had much vandalism?

MR. MUNCH: No. There was an incident where somebody with a screwdriver tried to get in to the change machines. We got it on videotape. It was a teenager by size and stature.

JOHN NOWICKI: Is your site totally monitored? You can see the cars at vacuum stations?

MR. MUNCH: We can see the cars anywhere around the building; inside the bays, inside the pump room.

JOHN NOWICKI: Do those monitors pick up sound at all?

MR. MUNCH: No sound.

JOHN NOWICKI: That is something we might need to think about.

MR. MUNCH: We have a manager that checks on things. He stops by at definite times a day.

JOHN NOWICKI: I realize you only have the one complaint, but if that becomes an issue, we'll have to take a look at it down the road. I agree what you folks said in the past. We were misled during the original presentation in some cases. But again, I have heard the same thing you did. Some people like it a lot. Some were a little disappointed.

KAREN COX: The bottom line, the C of O was based on a plan that we didn't see.

JOHN NOWICKI: We didn't see it.

KAREN COX: So that is now out of our control.

JOHN NOWICKI: The construction was done to a plan that we never saw. That was the problem. That wasn't fair to this Board. I will stop there and let it go on.

DARIO MARCHIONI: Pursuing what Karen (Cox) had said, we actually had one, two, three, four meetings, Planning Board meetings from informal to preliminary, and I read every

item here. Lighting was questioned many, many times. No spill off, the lighting will not affect. And throughout this -- all these minutes, never neon was mentioned.

Now I just want to continue. I checked with the Zoning Board minutes, the 25th of -- I think -- the 24th of January, I think it was. Or February. It went before the Zoning Board. And you -- that was mentioned there, because the question was also asked, what type of lighting and it was mentioned neon. But they were in the impression, because I talked to some of the members, that the Planning Board was aware of that.

MR. MUNCH: If I would have known it was an issue, we definitely would have discussed it.

DARIO MARCHIONI: It is a real big issue. But they were under the impression that the Planning Board understood that, and that is why they voted on their -- the zoning for the additional signage.

We have had comments and some of the meetings you have been in, Public Hearings, that Las Vegas moved to Chili. Also in the minutes for the Zoning Board, it was mentioned that these would be low, no-bleed-off type lights. Low intensity. Well, I have been there -- tonight, it is low. Last night it was very bright. Is there a way that it is controlled or something?

MR. MUNCH: It is the same lighting. It goes on when the -- when it gets dark, it switches on. We have done photometric studies of that building and there is no bleed off. And I definitely would have brought it up. In eight locations, it has never been an issue. I don't think we --

DARIO MARCHIONI: The lighting type presented to us was dark sky lighting. We have pictures that you showed, the side of the building and the soffits. These are the ones presented to us.

The other thing is the elevations that were presented to us, I have copies of them, the originals. The signage does not look like neon. It just looks like box-type signs. If anything, internally lit. But these are actually neon that create the sign itself. The neon creates the letters. It does not look like that.

Now, the other issue, if I may, the other issue, we were concerned about any type of spill off to the neighbors, because we have residential areas. And your elevations, you show the front elevation with signage. Lit signage basically. You showed the right side elevation with signage. The rear elevation with the box type signs. But on your left side elevation, there is no signage and no lit, except two box-type signage. Now, I went there, and there is a big sign on your left side elevation. Not only does it spill, but it lights half the guy's next-door neighbor's house. This is what we're concerned about. Here is your elevation (indicating). I will give them to you. Review them. This is the stuff that was brought to us, and we based our decision voting on this information you presented us.

MR. MUNCH: If I may, sir, the elevations, we didn't have elevations to any Board. We never presented them before.

DARIO MARCHIONI: What are those?

MR. MUNCH: It was requested that these be put together because we were changing our roof line for the Town. So -- with special attention to the roof line. I didn't tell the engineer to have -- put any signage on, you know, who did the elevation. I really wasn't worried -- I have to be honest, we were focused on the roof line because that is what it -- was changing. We didn't have elevations. They were created just for this.

At the side one -- you know, it is not sort of a photograph. It isn't going to be. I don't even know if it -- his computer program that he created for this would have allowed him to show the neon tubes. We didn't create this. We asked it be created.

DARIO MARCHIONI: If you read all our minutes, the biggest concern was architectural, and also it was mentioned here, the mini lube, the bank, how it conforms with that architectural. That was -- that was strictly -- you know, we were really serious about architectural, the lighting. I mean there are questions after questions by John Hellaby, by John Nowicki pertaining to lighting and architectural.

MR. MUNCH: That is what led us to change the roof line. We did submit a sign --

DARIO MARCHIONI: The roof line was mentioned informal, right at the beginning. That was one of the questions that -- changing, and you say this is going to be different and usually the buildings we build we're going to put a hip roof type to conform with -- but that is not the big issue. It is the lighting which we asked questions and questions again, and it says, as I mentioned last time, our lighting is at the exterior line, facing in. Those lights that curve down 45 degrees. "There is absolutely zero lighting bleed off to the surrounding properties."

That is a statement you guys made.

MR. MUNCH: All true.

DARIO MARCHIONI: Excuse me. If you go there now, you see on the left elevation, that light bleeds half the neighbor next-door and it comes from the sign.

MR. MUNCH: I have photometric studies that say different. We had it studied.

DARIO MARCHIONI: Somebody is lighting the next-door neighbor's yard. It isn't coming from the sky. It is dark out there.

MR. MUNCH: We not only shrunk the building --

DARIO MARCHIONI: Sir, I have a feeling you really duped us here on this whole project. This is not fair. I was -- I would never have voted for this. This is not what I was presented here. These are all of the documents that I have. This is not what I was presented here.

MR. MUNCH: Geez, this is the only --

DARIO MARCHIONI: We're very interested in architecture in this Town. This is an important issue.

MR. MUNCH: We shrunk our building down. I have to say, we talked about light packs and what type of lights we use. We had submitted the sign package. We had submitted construction plans.

DARIO MARCHIONI: Where are your neon lights? Show me --

MR. MUNCH: Construction plans. They're on the sign submission. They're in the construction plans. It is clearly spelled out.

DARIO MARCHIONI: I voted on this based on the information that you presented me. This is it. I got it all here. Every item. Even the Zoning Board information. This is what I voted on. I did not vote on what is there now. Believe me.

MR. MUNCH: And again, I apologize, but this has never come up in eight towns where this sits, nobody has ever complained about the signage. All we got was compliments from the Board.

DARIO MARCHIONI: You should have been at one of the hearings. We have Las Vegas in Chili today. I mean that is not -- you can still do business. You don't need --

MR. MUNCH: We spent over a million dollars on our building for a carwash. Frankly we're still losing money. We're waiting to turn the corner and all of it was to have a good looking building. It was even more in this case because we changed the roof line and we did shrink down our plan for the number of bays. Not because we need a side yard. They said, geez, it looks a little dense. We thought we went miles to work with the Town. We obviously have diametric views. We wanted to be in Chili because it has nice looking buildings, and we wanted to fit in without losing our building. To say something presented was false is absolutely unfair, absolutely untrue. Never have done that to the Town. This is the first time it has ever happened to me in front of a Board where somebody has insinuated we have presented something that wasn't true. We had photo after photo. I realize it was day, but you could see there was neon tubes in the photos. I standby my presentation. I answered every question.

DARIO MARCHIONI: We had tremendous criticism about the pedestrian and their lighting. That is why we brought it up over time. We end up falling in the same trap twice. It --

MR. MUNCH: The signage has never been a big deal. It has never come up it was a big deal, or I would -- all I did was answer all of the questions asked to me. Really usually the concern when people talk about lighting is the wall pack lights, the pole lights, are these shining down into my window? Not is the signage on the building going to be lit and how? That has always been more a stylistic thing and not really been a concern. We -- it has never been raised to us as a concern. Neighbors. It has never been raised as a concern from the Board how they want us to do it. They have let us do our sign our way and maintain our branding. That is all I can say. I apologize. All I can do is apologize. I thought I answered all of the questions as best as I could. And it was all in the materials.

KAREN COX: I throw this out at the risk of giving criticism. We didn't -- there was a plan that got approved for a C of O that the Board did not see. Whether it was this gentleman's fault or not, that is not for us to decide, but the bottom line is, somewhere along the way, you know -- that particular issue that was our concern wasn't remembered when the C of O was signed. So, you know, I guess I would ask that the Building Department -- whether that was the problem there or not, but I would just ask that that be kept in the back of your mind. If there is an issue that is -- that is a big concern of the Board here, try -- please try to remember that when you're reviewing the final plans.

JAMES MARTIN: A comment on that. I believe that one of our goals or objectives for 2007 is to work on the architectural aspects that this Board has to deal with, and hopefully that will eventually lead to architectural standards or guidelines that will be in place that this Board will have as a -- you know, kind of a bible to go by from the standpoint of design and the characteristics of the proposed buildings that we are addressing, and as part of that, certainly I think as we moved down the road toward putting those in place. One of the things that I would hope we would achieve is that the plans that come into the Building Department for authorizing the building permit, eventually leading to a C of O, is that those plans are reviewed and any complaints -- that any comments that are elicited from review of those plans would be presented to this Board in some form, whether it is potentially an advisor sitting at the side table or we have it captured in -- you know, a review checklist of the project. Those are some things that I'm hoping will come to fruition in 2007, and I think we all share the feeling that somehow we just didn't understand, okay, what was going to be built. It was clear. I have the same feeling as everybody else on the Board.

I went and looked at the plans that were submitted and clearly it is spelled out there. There is no equivocation about it. The back-lit glass block, the neon banding, it is all there. I think there is probably some give and take in both directions here that will hopefully lead us to a better position in the future as far as this Board is concerned. Maybe this is a good example we'll use in order to formulate the guidelines and specifications that we need to have to, I think, make an informed decision.

As Dario (Marchioni) said, we vote on the documents presented to us. If they're not complete and we're missing something, you know, it -- we bear the brunt of the criticism eventually because we approved it, and we did the best job we could at the time.

So anyhow, that being said, hopefully we'll learn from this and do a better job in the future.

KAREN COX: In defense of the applicant, the building that was eventually constructed was one that a C of O was issued on, based on the plans that were presented. So you know -- just so the people, the audience understands, the -- that is what happened.

JAMES MARTIN: Keith (O'Toole), comments from this application?

KEITH O'TOOLE: None at this time.

DENNIS SCIBETTA: I would just like to respectfully, for the Board -- this was not an oversight on my part. I issued the C of O. I don't want it to be misunderstood, that that is something that we check in, in accordance with the Planning Board. The building was constructed under my knowledge with plans that I was presented, and in accordance with all of those inspections. I won't go any more than that. I think we all know where that came from, but that is being done. I just want to assure you that as Jim (Martin) has said, we are working towards that, to correct that and try to not have any of these situations pop up like this one.

MR. MUNCH: I would just like to say I learned something from this Board tonight, and it -- I apologize that I can't do it in front of this Board. I will include it at all future presentations what we're doing with the sign package and I will make it a point. I just want you to know there was no intent, and again, I just apologize. We're trying to be a good neighbor. Thank you.

JAMES MARTIN: Understood. Thank you.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

FRANCES SCHRADER (phonetic)

MS. SCHRADER: My name is Frances Schrader. I live next-door to the carwash, exactly next-door on the other side of the fence. I agree with this gentleman over here (indicating). I have been in this town probably all my life, all 59 years, and I have seen the Chili Avenue grow, and you gentlemen and whatever other Board was here before you has kept an architectural balance. This carwash does not fit the architectural balance. I do not understand why it was allowed to be built, because I know what happened to Phil. I know what happened to a couple other people. They had to have pillars and they had to have this and that. So why does this carwash have neon and does it look like Las Vegas?

The other thing is, it is lighted all of the time. The lights do cause a problem. The noise does cause a problem. I'm right next-door. Also, I have a water problem. All along the white fence I have about a 90-foot-by-6-foot water, okay, problem that I never had before. In the corner where his garbage is, I have garbage on the other side of the fence that I have to clean. Noise, big problem. So I have a problem with the carwash. I have a problem about the lights, I have a problem with the noise, the height of it and the architecture. I would like to see it changed with the lights. Maybe close it with the -- at 9:30 like the Kwik Fill across the street. I am totally unhappy.

JIM MARTIN: Can you be specific about what the noise issue is?

MS. SCHRADER: Radios, kids and the -- the noise of the machines themselves. You know, when the car goes through. I'm pretty close.

KAREN COX: Which side do you live on, the west side?

MS. SCHRADER: Left side. As you look on it, I'm right on the left. Right on the left. The little blue house right next-door. I also own the other house next-door to that. Lots of noise. You can't sleep. I don't have to have a light on inside my house. I don't need to look at a flashlight to put a key in my door. None of us around the carwash appreciate it. I would like to see my water problem, garbage problem, light problem, noise problem fixed.

KAREN COX: Have you called the number?

MS. SCHRADER: Yes, I have called Mr. Munch three or four times. I left messages and I also walked over and talked to his people that were there three or four times. Yes, I have called him.

DARIO MARCHIONI: Would you say the lights bleeding are the problem?

MS. SCHRADER: Why is it necessary? Why is it high? Why doesn't it fit like Phil's architecture or the rest of the architecture? Or the new family restaurant's architecture? I mean you guys do it all of the time. You force people to put up the pillars and this -- and all of this design, and this carwash does not fit.

JOHN HELLABY: I have one quick question. You say you called Mr. Munch.

MS. SCHRADER: Yes, I did.

JOHN HELLABY: Elaborate on his reply to you.

MS. SCHRADER: He left me a message to call him back.

JOHN HELLABY: Personally, you have been playing phone tag, correct?

MS. SCHRADER: Yes.

JOHN HELLABY: So I understand where it is at. It is tough to change the architecture.

MS. SCHRADER: Why did you pass it in the first place? It doesn't match anything on Chili Avenue.

JOHN HELLABY: It is water over the dam.

MS. SCHRADER: It doesn't match one thing. I know that you have gone through, excuse me, a lot of aggravation to do what you want to make the architecture look the way it is, and this doesn't fit at all.

JOHN HELLABY: I think we're at a point where we can get Mr. Munch to at least alleviate --

MS. SCHRADER: Why is it necessary to be open 24 hours a day, 24/7? I called the Sheriff's Department. One day I parked in my driveway, probably for a week, and I stayed up between 1 o'clock and probably 7 o'clock in the morning. You can check the Sheriff's Department. I called every single hour on the hour of all of the kids and stuff that were causing problems, just before the carwash was built for the Kwik Fill across the street. They had one problem after another over there. I'm so glad that they're closed early. I think Mr. Munch's place should be closed early, too, and a few other things need to be changed. I don't know why you passed it. I'm really shocked that you did.

KAREN COX: You saw the volume of paperwork that Mr. Marchioni had. And you also heard the questions from us that indicated that the signage we saw on the elevation was not eventually what happened. So, you know, I will say in defense of this Board, we did ask those questions. And --

MS. SCHRADER: But if this gentleman --

KAREN COX: Those were the elevations we saw. So we have to take the applicant --

MS. SCHRADER: While it was being built, if this gentleman is inspecting it, why didn't he come back and let you know things are looking a little bit bigger, a little more bright?

KAREN COX: It was shown at two stories. The thing we were not aware of, on the Board, was the signage. We were aware the roof line was changing. We saw the elevations that it needed to be that high.

MS. SCHRADER: Where is the pillars and architectural like everything else on Chili Avenue?

KAREN COX: Not everything on Chili Avenue --

MS. SCHRADER: I know the Board pretty much wants everything on Chili Avenue to look a certain way and, boy, this place does not fit in.

JAMES MARTIN: How frequently did you try to contact Mr. Munch?

MS. SCHRADER: Almost a week straight a few weeks back. We were playing phone tag. A lot of time I'm in Syracuse, but now I'm here. I just gave up. He also had a gentleman come to see me to cut my trees down because it interferes with his lighting system and the people from the street can't see his lighting system, because the trees on my property are in the way and he wanted to cut them down.

JOHN NOWICKI: Did you say you called the Sheriff's Department?

MS. SCHRADER: Yes, about the noise, people.

JOHN NOWICKI: What was the response?

MS. SCHRADER: They came and checked it out.

JAMES MARTIN: For carwash or Kwik Fill?

MS. SCHRADER: Kwik Fill.

JAMES MARTIN: Have you not called the Sheriff's Department about the carwash?

MS. SCHRADER: Not yet. I did have them there one day. I did call about two weeks ago. I was looking out my back window because I try to watch and a prowler came from the carwash, toward my side yard and about eight cop cars came and they went everywhere looking for this guy. Black hood and -- right around the back. Now the fence is there, you can't see back there. People are -- the kids are crawling back and forth between the bank, the oil change place and they come back around. I got garbage back there, too.

KAREN COX: The water that collects along the fence --

MS. SCHRADER: What I watch them do. When the car goes through the carwash thing, once in a while there is a kid, like I said, that comes out and they spray it with a hose. I don't know why they're spraying a lot, and it is all pushed out away from the building. It is all pushed out towards the sides of the carwash. Along the whole fence I'm getting water.

KAREN COX: Why would they spray?

MR. MUNCH: There is a -- I can check into that. That's the first I heard of that. But they do power wash the concrete, blow the leaves, rake. It would be in the way of cleaning up the lot. If they are spraying water towards her property, I can definitely get that stopped. The only call I had received was she thought our fence was on her property. I called and said I have an as-built survey, which you all have. I just want you to let me know, call me back to get an address to send you a copy. That I never heard about a couple months ago. That was the extent of the message. I apologize. I thought I answered your questions. The gentleman who came out represented himself as your real estate broker who called me several times to try to sell your lot to me, and then at one point he did have a discussion with me about cleaning up, cutting the trees for the mutual benefit because that property is zoned commercial and my understanding is she is not living there, but they have apartments there now. He did approach me. I said that would be wonderful. Nothing to do with lighting, but it would open up the visibility coming this way.

KAREN COX: You said the gentleman that came out --

MS. SCHRADER: He said that Mr. Munch called him.

KAREN COX: Now Mr. Munch is saying the gentleman is representing you.

MS. SCHRADER: The gentleman was my realtor. He is no longer my realtor. He called up and said him and Mr. Munch were talking, I guessed they were friends and he would appreciate it if I could caught down the trees, because, um, the view from the road was being blocked by my trees for his building.

KAREN COX: All right. Well, I -- I am not even going to go there.

JAMES MARTIN: We're dealing with a lot of hearsay here.

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KAREN COX: Certainly the washing operation could probably be done in a manner that doesn't push the water towards the residential properties.

MR. MUNCH: I will make that call tomorrow morning to make sure no water in any incidence is pushed towards her property.

MS. SCHRADER: Garbage.

MR. MUNCH: That one is a mystery. I will have our guys go and check. There is an enclosure there and a dumpster there.

MS. SCHRADER: It is right in the corner of the properties.

MR. MUNCH: Is it? The back corner near her property, but I can actually ask my guys to police it and make sure if there is any garbage coming on her property, that they clean it with her permission.

KAREN COX: That is right. They won't be able to enter your property without your permission.

MS. SCHRADER: That is fine.

MR. MUNCH: I can have that done, too.

MS. SCHRADER: What about the lighting?

JAMES MARTIN: I would also ask perhaps after you leave here tonight, you make a visual inspection as to how much light spillage is occurring on the adjacent property, because obviously we have, you know, a member of the Board that has been there and says it is fairly intense spilling off your property. That is an issue that is going to need to be dealt with from the standpoint of just correcting that issue, if it exists that intensely.

MS. SCHRADER: What about having it closed down early? Why is it necessary to be open 24/7?

JAMES MARTIN: I will allow some other people to speak. Thank you for your comments.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I think I was here for every one of those hearings that Mr. Marchioni talked about.

Am I understanding correctly that a C of O was issued and this Board made a decision without seeing those drawings?

JAMES MARTIN: What I stated was that the elevations that we saw, all right, when we approved the application for this particular project were different than the actual architectural plans that were submitted to the Building Department, to obtain the building permit under which that building was constructed and that the C of O was granted. So we did not see those detailed plans.

MS. BORGUS: That's not normal?

JAMES MARTIN: Um, I would say some percentage of the time we see the detailed elevations and there is some percentage of the times that we do not see those detailed elevations.

MS. BORGUS: That might be another change that would be wise to make.

JAMES MARTIN: That is why I made my previous statements, Mrs. Borgus, we'll work in 2007 to make sure the Board gets the full set of information.

MS. BORGUS: I would also like to point out if there was an Architectural Review Board, this probably would have not have slipped past one more Board, especially since that is what they would focus on. I have often said the people that sit on this Board are not in the business of judging architectural design. You have another function. You do the best you can. I will give you credit for it. We need an Architectural Review Board and I would hope this Board presses hard to get one.

I would also have to agree with the prior speaker. I wonder if this carwash needs to be open 24 hours a day. As I said, I was here for the other hearings, and I realize they think it is economically advantageous to them to be open 24 hours a day, but if it is a problem and these lights are so annoying to neighbors, maybe that is part of your solution. This Board obviously doesn't sit here to make things the best for what everybody wants to do in Town. Your job is to make it best for all of the people that live here on all accounts. Maybe we have tried 24 hours. Maybe that is not something we should continue. I think this Board should give it some thought.

I would also like to have the comment investigated that those lights on those pillars can't be eliminated. I don't know why they couldn't be. I don't think it is probably the lights from the signage that you saw originally that is the problem. I think it is signage that was added that you didn't know about, and obviously, it is a lot of light from those -- from those wrap-arounds on those glass block pillars in the front. So I can't understand why those -- the lighting in those -- in those glass pillars can't be eliminated, number one, and secondly, I would like to see in the interest of peace in the neighborhood and the quality of our life in Chili that this Board cut back on the 24-hour provision. Thank you.

JAMES MARTIN: Motion to close.

JOHN NOWICKI: Second.

James Martin made a motion to close the public hearing portion of this application, and John Nowicki seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

JAMES MARTIN: As I related to you earlier, Mr. Munch, when we first approved this, we gave you a one-year conditional use. That one-year conditional use was primarily to ascertain how the operation was going to affect the residential neighborhood next to the carwash. Um, and I believe we got into a lot of technical detail at that time about the ability of the carwash to have its operations during certain hours. You have the ability at the master control to do that, was my understanding of the issue at the time.

MR. MUNCH: We do not. And I think that was part of why it was granted to be open 24 hours. The machines are always on. They always bleed. It is a problem if there is an extended power outage. The water would freeze up in the machines and cripple the whole system. It is prototypical by the manufacturer. I presented a letter from the manufacturer at that time, because the Board wanted to understand if they could be shut down at night.

JAMES MARTIN: I believe what we understood at the time, and please, correct me if I am wrong, is that, yes, the machines would remain in some sort of standby operational condition, but you could lock down the doors so the doors would not open.

MR. MUNCH: What we had come up with or said is that we could always move a cone in front of -- you know, because you can't turn off the auto cashier, it is wired to the doors, without shutting down the power for the whole building, which is a problem. We said we could move cones at night.

I guess I would just present all of these are 24-hour, and it -- the lights are on photo sensors. Putting the cones in front of the door would not change whether the lighting was there or not, without rewiring the whole building. And I think at that time, if you will recall, primarily the discussion was what if this is a noise problem at night because these machines can be heard from the neighbors behind us. I have not heard that. I have not heard it from one neighbor it is keeping them up at night. The first thing I heard was once at 10 p.m., the -- somebody was vacuuming with their radio playing loud. That be as it may, I mean -- all I have heard is one incident before 11 o'clock, at 10 p.m. at night, where somebody was doing something beyond our control, not to do with our equipment.

JAMES MARTIN: Now, that -- I understand exactly what you're saying. However, we did voice those concerns about people coming in with boom boxes, playing them loud at 1 o'clock in the morning, which can happen.

MR. MUNCH: I recall that.

JAMES MARTIN: I went back through and read the minutes. There was a lot of discussion about our concerns about that, and the capability to limit the hours of operation, which I think is still a prerogative of the Board if we chose to do that. And, you know, we have heard at least one public comment tonight it is a problem, and obviously the lighting issue you will have to go look at, because clearly, if you need to shield those lights or do something, that has to be corrected.

I guess I will go to the Board for further discussion. You know, we have had one complaint. Mrs. Schrader has been up here and outlined her concerns. Although, you know, there weren't any other comments from the neighborhood, other than hers.

I mean we also talked about putting a sign on the doors that said hours of operation are from such-and-such to such-and-such. And if you want to put cones or whatever it is, so that people would not, you know, utilize a machine at 2 o'clock in the morning or something to that effect.

So anyway, discussion from the Board? I mean, what is the feeling of the rest of the Board on this particular issue?

KAREN COX: Well, the noise complaint came in about something around 10 o'clock, right? It wasn't in the middle of the night.

JOHN NOWICKI: One complaint. How long has it been in operation?

JAMES MARTIN: A year.

JOHN NOWICKI: One complaint. And it hasn't been a legitimate formal complaint.

JAMES MARTIN: Except for what we heard tonight, which I will accept.

JOHN NOWICKI: Again, it has been running for a whole year here. I think the concern is that -- the concern that most people have is the lighting, that it is going on his property. I'm sure that can be fixed somehow. Adjusted somewhat. It can be tuned down. That is another thing. But there are simple things that can be done to correct the situation.

KAREN COX: This may sound stupid, but is it effective to put up a sign near the vacuum asking people to be courteous of the neighbors around them? That may be a stupid thing to put up, but I think perhaps sometimes people pull into these facilities and don't even realize -- don't even look at the neighborhood around them.

JOHN NOWICKI: Just being in the front yard with a boom box in your front yard. We have a noise ordinance and nobody enforces it. It is not just the important thing that has to be enforced. But if there is a very serious problem with that, people can call the Sheriff's Department and there is a code -- there is an ordinance they can enforce if they have to. But again, one year of operation, one complaint, I'm sorry --

JOHN HELLABY: Well, I agree with you.

JOHN NOWICKI: -- I don't see it is a problem.

JOHN HELLABY: I think the big issue right now is the lighting factor. You need to take the first step and be the good neighbor, however. Work with the neighbors. They have a complaint, whether it is trash, or the water overflow. You know, take the initiative to talk to

those people and understand what their concerns are. Maybe have a more visible presence when they come and pick up the trash or do the maintenance, they run on the other side of the fence and pick up the trash and make everybody smile. Again, there is nothing we can do about the architecture. We can't make you lower the building at this point. It is what it is. The lighting issue, I guess, will be the big concern, getting it knocked down, shields put on, to try to affect the overflow spillage. Again, I think the maintenance issue on this neon is going to be so overwhelming, that over the course of time, you may want to down grade it anyhow because it is a maintenance problem. I have dealt with it for years. I know.

JOHN NOWICKI: You're exactly right.

JOHN HELLABY: I also, I guess -- the question is, we gave him a year on the first time around. I don't want to strap the applicant, but I mean -- do you give him another year and see where he is in a year? I guess that will be another stumbling block.

KAREN COX: I would be inclined to give it another year at the 24-hour operation based on the fact that we have had one noise complaint. If -- you know, if -- I guess I would throw out if you or your neighbors are unhappy, the key is to lodge a formal complaint, whether it be with the Town or with the Sheriff, because then we have got -- we have got some backbone behind us to say --

MS. SCHRADER: I will start calling every day. Just like I did with Kwik Fill.

KAREN COX: But that is one person calling 50 times. You know, if -- the -- where complaints start to mean something more than just one person calling 50 times is 10 people calling a lot of times.

MS. SCHRADER: People are afraid to talk. I talked to my neighbors. They're afraid to talk. People don't want to cause trouble. Well, you it does bother. Why don't you say something?

KAREN COX: They won't get in trouble. It is to their advantage.

JAMES MARTIN: That is not the correct attitude.

JIM POWERS: At the end -- if we grant it for a year, at the end of a year's time, could the Building Department contact the Sheriff's Department and have him pull off their log the number of complaints for one thing or another that have been filed with the Sheriff's office?

JAMES MARTIN: We have done that in the past on other issues, so yes.

DENNIS SCIBETTA: There is somewhat of a simple solution to this also. It is easy enough to tell if it is a real noise complaint or bogus noise complaint. Because they have, and correct me if I am wrong, 24 cameras that have the ability to give you the license plate number and the time as to when they're there. So I mean if there -- if the complaint is registered with the Sheriff's and if this is a serious thing, we probably do have a way to legitimize the complaint.

KAREN COX: For me to -- for me that would be better documentation, rather than, you know, we have a thing here saying one person has a complaint. But there is no documentation that says, you know, one person calls up and lives at such-and-such an address, this time. You know --

JOHN NOWICKI: Working together, I think we can make it come out right. I think that is the ability, and I think that is what Dennis (Scibetta) is saying. We have that opportunity to work together. So try it for a year. I am sure they want to be a good neighbor and see how they can all come out that way.

MR. MUNCH: If we're made aware of any noise complaints, we'll cooperate in any way. We'll go through our camera logs.

JOHN NOWICKI: They will address that lighting issue. There has to be conditions on that.

DENNIS SCIBETTA: I don't mean to give you -- but an example was they did have an incident with the Sheriffs where they actually caught something that was happening and the Sheriffs used their video. They were able to use their video for -- and -- to help catch whoever it was. I couldn't tell you where it was, but I was aware of that.

JAMES MARTIN: Basically, what I have put on the approval sheet here is that, number one, all previous conditions imposed by the Board remain in effect.

James Martin reviewed the proposed conditions with the Board.

James Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be an unlisted action with no significant environmental impact, and the Board all voted yes on the motion.

DECISION: Unanimously approved by a vote of 6 yes with the following conditions:

1. All previous conditions imposed by this Board remain in effect.
2. Applicant will address concerns raised at this hearing regarding lighting from building, trash pick-up and water drainage off site.
3. Approved for one year with 24-hour operation.

1. Application of Amateur Sports Program, Inc., owner, 525 Ballantyne Road, Rochester, New York 14623 for renewal of conditional use permit to allow 7 ballfields, 2 football fields, 4 volleyball courts, 2 batting cages, 3 concession stands and the sale of beer at property located at 525 Ballantyne Road in A.C. & FPO zone.

Alan Knauf was present to represent the application.

MR. KNAUF: Alan Knauf, 2 State Street, Rochester. I'm the attorney for Amateur Sports Park. We're here to request renewal of the current special permit. Pursuant to an agreement that was reached with the Board and the Town and was approved as a court order by Judge Frazee, the park had a four-year special permit with about 19 different conditions to resolve any issues. We believe we have satisfied all of the conditions. We haven't heard otherwise, and now we're back to ask for renewal.

The requirement is that the permit shall be renewed with no further conditions unless there is a substantial change in operations. There has not been a substantial change, and we respectfully request that the Board approve the renewal.

Mr. -- Jim Sanagorski, who is the foreman for the operation, is here tonight if there are any particular questions about the operation. Mr. Aselin is in the hospital, but that is basically our presentation. We think -- it was a long struggle working out the issues. We believe that we have done everything the Town requested as far as the agreement and satisfied all of the conditions, and we would like to continue to operate. Thank you.

JAMES MARTIN: If I go back to a letter that was issued by Dan Kress on January 27th, 2003, basically there was a list of conditions. I'm assuming, Mr. Scibetta, that that list of conditions, the inspections that were subsequently conducted basically found the site to be in compliance with those conditions?

DENNIS SCIBETTA: At that time, yes.

JAMES MARTIN: I don't have any questions at this time.

DARIO MARCHIONI: My question is -- I just got this right now.

MR. KNAUF: Sorry.

DARIO MARCHIONI: I didn't get a chance to read it all. But I -- my question -- was the Judge aware of the conditions of the property? Did the Judge actually go to the property, do you know?

MR. KNAUF: She didn't actually go to the property, to my knowledge. But we gave her pictures and spent quite a long time negotiating in her chambers. We went through all of the conditions. Mr. O'Toole and I went back and forth over great length all of the issues and she was well aware of the issues. This was a stipulation converted to a court order so it has the effect of a court order. She was fully aware of it.

DARIO MARCHIONI: I'm not questioning her. I'm just asking the procedure, as matter of procedure. Is she aware of it? Did she see it? Did she see the conditions?

JAMES MARTIN: She was thoroughly briefed on the conditions.

DARIO MARCHIONI: That is the question I have.

JOHN NOWICKI: The existing conditions.

JAMES MARTIN: The conditions upon which we were basing our decision at that time that needed some form of correction, that was -- she was well aware of those conditions.

MR. KNAUF: Right.

DARIO MARCHIONI: Some of these judges can put gag orders on some stuff. We have been going --

MR. KNAUF: No. She was fully aware.

DARIO MARCHIONI: That is a different world all together, being a judge. They have a different way of looking at things. We think about the people that live in this community, the best interest of this community. That is what we try to do the best. Judges look at it -- I don't know where they look, but they make their own decision and that is their prerogative, I suppose.

JAMES MARTIN: The key paragraph is 1A. Basically. And you know, "Special permit shall be renewable by the Planning Board in successive four-years terms, and shall be renewed with no further conditions unless there is a substantial change in the operations, or a substantial failure to comply with the terms set forth in this Stipulation. Petitioner reserves the right to request that the Planning Board approve changes in the operations, conditions or site plan."

There has been no substantial change in operation, and basically the conditions that were set forth by the Board have been fulfilled.

MR. KNAUF: That's correct. We're not asking for any changes.

JOHN NOWICKI: I'm not so sure about that yet.

DARIO MARCHIONI: One more question, if I may. Is this property for sale?

MR. KNAUF: Yes. He has tried off and on and he has been making efforts to try to sell.

DARIO MARCHIONI: Does this decision go with the land? I mean, if this property is sold, can we --

JAMES MARTIN: If it changes substantial use, then it is a whole new ball game.

MR. KNAUF: If the use -- no pun intended, it is a new ball game.

DARIO MARCHIONI: What if the owner maintains the same thing?

MR. KNAUF: They would be able to continue to operate because it runs with the land.

DARIO MARCHIONI: You're the lawyer. My son is a lawyer, too, but he never tells me

anything.

MR. KNAUF: Maybe he will be a judge some day.

DARIO MARCHIONI: They say never ask a question unless you know the answer, but in my position, I don't know the answer.

JOHN NOWICKI: My question goes to the Dan Kress sheet.

MR. KNAUF: I don't know if I have it. Go ahead and read it. I have the Judge's conditions. I'm not sure I have that in front of me.

KAREN COX: Are you talking about the e-mail?

JOHN NOWICKI: The last attachment. We have -- I have an attachment from Dan Kress on January 27th, 2003 indicating you received a court order, and the following summary of the order and figured the dates in the second, third item. There was an item on there. You said you had someone here tonight that works there?

MR. KNAUF: Right.

JOHN NOWICKI: One of the conditions was flags and banners to be removed between November 1st and March 31st.

MR. KNAUF: Right.

JOHN NOWICKI: The American flag is rather important, I would assume, to all of us in this room. In my observation of that operation, the American flag has been abused to no -- to the nth degree. I want to know why, and I want to know why it is not being taken care of properly. That is my only complaint and I want to know what is going to be done to protect the American flag on that property.

MR. SANAGORSKI: To address your question -- Jim Sanagorski. We changed that flag four times a year.

JOHN NOWICKI: There is more than one flag?

MR. SANAGORSKI: Right. Whenever it is tattered or torn on.

JOHN NOWICKI: Oh, really? What time do you take the flags --

MR. SANAGORSKI: Most of the times we do. This year --

JOHN NOWICKI: You don't leave the American flags out there all torn and ripped?

MR. KNAUF: Is it out there now?

MR. SANAGORSKI: Yes. I was in for surgery. I should be out there.

JOHN NOWICKI: That is my complaint.

MR. SANAGORSKI: Do you see one up there now?

KAREN COX: If they're left out, they're supposed to be lit.

KAREN COX: They're supposed to be lighted.

JOHN NOWICKI: Now that is abuse. That has to stop (indicating).

MR. SANAGORSKI: Okay. I understand what one you're talking about there. That will be removed.

JOHN NOWICKI: Can you appreciate what I'm saying?

MR. SANAGORSKI: Yes. This wasn't here when I closed the park, this flag. He must have stuck --

KAREN COX: He stuck it up as a way for people to look at the "for sale" sign, which is another way.

JOHN NOWICKI: Sometimes it pays for the Judge to get up out of the chair to go take a look.

MR. SANAGORSKI: That will be taken care of. I will have that removed tomorrow.

I wasn't aware he put that -- Don. When I'm done in October, I'm done in October. I don't go back there.

KAREN COX: Who is watching him? Who is babysitting him when he is doing this kind of stuff? I mean, you know, if we have a condition that says take the flags down between this date and this date, then who --

MR. KNAUF: Well, the procedure is that -- we did set up a procedure if there are any violations, the Town gives us notice, a ten-day notice saying there is a problem, you have to correct it, and then we'll go ahead and do it. I mean, you know -- and if we did get one of those, we would immediately jump on it as far as taking care of the problems.

JOHN NOWICKI: In my particular case, it is just each individual should have respect for that flag.

MR. KNAUF: We understand. It is a valid point. We were not aware of this.

JOHN HELLABY: It is my intention to abstain on this. I would like to make perfectly clear, I was not directed to abstain or ordered to abstain, but it is just my years of frustration with this application.

JAMES MARTIN: Understood.

KAREN COX: I share John (Hellaby)'s concern about the flags. Obviously, it is a condition that Mr. Aselin forgot about. Maybe this could be considered ten-day notice.

MR. KNAUF: We'll take care of it.

KAREN COX: But I mean, it -- I guess we all have to keep an eye on things during that period of time. Now that I know there is a procedure in place, I will keep my eyes open. That is all I have.

JIM POWERS: Walk across the street there. The VFW post is there. Find out how the flag is to be displayed, if it is being displayed, and not abused such as it has been down there.

I'm sure there are a few things on this list -- I just got this this evening -- that I could

comment on. Have you been to the property yourself personally?

MR. KNAUF: I have, but not recently. I mean, I have been there, but I haven't been there recently.

JIM POWERS: How recently?

MR. KNAUF: Probably at the time of this stipulation.

JIM POWERS: When you did go, did you find that these things were in order that are on this list?

MR. KNAUF: Not totally, because it was in progress at the time. In other words, at the time we were -- Mr. O'Toole and I were discussing the various items and we went out to the site. We were talking about where the fence should be, and what the conditions -- the vehicles. We had a whole laundry list of things. So we did go out to the site to look at it, and -- so I better understood what the Town's concerns were, and that resulted in our negotiation and the different items. I cannot vouch for what the condition is other than I know -- that is why I -- Jim (Sanagorski) is here, because he -- he knows the condition, and like I said, nobody -- again, we hadn't heard there was a problem. If there are any issues, we would be happy to go and address them.

JIM POWERS: I agree with my cohorts here on the Board. I have to question seriously if the laundry has been washed as thoroughly as it should be with regard to this particular application.

MR. KNAUF: Well, it was a settlement. When people make resolutions, not everybody is totally happy. But we agreed we would set ground rules and we have tried to live by the ground rules. If there is a slip up you brought up tonight, we'll take care of it. So...

JERON ROGERS: When did the Judge render his decision?

MR. KNAUF: It was four years ago, 2002. It was basically we had a pending case, and the Judge encouraged us to try to resolve it and brought us into her chambers, and it was negotiated and an agreement was reached and she approved the agreement and made an order. So basically we told her what terms. She had to review it. She could have rejected it, but she approved the terms.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

STEVE GINOVSKY, 19 Hubbard Drive

MR. GINOVSKY: First of all, with the American flag, is it lit or is it taken down every night? I would like to have that answered to me.

JAMES MARTIN: You can answer that question, if you can, please.

MR. SANAGORSKI: The one that he is showing in the picture? What that is, that appears to be one of the small flags that people put on their vehicles that is stuck out there. And the ones that are in the park are not lit.

MR. GINOVSKY: They are not lit and they're not taken down?

MR. SANAGORSKI: They're brought down half mast.

MR. GINOVSKY: Every day? Okay.

Second, I noticed on Beaver Road and Archer, a sign there and one down by Ballantyne that says Amateur Sports Park. I know this Town has a sign ordinance. Are those approved signs or not? I have asked that a number of times.

MR. SANAGORSKI: The green ones you are talking about? State approved.

MR. GINOVSKY: Did the State give permission for those?

JAMES MARTIN: Mr. Scibetta, the signage for the --

MR. SCIBETTA: It has been a question and addressed many times and we have been told that the State has allowed that. We ask it.

JAMES MARTIN: They're allowed by the State.

MR. GINOVSKY: It bypasses the Town local law ordinance.

KAREN COX: Yes. It is in the right-of-way.

MR. GINOVSKY: The next part is I understand there have been issues there, bleachers and such. Gag orders, judges giving orders. It hasn't been -- really been cleared up. There has been -- filling in land over there. Swimming pool at one time. Have all those issues really been cleared up? This is going back to -- excuse me -- our past Chairperson of the Planning Board, Mr. John Cross, and it came real tight in his chest. And as a Town resident, has this been taken care of? If it has, fine. If it has not, I would -- I don't care if it is in progress, since the year 2000, or -- or 1990. The Town Board needs to take a real stance on this. And it is about time something has been done seriously. If we're going to do it, please do it right. Thank you.

MR. SANAGORSKI: Would you like me to address the swimming pool issue?

JAMES MARTIN: The swimming pool is gone, I know that.

MR. SANAGORSKI: The land fill, I don't know what you're talking about.

JAMES MARTIN: Let's not get into one-on-one. It comes through here, all right? I will answer the basic question. The conditions that were imposed that needed to be addressed, according to Mr. Scibetta, have been addressed and have been resolved.

Move to close.

JIM POWERS: Second.

James Martin made a motion to close the public hearing portion of this application, and Jim

Powers seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

JAMES MARTIN: It says we can impose no further conditions, but all previous conditions can remain in effect; is that correct?

KEITH O'TOOLE: That's correct.

JAMES MARTIN: The abuse of the American flag, how should I handle that because it is a situation that has to be addressed, but is not in the original conditions.

KEITH O'TOOLE: The flag code is not within the jurisdiction of the Board. But the provision of the court order stating flags and banners on flag poles must be removed between November 1st and March 31st. That's it.

JAMES MARTIN: So in my letter, can I state that it -- even though it is not a condition, the Board requests that proper procedures be followed as it applies to the display of the American flag?

KEITH O'TOOLE: Yes, you may.

JAMES MARTIN: Thank you.

DARIO MARCHIONI: I have a legal question, if I may.

It says that we have to approve this for a four-year term. That means we all have to vote yes? Is that what it means?

KEITH O'TOOLE: No.

JOHN NOWICKI: Better not.

KEITH O'TOOLE: It means that instead of a one, three, five, ten or whatever other variance you might think of, that we're doing it on a four-year cycle. That was the agreement.

DARIO MARCHIONI: If I say I vote against this, would I be in jeopardy against a court order? I mean what -- if I vote no on this renewal, what position would I be in? Am I in violation of the court order or do I have -- can I exercise my right, or can I abstain like John (Hellaby) just did? In other words, what are my options here?

KEITH O'TOOLE: The Board is a party, and it is not you individually.

DARIO MARCHIONI: Oh, okay.

James Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be an unlisted action with no significant environmental impact, and the vote on the motion was 5 yes with 1 abstention (John Hellaby).

James Martin reviewed the proposed conditions with the Board.

On the approval of the application, the following vote was cast: 2 yes (Karen Cox, James Martin), 2 no (Jim Powers, John Nowicki) and 2 abstentions (John Hellaby, Dario Marchioni).

JAMES MARTIN: It is approved.

MR. KNAUF: If I could be heard, this is a court order that requires the Board to renew the permit. So you really do not have an option here. There was absolutely no evidence of substantial change. The court has ordered this and -- with the Board voting against it is a violation of court order.

KAREN COX: Why have it come in front of us then?

MR. KNAUF: Because the Board did -- did set a test. The test is whether -- the Court set a test. The test is whether there is a substantial change in the operations. That is the test. Or if there is a violation of the conditions. This was a negotiated deal. Everyone agreed on it. Everyone agreed on the rules and the Judge ordered it. I can't change it. You can't change it. I got to obey a court order. You have to obey a court order. The Judge is a higher authority than all of us here in this room.

KEITH O'TOOLE: Mr. Knauf, if I may.

It comes down to findings. If you're going to vote against it, there has got to be a reason. That is really what it comes down to. If, in fact, we don't have a vote to approve this, there has got to be a reason why we don't. And under that -- to that degree, that -- Mr. Knauf is correct. That if you found that they're not in substantial compliance, then you're not bound to reapprove or to extend the permit. On the other hand, if you're not in a position to make that finding, then the question arises why did you vote against it. And frankly, it -- I notice we have a partial Board this evening, and it may be appropriate, if necessary, to revote on this perhaps at next month's meeting.

JAMES MARTIN: Next month's meeting?

KEITH O'TOOLE: Yes.

JAMES MARTIN: That presumes we'll have a full Board by next month's meeting.

KEITH O'TOOLE: Well, there is that.

JAMES MARTIN: Can I review -- Jim (Powers), you were a yes?

JIM POWERS: I was a no.

JAMES MARTIN: I'm sorry.

KAREN COX: I was a yes. But even if we have a full Board next month, that is wasting our time and the applicant's time if the -- if the court order indicates what the applicant had said. Why have him come in? We have to approve it, unless we can prove that the conditions have changed from what is shown in this court order.

KEITH O'TOOLE: Exactly.

KAREN COX: Why have them come in?

KEITH O'TOOLE: For just the reason you said. Because there had to be an enforcement mechanism in place to verify the property owner would comply with the order. You can't go run back to the Judge every time we have arguments about dumpsters and other things, because frankly judges, as a general rule, will not come out and visit properties. You are the local enforcement mechanism. You have this experience. You have seen the property. You are certainly one up, and it is to our advantage that you be that enforcement mechanism. We got some stuff in return for the settlement. We gave up some stuff. That is -- such is the nature of a settlement. But if you're going to vote no, there has to be a reason.

KAREN COX: Documented reason?

KEITH O'TOOLE: Yes.

KAREN COX: There is no documented reason.

JOHN NOWICKI: I would like to make a statement. It is interesting that the people on this Board have made a statement. If you want to call for a new vote, based on the evidence or what they stated between the two attorneys, that is something else. But I think the intent of this Board was to send a message. That message is out there. It is out there. Because we have historical problems with this project, for many years.

JAMES MARTIN: That is a given.

JOHN NOWICKI: It hasn't been a good one for this Town. But the important part about the American flag is going to be taken care of. If it is not, then there are going to be letters to the editor attacking this particular project, guaranteed. But if you want to call for a revote, I will revote on it.

JAMES MARTIN: Mr. O'Toole, we can call for a revote at this time?

KEITH O'TOOLE: Yes.

JIM POWERS: What was the original vote, Jim (Martin)?

JAMES MARTIN: Original vote was two against, two for and two abstentions.

JOHN NOWICKI: Didn't quite make it.

JAMES MARTIN: All right. Given that we have now been educated by our legal companions here tonight, I would at this point make a motion that we revote on this particular application. Do I have a second?

JOHN NOWICKI: Second. On revoting on the application?

JIM POWERS: Reluctantly, yes.

KAREN COX: Yes.

JOHN HELLABY: Abstain.

JOHN NOWICKI: Yes.

DARIO MARCHIONI: Under protest, I will vote yes.

JAMES MARTIN: I will vote yes also.

So we're now going to revote on the application. We have done SEQR. Nothing has changed at this point.

On the application itself now?

JIM POWERS: Yes.

KAREN COX: Yes.

JOHN HELLABY: Abstain.

JOHN NOWICKI: Yes.

DARIO MARCHIONI: Yes.

JAMES MARTIN: I will vote yes also.

MR. KNAUF: Thank you very much. We'll take care of that.

JOHN NOWICKI: Thank you very much. I'm looking forward to that. I really am.

DECISION: Approved by a vote of 5 yes with 1 abstention (John Hellaby) with the following conditions:

1. Granted for a period of four years.
2. All previous conditions imposed by this Board remain in effect.

The Board made note of the fact that the display and treatment of the American Flag at the sports park has not been done according to proper display standards. Although not a condition of approval, the Board requests that in the future the applicant will meet all approved standards for display of the American Flag, and any abuse thereof will cease.

3. Application of Amerada Hess Corp., 1 Hess Plaza, Woodbridge, NJ 07095, property owner: North Chili Enterprises; for preliminary subdivision approval to combine two

lots into one lot to be known as Amerada Hess Subdivision at properties located at 4371 and 4375 Buffalo Road in G.B. zone.

- 4. Application of Amerada Hess Corp., 1 Hess Plaza, Woodbridge, NJ 07095, property owner: North Chili Enterprises; for conditional use permit to erect a service station with fuel pumps, and a car-wash at property located at 4371 and 4375 Buffalo Road in G.B. zone.
- 5. Application of Amerada Hess Corp., 1 Hess Plaza, Woodbridge, NJ 07095, property owner: North Chili Enterprises; for preliminary site plan approval to erect a 3,500 sq. ft. convenience store/service station with fuel pumps and 864 sq. ft. car wash at property located at 4371 & 4375 Buffalo Road in G.B. zone.

Dennis Kennelly and Mr. Lautenbacher were present to represent the application.

MR. KENNELLY: Good evening. My name is Dennis Kennelly from FRA Engineering in Henrietta. With me is Any Lautenbacher from Hess Corporation from Woodbridge, New Jersey. One quick clarification. Amerada Hess is no longer Amerada Hess. We're just now the Hess Corporation. I just want to respect that name change.

What we're proposing, again, as stated, is three things. Subdivision, combining two lots into one, we're proposing a site plan approval, and a conditional use permit to operate a continued operation of a new facility. Everything at the parcel, which is 1.2 acres, would be razed to make way for the new building which is about a 3,500-square-foot building and a six-island carwash -- I'm sorry, dispenser, gasoline dispenser area with canopy and a single-bay laser carwash.

JAMES MARTIN: What we're proposing for access is to utilize the existing access location on Buffalo Road and to eliminate the driveway closest to Buffalo Road on Union Street, actually eliminate both those and replace them with one for better access.

So the driveway closest will be shifted about 40 feet on the center to the south. So that is -- so that is a nice improvement, I think, to the site.

Overall, we're going to add about three times as much green space as what currently exists on the site. We're going to provide landscaping and buffers around the site. The amount of rooftop will decrease by about 5,000 square feet, and the amount of impervious surface will be reduced by about 30 percent. All of those features, along with obviously the brand new building with the Hess prototypical architecture, will provide many improvements to the corner, certainly in our opinion.

As part of the application, we submitted a full set of engineered drawings for the site plan architectural drawings, long environmental assessment form, storm water management plan and other supporting documents. We received some comments from the Town Engineer. I have spoken to the Town Engineer on a couple of occasions. We take no exception to any of those comments. They're all very good, supportive comments. We'll provide additional information on the lighting as requested. We have that information now. We're just putting it in the form that the Town Engineer requested, and we'll submit that.

So again, we're seeking approval of all three of those applications at this time. We will be presenting to the Conservation Board and we'll need to present one area variance application to the Zoning Board and that would be for the side or rear setback for the carwash.

The current large building on the site is about 22 feet from the lot line, as would be the proposed carwash building. So we would be needing an area variance about 12 feet or so to get within the required setback variance for the carwash.

JAMES MARTIN: Is that it?

MR. KENNELLY: That's it.

JAMES MARTIN: I guess I will start with a couple of questions, and maybe a concern.

Looking at your proposed diagram here, one of the things that we have addressed with other projects that have come before us, and specifically drive-through type activities, carwashes, pharmacy drive-through windows, those types of things, there has always been a concern expressed that we really need to have a bypass lane for emergency purposes. If somebody were to become violently ill while they're in a queue waiting for a carwash or some other emergency occurs, there really is no, what I can see on this diagram, a bypass lane available that leads to the entrance to the carwash.

MR. KENNELLY: We could provide that additional bypass with the loss of a little bit of green space around the carwash, but Mr. Lautenbacher agrees with that comment.

JAMES MARTIN: Thank you.

In the Town Engineer's comments to you, and a lot of us recall the last time that the tanks were put in the ground over there for the current Hess station, that -- I can't remember the duration of time that they had to pump water from underneath those tanks because they floated up at least once that I know of, okay, and I know there was a significant amount of pumping that went on over there in order to get the water table down low enough so you could hold the tanks in the ground.

The proposed new location for the tanks, I'm not sure how far that will be from the springs under the ground there, but it is a significant concern as to whether you will be able to bury the

tanks without going through very significant engineering hydraulic operation to get the tanks to stay in the ground.

MR. KENNELLY: We appreciate that comment. He notified me of that several weeks ago. We notified Hess. Part of the reconstruction will be a geotechnical engineering report and subsurface work to identify just what would need to be done to anchor those tanks and the methods in which they build them during construction.

MR. LAUTENBACHER: Well, we have actually gotten better at it over the years.

JAMES MARTIN: Next concern I have is will soil tests be conducted on the site to determine whether there has been any subsurface contamination to the water table as a result of the tanks or any surface activity that occurred? I know people spill gas all of the time on the asphalt, if they over fill their tank, those types of things.

I didn't see anything in the EAF that indicated there was going to be any soil testing conducted in order to verify there is no significant subsoil or subsurface contamination of the soil.

MR. LAUTENBACHER: There is ongoing testing on our portion of the site now. We do that in all of our locations.

As part of the prepurchase assessment of the additional property, some Phase 1 testing has been done and we will be doing extensive testing as we go along.

JAMES MARTIN: All right. I think, you know -- we would probably like to see the results of all of that testing not submitted as part of your approval package, but I have a strong desire to see that information.

MR. KENNELLY: May I comment?

JAMES MARTIN: Yes.

MR. KENNELLY: In that environmental assessment report will be any existing conditions or previous spills underground or on top of the ground on file with the DEC. That is all part of that. So you will get that information.

JAMES MARTIN: Okay.

JIM POWERS: I'm glad you brought that particular subject up about the tanks. I think it has happened on more than one occasion that we have had a water problem with those tanks. I guess it is the northwest corner of that station out there in North Chili. I understand you are going to be putting in new tanks.

MR. KENNELLY: Correct.

JIM POWERS: What is the capacity of the underground tanks now?

MR. LAUTENBACHER: I'm not sure. They're probably 10,000 gallons.

JIM POWERS: What do you contemplate putting in the ground?

MR. LAUTENBACHER: Two 20,000 gallon tanks. One is compartmentalized so we can have diesel offering, as well.

JIM POWERS: On the carwash, I'm sure you're aware of the fact that they're putting a carwash up across the street in North Chili.

MR. LAUTENBACHER: Okay.

JIM POWERS: You're aware of that.

The Hess station that you have on Chili Avenue, you have a carwash already there. You have Buckman's. Does this go with this grocery store plan of Hess, the -- do you have carwashes at your other developments throughout the County? You have one in Webster?

MR. LAUTENBACHER: Penfield, there is no carwash there. It depends on the property that is available.

JIM POWERS: Any reason in particular why you're going to put a carwash here in North Chili with one across the street?

MR. LAUTENBACHER: Because the property is available.

JIM POWERS: Could I ask some questions on the interior operation as well as -- on your assessment review, environmental assessment form, you said that you will probably add four employees. Is that per shift? Is that seven days a week, 24 hours?

MR. LAUTENBACHER: Yes.

JIM POWERS: Is that four people a shift, or four people in total?

MR. LAUTENBACHER: That would be for the peak shift. It would probably -- off hours would probably be two people.

JIM POWERS: We're famous for pizza in this Town. Are they going to be combined, or are they in separate wings of the -- the major building?

MR. LAUTENBACHER: They're kind of side by side.

JIM POWERS: Similar to the one on Chili Avenue?

MR. LAUTENBACHER: They're not separate operations. We're the franchisee operated with our personnel.

JIM POWERS: There will be restrooms in the facility?

MR. LAUTENBACHER: Handicapped-accessible restrooms, accessible only from the inside.

JIM POWERS: How many tables do you plan on or contemplate on having inside for dining?

MR. LAUTENBACHER: I believe there are five.

JIM POWERS: What other products -- will you have a full wall of freezers inside?

MR. LAUTENBACHER: Two walls will have reach-in coolers for soft drinks, juice,

milk. Um --

JIM POWERS: Beer?

MR. LAUTENBACHER: Water, beer. Um, we'll have, you know, sweet and salty snacks. Lottery tickets, newspapers. Um, no groceries. You know, it is not a produce market. It is not where you would go for groceries.

JIM POWERS: When you said two people on the shift, would that be during the day?

MR. LAUTENBACHER: That would be off hours.

JIM POWERS: One person would work the pizza, and --

MR. LAUTENBACHER: And one on the cash register. And -- and witnessing the gas operation, as well.

KAREN COX: Where do you expect the trucks that deliver the various things that you will be selling in the store to unload?

MR. LAUTENBACHER: There will be two significant deliveries to this location. One will be gas on an as-needed basis, and obviously, you know, he will position himself over the tanks. That is where he will make his delivery. The delivery takes usually about 40 minutes. There will be one tractor-trailer delivery a week to deliver to the store and other periodic deliveries by smaller vans, and they will park in a parking space.

KAREN COX: So the tractor-trailer -- so the tractor-trailer will be coming in on and off on peak hour?

MR. LAUTENBACHER: Absolutely. We don't want them disrupting the business.

KAREN COX: That seemed obvious to me, but I wanted to ask that.

Did I see Mr. Nagle's name associated with this application at all?

MR. KENNELLY: I don't know that name.

MR. LAUTENBACHER: No.

DENNIS SCIBETTA: He is a neighbor.

MR. KENNELLY: Oh, he is noted as an adjacent property owner.

KAREN COX: That is what it was. Okay.

KAREN COX: You gentlemen have sat through this whole meeting. You have heard our diatribe, I guess some people would call it, about architectural aesthetics. And I -- you know, I'm aware that the views that you show here, the colors that are shown are your signature colors, but if you take a look at the Family Video on the other corner, and if the Walgreen's ever gets built on the diagonally opposite corner, those two buildings have similar colors, except that they're muted. In other words, the roof is a dark green roof. The red is more of a maroon. So I guess my question is, does Hess have alternate, more muted color schemes you have used in other operations?

MR. LAUTENBACHER: Not as a standard. You know, if something needs to be adapted to a specific community, then we work that out with the community.

KAREN COX: I guess I would ask that that be considered. You know, I appreciate your honesty in that, and I know now that the store or the facility that is there uses these colors, but it is also smaller. And you know, I -- this is going to be an improvement to what is out there. There will be more green space, which certainly is better than what is there. But I guess on behalf of the Board, I would ask that you consider showing us some different colors. That is all I have.

JOHN HELLABY: Is there any green neon on the outside of this building?

(Laughter.)

JOHN HELLABY: Which leads into the next question, what type of neon signage goes in the front windows for beer sales and soda sales and things to that effect?

MR. LAUTENBACHER: There will be neon inside the building. There is nothing from a planning perspective that is going to be in the windows for -- as a permanent advertising nature such as neon.

If anything shows up after the fact, it will be something we'll have to take up with the operations people. You can give me a condition that says no neon in the windows, and they will have to live with it. I would be willing to accept that.

MR. KENNELLY: The Hess Express sign over the door is a back-lit sign box. That's not neon.

JOHN HELLABY: Do you presently own the parcel where the other store sits?

MR. LAUTENBACHER: It is under contract.

JOHN HELLABY: You don't have control of it yet?

MR. LAUTENBACHER: Correct.

JOHN HELLABY: Clarify procedure, I would assume that their application should have the owner's signature on it and notarized, which the copy I have in my possession does not.

MR. KENNELLY: In dealing with the administrative staff, I was under the understanding if we gave a copy of the purchase agreement, that would suffice and -- in lieu of signature.

KEITH O'TOOLE: That would be satisfactory.

JOHN HELLABY: It is? Okay. You have that, I trust?

MR. KENNELLY: That was part of the application package.

JOHN HELLABY: The only other question I have, I noted it was not noted whether or not both parcels are in a drainage district. If they are not, I would assume they must be -- you will have to petition the Town to put them in a drainage district.

DENNIS SCIBETTA: They're in a drainage district.

JOHN HELLABY: Both parcels?

JAMES MARTIN: Yes. We verified that.

JOHN HELLABY: I guess that is all I have for right now.

JOHN NOWICKI: You mentioned before about a bypass around the carwash. Does that impact on the drainage designed for the site?

DAVE LINDSAY: I guess if it pans out, they plan to address it if they will move the building.

JOHN NOWICKI: That will come up in final design?

MR. KENNELLY: Yes.

JOHN NOWICKI: Landscaping, you have not seen the landscaping get?

PAT TINDALE: No.

JOHN NOWICKI: I will really want to see some --

PAT TINDALE: We have a drawing, but no licensed landscape architect.

JOHN NOWICKI: Do a good job on this.

MR. KENNELLY: It has been laid out by a licensed landscape architect who will sign and seal the final drawing.

JOHN NOWICKI: We'll look at that when it comes in.

This application is listed before us Amerada Hess Corporation. You say Amerada is not appropriate. That is not --

MR. LAUTENBACHER: The company name was changed in May at our stockholders meeting from Amerada Hess Corporation to Hess Corporation.

JOHN NOWICKI: Amerada is off?

MR. LAUTENBACHER: Amerada went away.

JOHN NOWICKI: Then the property owner is listed as North Chili Enterprises; is that correct?

MR. KENNELLY: That's correct.

JOHN NOWICKI: Okay. Mr. O'Toole, you say there will be a sale agreement here that is going to be part of this application?

KEITH O'TOOLE: There is (indicating).

JOHN NOWICKI: You have one. Okay.

Next-door to you, to the west, the property is identified as United Refined Holdings Corporation. Is that related to you guys?

MR. LAUTENBACHER: No.

JOHN NOWICKI: No relationship there?

MR. LAUTENBACHER: No.

JOHN NOWICKI: Are you familiar with our requirement in the code for dark sky lighting on the project?

MR. KENNELLY: Yes.

JOHN NOWICKI: Something that you will have to -- that will be addressed by our Building Department.

MR. KENNELLY: All lighting is down lighting, completely enclosed.

JAMES MARTIN: That has been requested by the Town Engineer to have that spelled out.

MR. KENNELLY: Yes, that's correct.

JOHN NOWICKI: Are there going to be any types of units that will be seen on this building, air exchange units, heating units, anything at all that you can see from the road? (Laughter.)

MR. LAUTENBACHER: On the roof, hidden by the mansard.

JOHN NOWICKI: You won't see them from the road?

MR. LAUTENBACHER: That's correct.

JOHN NOWICKI: Everything is hidden?

MR. LAUTENBACHER: Yes.

DARIO MARCHIONI: Samples of the materials you will use here for the -- such as the roofing, you know, so we get an understanding exactly what color it is? I mean these plans really --

MR. KENNELLY: Well, if you have been to any of the other Hess facilities, they have this -- it is the standard -- I call it Hess green, because I don't know the technical name, but it is their signature color, as we stated earlier. That is a standing seam metal roof on the building and it is split-faced masonry fascia on the building are the materials.

DARIO MARCHIONI: What colors? Can we have a sample of this stuff?

MR. KENNELLY: Yes.

DARIO MARCHIONI: Put it together for what it will be like.

JAMES MARTIN: The names are on the elevation, but I don't know what that color really is. They are listed on there, whatever -- when you do -- whatever. But it would be nice to see what they actually look like.

DARIO MARCHIONI: Are you going to request any variances on signage or anything from the Zoning Board or will you comply with existing --

MR. KENNELLY: As far as I know right now, we're within the code. And if we deviate from the code with any signage -- well, let me back up. On the ID sign out at the roadway, there are existing variances on that sign, and that sign will remain as is.

DARIO MARCHIONI: You will not touch that at all?

MR. KENNELLY: No. Stays right there. That was worked out when the D.O.T. rebuilt the road last year.

We will make sure the fine points of the final sign package comply with the code or we'll approach the Zoning Board, but all of the signage we're proposing is shown on the current application package.

DARIO MARCHIONI: Buffalo Road and Union Street is quite a -- I mean, it is really developing very well. A lot of businesses -- things are happening there. Like we expressed before, architectural is very important to us. We would like this building to fit in, not stand out. You know -- so basically, that is one of our objectives. And if you can keep that in mind when you give us some more of that information.

And basically, you know, I think it is a great improvement for that corner, from what it is right now.

MR. KENNELLY: Thank you. We do, too.

JIM POWERS: No outside products sold on site off the sidewalk; is that correct? Everything will be inside the building?

MR. LAUTENBACHER: I would like to be able to say yes. Our marketing people will try to push stuff outside. I can --

JIM POWERS: If is it a condition --

MR. LAUTENBACHER: I will pass that on to them, yes.

MR. KENNELLY: Would that include ice makers?

MR. LAUTENBACHER: I'm sorry. We do have an outside ice merchandiser we put --

KAREN COX: That is standard.

JAMES MARTIN: We're talking about people selling wood, you know, for fireplaces?

MR. LAUTENBACHER: We have soda suppliers that put all kinds of stuff outside.

KAREN COX: The Hess in Brockport I know says --

JOHN NOWICKI: Byrne Dairy does that. Byrne Dairy sells on the outside.

JAMES MARTIN: You want me to capture sidewalk sales displays will not be allowed?

KAREN COX: I guess if we -- how could we do that if we allow -- I guess we have to be specific as to what we don't want being sold.

JOHN NOWICKI: Byrne Dairy also has ice cream.

KAREN COX: You know, certain like firewood and -- we can't really --

JAMES MARTIN: We can have a very, very long laundry list.

KAREN COX: I agree. But I'm saying -- if we -- if we allowed soda sales, occasional soda sales at another place, I don't see how we can restrict that with this applicant. What we don't want to see is fire wood and furniture and velvet paintings and --

MR. KENNELLY: I knew that was coming.

MR. LAUTENBACHER: You won't find that here.

KAREN COX: I'm being facetious with the velvet paintings, but you do --

MR. LAUTENBACHER: Coke, Pepsi and water.

JOHN NOWICKI: The Hess operation up there in Gates on Chili Avenue, they seem to be pretty careful what they do up there.

JAMES MARTIN: That is the model.

MR. LAUTENBACHER: Right down the road here? I have something else I have to bring up I know will be painful here. And I don't think it is mentioned in the site plan. I just checked with Dennis (Kennelly). I just looked at the plan. The canopy fascia is proposed here to be the same as that one down there. It is illuminated. It is internally illuminated. White with a green stripe.

MR. KENNELLY: It is the Hess standard you have seen around the community for --

MR. LAUTENBACHER: Pretty much all our stations.

KAREN COX: Thanks for being honest and bringing that up.

DARIO MARCHIONI: Even throughout other states? I went to a seminar on -- you know, in Saratoga, what they do to some of these gas stations is just beautiful. They're really addressing some of the architectural. No more does it look like a gas station. It looks pleasing and fits with the community. And -- I have seen some gas stations.

MR. LAUTENBACHER: There are exceptions in our chain, but they're usually stations that we acquired that have an existing canopy and we just put a green stripe on it.

JIM MARTIN: Is there a way you can control the intensity of that?

MR. LAUTENBACHER: Yes.

JAMES MARTIN: Back light?

MR. LAUTENBACHER: Yes. We have done some things in other communities where it has been an issue. Um, and we have been able to tone it down, especially if I know going in I have to tone it down. I can take it down by half.

KAREN COX: Certainly if it is back lit, it will be easier to tone down than neon will be.

MR. LAUTENBACHER: There is no neon outside.

JAMES MARTIN: I will just capture intensity of the back lit canopy will be minimized, I guess.

MR. LAUTENBACHER: That would be fine. And -- I -- absolutely we'll do it.

JOHN HELLABY: I guess is there a way -- I know it will be tough, but is there a way to quantify as to minimize? Minimize might not be what we envision it being.

MR. LAUTENBACHER: I can give you scientific data.

KAREN COX: Specific wattage.

JOHN HELLABY: Comparison photographs possibly.

MR. LAUTENBACHER: Here is the thing. You can see it. It is illuminated, bright, but can't be measured on the ground. It just doesn't -- it is not measurable on the ground.

We have done experiments in the shop and -- or actually our sign company has. They manufacture it. And we have done tests and we have done different -- different things with it to tone it down, and I do have that data. Um, I'm just going through that. I have just gone through that in Tarrytown, New York where they were not exactly pleased with the light coming from our canopy. So we were able to cut it, I believe, in half. And I can give you that data, and I -- we also have been doing different designs on the canopy that actually tone it down a little bit. I can give you some data on that.

JAMES MARTIN: I guess we would like state of the art, okay, on the canopy design and back lighting.

MR. LAUTENBACHER: That is what we do now. I can give you that data.

DENNIS SCIBETTA: I am a little disappointed with the quality of the design considering the carwash, what we got from Walgreen's and other things keeping in character with the Stagecoach Inn, which sounds like we're going to be forced to keep. I think it is very bright, and I don't want to see an enforcement problem with the lights that we're currently addressing on other properties, so I do have some concerns about that. I just think that we could -- it is a standard for them. Does it have to be a standard for Chili? That is all I would like to say.

KAREN COX: Dennis (Scibetta), I asked the applicant if other color schemes had been used that were more in keeping with Family Video and what Walgreen's showed us, and he indicated that they have in select areas.

DENNIS SCIBETTA: Are we going to see that?

MR. LAUTENBACHER: What are those other buildings? I haven't been there recently. I'm sorry.

KAREN COX: There is Family Video on the southeast corner.

MR. LAUTENBACHER: What is it made of?

KAREN COX: It is similar. The roof is a standing seam roof. Just a more muted green, I believe. I believe the building construction is split face block.

DENNIS SCIBETTA: Yes.

KAREN COX: The Walgreen's hasn't been built, but there should be an elevation on file with the Town that would show a color scheme.

MR. LAUTENBACHER: Suppose I did this in red brick?

KAREN COX: That would be desirable.

JOHN HELLABY: As long as you could work the roof covering in it in some way.

MR. LAUTENBACHER: It looks good with this roof, to be honest, but --

KAREN COX: You're right. The green with the red brick is a more desirable.

MR. LAUTENBACHER: We did that downtown Concord, New Hampshire, a historic district, and they were very happy with it.

DARIO MARCHIONI: We would be very grateful.

JAMES MARTIN: This will be somewhat contiguous with a historic property.

MR. LAUTENBACHER: We'll do red brick.

DARIO MARCHIONI: Thank you, sir.

KAREN COX: Thank you.

MR. KENNELLY: That was easy. Never tells me that.

MR. LAUTENBACHER: You're hearing too many "no"s from me.

JAMES MARTIN: I tried to capture alternative architectural design shall be presented to the Board for consideration, but you essentially --

DARIO MARCHIONI: One more question. Real brick or imitation.

MR. LAUTENBACHER: Real brick.

DARIO MARCHIONI: One gas station we got the panels, or --

MR. LAUTENBACHER: We tried that. It looks awful. The brick -- the building will come without the brick, and it will be installed in the field. This is a modular building. It comes in on trucks.

DARIO MARCHIONI: That is why I asked the question. I didn't ask it at the other one, and we got that.

MR. LAUTENBACHER: We do real brick.

DENNIS SCIBETTA: Thank you. I appreciate your addressing that.

DAVE LINDSAY: Be sure to copy me in on the hazardous waste report. And I just want to check in your SWPPP, you mentioned that you thought it would be a five-day review, but it might be a 60 because you're using a redevelopment strategy. Keep that in mind because of your scheduling.

JAMES MARTIN: This will be pending Town Engineer approval.

JERON ROGERS: Do you have access to the original soil borings from the first station?

MR. LAUTENBACHER: If they exist, I -- I will find them.

JERON ROGERS: I would like to see those, if you can get them.

MR. LAUTENBACHER: If we can find them, absolutely.

JOHN NOWICKI: Can you repeat the question? We didn't hear them?

JERON ROGERS: Do you have access to the soil borings from the first station? The first

station soil borings.

MR. LAUTENBACHER: I can't guarantee they were actually done, but if they exist -- but if they exist, I will get them.

PAT TINDALE: They said they would come to the next meeting, so I am fine.

MR. TROTT: Just a couple of questions. Obviously the escape route for the carwash I think you handled. Also, will there be markings for any signage for the direction of the carwash?

MR. KENNELLY: Yes.

MR. TROTT: I didn't see it on your plans. It needs to be clearly marked.

DARIO MARCHIONI: The agreement on the corner for Buffalo and Union, the green area, the signage, can we have some brick on the base of the sign or something that would match the building?

MR. KENNELLY: Well, I don't believe in this case we can because the sign actually exists within the D.O.T. right-of-way. And they very reluctantly agreed to just having anything in there. I have never seen them allow anything in the right-of-way, but because this was an existing situation, and they widened the road so much, they worked closely with Hess to allow that. So I doubt they will allow additional physical features. Shrubs or landscaping, yeah, but I don't think they will allow brick or anything permanent.

DARIO MARCHIONI: That would improve the base. Thank you.

JIM POWERS: When and if you do begin this project, will you take the stone building that is there first before you remove the gas operation?

MR. LAUTENBACHER: Yes.

JIM POWERS: So that that will continue even while you're working on site?

MR. LAUTENBACHER: We'll run the business as long as we can.

DENNIS SCIBETTA: If I might ask, what is your anticipated -- do you have a time line on that, as far as how long --

MR. LAUTENBACHER: Up -- oh, how long it will take?

DENNIS SCIBETTA: Loosely.

MR. LAUTENBACHER: We're committed to 100-day projects.

JAMES MARTIN: You had a comment earlier about the asbestos.

JOHN HELLABY: Just a note that the engineer noted the Article 56 requirement.

DENNIS SCIBETTA: It's a requirement yes.

JOHN HELLABY: I make note to the Board members that after the 1st of the year, it will be required on any demolition project, regardless of the age.

DENNIS SCIBETTA: That's correct.

MR. KENNELLY: It will be completed.

MR. LAUTENBACHER: We do it anyway.

JAMES MARTIN: All right. Just so you know.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: The comments regarding the canopy lighting should be taken very seriously under consideration here. The canopy lighting at Byrne Dairy at Union and Chili could be mistaken for a landing strip for the Rochester International Airport. That turned out to be so much more than anybody thought. That is just way over the top. So be careful of that. I don't think you want to repeat that on the next corner to the north.

The gentlemen have said that they don't plan on any signage except what is on the plan, but yet they have it -- they haven't obviously thought of signage for the carwash and so forth. So I'm not sure they have thought this through or else they don't understand in Chili what we would consider signage they have to address.

And I bring that up only because they have already had a real sign problem over there with the existing Hess station. And I believe that Mr. Scibetta could say with some degree of certainty there has been a great deal of complaints about the signs they have put up over there illegally so far. They haven't been good neighbors when it comes to our sign ordinance. They should understand that no signs in this Town means no signs on the dumpster enclosure. No signs on the light poles. No signs on the fencing. No signs strung between gas pumps. I want this Board to make them understand what our sign law means. We don't need any more sign pollution in this Town, especially when you're redoing a corner that is a major intersection. People over in North Chili have waited a long time to get some improvements over there, and we just got to make sure that the people that come in understand what our sign ordinance means. Maybe they need a copy of it so they fully appreciate the seriousness with which we regard excess signage in this Town and illegal signs.

I wish this Board would take them up on their offer for no neon signs in windows. I'm thinking of ArrowMart again at Chili and Union. That was a nice-looking store when they put it up. They had their grand opening. We went down to the corner. With me living right there, you go down, and here were all these neon lights. Neon lights just kind of sneak up on this Planning Board. So be sure that you know what you're doing with neon signs. If they're willing to say no neon signs in the windows, I think this Board should take them up on it. It is a very good offer.

The red brick would be a big improvement. I think that is a totally unfitting building for North Chili across from a historic property. And I think the one that is in Gates is an eyesore, as

well. But what they allow in Gates is up to them. I don't think we need another building like that in Chili, so the red brick is a welcome offer. Take that, too.

Now I would like to talk a little bit about the outside sales. That's a problem at Byrne Dairy and that wasn't supposed to be either. So I think this Board should learn from their past mistakes or their give-aways. At the Byrne Dairy, we have had outside sales go so far that they have brought in one of those trucks that take dings out of cars, and on one Sunday we had a tent and this huge car down there, and here they are down there, half the parking lot or more was taken up. I don't know how people got to the gas pumps. They're taking dings out of the cars in the parking lots with tents. Maybe you people don't come that far west to see that, but I do. I live there. I don't want all of that stuff. I think if you get down to what Hess can't do, you better be pretty specific, because Byrne Dairy was told no outside sales, but they, too, have pop and charcoal and Christmas trees under that porch and the stuff they have been selling there is incredible.

So if you want to get a handle on this, you better get pretty specific as to what you don't want to see there because you will have it and when it is not written, it isn't said, so you better be careful on this one. This is an important corner. North Chili has been neglected a long time. They deserve this. Please be careful and get what you can here. It behooves these people right now at this point in time to give you what you want and what the people in Chili need to make it a good corner. Now is your chance to get what you need. Give it away tonight, and you lost it forever. So bear that in mind.

STEVE GINOVSKY, 19 Hubbard Drive

MR. GINOVSKY: Mr. Martin, originally that gas station that was there was an Amco. It was Joe Amigo's (phonetic). I wired that station back in the '70s. I can tell you that for a fact. That is a person in -- Amco fuel, that is who had it. That is the information for your samples.

Next, I'm glad to hear about the neon signs that Ms. Borgus mentioned. If we don't want them, don't give them.

Next is the sign you have out in the front, the existing Hess sign. Are there any plans on changing that to a digital or any other change in form, whatever, where it can change letters, move, anything like that? I would like to know. Because I know on the other corner there is one being proposed over there that has been approved.

JAMES MARTIN: To the best of our knowledge, there will be no change to that sign.

MR. GINOVSKY: The Hess Corporation representatives are here right now. To get that -- to get the straight skinny on it.

The next part is the carwash. We have got a new one going in across the street. I think it is totally out of character for North Chili, for more than one carwash. It is prime property that could be used -- utilized in a better fashion. You won't get the property back. Once you put up another carwash, that's what you got.

Next part that came -- I was thinking about on this property, where is the snow removal going to be going on this? It is a very important issue, and pushed out back -- you want put it on Buffalo, you can't put it on Union. You can't push it over by the Kwik Fill on that hill, because you won't get much stacked up there.

And it would also block the view from the gas station next-door, coming out of the parking lot. That would cause a real big hazard there. There is enough accidents coming out of the restaurant on the other side of the Kwik Fill. And also from where the IGA is.

Also -- I believe I had the table, and I would like some respect for it. Please.

JAMES MARTIN: Please continue.

MR. GINOVSKY: Okay. Also, for the pop that Hess may sell out in front, I have got a big problem with having skids of that stacked up, 5, 6 foot high. I think that is a little bit much and I don't think we really deserve to have something that unsightly there, and you do have the sugar content. You will have ants. You will have everything there. It is unacceptable.

It looks like down in the ghetto, to be perfectly honest. You don't have it. And we don't need it in North Chili. We just got the corner done. We just got sidewalks, and we have to work through that for over a year. I think we need to really look at it. With two carwashes, unacceptable on two prime pieces of property. Thank you.

JAMES MARTIN: Thank you. Other comments?

MIKE ANELLO (phonetic)

MR. ANELLO: I own three parcels of land up here. I moved my family to Chili about eight years ago. My comments are twofold. I'm a resident here, as well. I haven't been here for 59 years like some of you, but I'm also a business owner. My tenant -- I'm a tenant, I'm sorry, of the land that they're going to raze where Alexander's Market used to be. First off, my first question is as a resident, do we need a drugstore on two corners? Do we need two big gas stations right next to each other on the same area? Do we need a coffee shop on every corner? It seems like in Chili we get all of the same things. You referenced it as the land of pizza. When I moved out here eight years ago, I liked it. I like progress. I'm a businessman. But I also have to look at it and say when is enough enough? Why do we have to have the same things at every corner? Do we need 4 donut shops, 18 pizza places?

Is there a way we can look at this -- this is my second part. Where do the small guys go? I mean, this country was built on small business. I have been in business for 15 years. I own a

small collectibles store. Kids hang out there. A great place to be. Ask of the parents. Where do we go? Where does Terry's Take-out go? They're a small hamburg place. If you lived in this area for a long time, all of the other corners, where are they all going? What happens to us? We just kind of get pushed out, corporate comes in and says bye-bye. That is all.

JAMES MARTIN: Motion to close the public hearing.

JOHN NOWICKI: Second.

James Martin made a motion to close the public hearing portion of this application, and John Nowicki seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

James Martin reviewed the proposed conditions with the Board.

KAREN COX: As far as the canopy lighting goes, can we add to that comment that we want to see the scientific data that he mentioned? The numerical data?

James Martin further discussed the proposed conditions with the Board.

JAMES MARTIN: We had a lot of comments about outside sales. I have concern about -- We have been schnuckered by Byrne Dairy. We discussed that with them. They said they wouldn't have anything out on the porch for sale and that was abused within the first month they were in business. But we didn't put it in as a condition of approval at the time because they told us they weren't going to do it.

As far as the outside sales restriction, again, without creating a very long, long laundry list, I'm not sure what the wording should be on that since other places in the Town are doing it, you know --

JOHN NOWICKI: Ask legal counsel.

JAMES MARTIN: Comment, Keith (O'Toole), on that?

KEITH O'TOOLE: You're reviewing this site, standing on its own. You are not obligated to recreate the mistakes of the past. So if in your experience you found that you need a condition to control a problem, you can impose it on this site. Certainly you have to be clear about it, because there is something they're selling outside, gasoline. So we need to be clear what it is you're prohibiting the sale of. So some condition to the effect, something along the lines of no outside sale or display of retail goods or services, excluding therefrom the sale of gasoline and other fuel products.

JAMES MARTIN: Will you have diesel fuel available at this site?

MR. LAUTENBACHER: Yes.

KEITH O'TOOLE: Other fuel products.

JAMES MARTIN: Outside sales of retail sales items with the exception of gasoline and other fuel products will not be allowed. All right? Okay?

JOHN HELLABY: One of the engineer's requirements was to show the lighting spill on one of these drawings. Do we also have the supporting documentation for the lighting used in the gasoline canopy as far as -- I know they said dark sky lighting, but I would like to see exactly what they're proposing.

DAVE LINDSAY: That is what Karen (Cox) asked for. Are they asking for the back-up documentation?

KAREN COX: That was specifically when we're taking about the canopy at the store, but -- but I guess I would defer to Al (Hellaby)'s request about the gasoline canopy also.

JOHN HELLABY: Only reason I ask that is because I think referring to what Dorothy (Borgus) had mentioned, that a couple of these things we thought we had where they belonged ended up -- the fixture was below the canopy ceiling and the spill was horrendous on these things.

MR. LAUTENBACHER: I know the hearing is closed, but I can help you out a little bit. The lights that are used to illuminate the fueling area are recessed into the canopy deck. So what you just described we don't have. The canopy that we're talking about here is the gasoline canopy over the fueling area and I have been talking about the fascia, the illuminated fascia. That is what I am going to give you back-up documentation on.

JOHN HELLABY: Could you include the cut on those lights for that gas canopy?

MR. LAUTENBACHER: Sure. We can do that.

JAMES MARTIN: How much lighting on the pumps itself?

MR. LAUTENBACHER: The lighting plan that you have.

JOHN NOWICKI: Sometimes they have units up on top that protrude that are ugly. In other words, the canopy encloses all of the lighting.

MR. LAUTENBACHER: The lighting is all fully enclosed. What you will see is maybe on top and I'm not sure how they will build it. Here is the fire suppression system (indicating).

JAMES MARTIN: Anything else?

JOHN HELLABY: One other thing. I know they have mentioned the existing Hess sign that was in the State's right-of-way out there that was to remain. There is a note on the drawing

that three signs will be added that -- I would just like to see -- what that final design is actually going to look like? Because right now it is just telling me that they're adding them. I have no idea size, height on the pole or anything else.

JAMES MARTIN: I will add to the restriction on the outside retail sales section of gasoline other fuel products and ice vending.

KAREN COX: Don't they just use them for storage? Usually they have those machines out there just for storage of the extra ice. They have locks on them. So ice storage.

JAMES MARTIN: Ice storage.

JOHN NOWICKI: Can't have that?

KAREN COX: They can.

JOHN NOWICKI: They can.

KAREN COX: But the way it was written before, it was not going to allow that.

JAMES MARTIN: So I will add outside ice storage.

DENNIS SCIBETTA: Is there propane storage?

JAMES MARTIN: Will there be propane?

MR. LAUTENBACHER: No.

JAMES MARTIN: We have three applications in front of us. I would like to do a fairly formal review of SEQR at this point. Can we apply the SEQR vote to all three applications or do we need to do them separately?

KEITH O'TOOLE: All three.

JAMES MARTIN: It can apply to all three?

KEITH O'TOOLE: In fact, you should.

JAMES MARTIN: All right. Just wanted to verify that.

We have been given full environmental assessment form by the applicant, who has filled out part one. Hopefully everybody had an opportunity to review part one of this particular document. At this time I would like to go through and make a determination of significance on this particular action based on the evidence that has been presented in the long form EAF, and make a finding as to the type of action this is, and whether or not it will lead to a positive declaration.

Has everybody had an opportunity to review the long form EAF?

Under lead agency, I have identified the portions we have completed for this project. They have completed Part 1. "Upon review of the information recorded on this EAF, and other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that: The project will not result in any large and important impacts and, therefore, is one which will not have a significant impact on the environment, therefore a negative declaration will be prepared; B. Although the project could have a significant effect on the environment, it will not be a significant effect for this Unlisted Action because of mitigation measures described in Part Number 1 have been required, therefore a conditioned negative declaration will be prepared; C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore, a positive declaration will be prepared."

I would make a motion that we find this to be basically a Type I action, and that we can probably go to a negative declaration based on the evidence that has been presented in this EAF.

Do I have a second to that position?

JOHN NOWICKI: Second.

On the three Amerada Hess applications, James Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type I action with no significant environmental impact, and John Nowicki seconded the motion. The Board all voted yes on the motion.

JAMES MARTIN: That applies to all three of the applications.
Voting on applications separately.

James Martin reviewed the proposed conditions.

JOHN NOWICKI: Any County comments?

JAMES MARTIN: Nothing of any consequence.

JAMES MARTIN: Preliminary subdivision?

The Board decided to waive final.

DENNIS SCIBETTA: Was it paid for? I'm asking.

JAMES MARTIN: Yes. I had that. I have that marked on my sheet. The fee was paid.

DECISION ON APPLICATION #3: Unanimously approved by a vote of 6 yes with the following conditions:

1. Pending approval of the Town Engineer.

2. There shall be no neon signage in the windows.
3. Landscaping plan to be approved by the Conservation Board.
4. Pending Zoning Board of Appeals approval of all required variances.
5. The intensity of the back lit canopy shall be at the lowest level possible. Technical data pertaining to this illumination level shall be provided to the Board.
6. Alternative architectural designs shall be presented to this Board for consideration. The applicant has agreed that the exterior of the building will be done in red brick.
7. The applicant will comply with the Town of Chili sign ordinance.
8. Outside sales or display of retail sales items with the exception of gasoline, other fuel products, and outside ice storage shall not be permitted.

Note: Final subdivision approval has been waived by the Planning Board.

JAMES MARTIN: On the conditional use permit?

The Board discussed the time period.

DECISION ON APPLICATION #4: Unanimously approved by a vote of 6 yes with the following conditions:

1. Pending approval of the Town Engineer.
2. There shall be no neon signage in the windows.
3. Landscaping plan to be approved by the Conservation Board.
4. Pending Zoning Board of Appeals approval of all required variances.
5. The intensity of the back lit canopy shall be at the lowest level possible. Technical data pertaining to this illumination level shall be provided to the Board.
6. Alternative architectural designs shall be presented to this Board for consideration. The applicant has agreed that the exterior of the building will be done in red brick.
7. The applicant will comply with the Town of Chili sign ordinance.
8. Outside sales or display of retail sales items with the exception of gasoline, other fuel products, and outside ice storage shall not be permitted.
9. This conditional use permit is granted for a period of two years.

JAMES MARTIN: Preliminary site plan?

DECISION ON APPLICATION #5: Unanimously approved by a vote of 6 yes with the following conditions:

1. Pending approval of the Town Engineer.
2. There shall be no neon signage in the windows.
3. Landscaping plan to be approved by the Conservation Board.
4. Pending Zoning Board of Appeals approval of all required variances.
5. The intensity of the back lit canopy shall be at the lowest level possible. Technical data pertaining to this illumination level shall be provided to the Board.

6. Alternative architectural designs shall be presented to this Board for consideration. The applicant has agreed that the exterior of the building will be done in red brick.
7. The applicant will comply with the Town of Chili sign ordinance.
8. Outside sales or display of retail sales items with the exception of gasoline, other fuel products, and outside ice storage shall not be permitted.

There was a recess in the meeting.

JAMES MARTIN: We'll go in reverse order on the last two.

7. Application of James Perna, 26 Florentine Way, Rochester, New York 14624, property owner: M. Benson; for preliminary subdivision approval of 6 lots to be known as Cheryl Lynn Subdivision at property located at 131 Attridge Road in R-1-15 zone.

James Perna was present to represent the application along with Robert Fitzgerald.

MR. PERNA: Good evening, ladies and gentlemen. I am purchasing this piece of property with the intention of my sister-in-law is moving into the existing Benson Homestead there, and I ended up with these other five lots and I'm not really doing anything as far as changing what is there right now with the exception of alongside of the existing house -- I don't know if you guys went by it, but there is a driveway that goes underneath the garage. I will probably fill this in (indicating) and grade this down (indicating). To match the new grade that I am establishing right here (indicating). She wants to put a garage up later. She can put it here or attached (indicating).

JAMES MARTIN: Does she have plans to do that?

MR. PERNA: Yes. We wind up with five beautiful lots. We'll be filling the front, as the grading plan shows, and then there will be all walk-out basements. Rob (Fitzgerald) is here to represent me on the technical details.

MR. FITZGERALD: If I can just add a couple things before we take comments and questions.

The parcel is approximately 15 acres. I will approach the Board to point a couple things out. It is approximately 15 acres. There is an existing house on the parcel now. There is actually an out parcel in the middle. Their house wraps around. There is a small piece back here (indicating). Just to clean it up, Jimmy (Perna) will deed this back piece to that owner.

MR. PERNA: That is Joe Benson's house. I asked him if he wants that land. We'll just give it to him so there is are no arguments later.

MR. FITZGERALD: It will all be public utilities. They will all be either bored or drilled. In the case of sanitary sewer on the other side of the road will be directional drilled for the lateral. Gas is on the other side of the road, so that will be bored, pushed across.

JOHN NOWICKI: What is on the other side of the road?

MR. FITZGERALD: The other side of the road is gas and sanitary.

JOHN NOWICKI: So you will have to bore underneath for sanitary?

MR. PERNA: Yes. We'll do two at a time.

MR. FITZGERALD: Pure Waters, they're -- I don't want to say pushing, but they are pushing the directional bore as opposed to jacking or hammering across the road. And it is cheaper. This parcel is hard because it is residential. We're disturbing more than 1 acre. We're disturbing 2 acres of land. It is hard to take care of the ground -- the surface water runoff. We're kind of in that weird area where you don't want to do a pond, because it is something else the Town may have to take in dedication or at least maintenance. So what we're doing for water quality in this case is we're doing what is called dry swales. Glorified French drains. Perforated pipe so the surface water goes through the 2-foot layer of sand and drain into the pipe and then drains out the end. But with saying that, we do have some feedback from the DEC. They had a number of comments we'll get into in a little bit here, through the Development Review comments.

There is a wetlands to the north of this parcel. I did highlight that in yellow. In red, rather. There is a wetlands up here (indicating). Then the 100-foot buffer. As you will see, there is an existing pond, a man-made pond for the development of this parcel to the north of us. We did a certified easements survey on this house, and we do have a part of this wetlands when it was delineated some years ago. I believe it was 1978. I do have a map I can pass out to you. One of the comments from the DEC was that they wanted to have that wetlands flat. Why we didn't flag it ahead of time is because, you know, 500 feet away from our improvements, we did the overlay from our wetlands map and also with having that, you know, some -- I think it was '78 when it was delineated, it was right in this area, within like 25 feet or so. That is why we didn't want to do a wetlands delineation. We still need to talk to the DEC further about that to see if they will request it or not. Why we don't want to do it, price and time.

MR. PERNA: Plus we're not doing anything out there.

MR. FITZGERALD: That was our arguments, as well. We'll have to have some more discussion.

JAMES MARTIN: You discussed it with the DEC.

MR. FITZGERALD: Exactly. We were under the impression this was in a 303 D watershed, and one of their comments from -- that we got back from DRC makes reference that maybe it is not. So that is something we're also looking further into. Why that is important is because if we have this water quality, we don't really -- again, it is hard to do water quality without doing a wet pond. If we do wet pond, we have to put an easement on it. Then it is typically maintained by the Town. From last month's discussion, I think -- I don't think this Board and Joe Carr, they don't necessarily want these tiny micro ponds popping up all over Chili, having to maintain them. So if we can get away from that, we still may. That is why we don't do a pond. If we can get away from the dry swales, we'll try that, too. Because what we're proposing with five houses, and we have about a 500-foot buffer between the back of those lots, to the creek, that is pretty good buffer to treat any runoffs you will get from the cars. But we're still going to have to work out those issues.

I have talked enough.

JIM POWERS: How much fill will you put in the -- what is it, one, two, three and four?

MR. FITZGERALD: It is quite a bit. We figured it is about 100 truckloads or so.

MR. PERNA: 1,000 yards.

JIM POWERS: Bringing it up to road grade level.

MR. PERNA: I want to be above the road with the house, like 2 percent. 75-foot setbacks. There are 75-foot setbacks.

JIM POWERS: From there, how far back -- you will have walk-out basements?

MR. PERNA: Yep. All walk-outs.

JIM POWERS: That is a lot of fill.

MR. PERNA: No, no. We won't be filling the backs.

JIM POWERS: I know that.

MR. PERNA: We'll just be filling the fronts.

JIM POWERS: To bring it up to grade there.

MR. FITZGERALD: It is a lot of fill.

JIM POWERS: That sewer hook-up, across the street on the entrance, there is a small culvert that goes -- I think it is right near that.

MR. PERNA: There are two of them.

JIM POWERS: The box culvert under the road --

MR. PERNA: Uh-huh.

JIM POWERS: -- will you pick that up?

MR. FITZGERALD: Yes. I didn't -- we'll collect the cross culverts up and have a closed drainage system along the frontage of the County road. You can see from the County comments they had a thorough review on that and quite a few comments.

JIM POWERS: Is the creek that goes behind the property there -- I tried to find out where it crossed -- I thought it was about half a mile or so, there is a culvert under Bromley. Is that where the water flows from this property?

DARIO MARCHIONI: It goes into Riga, doesn't it?

JIM POWERS: Yes.

MR. PERNA: Yes. It flows -- it flows to the southwest.

DAVE LINDSAY: I believe that is correct, into Riga.

MR. FITZGERALD: It would be crossing Bromley at some point, I'm not exactly sure.

JIM POWERS: Quite a ways from Attridge.

KAREN COX: Dennis (Scibetta) stated, is -- I recall that there is an area up here on Attridge Road, maybe closer to Buffalo Road, where there has been a history of drainage concerns over the years. In fact, I looked at a document that was dated back in the '80s.

MR. PERNA: That is Buffalo Road there. By the Pagano (phonetic) residence.

KAREN COX: I don't recall the residence.

MR. PERNA: It was out here. I know.

KAREN COX: Further north?

DENNIS SCIBETTA: It is further north, it is actually the rear of the Buffalo Road properties, but it does tend --

KAREN COX: So this -- because I know that there are people along Buffalo Road whose backyards are constantly wet. Now do you see any concern that this would cause that problem to be exacerbated?

DENNIS SCIBETTA: We have had an ongoing discussion with the engineer and I will allow him to detail that.

KAREN COX: I will defer to him.

DARIO MARCHIONI: If I mention, Joe Lu had a study of this whole area. It was started by the Drainage Committee at that time when I was the Chairman there. And we do have a full study of this. We financed the study on this whole area here (indicating). So I don't know -- did I give you a copy of that.

KAREN COX: You gave me a copy of it, and I gave it back to you.

DARIO MARCHIONI: So you must have it on file.

MR. PERNA: That is when that pond got built. Because Ron Perry divided those lots

along Buffalo Road and sold all those lots off.

KAREN COX: But I believe the problem is still there.

DAVE LINDSAY: It might be easier for me to grab it since I have it.

DARIO MARCHIONI: I will bring it tomorrow night.

DAVE LINDSAY: We talked about this project at the Drainage Committee meetings last week. Um, and discussed this area here. Discussed it with Joe Carr about whether he thought he needed an easement to get in there and clean that ditch or not. He asked me to take a walk through there to see if there is a defined channel. I haven't done that yet.

KAREN COX: There isn't.

DAVE LINDSAY: His thought was the last time he was there, he has walked it and the drainage comes out of the wetland, and then just kind of meanders through a flat area. There is no defined channel and a way to define where the easement would need to go. At some point, the southwest, when it leaves these lots here (indicating), then it really starts to get into a defined channel.

MR. PERNA: I will give you an easement, if you need it.

DAVE LINDSAY: Right.

KAREN COX: I mean -- you know, the grading is done such that most of the flow is going to sheet off to the closed drainage in the front, but there is also drainage heading out towards the back of the properties. I guess, you know, I would ask that -- that you would insure that it is not going to create or exacerbate the already existing problem.

DAVE LINDSAY: Yes, I will.

JAMES MARTIN: This is going to cross Town boundaries also. Do you think that drainage is going to the southeast?

DARIO MARCHIONI: Right. In fact, if I may add on that, are you working with the Town of Riga? Because a lot of the work should be done in Riga with that ditch to alleviate that area.

JAMES MARTIN: I think you need to --

MR. PERNA: I'm far enough away from that. They're three or four miles down further.

Most of the water that is going here now, Karen (Cox), or the Board I should say, we're grabbing all of the -- this water -- dumping all of the water on that property. By us, you know, putting this drainage in there, it will really help a little bit. You know?

KAREN COX: It will still keep going south.

MR. PERNA: Yes. But that water has been going there from day one.

KAREN COX: It will not help it. It will just not going --

MR. PERNA: We're not increasing. What I meant to say, we're not increasing what is already there.

JAMES MARTIN: I understand that. Okay. That is part and parcel. You can't increase it.

But it just seems as a courtesy, just notification to the Town of Riga that this development is going to happen, and, you know -- just to let them know that this is going to happen.

MR. FITZGERALD: That is fine. I'm usually there every month, too. So that is no problem.

JOHN NOWICKI: Good idea. Good business.

JAMES MARTIN: I don't think you will need a formal review. Just a notification.

MR. PERNA: There are quite a few properties in between there. They're building up on the other end now.

JAMES MARTIN: I know on Bromley Road it is getting really developed.

MR. PERNA: Even on Latterborn's (phonetic) lots, they built the four or five houses there, too.

MR. FITZGERALD: I wish I would have blown this up, but here is an aerial that does show somewhat of a defined path of the waterway (indicating). So the wetlands is here (indicating), to the north, and then from the area you can somewhat see that ditch.

KAREN COX: I think it is just really flat and not, you know -- because we know a couple of people that live over there and they say over the last six or seven years, their backyard has become unusable most of the year. So obviously maybe it needs some cleaning out.

MR. FITZGERALD: It is a flat area in general.

JAMES MARTIN: What he is doing in front might help that.

KAREN COX: Yes.

MR. FITZGERALD: I spoke with Mr. Perna about this, too. He would consider a pond. We didn't want to burden the DPW with a pond and maintenance of that. Mr. Perna stated he would dig a pond and use the fill for the front. That is easy for me, but I did not think Joe (Carr) wants a pond back there.

MR. FITZGERALD: If he doesn't want an easement, we could call it a private pond --

JAMES MARTIN: That comes up all of the times. Minimizing the number of ponds.

MR. PERNA: I would be glad to dig the pond and take the dirt to the front, but I don't think Joe (Carr) will want that.

JAMES MARTIN: You think working with the Town Engineer to insure we have proper drainage conditions met -- the one comment he made about the dry swale and the separation of the groundwater from, you know, the surface and all of that, I mean you will verify all of that. It has to work, right?

MR. FITZGERALD: Yes. There are some more details to work out on that.

DARIO MARCHIONI: One other thing. The reason we had that -- Lu Engineer make this study, because we had a lawsuit on our hands at that time, litigation. When we approved those houses on Buffalo Road, for the building of those houses, it created -- one of these owners, a lot of water on their property, so he filed a lawsuit against us. I don't know how that ended up.

MR. PERNA: That was years ago.

JIM POWERS: It has been a while.

MR. FITZGERALD: We need to do further measures. We have 15 acres. We're just developing the front of it. We do have a chunk of land we can work with.

DAVE LINDSAY: I will review the report in my site visit, as Joe (Carr) requested, and I will look at the plans to insure that drainage is adequately addressed.

DENNIS SCIBETTA: On the coordinated review, Riga has been copied in on the coordinated review.

JAMES MARTIN: They have been notified.

DENNIS SCIBETTA: Yes.

JAMES MARTIN: So I don't need to put that down?

DENNIS SCIBETTA: No.

JOHN HELLABY: Did I notice a well casing on the front of Lot 2?

MR. PERNA: Yes. That is not tied in the City water. Before she gets mortgage, I will have to put City water into the house.

JOHN HELLABY: The only other question I have, is in your subdivision report on page 2, storm water drainage, it says Cheryl Lynn Subdivision includes 2.49 plus or minus acres of land. I think it contains a little more than that. I am not quite certain what you're referring to.

MR. FITZGERALD: I think that is disturbance. She meant land disturbance.

JOHN HELLABY: That might be.

JOHN NOWICKI: Did I interpret this note correctly that you're applying for the drainage district?

MR. FITZGERALD: Yes.

JAMES MARTIN: It is not currently in the drainage district.

MR. FITZGERALD: That is my understanding.

JOHN NOWICKI: You have applied.

MR. FITZGERALD: We're in the process of getting the paperwork together.

JOHN NOWICKI: County comment letter?

MR. FITZGERALD: Yes.

JOHN NOWICKI: Do you feel comfortable you will be able to meet all of the requirements listed here?

MR. FITZGERALD: I do. I got this this morning from the Building Department. I ran through it. It is pretty lengthy. Henry Hertzog (phonetic) had a good 15 comments himself for the County stuff.

JAMES MARTIN: I was impressed. I even called Rob (Fitzgerald) and said you better take a look at this before tonight.

MR. FITZGERALD: But it is not too much of "change this" or, "no, this is not acceptable." It is add a driveway width. Intersection sight distance -- it is --

JOHN NOWICKI: Would you let Mr. Perna know he will have to issue a couple of checks to him?

MR. FITZGERALD: I did not.

JOHN NOWICKI: I see there are a couple checks required.

KAREN COX: Review fee.

MR. PERNA: It is not him I have to deal with. It is the other one. The guy that comes out.

JOHN NOWICKI: Those comments and then, of course, our Town Engineer's comments that are excellent. We'll need have follow-up on them.

DARIO MARCHIONI: First question, Jimmy (Perna), will you build these houses or sell the lots for somebody else to build them?

MR. PERNA: I will build them. Why, you want to build a house there?

DARIO MARCHIONI: You build a good house.

MR. PERNA: They will be nice.

DARIO MARCHIONI: Who will you sell them to?

MR. PERNA: No.

DARIO MARCHIONI: I want to know who will build the houses.

MR. PERNA: I build them.

DARIO MARCHIONI: Oh. That is not what it says here. It says you will sell the lots --

MR. PERNA: No.

MR. FITZGERALD: -- with houses.

MR. PERNA: I'm selling that house to my sister-in-law, Dario (Marchioni).

KAREN COX: So we won't see Ryan Homes coming up?

MR. FITZGERALD: I don't think it is large enough for them.

DARIO MARCHIONI: You always built a quality home here in Chili.

JAMES MARTIN: I would assume you would sell the lot prior to building the house?

MR. PERNA: Yes.

JAMES MARTIN: You will not spec build?

MR. PERNA: Oh, I am probably going to put up a spec. I will build the house to sell. I will probably build it, you know, one at a time, unless somebody wants -- I already have somebody interested in the 6-acre lot, a big house.

DARIO MARCHIONI: Where is the fill coming from? What kind of fill will you put in?

MR. PERNA: Where I am getting it from?

JIM POWERS: Union Square.

(Laughter.)

DARIO MARCHIONI: Lake next to Wegmans, you had to haul it all out of there, right?

MR. PERNA: Select RVA fill.

JAMES MARTIN: It will be described in the fill permit.

DENNIS SCIBETTA: No fill permit. This is subdivision. It goes with the site plan. No fill permits.

DARIO MARCHIONI: We want to know where the fill comes from. We don't want to see big rocks and garbage in there.

MR. PERNA: No. It will be all clean.

DENNIS SCIBETTA: Dave Lindsay said it is coming from the Hess station. I hope you didn't hear that.

(Laughter.)

MR. FITZGERALD: I would be more than happy to put a list of the acceptable types of fill.

JOHN NOWICKI: What about Roger Brandt?

JIM POWERS: That is what I said, across the street.

DARIO MARCHIONI: We have seen some of the fill from other areas, where --

MR. PERNA: Dario (Marchioni), I will -- I will -- I will be driving the bulldozer, so I am not going to take garbage.

DARIO MARCHIONI: Jimmy (Perna), I know that, but the reason I ask that --

MR. PERNA: I agree with you, but the DEC, the way they are today, I don't want no problems. As a matter of fact, before they bring me fill, I want to see where it comes from.

DARIO MARCHIONI: I appreciate it.

DENNIS SCIBETTA: I have several things, I think. Sorry.

If there is the condition of the swales, these lots are deep enough we would like to see those swales put in before the buildings are done and not touched afterwards, so they're maintained. Any of that work, I'm sure we'll coordinate that with Town Engineer.

KAREN COX: Not touched by whom?

DENNIS SCIBETTA: Not touched by the owner or by the builder.

KAREN COX: How do you keep an owner from not touching it? I am just asking that question.

DENNIS SCIBETTA: If it is in an easement that is concerned with the drainage, we'll make that a condition. We have done that before. We have done this in the past and it worked out well.

JAMES MARTIN: You want this as a condition or will you control this from the Building Department?

KAREN COX: In other words, what keeps Mr. Homeowner from deciding in three years to fill it in? Because that has happened in my neighborhood.

DENNIS SCIBETTA: If there is -- Dave (Lindsay) is telling me there probably isn't -- if there are any issues with the swales, if they are to be constructed in the easements at the rear of the property, if we go that way, we would like it in before the houses are maintained so they're in and working at the time they're turned over to the owner.

DAVE LINDSAY: To clarify that, in larger subdivisions where we have long stretches of rear yard swales, we have had problems where the swale was created and then they come in and built homes and filled the swale in. So really that is what we're talking about. Mainly in larger developments to have that swale stabilized so it is not touched when they start building the home.

JAMES MARTIN: So "stabilize" is the key word here.

DENNIS SCIBETTA: Yes.

MR. PERNA: You want it seeded and ready to go?

DENNIS SCIBETTA: Yes. Not trying to confuse anything.

On Lot Number 125, Joe Benson's, the existing house, you need to come in to get a variance for the existing barn. It is only 6 feet off the property line and there is a 10-foot setback.

MR. PERNA: He has to? It is not on my property, though, right?

DENNIS SCIBETTA: Um, if you're not owning that.

MR. PERNA: I'm not owning that. The existing house, not the one I'm buying. It is the existing one there?

DENNIS SCIBETTA: 125 Attridge, I believe.

MR. PERNA: That is his.

DENNIS SCIBETTA: He has an existing barn in the rear that does not meet the side setback.

KAREN COX: But Jimmy (Perna) is not buying that.

JOHN NOWICKI: Well --

DENNIS SCIBETTA: But it is a resub.

JOHN NOWICKI: The action is causing the property --

KEITH O'TOOLE: The subdivision creates the variance.

KAREN COX: Oh, okay.

MR. PERNA: Can we change that lot line a little bit?

MR. FITZGERALD: This lot here (indicating)?

MR. SCIBETTA: Yes.

MR. PERNA: What if I shuffle this lot line a little bit?

MR. FITZGERALD: This lot line is existing right here (indicating). That lot line is existing.

JAMES MARTIN: Say it again.

JOHN HELLABY: Oh, this parcel --

MR. FITZGERALD: This is an out parcel. Our parcel actually goes around, and we were just going to deed over this small sliver.

DENNIS SCIBETTA: Is that an existing boundary?

MR. FITZGERALD: This is an existing boundary, yes.

JAMES MARTIN: That is basically preexisting, nonconforming.

DENNIS SCIBETTA: No such word. Won't hear of it. When it was built, there was a 10-foot side setback that was ignored and it needs to be clarified.

MR. FITZGERALD: We're just going to extend these two lot lines just to make it clean.

JAMES MARTIN: I understand.

Why don't you send him a letter, Dennis (Scibetta)?

JAMES MARTIN: Will you send him a notice that he needs to come in for a ZBA?

DENNIS SCIBETTA: Yes.

JAMES MARTIN: It is not part of this approval, per se.

DENNIS SCIBETTA: That lot line hasn't changed?

MR. FITZGERALD: We're proposing to need this.

DENNIS SCIBETTA: This lot line has always been here (indicating)?

MR. FITZGERALD: Yes.

DENNIS SCIBETTA: We'll take it up with the owner.

DAVE LINDSAY: Comments from the DEC about the Black Creek not being 303 D?

MR. FITZGERALD: What I am referring to is Comment 22 where it says future projects will require a full SWPPP due to the proximity to a 303 D waterway. So I was just curious why they would say future projects because I would think this one would. It was our intention to do a full SWPPP on this.

DAVE LINDSAY: That is what I think is required, and maybe you can just clarify that with them.

MR. FITZGERALD: It is our intention to do a full SWPPP, but that kind of threw me. It could have just been a typo or something.

PAT TINDALE: I had a question of Rob (Fitzgerald). Are there designated wood lots on this parcel?

MR. FITZGERALD: The DRC comment says there is, but it is pretty much open all of the way back to the creek, looking at the aerial. If you want to call the creek -- I guess the waterway. The other side of it, there starts to be some heavier growth.

PAT TINDALE: That wouldn't be taken down.

JAMES MARTIN: That will not be disturbed?

PAT TINDALE: No, that is all.

DARIO MARCHIONI: How about the Assessor? She wrote a letter pertaining to this, right, about the numbering?

MR. PERNA: We got that squared away. The house numbers. We're changing the existing house number.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I have heard talk about swales. Could somebody tell me where these swales are going to originate and where they are going to run to?

JAMES MARTIN: You can point that out.

MR. PERNA: Right now the swales we're talking about are in between the lots right here (indicating). And right now, there is an existing box culvert. One right here (indicating), I think, and one here (indicating).

MR. FITZGERALD: Down a little farther.

MR. PERNA: The water is coming across the road that we're going to shoot it straight back. Right now it is just flowing on our property with no -- designated where to go.

MS. BORGUS: So Karen (Cox)'s point was well taken. What prevents a homeowner from deciding they don't want that swale, that dip in their lawn and they just fill it in?

MR. PERNA: They can't. We'll give -- there will be an easement to the Town. They can't fill it in.

MS. BORGUS: Okay. What architectural style house is planned for here?

MR. PERNA: It is what I build, probably, normal. I will probably be building some Colonials and some ranches in there.

MS. BORGUS: I don't know what report it was on, but I was looking through the papers

involved with this application. I believe it was a drainage report in the packet, and there was a question there, are there any existing drainage problems on site, upstream or downstream? And the answer filled in was no. I don't know if anybody on the Board noticed that. I mean we all know there are problems there, so I don't know how that can be answered that way.

JAMES MARTIN: I think that issue was brought up. Karen (Cox), Jim (Powers), somebody brought that up, that there have been problems in the area.

MS. BORGUS: Extreme problems.

MR. FITZGERALD: That's -- do you want me to try to answer that? It is always a hard question to answer. Pretty much any development in Chili, Riga, Ogden, are there any drainage problems upstream or downstream, it -- yeah. It goes without saying. So we're kind of looking at it more for site specific. And because it is a large area -- it is low, it does fall off back to the creek, but that is how we're looking at it, in the front area. Is there ponding water?

MR. PERNA: This is 15 acres and we're building 5 houses on it. We could build 30 if I wanted to do a subdivision.

MS. BORGUS: I don't believe you would there. I don't think you would get away with that.

Then the next question is: Are there any signs of standing water on the site, and the answer is yes. I take it, you think these swales are going to correct that?

MR. FITZGERALD: Well, there is the end of a tributary that cuts across the property, so there --

MS. BORGUS: Where does that come on the property?

MR. PERNA: Back here (indicating). It's like a little creek there.

MS. BORGUS: Oh.

Now I saw that you have a silt fence, I believe, marked on the map, indicated with a dotted line there.

MR. FITZGERALD: For erosion control measures, yes.

MS. BORGUS: I'm sure the Building Department, Mr. Scibetta is going to take really good notice of that silt fence. I trust that he is going to. And I make that an issue, because when this builder built Whispering Winds, across from me, silt measures were not on their plan. They weren't done and the one reason that that pond now is almost nonexistent is because the mud literally went there. And silt measures were just forgotten. I'm sure that they were -- they were supposed to have been followed, but they weren't. So I'm sure Mr. Scibetta will be right on that this time and we'll make sure we don't have any more mud in Black Creek.

MR. PERNA: They wouldn't have needed that pond if they went across the creek with it.

KATHERINE LLOYD, 113 Attridge Road

MS. LLOYD: Katherine Lloyd, I live at 113 Attridge Road. That's the house that has that pond on the property. My concern is simple. I'm not a fan of the pond on that property when we bought it and I don't want to see it get any larger, for obvious reasons. There was shrubbery and whatnot. That land has been cleared off. Right to the left of it. Because we have noticed over the past couple of months or so, I don't know when it occurred, but my concern is simple, I don't want that pond bigger. It is already too big in my mind. I would like to fill it in and get rid of it. I don't want continual water draining back there. Other than that, I don't have any questions in terms of home construction. It will be a nice neighborhood.

JAMES MARTIN: I do not think that will be a problem.

MS. LLOYD: I trust you will take care of that.

JAMES MARTIN: But I don't think we can have the pond filled in either.

MS. LLOYD: I wouldn't expect that. I just don't want it bigger than it already is.

JAMES MARTIN: Move to close the public hearing.

James Martin made a motion to close the public hearing portion of this application, and John Nowicki seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

JAMES MARTIN: We have to shorten the environmental assessment form given to us prepared by the applicant. I would like to go through this before we actually make a declaration on the SEQR process. I will start with actually question Number 8 on here, "Will proposed action comply with existing zoning or other existing land use restrictions?" The answer is "Yes."

"What is present land use in the vicinity of project? Residential."

"Does action involve a permit approval or funding, now or ultimately from any other governmental agency, federal, state or local?" The answer is "Yes." Needs approvals required by the Monroe County Health Department, Pure Water, DPW and NYSDEC. Okay?

"Does any aspect of the action have a currently valid permit or approval? No." Not at this time.

"As a result of proposed action will existing permit/approval require modification? No."

"Does action exceed any Type I threshold in the 6 New York State CRR Part 617-4? My recollection is the answer to that is no.

"Could action result in any adverse effects associated with the following: Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic patterns, solid

waste production or disposal, potential for erosion, drainage or flooding problems?" Basically those are being mitigated.

"Aesthetic, agricultural, archaeological, historic or other natural or cultural resources; or community or neighborhood character?" The answer to that is no.

"Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? No."

"Community's existing plans or goals as officially adopted, or a change in use or intensity of use of the land or other natural resources?" Basically zoned for residential.

"Growth, subsequent development, or related activities likely to be induced by the proposed action." Nothing of any significance.

"Long-term, short-term, cumulative or other effects not identified in C1-C5? No."

"Other impacts, including changes in use of either quantity or type of energy?" Obviously a little more electricity used if you build houses there, but it won't affect RG&E that much.

"Will the project have an impact on the environmental characteristics that caused the establishment of a critical environmental area? No."

"Is there, or is there likely to be, controversy related to potential adverse environmental impacts?" The answer is "No."

So basically what I would like to do on the short form EAF information we reviewed is declare ourselves lead agency as to SEQR.

James Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be an unlisted action with no significant environmental impact, and the Board all voted yes on the motion.

JAMES MARTIN: As far as the preliminary subdivision, the fee has been paid for waiving final.

The Board indicated they could waive final.

James Martin discussed the proposed conditions with the Board.

DECISION: Unanimously approved by a vote of 6 yes with the following conditions:

1. Pending approval of the Town Engineer.
2. All swales to be installed, maintained and stabilized prior to commencement of house construction.
3. Applicant shall apply to the Town Board for inclusion of the property in the Town of Chili Consolidated Drainage District.
4. All Monroe County Development Review Committee comments shall be satisfied.

Note: Final subdivision approval has been waived by the Planning Board.

6. Application of Ignazio Battisti, owner; 27 Stone Barn Road, Rochester, New York 14624 for final subdivision approval of 17 lots to be known as Battisti Subdivision at properties located at 29 Stone Barn Road, 227 Golden Road and portions of 221 Golden Road and 24 Sutters Run in R-1-15 zone.

Robert Fitzgerald was present to represent the application.

MR. FITZGERALD: I've been with Avery for nine years and this has been one of the first projects I started working on.

There was a discussion off the record.

MR. FITZGERALD: We do now have a joint permit from Army Corps and DEC to do this project, work in the wetlands and the foundry sands removal and the whole mediation plan for that.

Town Engineer has a couple, three comments. First one says, and it looks -- we have completed Mr. Joe Carr's concerns regarding the storm water management facility, so he is content with that.

Number 2 mentions the drainage port. It looks like it complies with Town requirements. They do want the final SWPPP. With the final SWPPP, we are putting the pieces together. This is not the normal project. This will be part of the SWPPP and the requirement, the soil moving process, that will be part of the SWPPP. So now we have all of the pieces and our draft for this particular project. So now I can put it all together and ship it out to DEC and, of course, copy in the Town, as well.

Then we're three -- I think Dave Lindsay is just looking to have his comments -- or the power to have additional comments, probably -- there are other things we need to work out. Letter of credits and items and things like that to finalize those.

JAMES MARTIN: I see you have complied with our request. The signage will be on the fence surrounding --

MR. FITZGERALD: We added a blurb. Hopefully that was satisfactory.

JAMES MARTIN: The I's are almost all finally dotted on this. I will go to the Board.

DARIO MARCHIONI: No comment. Good job. I just want to make that comment.

KEITH O'TOOLE: The 30-foot easement, referenced on the map should be called out by Liber and Page of Deeds.

Also, I would like to see a copy of the easement that references a maintenance easement, but all you really need is a general driveway easement. Correct?

MR. FITZGERALD: Yes.

DENNIS SCIBETTA: There is a condition of the -- before any mylars will be signed or finalized, that the frame building, the trailer and the barn and all that are to be removed and the people that are living there will be immediately removed from site. That is not habitable space. It was not -- it is -- somehow became an address. Someone is living there. We need that done immediately. We will not sign off on the mylars until that is done.

JOHN NOWICKI: Until those buildings are removed?

DENNIS SCIBETTA: Yes.

JAMES MARTIN: So all -- how do you want me to word that?

DENNIS SCIBETTA: Accessory structures on lot --

KEITH O'TOOLE: Rob (Fitzgerald), there is a frame building on Lot 17. That is called out as building to remain.

MR. FITZGERALD: Yes.

KEITH O'TOOLE: Is that being inhabited by anyone right now?

MR. FITZGERALD: I don't know. I honestly don't know.

KEITH O'TOOLE: Is your client here?

MR. FITZGERALD: No. Isn't that a barn?

KEITH O'TOOLE: There is a metal barn and also a framed building.

DENNIS SCIBETTA: It is a frame building that I believe was a shed converted to living quarters.

KEITH O'TOOLE: Mr. Chairman, prior to have execution of the mylar, property owner shall remove from Lot 10 the silo, the grain building and the trailer, and from Lot 17, the frame building. These four structures to be demolished and the debris properly disposed of off site, along with a frame shed on Lot 9.

JAMES MARTIN: Lot 9, A frame shed. I missed the second one after the silo.

KEITH O'TOOLE: Excuse me. Another one. There (indicating).

JAMES MARTIN: Lot 10. Silo, trailer and what was the third one?

KEITH O'TOOLE: Grain building.

JAMES MARTIN: Grain.

KEITH O'TOOLE: Building. A frame shed on 9. And a coop on 14. And the frame building on 17.

JAMES MARTIN: Hang on. Number 14, what is that?

KEITH O'TOOLE: Coop. Chicken coop, perhaps.

JAMES MARTIN: So it is not a two-door car; it is a building?

(Laughter.)

KEITH O'TOOLE: I'm thinking the latter.

JAMES MARTIN: Any others?

DENNIS SCIBETTA: One second. We're not done yet, I don't believe.

Lot 17 near the border -- I'm sorry, on Lot 13, there is a loading ramp and a framed shed that need to be removed.

JAMES MARTIN: All right. All existing structures as listed on -- on Lots --

KAREN COX: There is a frame shed on 4, too.

DENNIS SCIBETTA: Sorry. Just saw it.

JAMES MARTIN: All existing structures as listed on the following lots, and I listed all of those, to be demolished.

All debris removed from the site prior to approval of the mylar, right?

DENNIS SCIBETTA: As Mr. Hellaby will tell you, you probably want to get those done before the new year.

JAMES MARTIN: It will be in my decision letter if you didn't get it all.

JOHN NOWICKI: He had some other notes here. Pond easements?

DAVE LINDSAY: Yes. We're all set with those.

JAMES MARTIN: There will be an easement associated with the pond.

JOHN NOWICKI: Make sure the land is posted and in compliance.

These are DRC comments.

JAMES MARTIN: We were talking about the sign on the fence, the posting of the sign on the fence. The contaminated soil.

DARIO MARCHIONI: Is this all in one, in phasing?

JAMES MARTIN: Your guess is as good as anybody.

MR. FITZGERALD: It would be filed all as one subdivision.

DAVE LINDSAY: I just say that Larry (Nissan) had a couple of letters probably last year he sent you with a number of comments. I didn't reiterate all of those. Double check them and make sure you're satisfied with those.

JAMES MARTIN: Basically we have cleared up all of those things.

PAT TINDALE: I'm assuming that the previous use of the land is declared on the plat like we asked before. That's it.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

JOHN BUCK, 20 Providence Drive

MR. BUCK: If I can approach the map. I live in a house on the northwest side of this wetlands over here (indicating), and I've lived there since 1991, and as other developments down here (indicating) have come into play, this wetlands has grown and as -- every spring, the winter that you -- that water tends to push out from all that collection there, and I see that we're going to be developing some homes in there. I have been working with David Lindsay here for about two years. There is a drainage ditch here (indicating) that drains back into the wetlands. It is about a three-quarter inch grade over two, three property plots and this year, obviously with it being really wet, it has been tremendously -- I haven't been able to mow my lawn for about three months. And so as that grows, I want to know what the Town is going to do to eliminate, you know, this problem as it gravitates towards my property because it will obviously get worse. That is my question.

JAMES MARTIN: With the pond you're putting in place, there will be no water coming off the property as currently is. Maybe less.

MR. FITZGERALD: Yes. And it is ultimately towards the track. We're not damming up anything to stop water from migrating towards the tracks. We have a collection system. Yes, it has grown over the years. As Mr. Battisti can attest to. There is also down the road further, across the tracks, and actually it is more of a problem in Gates, if you go north on Coldwater to the intersection of Westside Drive, all you see is cattails. All wetlands and I think for like two miles there are no grade changes. It just backs up from -- it just backs up from there.

DARIO MARCHIONI: They cleaned it in 1980, I think. They had a grant from the County or something to clean those. That was last time we ever did anything on that.

KAREN COX: It is very hard to get any kind of a permit to do that work.

DARIO MARCHIONI: Along Attridge Road, we went along the swales. We did clean it. For a while it was working.

MR. BUCK: My understanding is there is a drainage that comes back out and there is a ditch that goes down the railroad. That has been cleaned out at one time. Unfortunately, the railroad is a separate entity and comes in, and it goes through and cleans up the stones and pushes stuff right back into that. And all of a sudden it is dammed up again.

DARIO MARCHIONI: You should bring that up with the Commissioner of Public Works. Attend a lot of the Drainage Committees.

MR. BUCK: I have been to several.

DARIO MARCHIONI: That is where it starts. We have no power here.

MR. FITZGERALD: I think a lot -- I have been involved with this project for a long time, and I remember meeting out there with Mr. Battisti and Lee Sinsebox when he was representing the Town of Gates and he was like, yes, it has been a problem, but we're -- we can't clean out three or two miles of wetlands to make a ditch. Of course there is a problem with crossing under the tracks, too. So all we can do is not barricade the water from flowing onto it. So we're grabbing that and of course we're not increasing the rate of runoff.

KAREN COX: The problem dealing with railroads, they're typically not good neighbors, most any town they're in, as you found out. They're usually more concerned about maintenance of their tracks than maybe the effect they're having on surrounding land. So the Drainage Committee, you know, their hands may be tied as far as getting any kind of action from CSX.

MR. BUCK: I called the Railroad and Army Corps in Buffalo. Basically they directed me back to the Town of Chili.

KAREN COX: Right.

JOHN NOWICKI: Figures.

MR. BUCK: We're going to build where that water goes and basically that water will be right on my property. It is right there, and you delineate it in your maps and everything as wetlands. It is right there on my property. I mean I can't dig. I can't do anything because it is wetlands, delineated wetlands that just keep growing. As we press it in, you know -- water is going somewhere, and you're going to --

JAMES MARTIN: Well, this project should be neutral to that condition, I think, based on your calculations, Rob (Fitzgerald); is that correct?

MR. FITZGERALD: Yes.

JAMES MARTIN: So I wish we could do something to alleviate your problem, but there is not much that we can do at this point.

JAMES MARTIN: Move to close.

James Martin made a motion to close the public hearing portion of this application, and John

Nowicki seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

DECISION: Unanimously approved by a vote of 6 yes with the following conditions:

1. Pending approval of the Town Engineer.
2. All existing structures as listed on the following lots to be demolished and all debris removed from the site prior to the mylar being approved:
 - a. Lot #4 - frame shed
 - b. Lot #9 - frame shed
 - c. Lot #10 - silo, grain building, trailer
 - d. Lot #13 - frame shed, loading ramp
 - e. Lot #14 - coop
 - f. Lot #17 - frame building
3. Applicant to mark Liber and Page of Deeds of all existing easements on mylar.
4. Driveway easement subject to approval of Planning Board Attorney.

The 11/6/06 Planning Board meeting minutes were approved as submitted.

The meeting ended at 10:50 p.m.