

1 PLANNING BOARD COUNTY OF ALBANY
2 TOWN OF COLONIE

3 *****
4 CHIPOTLE MEXICAN GRILL
5 105 WOLF ROAD
6 REVIEW AND ACTION ON SIDE YARD PAVEMENT
7 AND CONCEPT ACCEPTANCE
8 *****

9 THE TAPED AND TRANSCRIBED MINUTES of the above
10 entitled proceeding BY NANCY STRANG-VANDEBOGART
11 commencing on May 25, 2010 at 7:14 p.m. at the
12 Public Operations Center 347 Old Niskayuna Road,
13 Latham, New York 12110

14 BOARD MEMBERS:

- 15 CHARLES J. O'ROURKE, CHAIRMAN
- 16 THOMAS NARDACCI
- 17 TIMOTHY LANE
- 18 ELENA VAIDA
- 19 PETER GANNON
- 20 PAUL ROSANO
- 21 PETER STUTO, Jr. Esq., Attorney for the Planning
22 Board

23 Also present:

- 24 Joe LaCivita, Director, Planning and Economic
25 Development
- Peter Lynch, Esq.
- Michael Tucker, Infinigy Engineering
- Joe Grasso, Clough Harbour and Associates
- Steve Igoe

1 CHAIRMAN O'ROURKE: Next on the agenda we
2 have Chipotle Mexican Grill, 105 Wolf Road. It
3 is a fast food restaurant. They are looking
4 for a review and action on a side yard
5 pavement waiver and concept acceptance.

6 Joe, you want to update us?

7 MR. LACIVITA: I was just going to
8 mention, C.J., that this is an
9 existing -- it's about a 20,000 square foot
10 two-story multitenant building. It is coming
11 down with demolition and with the erection of
12 a 2,300 fast food restaurant.

13 The Planning Department had made some
14 recommendations that I'll read later on as we
15 go.

16 CHAIRMAN O'ROURKE: Okay, for the
17 applicant?

18 MR. LYNCH: My name is Peter Lynch. I
19 represent the applicant, Thomas and Jeremiah
20 Burke. With me tonight is Michael Tucker from
21 Infinigy Engineering. He is the project
22 designer.

23 If I may, Mr. Chairman and members of the
24 board, my clients, the Burkes, actually own
25 this site. It actually consists of two

1 properties. What I'd like to do initially is
2 just show you where we are.

3 This is an existing plan. It's a long
4 rectangular shaped building. It's a mixed-use
5 building of office, retail and hair salon. It
6 fronts on Wolf Road. It's the third building
7 north of the intersections of Sand Creek and
8 Wolf. We have a bank building on the corner.
9 We have First Niagara Bank immediately
10 contiguous to it and then we have our site.

11 This site is approximately 1.3 acres of
12 land. As you can see, the building itself is
13 actually 29,000 square feet or 49.9% of the
14 site. It has approximately 43% greenspace on
15 the site and 49% paving on the site. The basic
16 idea here is that this building has fast
17 become and is becoming economically obsolete.

18 When Mr. Burke bought this building, he
19 did not buy it in a vacuum. He had envisioned
20 that the future development of this site would
21 parallel the development of this site here
22 (Indicating) on Sand Creek Road which he also
23 owns. It's formerly the Clay's Fish
24 restaurant.

25 I'm sure that you're all familiar with

1 that site. That's about an acre. It's
2 1.4 acres. It's a total of about 2.7 acres of
3 the two sites. The Clay's restaurant has long
4 been closed. The site has become obsolete. For
5 lack of a better word it's effectively a
6 blighted site.

7 So, Mr. Burke's goal in the redevelopment
8 of these two sites was to allow the site
9 access via Sand Creek as well as Wolf Road.
10 What we have done is we've marketed the site.
11 We have a lease with our first tenant which is
12 contingent upon getting approval. It is with
13 the Chipotle restaurant. The Chipotle
14 restaurant we have on this plan right here
15 (Indicating) is proposed to be up on the
16 street scape of Wolf Road. We meet all of the
17 dimensional requirements of the ordinance for
18 the Chipotle restaurant. For example, we only
19 cover 4.1% of the site with this building.

20 The idea would be to demolish the office
21 building on the site. One of the comments that
22 was received from the planning staff - we had
23 a bunch of comments, as you know. One of the
24 comments was hey, if you guys are going to
25 demolish this building -- and I think, Joe

1 Grasso, your recommendation was to have a
2 demolition and removal plan. We will do at the
3 next stage. The recommendation was to also
4 take down and maintain the Sand Creek Road
5 property - take that building down at the same
6 time. That's absolutely agreeable. So, if we
7 get the approval - and the approval is
8 important because it allows us to go forward
9 with a project which is bankable, and which
10 provides funding so that we would then be in a
11 position to take down both of the buildings at
12 the same time. That particular comment that
13 Joe Grasso had made and some of the staff had
14 made - that's our plan anyway.

15 What we have here is one waiver request
16 along what would be the south side of the
17 property. This is right next to the First
18 Niagara Bank. The ordinance requires that the
19 paved areas be not less than 10 feet from the
20 property line and our paved area is six feet
21 from the property line.

22 One of Joe Grasso's comments was hey; you
23 know I think that if you just shift everything
24 north four feet, you can establish ten feet
25 setbacks on both sides. There's a reason for

1 why we did it the way that we did it. Our
2 access onto Wolf Road is to implement to the
3 fullest extent practicable the existing access
4 that services the office building. This access
5 driveway is very close to the access driveway
6 to the 99 restaurant. We felt we would have a
7 better development and a safer development
8 with a six-foot setback on this southerly
9 property line along the bank than we would if
10 we were to shift everything four feet closer
11 to the access driveway for 99. In other words,
12 we didn't want the driveways to get any closer
13 than they already are. So, our thought process
14 was on balance, if we could achieve that
15 minimum waiver then that would enable us to
16 maintain the integrity of the existing
17 driveway without moving it closer to the 99
18 driveway.

19 There was one of the other big issue that
20 came up early in the development committee
21 meeting in December. Comments were received by
22 Clough Harbour, Albany County Planning Board,
23 CDTA, Planning staff and the like was that we
24 should consider allowing other properties to
25 connect to Sand Creek Road. Let me just give

1 you an example of what I'm talking about.

2 On our site plan for the Chipotle
3 restaurant - the restaurant and the parking
4 field that services the restaurant is really
5 directed towards Wolf Road. We have provided a
6 concept of an access road to Sand Creek. I
7 will tell you that under our lease with
8 Chipotle, we are going to provide them with
9 that secondary means of ingress and egress to
10 the site. The idea that was discussed at the
11 development meeting and some of the comments
12 were hey, why don't you allow the 99
13 restaurant which is immediately north of the
14 site to connect through your parcels and come
15 to Sand Creek Road and also the First Niagara
16 Bank. The first thing that I want to tell you
17 is that if my client, who is the owner of the
18 property -- we have discussed this at great
19 length and he is open to the idea. But right
20 now, we believe that it's premature. Let me
21 give you a couple of reasons why. I know that
22 this was a big discussion during our meetings.

23 Joe, you made a very strong point for
24 this allowance.

25 First of all, while we have the Chipotle

1 restaurant on the frontage on Wolf Road, the
2 balance of the combined assemblage of the
3 sites -- we don't have a tenant yet. We don't
4 know who that tenant is going to be. We don't
5 know how it's going to lay out and we don't
6 know what the size of the building is or
7 ultimately what the final road configurations
8 of the site are going to be. So at this stage,
9 we're asking you to consider giving concept
10 approval to Chipotle so that we can go forward
11 with the final site plan approval. But at this
12 stage we believe that it's premature to impose
13 any kind of a condition that we allow
14 adjoining property owners to connect to Sand
15 Creek Road through our parcel.

16 I will also note that the property at
17 103 Wolf, the First Niagara Bank, actually
18 already enjoys an access drive from Sand Creek
19 Road. It's actually a one way in leading north
20 off of Sand Creek into the bank. It's not a
21 two way, but it does have traffic flow off of
22 Sand Creek into 103. The 99 restaurant
23 property does not have that access.

24 But ultimately the thing that we're
25 trying to express tonight is this: We cannot

1 make a commitment at this time to allow the
2 interconnection to the 99 restaurant which
3 would be the logical target, if you will, to
4 that connection. But we're open to the idea
5 during the future development of the site and
6 we wanted to make that known to the board.

7 There is one other issue that was brought
8 out through those comments that we had
9 received. I know that you've all looked at the
10 site plan and you can see as you enter the
11 Wolf Road entrance, immediately to your right
12 you see the building but there are two parking
13 spaces at this location. Those parking spaces
14 are for people that are getting a takeout
15 order. They come in and park in that spot and
16 they're in and out.

17 There were a number of comments received
18 from staff about the fact that they thought
19 that these two parking spaces should be
20 eliminated from the concept design. We have
21 gone through great lengths in talking with
22 Chipotle about this.

23 I will tell you that Mr. Burke expresses
24 his apologies for not being here tonight, but
25 he is actually in Las Vegas at the retail

1 convention. He met today with Brad Toothman
2 who is the real estate director for Chipotle
3 restaurant on that two space issue.
4 Mr. Toothman made it very clear to us that is
5 an essential component to their business model
6 and their business plan.

7 You're all familiar with the Chipotle
8 site plan that you approved off of Wade Road
9 and Route 7. You know that when you go into
10 the front door there, there is about 40
11 parking spaces right in that field right there
12 that services the building. Chipotle has
13 advised us that this is a material element of
14 the plan. We're asking you to give it some
15 consideration because as the applicant is
16 trying to develop this project and trying to
17 get this tenant to build this building,
18 they're telling us that we have to have those
19 two spaces. Consequently, while Mr. Burke
20 wanted me to express to you his openness in
21 considering future connections with the
22 adjoining property owners, we don't have any
23 flexibility on the two parking spaces because
24 we're being mandated by our tenant. I know
25 that you've heard a million times before that

1 tenants mandate things. We have gone to them
2 and they told us that this is material to them
3 and I'm just bringing that to your attention
4 for your consideration.

5 With respect to the balance of the site,
6 as you can see, we've got on here 49.8%
7 greenspace. You know that the code is 35%. All
8 of our calculations that we put on our plan,
9 we limited to the property of 105 Wolf Road.
10 The only reason that we've shown the Sand
11 Creek Road property was just for the access
12 drive. We know that there will be future
13 development of this site and we know that
14 there will be future reconfigurations. We know
15 what the ultimate greenspace requirements will
16 be.

17 At this juncture, you can see this as a
18 very soft use of the site compared to the
19 office building. There were all sorts of
20 letters from all the various departments of
21 the town. We believe that this is a reuse of a
22 site that has now become obsolete. It's a
23 modern use of the site. We think that it's
24 going to jumpstart the development of the
25 balance of the site and we would ask that you

1 give us consideration for concept approval.

2 If you have any questions and certainly
3 any engineering questions - that's why Mike is
4 here. Thank you for your time.

5 CHAIRMAN O'ROURKE: Thank you, Mr. Lynch.
6 Joe?

7 MR. GRASSO: We issued a comment letter
8 on the project May 21st on the concept
9 submittal. I'm going to go through our
10 comments.

11 Peter had touched on many of our comments
12 in our letter, but I'm going to go through
13 most of them anyway just for the sake of
14 discussion.

15 It appears as though the concept plan
16 addresses the comments from the DCC meeting
17 that we had back in December with the
18 exception of the connector for interconnection
19 with the adjoining properties. The proposed
20 access to Sand Creek Road is a significant
21 access management benefit to the project site
22 that can also benefit adjacent properties.

23 We commend the applicant for acquiring
24 the rights to provide this connection early on
25 in the planning process to the connection to

1 Sand Creek Road.

2 Also understanding that this could put a
3 competitive disadvantage on the project site,
4 provisions should be made for either short-
5 term or
6 long-term connections to as many nearby
7 properties as practicable.

8 Just to expand on this, obviously the
9 bank to the south already has a connection to
10 Sand Creek Road so another redundant
11 connection there probably doesn't serve that
12 much public benefit at this time. Although
13 long term, the intent along the properties
14 along Sand Creek Road and Wolf Road that are
15 close to that intersection would be the
16 elimination, consolidation, or curb cut even
17 on Sand Creek Road so that curb cut that
18 serves the First Niagara Bank - the long-term
19 intent would be to eliminate that curb cut and
20 possibly this access drive (Indicating).

21 There is no question that there is a
22 tremendous opportunity to promote access
23 management and reduce vehicle conflicts by
24 providing a connection through this property
25 over to the 99 parcel. Obviously it is a

1 restaurant and the competitive disadvantage
2 issue is something that the Planning Board
3 should consider in their decision, but the
4 long-term goal should be to obtain some form
5 of access rights for multiple properties so
6 that this can serve somewhat as a service
7 corridor. This is so that cars can either
8 eliminate going through the intersection at
9 Wolf Road and Sand Creek Road or cars that are
10 trying to make a left out of these properties
11 onto Wolf Road have the benefit of coming out
12 to Sand Creek Road and hitting the signal
13 which obviously would be a much safer left
14 turn coming out of these sites than what
15 currently exists trying to get onto Wolf Road.

16 CHAIRMAN O'ROURKE: Doesn't that just in
17 general handcuff that property owner? We're
18 asking him to provide egress to somebody
19 else's property that takes away from the space
20 that he'd be able to develop, if I'm
21 understanding it.

22 MR. GRASSO: It does, although there are
23 many access aisles that cut through the site
24 and ingress/egress easements can be set up in
25 a floating arrangement so that you're not

1 restricting the development potential of the
2 property. The properties are already developed
3 and they're going to be developed through this
4 redevelopment plan so that the only loss of
5 greenspace would be an area maybe 24 or 25
6 feet wide. I think that they have the access
7 road within 30 feet off the property line
8 toward the north. So that's really the only
9 area that we're talking. Other than that, the
10 traffic is just going to go through these
11 parking aisles (Indicating).

12 We're not saying that it has to be a
13 dedicated town road. We're not saying that
14 it's got to be a road with no parking on it.
15 It's just important that there be a physical
16 connection so that if the 99 parcel was
17 redeveloped with another use that wasn't a
18 similar restaurant use, it would be nice for
19 those cars to be able to access Sand Creek
20 Road through this parcel.

21 CHAIRMAN O'ROURKE: My point is doesn't
22 it provide benefit to the next door neighbor
23 at the expense of the applicant?

24 MR. GRASSO: It absolutely does. There is
25 an impact to this project site by making that

1 connection, especially when the use is a
2 competitive use. The Planning Board has to
3 weigh the benefits of these cross access
4 connections because as we heard in the first
5 application, it's important to develop
6 appropriately and provide these
7 interconnections to accommodate traffic and
8 promote safety.

9 Something that the Planning Board should
10 consider -- Peter makes a good case that it
11 may not need to be a condition now. It may not
12 even need to be a condition of the final site
13 plan approval, but it's something that the
14 Planning Board should at least weigh in on
15 with our recommendation that a cross access be
16 provided as part of the application.

17 Our second comment is that a curb cut
18 permit will be required from DOT for the
19 proposed revised entrance onto Wolf Road.
20 Because of the New York State DOT's
21 involvement of access management along
22 Wolf Road, their comments should be sought
23 early on in the planning process. All the
24 correspondence from DOT should be provided to
25 the town as well as our office. At this time

1 we have yet to see any correspondence
2 submitted from DOT.

3 The proposed restaurant would appear to
4 have less of an impact on facilities such as
5 water, sewer, and highway when compared to the
6 existing development, as an addition of the
7 development is proposed within the project
8 limits. The cumulative impacts of the entire
9 development should be evaluated.

10 The stormwater practice feasibility study
11 indicates the use of an underground sand
12 filter as a preferred method of stormwater
13 treatment. Based upon the information
14 provided, this method appears appropriate.

15 The applicant has requested that test
16 pits, witnessed by the town be provided for
17 the preliminary planning review after the
18 existing tenants have vacated the building and
19 since the site is currently occupied, the
20 proposed stormwater management area is within
21 the existing building footprint. This request
22 seems appropriate.

23 The applicant is seeking a waiver from
24 the Planning Board to allow parking within
25 10 feet of the side yard and the parking is

1 located approximately six feet from the
2 southern property line, and about 14 feet from
3 the northern property line. We have commented
4 that it would appear mathematically that they
5 could shift the parking lot over and meet the
6 10-foot separation and understanding that the
7 reasons why they'd like to line up the access
8 drive with the existing curb cut - that idea
9 has merit.

10 Another thing that would support
11 maintaining that 14-foot separation to the 99
12 parcel is their parking lot is right about on
13 the property line. Basically all we've got is
14 two parking lots and 14 feet. By shifting it
15 over that buffer strip, that is going to be
16 compromised. Obviously as part of the site
17 plan petition they are looking to relandscape
18 that landscape strip and the 14 feet provides
19 great opportunity to do more potential
20 landscaping with those two properties.

21 Just to follow up on our comment
22 regarding the detailed demolition and removal
23 as planned which we had recommended be
24 provided during preliminary and final
25 design - Peter had mentioned that we had

1 recommended that the building on
2 Sand Creek Road, the old Clay's, be
3 demolished. That wasn't our recommendation on
4 that. I'm not sure where that recommendation
5 came from. It's not that we're against
6 demolition of that building, but it was not a
7 recommendation of us that the building be
8 taken down.

9 MR. LYNCH: It must have been the
10 department comments. There were so many.

11 MR. GRASSO: That's okay.

12 Although we didn't make comment on it in
13 our letter, Peter had commented about the need
14 for two pick up parking spaces which was an
15 issue brought up by the town and our office
16 earlier on in at the DCC level of review. They
17 have clarified that those parking spaces are
18 only for those pick up spots that had greater
19 convenience for those patrons. Based on the
20 historical low use of those spots, we don't
21 think that is going to create any issues with
22 the congestion that we had previously thought
23 of. So, if those are a program requirement, we
24 have no objection to the project moving
25 forward with those spaces being there, if

1 that's the choosing of the Planning Board.

2 That pretty much sums up our technical
3 comments.

4 In terms of SEQRA, they have provided a
5 short EAF which provides a basic description
6 of the project site. There don't appear to be
7 many significant environmental issues
8 associated with the project. They haven't
9 asked for a SEQRA determination at this time.
10 Obviously we're going to get much more detail
11 on the plans as they advance in the final
12 design.

13 The one issue that we should probably get
14 resolution of before any permission is made is
15 the need for the cross access of the
16 properties.

17 CHAIRMAN O'ROURKE: Thank you, Joe.
18 Tom?

19 MR. NARDACCI: Just a comment and a
20 couple of questions.

21 One of the things that I think the board
22 as a whole has been interested in seeing is
23 redevelopment of existing parcels. So, I like
24 when I see a developer come in and say, here's
25 a parcel that's old and tired. Let's find a

1 new use for it. They are always more
2 challenging, but the board has done a good job
3 working with applicants on redevelopment
4 projects and I think that we should continue
5 in that manner. I think that this is a good
6 use for the site. Having gone through the
7 reviews of Chipotle on Wade Road, the one
8 concern that I have here is landscaping. There
9 is a lot of parking lot in that facility and
10 not a lot of green. I know that Chipotle
11 architecturally is quite minimalist, but as we
12 move toward final I'd like to see a
13 landscaping plan.

14 Also, some of the comments that were in
15 the department review included plantings in
16 the front. Could you just explain what the
17 plan is overall? I know that there is a lot of
18 greenspace on the site. I know that 45% is
19 well above the threshold and well above the
20 changes that we made for redevelopment.

21 MR. LYNCH: Mr. Burke is heavy into
22 landscaping. Just by way of example he
23 completed the redevelopment of the corner of
24 Wolf and Shaker Road where the Moe's and
25 Starbucks are. You might note the landscaping

1 on that site is very well maintained.

2 I talked to him today about this. There
3 were two specific comments from the Planning
4 Department. One was to establish a buffer on
5 what would be the rear of the parcel. It
6 references the residential neighborhood but
7 actually the residential street - I think that
8 it's Kenlyn - it's actually a little bit
9 further east. The building that is immediately
10 abutting our rear property line is like a
11 three bay garage with a lot of equipment in
12 it. Notwithstanding that, Mr. Burke is going
13 to adopt the recommendation for a nice buffer
14 at the rear of the site. The recommendation
15 was for arborvitaes. That's not an issue.

16 There was also a recommendation for in
17 front of the patio. There is a patio proposed
18 in front of the Chipotle with a low level
19 wall. The request was to put some nice low
20 level plantings along that and of course, he
21 will do that.

22 Hopefully, if we get concept approval,
23 when we come back with our next plan, we'll
24 have a full-scale landscaping plan and I think
25 that you'll find that it will be satisfactory.

1 MR. NARDACCI: Joe went through the
2 details with regard to connecting the sites. I
3 personally am in favor of a connection. If a
4 developer is willing to do it, it's not an
5 overburden. I think that it makes sense in the
6 comments. There was a comment about right in
7 from the highway. Right in and right out only.

8 MR. LYNCH: I saw that.

9 MR. NARDACCI: Joe, do you agree with
10 that? Right in or right out?

11 MR. GRASSO: No. I think that what we're
12 going to create is a situation where people
13 are not respecting the right in and right out
14 and it's going to create a much more hazardous
15 situation. I'm supportive of a full access as
16 long as we can link up these properties and
17 everybody can get the benefit of this full
18 access intersection.

19 MR. NARDACCI: Making these connections
20 is part of the Comprehensive Plan. It's
21 something that we have done and supported on
22 other commercial properties, and especially on
23 Wolf Road where it is busy. It's not too much
24 of a burden. I personally would like to see it
25 as we move forward and have more time to

1 discuss this.

2 MR. LYNCH: The reason that I brought it
3 up initially is because Mr. Burke wanted me to
4 express that he is willing to do it, but you
5 can't just do it in a vacuum. You have to know
6 what your ultimate use is.

7 C.J. made a good point also. What if, for
8 example, we have a project that needs a
9 certain amount of square feet, a certain
10 amount of parking space, and greenspace and we
11 can meet it? But if we have to extend the
12 roadway or the blacktop to the next adjoining
13 property owner, then we don't meet the
14 greenspace. What I'm suggesting is that
15 ultimately when we have the final build out of
16 this site, that all those issues have to be
17 balanced out. All I wanted to express to you
18 tonight was that we can't really do that in a
19 vacuum. Mr. Burke is absolutely willing to
20 look at that as we redevelop the site. He's
21 not just saying that to just get your concept
22 approval tonight, because ultimately whatever
23 we do with the balance of the site is going to
24 be subject to your approval.

25 MR. NARDACCI: No, that's something that

1 I would keep in mind in the future as a matter
2 of reasonableness; understanding that if we're
3 asking an applicant to provide a public
4 benefit such as this going forward that we
5 should look at future plans and understand
6 some of the challenges that we may have
7 created ourselves.

8 MR. LYNCH: Fair enough.

9 CHAIRMAN O'ROURKE: Paul?

10 MR. ROSANO: Nothing.

11 CHAIRMAN O'ROURKE: Elena?

12 MS. VAIDA: I have a couple of questions.
13 Since we were just talking about creating the
14 ingress and egress for the other property
15 owners, I just wanted to express my feelings
16 on that right now.

17 I understand completely what you're
18 saying about not knowing what you're going to
19 do with the other property. Also, this is a
20 redevelopment. These were businesses that were
21 already there. If I remember correctly, the
22 one on Sand Creek that used to be Clay's - and
23 I don't remember what the other lot was.

24 MR. LYNCH: The property at 105 is an
25 office building. It's a college, hair salon,

1 doctor offices; it's a real mixed-use. It's a
2 very long narrow building.

3 MS. VAIDA: All these properties and 99
4 were obviously granted approval and were
5 allowed to build and be there without this
6 cross access. I would say that if it turns out
7 obviously in the future that's something that
8 looks like a possibility and if you're
9 inclined to do -- I assume that these were all
10 private agreements that would have to be
11 reached with each of the private owners of
12 these other businesses because there is going
13 to be issues like who is going to maintain the
14 board, and liability.

15 MR. LYNCH: Exactly. And we don't even
16 know if they want it. No one has contacted us.
17 You're right, this doesn't just happen in a
18 vacuum. It has to be done in a legal manner
19 and all of those rights and ramifications have
20 to be reckoned with.

21 MS. VAIDA: The issue with the two
22 parking spots - that's not an issue anymore?

23 MR. GRASSO: We don't have a concern
24 about those parking spaces.

25 MS. VAIDA: What about changing the width

1 from the 14 parking lot waiver?

2 MR. LYNCH: We have a 14 foot wide
3 setback of greenspace here (Indicating) and
4 99's parking is like right on the property
5 line. So, that 14 feet is really a good buffer
6 from that almost on the property line parking
7 space.

8 We're referring to the greenspace on the
9 southerly property line being our project and
10 First Niagara Bank. We have a six-foot setback
11 which, by the way, is consistent with the
12 setback that First Niagara Bank has also. This
13 asks for the relief of the waiver for that
14 particular property line so that we don't have
15 to shift everything north, primarily because
16 we do not want to shift the driveway for our
17 project and also for the driveway for 99. We
18 wanted to keep them as far apart as possible
19 using the existing curb cut. We thought that
20 the relief that we were requesting to go from
21 10 to 6 just on this corridor right here
22 (Indicating) would really have minimal impact
23 and really no adverse impact on the adjoining
24 property.

25 MR. GRASSO: Elena, just to expand on

1 that, although he is making space to try to
2 line up that curb cut, because you probably
3 have 30 or 40 feet there between Wolf Road and
4 the start of the parking spaces, I think that
5 they could probably deflect the road over for
6 six feet to move the setbacks. I don't think
7 that would be a big concern. I think that it's
8 more important for the board to consider the
9 width of the landscapes that are there against
10 the 99 parcel. Their pavement and their
11 parking spaces are right up to the property
12 line. So, it's how they treat this landscape
13 strip. I think that there is like an oak tree
14 that's a two-foot diameter tree and you're
15 going really close to it. If you're going to
16 impact it, it should be known because that's
17 more credence to provide a greater buffer
18 against the First Niagara Parcel.

19 There are only a few significant trees
20 out there and that's one of them.

21 MS. VAIDA: The other thing is the two
22 lots. Your client owns both of those lots
23 right now. It's important, I guess, to the
24 development of the site that there be ingress
25 and egress from both Sand Creek and Wolf Road.

1 I know that we have done this in the past,
2 too. While there is one property owner right
3 now - just to make sure that there is an
4 easement on file that allows both property
5 owners to use the ingress and egress.

6 MR. LYNCH: Absolutely. What we can do,
7 because we do have the common ownership - we
8 can file a declaration of cross easement
9 rights because hey, you never know Mr. Burke
10 could develop 105 and somebody could come in
11 and buy the Sand Creek property. In the next
12 submission at the next stage we'll submit the
13 legal document for the declaration and we'll
14 probably have it reported before we come back.

15 MS. VAIDA: That was it. Thank you, very
16 much.

17 CHAIRMAN O'ROURKE: Thanks Elena.
18 Tim?

19 MR. LANE: While I generally agree with
20 Tom, I think that the connecting road is
21 premature at this time. You're just at concept
22 right now, so what's going to occur down the
23 road right now is anybody's guess. I would
24 defer on this one.

25 As far as the setback and granting that

1 waiver, I'm fine with that as well. As long as
2 the landscaping is going to be provided on
3 those sides, it's kind of an offset.

4 My questions are for Joe. There was a
5 May 5th letter from Mr. Voorg at Pure Waters
6 that mentioned reference to the fact that it
7 does not appear that the gravity sanitary
8 sewer meets the Pure Waters minimal
9 requirements to prevent slope.

10 MR. LYNCH: The town has certain
11 requirements regarding minimum pipe slope and
12 depth of cover over sewer lines. The existing
13 building has lines through it.

14 MR. LANE: It's a much larger building
15 than what this is going to be.

16 MR. LYNCH: But it has an existing sewer
17 lateral gravity flow. There is no pump into
18 the existing building that ties into the town
19 sewer line. We're only at concept and they've
20 shown a schematic sewer line. They haven't set
21 the floor of the building and they haven't
22 given us any design. I'm confident that this
23 project can be designed with a sewer lateral.
24 The worse case would be if they couldn't they
25 would put in a small private grinder pump

1 which the town accepts routinely. I saw the
2 comments from Pure Waters, but I don't have
3 any concerns requiring holding up the project.

4 CHAIRMAN O'ROURKE: The grinder pump
5 becomes a little bit more difficult when we're
6 talking about a restaurant. Again, we're
7 talking prematurely though.

8 MR. LYNCH: Mike Tucker has done some
9 investigation.

10 MR. TUCKER: Based on his letter, we are
11 planning on meeting with Pure Waters to
12 address some of those concerns. Between the
13 time that we did our existing conditions
14 survey, they went out and actually cleaned out
15 another manhole that wasn't visible that was
16 there. Between those two spots and meeting
17 with him, I'm confident we'll get it to work.

18 MR. LANE: My only other comment was in
19 regard to your May 21st letter in regard to the
20 manhole. It said that you requested a manhole.

21 MR. GRASSO: The recommendation is that
22 we pointed to some sewer laterals just to
23 provide some access. That's only when you're
24 going create clogs. Especially with restaurant
25 facilities, we normally like to see manholes

1 at those points. Pure Waters doesn't require
2 it. It's not a town requirement so it's just
3 something to consider. If they want to propose
4 it without a manhole and they want to do
5 another cleanout arrangement, that would
6 probably be acceptable. As long as the owner
7 understands the maintenance issues for
8 cleanouts and clogs.

9 MR. LANE: Overall, I like the plans at
10 this point. The only thing that I would ask
11 you for is bike racks.

12 MR. GANNON: You had to get C.J. going.
13 I think that the project looks good. I'd
14 like to go back to the Highway Safety
15 Committee memo.

16 While I respect Clough Harbour's opinion
17 that it may not be necessary, I still think
18 that it's worth engaging the Highway Safety
19 Committee to just run down a bit on what
20 exactly their concerns are.

21 In their memo they indicate that there
22 have been several accidents. Well, several can
23 be three, or several can be 25. I think with
24 the access from Wolf going out to Sand Creek,
25 you have the potential for people using it as

1 a cut through. Now, we don't have the drawing
2 that is behind Michael in our packet, but I
3 left my glasses in my office so my question
4 is: In the parking lot there, is that green
5 and is that an island to try to mitigate -

6 MR. LYNCH: Yes, we have islands
7 throughout.

8 MR. GANNON: So, I think that with this
9 drawing that you presented tonight and Joe's
10 statements -- and I share his concern that
11 especially based on the clientele of Chipotle,
12 there tends to be some less experienced
13 drivers. You're going to see people trying to
14 make that left turn, regardless of the right
15 only. Take that drawing back to Highway Safety
16 and indicate what you've have tried to do here
17 in terms of mitigating the cutting through and
18 certainly relay the town designated engineer's
19 comments and let's see if that gives them some
20 satisfaction in addressing the issue.

21 Does that make sense, Joe?

22 MR. GRASSO: We haven't seen the comments
23 that they provided yet.

24 MR. GANNON: That's all I had, C.J.

25 CHAIRMAN O'ROURKE: Thanks, Pete.

1 I had a couple of different things. The
2 architecture, again, I have a little
3 difficulty with the Chipotle that is down on 7
4 for a couple of different reasons. The biggest
5 thing that I see now that it is built is that
6 there is too much parking, in my opinion.

7 Again, I just want to be on the record
8 stating that I really think that town wide we
9 should be looking at different uses and we do
10 see some of the parking lots and those
11 restrictions. I know that you have plenty of
12 parking in there but again, I just think that
13 in terms of those sites, it's difficult to put
14 all the parking in when the utilization is an
15 hour and 40 minutes at lunch time. The rest of
16 the day you have a big giant parking lot.

17 MR. LYNCH: Just to let you know, we have
18 a lease mandate for the spaces that have been
19 shown for Chipotle. That's their minimum
20 requirement. Also there will be other users on
21 the site. They have exclusive parking rights
22 to the row of parking right here (Indicating),
23 and the row of parking along this side here
24 (Indicating). These other parking spaces here
25 will ultimately be available to service future

1 development of the site too. So, the parking
2 that we've shown is the minimum that we had to
3 do for Chipotle. We had to provide a certain
4 amount of exclusive and a certain amount
5 total, but on balance some of the parking will
6 be servicing other users of the site.

7 CHAIRMAN O'ROURKE: In terms of the
8 architecture of those buildings - are they
9 like that everywhere? Is it the metal?

10 MR. TUCKER: This is actually going to be
11 different. This will be brick.

12 CHAIRMAN O'ROURKE: Good. I think that's
13 important. At least it's important to me - the
14 frontage on Wolf Road and the appearance of
15 those buildings. Certainly if we're taking
16 antiquated building out, we want something
17 that fits the architecture that we want to see
18 going forward. So, in regard to that also, as
19 we move forward with a landscape plan, Peter,
20 I think that this board is looking more for
21 fences to front properties, inclusion of stone
22 or hardscape. That's important, I believe. So
23 those are things that you might want to take
24 into account.

25 MR. TUCKER: This is the Wolf Road

1 frontage here (Indicating). There is an
2 outdoor dining and patio from the building.
3 This has a low wall around it.

4 CHAIRMAN O'ROURKE: Maybe some wrought
5 iron? Make it substantial. Make it look right.

6 MR. LYNCH: Got the idea.

7 C.J., the brick is more acceptable?

8 CHAIRMAN O'ROURKE: Absolutely, in my
9 opinion.

10 I think that you're asking for a
11 reasonable relief for the waiver of the
12 setback. My biggest issue is the way that
13 prior projects were granted parking lots right
14 up to the property lines and those things. I
15 think that this board has taken its stance on
16 being reasonable and being fair to each
17 person. I don't see a difficulty with the
18 14-foot setback on the 99 side. What

19 Mr. Grasso did say about the trees - I
20 would ask that as part of the landscape plan
21 to possibly use bigger street type tree
22 plantings and something to balance that side.
23 Perhaps something more significant, because we
24 certainly would lose that tree on that other
25 side. Again, it's reasonable.

1 In regards to the cross connection, I'm
2 all for it as long as everybody is paying.
3 This is still America and I don't see 99
4 benefiting off of the back of this developer
5 or the bank getting it so long as he's
6 reasonable about doing it in the future. I
7 just want to make sure that it's equitable in
8 some way, shape, or form for that one
9 developer that will then provide cross access.
10 I just want to make sure that as we go forward
11 in my opinion, it can't be on the back of one
12 single developer.

13 MR. LYNCH: We appreciate that.

14 CHAIRMAN O'ROURKE: Well, it's just fair.
15 That's all I had.

16 Does anybody in the audience have any
17 issues?

18 Yes, sir, could you come up to the
19 microphone and state your name for the record?

20 MR. IGOE: Steve Igoe. I own the property
21 next door to Clay's. I'm just wondering
22 between me and this road there is about 20
23 yards of greenspace. Is that staying?

24 CHAIRMAN O'ROURKE: Let me just tell you
25 sir that from this board's perspective, any

1 time that a commercial property abuts a
2 residential -- and I take it that is your
3 residence?

4 MR. IGOE: Yes.

5 CHAIRMAN O'ROURKE: We have been very
6 much asking them to work with those homeowners
7 so that it's an equitable arrangement. You're
8 going to be neighbors for some amount of time.
9 So, to get off on the right foot, I would ask
10 Mr. Lynch to contact you as they go forward
11 with the landscaping plan.

12 Certainly, Joe, if you would get his name
13 and contact him the next time that this
14 project does come up?

15 We want your input and we want to ensure
16 that there is equitable separation between
17 your property and this commercial property.

18 MR. NARDACCI: And if there are mature
19 trees, we want the mature trees to stay.

20 CHAIRMAN O'ROURKE: So at this point,
21 they are looking for a waiver -

22 MR. LACIVITA: C.J., before we have a
23 resolution as I went through the records here,
24 I'm looking for the DCC minutes of stormwater
25 management. They talked about Chapter 7 for

1 the design manual for concept review.
2 Redevelopment has been key for Supervisor
3 Mahan and when we reviewed Fresh Market, we
4 looked at Chapter 9 for redevelopment
5 regulations and I wanted to have at least
6 Clough Harbour look in to see how this may
7 differ. If we can bring this into a Chapter 9
8 redevelopment, I know that relieved some
9 burden on Fresh Market and it could possibly
10 do the same thing here. The fact that they are
11 including Clay's in the demolition project, we
12 should work with them to see if we could use
13 redevelopment regulations instead of
14 Chapter 7, which brings them to a higher
15 standard.

16 CHAIRMAN O'ROURKE: Right. I just don't
17 think that the project is there at that point.

18 MR. GRASSO: It's true. Based on this
19 phase of the project, they would probably
20 qualify under redevelopment standards. The
21 problem is that they are going to come back
22 for additional development, therefore, we
23 don't know.

24 I think that Mike has taken the
25 conservative engineering approach saying that

1 we can be in full compliance with these
2 regulations so we're going to set up that
3 project now and then we'll fine tune it as we
4 go.

5 There are no stormwater management
6 features that we could easily see from what
7 has been provided currently serving the site.
8 So, really, anything that they do is going to
9 be a benefit to the town.

10 CHAIRMAN O'ROURKE: Again, they are
11 looking for review and action on a side yard
12 pavement waiver and concept acceptance.

13 MR. LANE: Are those together or do you
14 want a separate motion on the setback?

15 CHAIRMAN O'ROURKE: No, it can be a
16 separate motion approving the waiver.

17 MR. LANE: I'll make that motion.

18 CHAIRMAN O'ROURKE: Do I have a second?

19 MR. NARDACCI: Second.

20 CHAIRMAN O'ROURKE: All those in favor?

21 ***(Ayes were recited.)***

22 CHAIRMAN O'ROURKE: All those opposed?

23 ***(There were none opposed.)***

24 CHAIRMAN O'ROURKE: Good luck. We'll see
25 you soon.

1 I'm sorry, on concept, do I have a
2 motion?

3 MS. VAIDA: I'll make a motion.

4 MR. ROSANO: Second.

5 CHAIRMAN O'ROURKE: All those in favor?

6 ***(Ayes were recited.)***

7 CHAIRMAN O'ROURKE: All those opposed?

8 ***(There were none opposed.)***

9 MR. LYNCH: Thank you much.

10

11

12 ***(Whereas the proceeding concerning the above***

13 ***entitled matter was adjourned at***

14 ***8:02 p.m.)***

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CERTIFICATION

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

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

15
16
17 **Dated June 14, 2010**