

PLANNING BOARD
TOWN OF COLONIE

COUNTY OF ALBANY

THE PROPOSED PROJECT OF VAN BUREN ACRES
21 LOT RESIDENTIAL SUBDIVISION
ALSO KNOWN AS 35 TURNER LANE - PRELIMINARY FINAL

THE TAPED AND TRANSCRIBED MINUTES of the above
entitled proceeding BY NANCY STRANG-VANDEBOGART
commencing on December 14, 2010 at 9:32 p.m. at the
Public Operations Center 347 Old Niskayuna Road,
Latham, New York 12110

BOARD MEMBERS:

CHARLES J. O'ROURKE, CHAIRMAN
TOM NARDACCI
PAUL ROSANO
TIMOTHY LANE
MICHAEL SULLIVAN
PETER GANNON
LOUIS MION
ELENA VAIDA, Esq., Attorney for the Planning Board

Also present:

Victor Caponera, Esq.

Robert Marini, Robert Marini Builders

Christine Standish

Elena Smith

Beth Antonio

Jim Blair

1 CHAIRMAN O'ROURKE: Again, this will be
2 the last time that I will have to apologize
3 for the Town of Colonie, to my knowledge
4 anyway. In error, no notice was given in
5 regard to this project and I believe that it's
6 a waste of time for both you folks and for the
7 Board and for the attorney's in this project
8 because no official public notice was given.

9 MR. LACIVITA: Actually, C.J., everyone
10 was notified. It was posted. There were
11 placards on the site.

12 MS. VAIDA: There is quite a few people
13 from the area here, so what we were thinking
14 of doing is maybe going ahead with the project
15 and letting the people that came out -

16 CHAIRMAN O'ROURKE: But it's for final.

17 MS. VAIDA: But we wouldn't be doing
18 final. We would have to set a public hearing.

19 CHAIRMAN O'ROURKE: Mr. Caponera, you're
20 okay with that?

21 MS. VAIDA: Unless he doesn't want to do
22 it.

23 MR. CAPONERA: Everyone has been here for
24 quite a long time.

25 I think that you're saying, Joe, is that

1 we'll have to do a further notification.

2 MR. LACIVITA: There was notification
3 sent out. I had a conversation with the TDE
4 and the engineer. This project has been around
5 for a long time. We wanted to get this in
6 front of the Planning Board and see where the
7 project has come to be, get more additional
8 public input, and if there is a comfortability
9 level call the public hearing and then go
10 forward with that.

11 CHAIRMAN O'ROURKE: Where in the Land Use
12 Law does it provide for that?

13 MR. LACIVITA: To bring a project before
14 the Board to update the Board? We do this all
15 the time, C.J.

16 CHAIRMAN O'ROURKE: This is the level of
17 incompetence that I am leaving for. There
18 should have been a notice in the paper so that
19 the taxpayers of the Town of Colonie have the
20 proper notice, not noticed on Thursday.

21 MR. LACIVITA: C.J., you've been in this
22 Planning Board for three years -

23 CHAIRMAN O'ROURKE: I've been on this
24 Planning Board for three years and the
25 incompetence level in the Planning Department

1 in the Town of Colonie is like nothing that I
2 have ever seen. If it was a business, they'd
3 be out of business. I pay my tax money and I
4 think that it's fair that these folks are
5 properly notified and that the notices go in
6 the newspaper so that Mr. Caponera doesn't
7 have to come here and not get what he's
8 looking for.

9 You were looking for final approval,
10 Mr. Caponera, is that correct?

11 MR. CAPONERA: That was my understanding.

12 CHAIRMAN O'ROURKE: We can't go through
13 that because proper notification was not
14 given.

15 MR. LACIVITA: C.J., once again, you're
16 running off your mouth because what had
17 happened here, sir, is that we notified the
18 public. When it goes into the paper is when
19 there is actually a public hearing called.

20 CHAIRMAN O'ROURKE: But there has to be a
21 public hearing called, which I will call
22 tonight at a date.

23 You give me a date, Joe. I will call a
24 public hearing tonight, but there is no sense
25 updating this Board on this project that's

1 been around two years that has been gone
2 through the Town Designated Engineers to waste
3 people's time.

4 MR. LACIVITA: We're not wasting time,
5 C.J. That's what the public needs to hear.
6 They need to have a chance to speak -

7 CHAIRMAN O'ROURKE: No, Joe.

8 MR. LACIVITA: This is where you and I
9 disagree.

10 We can call the public hearing for
11 January 11th.

12 CHAIRMAN O'ROURKE: At this point,
13 Mr. Caponera, it's up to you. If you want to
14 update this Board - I don't think that it's
15 relevant or necessary because you will then
16 have to represent on January 11th. It's totally
17 up to you.

18 I apologize to you folks that the
19 notification wasn't done properly. If the
20 Planning Department feels that it was, you
21 need to pick up the phone tomorrow and call
22 the Supervisor's office and tell them that
23 notification on Thursday isn't sufficient. I
24 pay my taxes on time or I get penalized. Why
25 should I be notified late? That's what I would

1 do.

2 So, Mr. Caponera, it's up to you. If you
3 want to present, feel free to.

4 FROM THE FLOOR: I'm not going to be here
5 in January. Is all of this on record somewhere
6 where I can go in and look at it?

7 MR. LACIVITA: Yes, it's in the Planning
8 Department.

9 MR. CAPONERA: I have our engineers here,
10 and these folks, many of whose faces I
11 recognize.

12 You mentioned two years, Mr. Chairman.
13 It's actually been three years. Our first
14 appearance was November 7, 2007.

15 Your TDE is here. I'm not sure that once
16 the notice goes out that any more people would
17 be here on the 11th.

18 CHAIRMAN O'ROURKE: But you understand
19 that this Board can't take any action.

20 MR. CAPONERA: I absolutely understand,
21 but these folks have been waiting here a long
22 time. I certainly would be happy to quickly go
23 through this and where we've been.

24 CHAIRMAN O'ROURKE: I think that is fair.
25 These folks have come out and sat. What I'd

1 like to do is then have you present, and we'll
2 have Brad take some time. I would ask that the
3 people on the Board would hold any comments or
4 questions to the next time in case there is
5 anybody that in addition to those in the
6 audience tonight that would like to have
7 something to say in regard to this project.
8 Does this sound fair?

9 MR. GANNON: C.J., is there any mechanism
10 to open a hearing tonight with the assurance
11 that it will be open until at least the 11th
12 for the folks that aren't here tonight?

13 CHAIRMAN O'ROURKE: Yes, we are going to
14 open it, but we aren't going to take a vote or
15 make any motions in regard to the project. It
16 hasn't been called as the public hearing so we
17 really can't open or close it. We can refer
18 these stenographic minutes into the record.
19 Again, I won't be here, but if Counsel takes
20 them and enters the transcribed stenographic
21 minutes in, I think that would suffice.

22 Do you agree, Counsel?

23 MS. VAIDA: Yes, I agree.

24 MR. NARDACCI: C.J., I'm fine with not
25 getting into detailed questions.

1 Just as an overview, one of the areas
2 that I'm extremely interested in, and I know a
3 lot of people are, is the stormwater. So, if
4 Brad could take time to really go over the
5 stormwater and if the applicant's engineers
6 can take time in talking about it, we'll have
7 a stenographic record about it. Then, we can
8 follow up on January 11th with more detail. I
9 appreciate that.

10 CHAIRMAN O'ROURKE: No problem, Tom.

11 MR. CAPONERA: By the way, you can be
12 here on the 11th.

13 CHAIRMAN O'ROURKE: I can, but I would be
14 out there.

15 MR. CAPONERA: Okay, thank you and I'm
16 sorry for the wait. As I said, most of the
17 people that are here tonight - I'm not sure of
18 how many of the Board Members were here back
19 on November 7, 2007, but that's when I first
20 came in front of the Board.

21 My name is Victor Caponera and I
22 represent the owner of the property which is
23 the Joe Garrity Irrevocable Trust, and at the
24 time and presently, we have Clough Harbour
25 with us who are the engineers for this project

1 and Tony Stellato is with us. He's the
2 engineer who has been working very closely
3 with me and with the various Town departments
4 since this came in.

5 Anyway, back in November we had made a
6 presentation on this side of the road. just
7 for the Board's edification, his is Turner
8 Lane. The record shows that my client's
9 family - and he put this in the record some
10 time ago - used to own almost all this
11 property in this area (Indicating). Long story
12 short, when we first developed this concept,
13 there was an additional 13 lots proposed on
14 this side of Turner Lane. We had 27 lots
15 proposed on this side. After a lot of
16 discussion and meetings with the various
17 departments, we ended up selling this piece up
18 here on what I call the north side for four
19 estate lots (Indicating). After we came before
20 the Board three years ago, we heard the
21 neighbors and the various comments by the
22 various members of the Board and we
23 redeveloped this into a 19 residential lot
24 subdivision. Actually, we'll say 21 because
25 two of the lots are going to be dedicated to

1 the Town for the purposes of stormwater.

2 Also, this is one interesting project
3 where the Board actually took a road trip to
4 the site. I don't know how many of you were
5 there. I know that, C.J., you were there and
6 I'm not sure if anyone else on the Board was
7 there at the time. We actually walked the
8 property and that occurred, I believe,
9 sometime in 2008.

10 This constitutes our fifth anniversary
11 with this Board since November 7, 2007. This
12 is our fifth time in front of the Board. Since
13 that time, the project has really changed and
14 evolved and developed into obviously a much
15 smaller project with much larger lots. The
16 last time we were here, I think, it was
17 August 12, 2008 and October 14, 2008 when we
18 got concept approval, the Board made a
19 determination that it was in the best interest
20 of the Town for health safety and welfare
21 purposes that the interconnection road between
22 Burton Lane as it exists now and Turner Lane
23 be a two-lane road. That's the way that it's
24 proposed and that's the way it's been
25 submitted, as was requested by the Planning

1 Board back in 2008.

2 Since that time, also, my client has
3 entered into a contract to sell these lots to
4 Robert Marini Builders. Robert Marini Builders
5 constructed the extension of Burton Lane that
6 I'm sure that everyone is aware of. I have
7 Mr. Marini here with us tonight to answer any
8 questions that the Board might have or any of
9 the neighbors.

10 Essentially, that's where we're at right
11 now. That's the project. This is what was
12 conceptually approved back on the 14th of
13 October of 2008. I know that it's been
14 engineered quite thoroughly between Tony's
15 office and it's been looked at very
16 closely - especially with stormwater - with
17 your Town Designated Engineer.

18 Without further ado, I'm pretty much done
19 with where we are and where we have been since
20 2007.

21 Tony, do you have anything to add?

22 MR. STELLATO: Did you want to review the
23 community meetings that we had?

24 MR. CAPONERA: Oh sure. I don't know if
25 you were aware of this either, but back when

1 we first came in front of the Board in
2 November of 2007, the then Chairman suggested
3 that we schedule a meeting with the neighbors
4 and discuss with them their thoughts,
5 concerns, and ideas. So, we did.

6 We had a meeting on November 11, 2007 at
7 Clough Harbour's office. At that meeting there
8 were 29 neighbors and they voiced their
9 comments and concerns. Many of those people
10 are here tonight, but not all of them. Some of
11 them were not happy with the fact that we held
12 it before the Christmas holidays, so we opted
13 to have another meeting which was on
14 November 29, 2008. At that meeting, 14 people
15 showed up; about half of the people that were
16 there for the previous meeting. Again, we went
17 through the project, went through their
18 comments, concerns, ideas, and explained to
19 them. Of course, it's an interesting scenario
20 here because you have Burton Lane residents
21 and then you have the Turner Lane residents.
22 There was a lot of consternation about whether
23 it should be connected. At the end of the day,
24 there were a lot of suggestions of a one-way
25 road and a two-way road. At the end, it was

1 this Board's determination based on the public
2 health, safety, and welfare of the Town, and
3 based upon the recommendations of your public
4 Highway Safety Committee that this be a
5 two-lane connection road for safety purposes.
6 That's what this Board voted on back in
7 October of 2008.

8 Tony, I don't think that you have much to
9 add, do you?

10 MR. STELLATO: No, I think that we should
11 let Brad speak.

12 CHAIRMAN O'ROURKE: Yes, let Brad speak.

13 MR. GRANT: We have reviewed the plans,
14 reports, and documents of this project on at
15 least two occasions. There has been a lot of
16 dialogue between those two formal submissions.
17 The latest plans that were reviewed were dated
18 October 2010 and I'm going to skip over a lot
19 of what I call housekeeping items.

20 There are proposals for stormwater
21 treatment in both water quality and water
22 quantity peak flow evaluations. There are two
23 stormwater ponds. There are pocket ponds.
24 There are septic New York State DEC treatments
25 practices that are particularly attune to this

1 site that has relatively shallow ground water.
2 These ponds would have a permanent pool and
3 excess storage above that permanent pool for
4 storm events of various magnitudes of up to
5 and including the 100 year storm that will
6 come someday. In addition, there are a couple
7 of lots that have dry swales, which are
8 essentially sand filtered within a ditch that
9 treat the water quality as a result of
10 development.

11 We have reviewed the stormwater
12 management report that Clough Harbour has done
13 on several occasions. We've had our own
14 findings and reports and we've made some
15 suggestions. Primarily, this is very similar
16 to that as we originally reviewed.

17 There are drainage concerns in this area
18 practically downstream, and extending through
19 the Albany Rural Cemetery property down to
20 Cemetery Avenue. In a past role for the Town
21 of Colonie with another firm, I had looked at
22 some of those concerns and particularly on
23 this project. It is in a sensitive water shed.
24 There are issues down in the Albany Rural
25 Cemetery. There are some culverts on Cemetery

1 Avenue that are in dire need of maintenance.
2 The important part of this project is that was
3 requested and appropriately so that this
4 project and the applicant meet the
5 requirements of the New York State DEC design
6 guidelines and the stormwater permit.
7 Particularly with interest to the deep flow
8 attenuation and that no increases in run-off
9 from the site for the 10 year and the 100-year
10 storm are allowed to occur. Often on these
11 projects, that can be a challenge. The
12 creation of lots, driveways, roofs, and roads
13 all have impervious area, and without
14 mitigation would increase the run-off from the
15 site. It's important to have these features
16 for the water quality and improving the
17 retaining sediments and pollutants that can be
18 in a residential subdivision for control, and
19 to regulate the outflow of stormwater from the
20 devices. A lot of people were able to take a
21 look at the plan.

22 Tony, could you just point out the two
23 stormwater ponds and where they are?

24 Those are the primary treatment devices
25 proposed for the project. We have gone through

1 the calculations and there are reductions in
2 the 10-year storm with regard to the proposed
3 development condition, as compared to the
4 predevelop condition for this property. I've
5 gone through the numbers and I'm satisfied
6 that they have met the intent of the permit
7 with their design and provisions for access
8 for excess stormwater.

9 CHAIRMAN O'ROURKE: Is that next year's
10 regs, or this years?

11 MR. GRANT: That's this years. Next years
12 regs talk about the green infrastructure and
13 the provision of consideration factors and
14 maintaining the existing natural features and
15 reducing impervious areas. This project has a
16 lot of wetlands. A green belt going diagonally
17 through the middle of the project has really
18 effected the allowable density of this
19 project.

20 The Army Corp of Engineers has been
21 involved in this project in the permitting
22 process. There have been requirements and
23 conditions which the applicant is meeting. So,
24 the development has been scaled down. Victor
25 touched on the fact that at one time it was 27

1 lots and now it's looking at 19. In particular
2 those natural areas have been preserved and
3 minor wetland impacts will be mitigated, but
4 the intent of the applicant is probably to
5 receive an approval from the Town of Colonie
6 and to be able to get an MS4 acceptance form.

7 CHAIRMAN O'ROURKE: By March?

8 MR. CAPONERA: Yes. We have clearly
9 advanced on this. We've had multiple meetings
10 with the Army Corp and DEC and it's that far.

11 CHAIRMAN O'ROURKE: You don't need
12 anything from SEAMAB?

13 MR. STELLATO: We have our SEAMAB.

14 MR. CAPONERA: We've done significant
15 work since the last time that we were here.

16 MR. GRANT: The SEAMAB is the watercourse
17 protection permit. There is a watercourse that
18 goes through there. There are setbacks from
19 that and there are limitations as to what one
20 can do in there.

21 FROM THE FLOOR: Who oversees that?

22 MR. GRANT: The Town does.

23 Some mitigation within that watercourse
24 might have to go through the mitigation
25 process, and that was received in November.

1 MR. STELLATO: I think that sounds right.

2 MR. NARDACCI: I'd be interested to see
3 going forward the correspondence with the Army
4 Corp. I didn't see anything in our information
5 on that.

6 MR. STELLATO: It's been a real back and
7 forth process. We've got a summary and what I
8 can do is before the next meeting, get that to
9 Brad and get that into your packets.

10 MR. NARDACCI: Joe, that might be
11 something that people would be interested in
12 and it may be something that you could post on
13 the website.

14 CHAIRMAN O'ROURKE: Brad, one of my main
15 concerns was the sewers.

16 MR. GRANT: The sanitary sewer system as
17 proposed - there was a letter from a local
18 resident discussing sanitary sewer odors,
19 particularly in the summer.

20 There is a pump station down near Burton
21 Lane and as I understand it, I had some
22 discussions once we received a copy of that
23 letter. I had some discussion with Pure
24 Waters. They went down to check on the pump
25 station and in a nutshell, it's not receiving

1 enough flow for it to turn over. It resides in
2 there so long and it becomes septic.
3 Particularly with the warmer temperatures,
4 that's when you notice it. It will be probably
5 less of an issue now, but what it needs is
6 more flow. As I understand it, there are five
7 lots in Burton Lane that are approved lots,
8 but haven't been built yet. A combination of
9 those lots and this project will produce
10 enough flow to keep that pumping at a time
11 where it won't become septic.

12 Sometimes when a force main goes into a
13 gravity manhole, it can be a messy manhole, if
14 you will, and that could be a source of odor;
15 but it wasn't that. When they checked the time
16 charts on the pump stations, the realization
17 was that there wasn't much at all because of
18 the flow.

19 FROM THE FLOOR: You're talking about the
20 pump station that's on Schuyler Road?

21 MR. STELLATO: It's off of Burton. This
22 is the extension of Burton Lane. At the end of
23 Burton Lane there is an asphalt driveway that
24 goes down to this detention pond. The pump
25 station is right about here (Indicating).

1 FROM THE FLOOR: Is all the waste from
2 this whole development going to that one pump
3 station?

4 MR. STELLATO: No, that's not true. The
5 sanitary sewer in the north part of the
6 project is going to pull by gravity out to
7 Turner Lane into these areas out here
8 (Indicating). The only portion of the pump
9 station that it will serve are these seven
10 lots on the south side of the wetland. As Brad
11 mentioned, the additional flow is going to
12 improve the situation.

13 CHAIRMAN O'ROURKE: It might.

14 FROM THE FLOOR: So you're saying that
15 water is going flow from that pond out to
16 Turner?

17 MR. STELLATO: Not the pond, but you'll
18 have houses on these lots along Burton Lane -

19 FROM THE FLOOR: Right by that
20 cul-de-sac.

21 MR. STELLATO: Right now the sewer on
22 Burton Lane is essentially a down grade all
23 the way down. This follows the grade to the
24 road and it goes to the cul-de-sac and at the
25 very end of the cul-de-sac, there is an

1 asphalt driveway that goes off -

2 FROM THE FLOOR: I understand that. You
3 were talking about on the right side of the
4 diagram.

5 MR. STELLATO: We're talking about
6 sanitary? The sanitary sewer from these lots
7 will flow to the street. That's going to flow
8 north.

9 FROM THE FLOOR: Uphill?

10 MR. STELLATO: No, it will flow downhill.

11 FROM THE FLOOR: That's uphill.

12 CHAIRMAN O'ROURKE: Yes, but they'll be
13 the sewer lines in and they'll be in the
14 street.

15 MR. STELLATO: The sewer on Turner Lane
16 is deep enough to allow us to start relatively
17 shallow and go deeper and connect with
18 gravity. The grade is there. We've done the
19 profiles and actually Brad has seen the
20 profiles and it does flow.

21 FROM THE FLOOR: I have a question and
22 this might be for Counsel.

23 If they plan this and put this in and it
24 gets screwed up, will the immediate neighbors
25 and neighborhood that are bordering the

1 land - do they have any recourse to the Town,
2 or to the developer, or to anyone?

3 CHAIRMAN O'ROURKE: The way that
4 infrastructure works is that it wouldn't be
5 taken over until the Town accepts the
6 dedication.

7 MS. VAIDA: The Town will eventually take
8 it over, if that answers your question. They
9 wouldn't take it over until it's been done
10 according to the specifications.

11 MR. MARINI: In English, it means that I
12 can't get building permits until the
13 infrastructure is in and certified by the Town
14 that it's built according to their plan.

15 FROM THE FLOOR: And if it fails?

16 MR. MARINI: I've got a problem.

17 FROM THE FLOOR: What if they file for
18 bankruptcy, what is your recourse?

19 MR. MARINI: Hasn't happened to me yet.

20 FROM THE FLOOR: If the pump station
21 needs more flow, it requires you to develop
22 more to get that flow, if I'm understanding
23 that.

24 CHAIRMAN O'ROURKE: Possible.

25 FROM THE FLOOR: That's what they said.

1 They need more flow and they'll get that with
2 more development.

3 MR. STELLATO: There is an older problem
4 right now. Some of the residents on Burton
5 Lane have complained about the odor at certain
6 times of day. The conclusion has been, as Brad
7 mentioned, that the pump doesn't operate
8 enough because there isn't enough flow to
9 exercise it. So, the wastewater will sit
10 there. The pump station is essentially a big
11 concrete manhole which pumps. What happens is
12 the pumps that generate flow flows by gravity
13 into that big concrete manhole. When it fills
14 up to a certain level a flow switch kicks on
15 and the pump comes on and pumps it out.

16 FROM THE FLOOR: So when you built this
17 pump station were you aware that there
18 wouldn't be enough flow?

19 MR. STELLATO: We were not the
20 engineering firm that designed this pump
21 station, but I would assume that it was
22 designed for some future flow down the road.

23 CHAIRMAN O'ROURKE: But this was pump to
24 pump. This is a pump system to a pump system.

25 MR. STELLATO: No, we're all gravity to

1 pumps. Everything in our project is gravity.

2 MR. CAPONERA: Yes, we have no pumping
3 station.

4 MR. MARINI: If I could clarify, when I
5 became involved in this, I wasn't aware of any
6 complaints from anyone on Burton Lane. The
7 project hadn't been built out yet. So, this
8 summer there was still three or four homes
9 that were in construction and three empty
10 lots, which have since all been built and
11 there is only two houses that are unoccupied.
12 So, the pump station is now receiving more
13 flow as a result of building the remaining
14 houses on Burton Lane. Right now, it's only
15 not receiving flow from those two houses.

16 CHAIRMAN O'ROURKE: Brad, I think that's
17 information that this Board is going to want
18 on January 11th. You know what the times were
19 that the pumps were kicking on the last time?

20 MR. GRANT: I can get that information.

21 CHAIRMAN O'ROURKE: Find out what it was
22 and what it is today.

23 FROM THE FLOOR: Is this pumping station
24 business - is this all up to standards? Is
25 this what the Town Planning Board really

1 believes is a good thing or is there something
2 else?

3 CHAIRMAN O'ROURKE: Honestly, ma'am, we'd
4 much prefer everything travel by gravity.
5 Gravity doesn't fail. Pump stations can fail.
6 Again, it's added infrastructure. Certainly it
7 costs Mr. Marini money to put the pump station
8 in. But then it's turned over to the Town so
9 ultimately we, as taxpayers, own the pumps,
10 and do the maintenance. It's either that or we
11 don't develop the Town. There are areas that
12 you do have to pump. We also have to be
13 reasonable. It's not reasonable to think that
14 they can't develop.

15 FROM THE FLOOR: So that pumping station
16 is reverted to the Town?

17 CHAIRMAN O'ROURKE: Yes, it is.

18 FROM THE FLOOR: You don't have to
19 develop, especially in this economy, if it's
20 going to end up costing us more money to run
21 this kind of an infrastructure. We're not
22 talking about commercial or industrial.
23 They're not putting up an adult housing
24 facility. We're talking about residential.
25 That cost us more to maintain.

1 CHAIRMAN O'ROURKE: You're right, but
2 Mr. Caponera; Mr. Garrity paid taxes on his
3 land, right?

4 MR. CAPONERA: For approximately 100-some
5 years.

6 CHAIRMAN O'ROURKE: So, Mr. Garrity has
7 some right to develop his property.

8 MR. STELLATO: Just for the record, we're
9 not proposing a pump station. We're all
10 gravity.

11 CHAIRMAN O'ROURKE: There was some talk
12 about going down near Fenway - gravity -- but
13 again, it doesn't do any good if the pump
14 station that's in - the infrastructure that's
15 in is low on flow. It doesn't make sense. I
16 think what's important is to get what the
17 timing of the pumps was when the odor began.
18 Certainly, if I owned property on Burton and
19 spent \$550,000 on a house and had sewer smell,
20 I'd blame the Town. I pay my taxes and I don't
21 want sewer smell. So, it's a reasonable
22 request and I think that we need to ensure
23 these folks that we're going to take care of
24 the issue.

25 MR. CAPONERA: Let me just mention a

1 comment that I think is pretty important. The
2 Town Pure Waters Department is requiring the
3 developer, our client, to run a dry sewer line
4 all the way to where the paper street used to
5 be, in the event that the Town ever likes to
6 take this property by eminent domain. That's
7 another requirement of the Town.

8 CHAIRMAN O'ROURKE: Then honestly, who in
9 Pure Waters requested that? Dave McMorris? So,
10 we're going to make the developer put a line
11 in to a paper street until the Town figures
12 out what we're doing?

13 MR. CAPONERA: Former.

14 CHAIRMAN O'ROURKE: It's a former? Who
15 took it?

16 MR. CAPONERA: Were you around when I
17 discussed the history of adverse possession
18 claim was made?

19 CHAIRMAN O'ROURKE: But it never went,
20 right?

21 MR. CAPONERA: The adverse possession
22 claim was granted to the owners of each
23 property on each side of the paper street.

24 CHAIRMAN O'ROURKE: How much do they want
25 for it? Why can't he buy it?

1 MR. CAPONERA: The number that was thrown
2 out there was astronomically high.

3 FROM THE FLOOR: We don't want the
4 traffic coming through Fenway. That's the
5 paper street that you're referring to?

6 CHAIRMAN O'ROURKE: Right.

7 FROM THE FLOOR: No one wants it. No one
8 wants this development.

9 CHAIRMAN O'ROURKE: No one is saying to
10 develop the street through it. He wants to put
11 a sewer line seven feet under the ground and
12 connect it.

13 FROM THE FLOOR: We don't care what they
14 want to do. We're telling you that we live in
15 the community. A petition was signed and
16 nearly 100 names - everybody is unanimous on
17 this with very few exceptions. They don't want
18 this development. It changes the character of
19 our area - of our community. They don't want
20 it. It destroys the wetlands that are in
21 there. It destroys the animals. They killed
22 all the beaver. They could have trapped them
23 and taken them away, but they killed them
24 because it was cheaper. That should tell you
25 what kind of people are developing this

1 property. Now we're going to have odors? I
2 don't think that you'd want to live there. I
3 think that we need to revisit this whole
4 thing. Take another look at it. Instead of
5 putting dry drainage things in an area where
6 people -- The Court has already decided. The
7 street doesn't go through there. I think that
8 you have to listen to the community. There is
9 a law on the books that says -- maybe our
10 attorney can quote this law. You can't change
11 a whole community when you have people that
12 don't want it.

13 MS. VAIDA: That's one of the factors
14 that are considered.

15 CHAIRMAN O'ROURKE: In SEQRA.

16 MS. VAIDA: But I believe that this was
17 approved a few years ago.

18 MR. CAPONERA: This was approved three
19 years ago at concept. The Garrity family has
20 owned all of this property including much of
21 the lands that some of these neighbors are
22 talking about, where they live. It has been
23 sold over the years and developed. The family
24 goes all the way back to the VanBurens, one of
25 our former presidents. That's how long this

1 family has owned this property. The point is
2 that we have concept approval. The Board has
3 already voted on SEQRA. This has all been
4 designed and engineered with the Town
5 Designated Engineer, and you've heard from the
6 Town Designated Engineer. It's ready to go.
7 The point is that there is nothing here that's
8 any different than was when we came and got
9 our approval for conceptual three year ago,
10 except that it's been engineered pursuant to
11 the comments that were made by the neighbors
12 that we afforded the opportunity to speak at
13 the two meetings that I mentioned a few
14 moments ago. There were also the comments and
15 the concerns that were made by this Board over
16 three years ago. This has been engineered.
17 As far as this issue with regard to this
18 smell, I'm sure that your Town Designated
19 Engineer -

20 CHAIRMAN O'ROURKE: It's a different
21 development. It has nothing to do with this
22 project.

23 MR. CAPONERA: We have no pump stations
24 on this. It's all gravity feed. We have
25 protected all the watercourse areas. A

1 substantial part of this is all protected.
2 There are conservation easements that have
3 been established here. Some of these lots are
4 over 100,000 square feet. But most of them are
5 protected by what's known as a conservation
6 easement. It's all laid out here. This is a
7 very, very small use in terms of the size of
8 this property. Because of the uniqueness of
9 the property. We've taken all of that under
10 consideration.

11 CHAIRMAN O'ROURKE: Trust me, I
12 understand. I walked the property probably as
13 much as the people who live here. I'm very
14 familiar with the project.

15 Ma'am the petition that you mentioned,
16 has that ever been entered in as part of the
17 record?

18 FROM THE FLOOR: It has been entered.

19 MR. CAPONERA: Any petitions that have
20 been put forth, I'm sure have already been
21 handed into the Board two years ago.

22 CHAIRMAN O'ROURKE: Before we walked the
23 property?

24 MR. CAPONERA: I'm not sure when it was.

25 CHAIRMAN O'ROURKE: Ma'am, do you have a

1 date on that? I did not see that in my packet.

2 FROM THE FLOOR: I would need to find
3 out.

4 CHAIRMAN O'ROURKE: If you can to make
5 sure that the Board has that for their
6 consideration.

7 Yes, sir.

8 FROM THE FLOOR: Is it unrealistic to
9 request that since you were the only person on
10 the Board three years ago to walk the
11 land -- when Mr. Caponera says nothing has
12 changed in three years, well the entire makeup
13 of this Board is different. You talk about the
14 Stonehenge project and that you can't change
15 history. Well, here you have a chance to
16 correct it before the mistake is made.

17 CHAIRMAN O'ROURKE: Trust me, I hear what
18 you're saying. I have walked that property.
19 What they are proposing now is significantly
20 better than what it was.

21 Now, again, if I lived where you lived,
22 would I like it? Probably not. But again, it's
23 still America. We have to allow him to
24 develop, reasonably, his property. When I
25 walked it, you could fish in the beaver pond.

1 I walked it. I saw the stream. I have a friend
2 of mine that lives on Beaver Pond and I was a
3 little taken back when Mr. Caponera said, oh
4 there are beavers. I said why the hell do you
5 think they call it Beaver Pond? I didn't know
6 if he was being funny or not at that point.

7 What you do have to understand is that
8 some of the things that were done on that
9 property over the years - some of the culverts
10 that are underground that water runs
11 underground - the Town Designated Engineer is
12 charged with fixing those things. So, some of
13 the issues that you see, the flooding issues,
14 are going to get better with this project. You
15 don't have to believe me, but it's going to
16 happen because the detention ponds - the way
17 that some of that streaming - again, he was an
18 older farmer and what he did was if he had
19 water, he dug a culvert and stuck a pipe in
20 the ground and moved it to where he wanted to.
21 So, there are huge issues on that property and
22 trust me, I've walked it. I've walked it when
23 it's wet, and when it's dry. There are issues.
24 Everyone understands that there is clay. The
25 water isn't going to drain through it. He's a

1 very competent engineer. One thing that I will
2 tell you is that Brad is very, very competent
3 in terms of stormwater. If you want one guy to
4 develop property in stormwater areas around
5 your house, I'd want him. I'm telling you that
6 as I sit here and Brad says that this is going
7 to work and it's going to be better, I will
8 look at your folks and tell you that it's
9 going to be better because Brad does a very
10 good job.

11 FROM THE FLOOR: The three acre piece off
12 of the original plan - where is that now?

13 CHAIRMAN O'ROURKE: It's up in the front.

14 FROM THE FLOOR: I was told by someone
15 that it no longer has to comply with the DEC
16 wetlands; is that true? I mean, what kind of
17 buffer will we get?

18 CHAIRMAN O'ROURKE: To a degree, that is
19 true. It can be done as a minor so it doesn't
20 have the SWPPP -

21 MR. STELLATO: We're just not cutting it
22 up anymore. It's a single lot for development.
23 All that is left to do is build a house.

24 CHAIRMAN O'ROURKE: Right, but to answer
25 her question fairly - I'm not an attorney, but

1 no, it doesn't have to comply with the
2 stormwater regulations.

3 MR. STELLATO: We are planning to do more
4 there than is required. There are wetland
5 regulations that would prohibit altering -

6 CHAIRMAN O'ROURKE: Right, on the ACLE.

7 MR. STELLATO: However, we're working
8 with the Army Corp of Engineers and you can
9 see right now what we have agreed to do on
10 this lot, and that's to include some
11 conservation easements and protect them the
12 same way that we're protecting -

13 CHAIRMAN O'ROURKE: So answer the ladies
14 question. What kind of buffer are you going to
15 give on that lot? It's like 3.2 acres.

16 MR. CAPONERA: It's 3.01 acres.

17 MR. STELLATO: I don't know the exact
18 number, but it's going to encompass all of
19 this.

20 CHAIRMAN O'ROURKE: In the deed, forever.

21 MR. STELLATO: Absolutely. It's going to
22 include some upland areas that aren't
23 currently there.

24 CHAIRMAN O'ROURKE: But that area is a
25 real swamp out there.

1 MR. STELLATO: This actually comes up
2 back here up in this area (Indicating).

3 CHAIRMAN O'ROURKE: Well, yes, after the
4 pond was drained.

5 MR. STELLATO: Because there is wetland
6 there we're just going to put it into the
7 buffer.

8 CHAIRMAN O'ROURKE: Does that answer your
9 question, ma'am?

10 FROM THE FLOOR: Yes. So there is
11 200 feet between the edge of the wetland and
12 the construction.

13 CHAIRMAN O'ROURKE: No, 100 feet.

14 MR. STELLATO: Actually this is a federal
15 wetland, so there is actually not a buffer
16 requirement on federal wetland. The state
17 wetland requires a 100 feet. However, we will
18 be setting the structures back appropriately.
19 The Army Corp is looking for 40 to 50 feet,
20 which we can comply with.

21 CHAIRMAN O'ROURKE: It wasn't delineated?
22 There is only federal jurisdiction?

23 MR. GRANT: That's my understanding.

24 MR. STELLATO: We are actually providing
25 a buffer, though. Our conservation easement is

1 not part of the wetland boundary. We are
2 providing a buffer where we can get a buffer
3 in there including some upland area so that
4 there is some space between the conservation
5 easement and the beginning of the wetland. The
6 edges of that are going to be signed so that
7 it's visible.

8 Yes, ma'am.

9 MS. STANDISH: I am one of the neighbors
10 that has come to many of these meetings.

11 Mr. Garrity has every right to develop
12 land. He doesn't have the right to adversely
13 effect the neighborhood. You know, 19 houses,
14 that's big. The problem is that it's not just
15 19 houses because you have all of Burton Lane
16 going down through there, and that adversely
17 affects our neighborhood. The people on Turner
18 Lane have told the previous Planning Board
19 over and over again and they didn't listen to
20 us at all. They went and they pushed through
21 the connection and then they added more houses
22 on Burton Lane, even when this plan wasn't
23 approved. Burton Lane had another option for
24 other houses, but they didn't take it. They
25 waited.

1 CHAIRMAN O'ROURKE: Again, we couldn't
2 change whatever happened in the poor planning
3 that has happened in the Town of Colonie.

4 MS. STANDISH: But you have an
5 opportunity right now -

6 CHAIRMAN O'ROURKE: No, because at this
7 point now, those residents on Burton Lane are
8 so far beyond what the state says is normal
9 for a cul-de-sac road -- there is no second
10 means of egress on that road.

11 MS. STANDISH: I understand that. And you
12 know what? That was again, poor planning in
13 the Town of Colonie.

14 CHAIRMAN O'ROURKE: Right, but now we're
15 charged with taking care of those people and
16 if it was your daughter or son that bought a
17 house on the end of Burton Lane and something
18 happened further up and they weren't able to
19 get an ambulance there you'd say, how could
20 the Town do that?

21 FROM THE FLOOR: But if it was my son or
22 daughter at the end of Turner Lane getting hit
23 by a car because of all the traffic that's
24 going to generate -

25 CHAIRMAN O'ROURKE: Again, there is a

1 legitimate concern about the width of Turner
2 road.

3 FROM THE FLOOR: Then you have the
4 traffic again on the other end, at
5 Schuyler Road.

6 CHAIRMAN O'ROURKE: Again, the community
7 has to grow, but you have to grow it
8 efficiently and effectively. There is no other
9 way around it.

10 MS. STANDISH: That's the problem. The
11 Planning Board didn't listen to us.

12 MR. NARDACCI: This project has changed
13 quite a bit in the last few years.

14 MS. SMITH: The north side, which they
15 sold separately - they keep saying we started
16 at 41 and we're down to 19. Who is going to
17 take the houses that they have on those
18 11 acres? That's not part of this. There were
19 six houses that were squeezed into that three
20 acres which is now no longer a part of this.
21 We haven't come down that much. It's 19 houses
22 plus two lots that are going to be ponds
23 because they have to be. Where did they
24 reduce?

25 MR. STELLATO: Here is our 27 lot plan

1 for that piece of property.

2 MS. SMITH: So that's three acres and you
3 couldn't because you could not cross that
4 wetland. That's where we started so you had to
5 change that. You had access in through Fenway,
6 which you didn't have the right to when you
7 made that plan. So you can't count that
8 either.

9 MR. CAPONERA: I disagree with that
10 comment, ma'am.

11 FROM THE FLOOR: There is no sensitivity
12 to our neighborhood at all because you lost
13 that suit of the paper street and you're still
14 appealing that. You're still conditioning that
15 you're going to go through onto Fenway.

16 MR. CAPONERA: I don't mind people
17 talking, but when things are said that are
18 completely untrue - no, it's not being
19 appealed. It's over. If we're going to make
20 comments, make them factual. Do not make false
21 comments.

22 FROM THE FLOOR: Did you appeal it?

23 MR. CAPONERA: Yes, it was appealed.

24 FROM THE FLOOR: Then I didn't hear the
25 end of it.

1 MR. CAPONERA: It's over.

2 This project has gone through more
3 changes than any other project that I've done
4 in 33 years in practice in front of this Board
5 and in any other Board in the State of New
6 York. I've appeared in front of many. This has
7 been a substantial change from what we started
8 with as was just shown to you by my colleague.
9 We've gone through this four other times, not
10 to mention the two private meetings that I've
11 met with all the neighbors, including
12 Ms. Standish.

13 FROM THE FLOOR: Which were strictly
14 public relations because every person or the
15 vast majority that came to those neighborhood
16 meetings were still completely dissatisfied.
17 It was a bitch session. Everyone bitched and
18 nothing got done.

19 MR. CAPONERA: I would respectfully
20 disagree with the gentleman's comments because
21 as we showed before, there were 27 lots and
22 now there are 19. To sit there and say that we
23 didn't do anything is a flat out
24 misrepresentation. Does this look like nothing
25 was done after four meetings with this Board

1 and listening to the various comments of the
2 departments and the public service department
3 and the public safety department and having
4 two private meetings with these folks? Does
5 that sound like we didn't do anything? All you
6 have to do is look at what's been done. Some
7 of those lots are 100,000 square feet. The
8 minimum lot size in a single-family
9 residential development is 18,000 square feet.
10 That's five times the minimum requirement.
11 Does that sound like a developer that has done
12 nothing?

13 CHAIRMAN O'ROURKE: Tom?

14 MR. NARDACCI: I'd just like to make a
15 comment. I've been on this Board for three
16 years and have looked at this project,
17 reviewed a lot of this project, and listened
18 to the residents. Developments that come
19 before this Board that abut other
20 neighborhoods are always a point of
21 contention. Look, I live in Loudonville.
22 Behind me is 15 acres of farm. I don't want it
23 developed, but you know what? Some day when
24 someone wants to build, he has a right. So,
25 what we sit here and ask for is

1 reasonableness. Reasonableness from the
2 developer, as well as the residents. I hate
3 people to walk away and say, well, he didn't
4 listen. But if you came here to say we don't
5 want anything ever built there ever, then it's
6 the wrong approach because it's not fair. It's
7 not reasonable. They have rights to develop.

8 From what we saw the first day that I
9 started on this Board and what was presented
10 before we got here to where we are now, is a
11 much improved project. What they are proposing
12 to build there is not going to bring down the
13 values of your properties. They're going to
14 build high end homes with very large lots;
15 100,000 square foot lots.

16 So, I'm sitting here and I'm listening to
17 the back and forth, but you're not getting
18 yourselves anywhere. Let's move forward. Move
19 the debate forward. What would you like to
20 see? I think that we've already gone down the
21 road of what you don't want to see. We've had
22 so many conversations about this. Now we're
23 into the nitty gritty.

24 This is the stormwater management plan
25 that he submitted that our engineer reviewed.

1 How do we ensure that this is 100 percent
2 accurate and that this is 100 percent right so
3 that the water course is improved, and the
4 sewer lines are improved? That's where we're
5 at now. I want you to know that we're trying
6 to listen, but I'm not hearing a lot of other
7 ideas. It's just that you don't want anything.
8 That's what I hear, because I haven't heard
9 anything else.

10 CHAIRMAN O'ROURKE: Yes, ma'am.

11 FROM THE FLOOR: There seemed to be so
12 much emphasis on the environment. He said
13 green areas are going to remain green. I don't
14 know why that was understood in Latham, but in
15 Loudonville nobody seems to care.

16 I walk my dog and I walk along the
17 neighborhood and now I see lots of empty
18 houses and then I get to Turner and they're
19 building more houses. Yes, they're bigger and
20 they're newer, but it doesn't make sense. I do
21 think that more empty houses will remain.

22 I used to love walking my dog. The
23 quality of my life is very good. I considered
24 myself very blessed to be where I was. I don't
25 like to walk on Turner Lane anymore because it

1 aggravates me to see this all going on. It
2 aggravates me to think about the repercussions
3 of it.

4 I live all the way up on Wildwood. At my
5 house I've had raccoons, fox, and badgers.
6 They didn't used to come before and I'm afraid
7 to tell you because I think that you'll just
8 go set more traps and kill them all. It's just
9 not right. The environmental consideration of
10 the quality of life is just as important in
11 Loudonville.

12 MR. STELLATO: Mr. Chairman, I'd like to
13 toss some numbers out there with respect to
14 greenspace. The project site is 23 plus acres.
15 Of that, approximately 5.5 acres is regulated
16 wetland. We are impacting 0.38 of those acres
17 of wetland. We are offsetting that by creating
18 double that now, and we're putting 10 acres
19 into conservation easements. So, nearly double
20 the amount of wetland is going to end up in
21 conservation.

22 CHAIRMAN O'ROURKE: And most of that
23 impact is because we told you that we wanted a
24 two-way road.

25 MR. STELLATO: Correct.

1 MR. CAPONERA: That's exactly correct.

2 CHAIRMAN O'ROURKE: Ma'am, I understand
3 what you're saying. I live in Loudonville. But
4 when you bought your house in Loudonville
5 nobody guaranteed you that Mr. Garrity wasn't
6 going to develop his property. So you don't
7 have a right to that.

8 FROM THE FLOOR: Why do we care about
9 Latham and not Loudonville?

10 CHAIRMAN O'ROURKE: Ma'am, as my
11 colleague said, I don't think that you're
12 understanding that this is reasonable. The
13 reasonable development of this property, in my
14 estimation, is being done. I'm of the opinion
15 that our Town Designated Engineer, who is the
16 best stormwater guy -- I'm telling you that
17 the flooding is going to be less. This project
18 is going to fix it. I'm more concerned on the
19 waste end - on the sewer end.

20 MS. ANTONIO: I'm Beth Antonio and I live
21 on Turner Lane.

22 When you're talking about something that
23 might make things a little better, why not
24 consider it making it one-way from Turner Lane
25 through Burton Lane instead of two ways?

1 MR. STELLATO: I can answer that. We did
2 consider that. We actually put a plan in front
3 of the Planning Board. It was a slightly less
4 impact, but in the end in the interest of
5 public safety, it was determined by Pete
6 Lattanzio, that had the final comment on it,
7 that the two-way connector road was desirable
8 in the interest of public safety.

9 Obviously, we would rather build a one-
10 way road. It would be a lot less expensive.

11 MS. ANTONIO: It makes a lot more sense.

12 MR. STELLATO: In the interest of the
13 Town, it's been determined to be a two-way
14 road.

15 CHAIRMAN O'ROURKE: It flies in the face
16 of the Comprehensive Plan.

17 MS. ANTONIO: Well, they can make it a
18 two-way road. I can't imagine people on Burton
19 Lane - why they would want it as a two-way
20 road because people are going to come north on
21 Route 9 and they're going to cut done through
22 Burton Lane and go through East Ridge.

23 CHAIRMAN O'ROURKE: No, they're not.

24 MS. ANTONIO: Yes, they will. If you made
25 it one-way going into Burton Lane, then

1 emergency vehicles could obviously still go
2 in.

3 MR. CAPONERA: With all due respect, we
4 discussed this to death. I don't know if you
5 were at those meetings when this Board was
6 reviewing them, but we really painstakingly
7 went over this. At the end of the day, it was
8 the Board's determination based upon an expert
9 recommendation of the public health safety and
10 welfare of the Town that this be a two-way
11 road. If we had to do the one lane, it would
12 not be in the best interest of the Town.
13 That's why when they voted on concept three
14 years ago, they voted to make it two-way.

15 MR. BLAIR: The minutes do not say that
16 the Board actually voted on it. You were on
17 the Board and you can show me in writing
18 because it's not in these minutes. It says,
19 you ought to consider the neighbors. It
20 doesn't say that road was approved for
21 two-way.

22 I also have the Colonie Land Use Law
23 adopted in January 4, 2007. Law number one
24 under the article, impact on health safety and
25 welfare. I presented that to the previous

1 Board prior to the meeting. It says in here
2 and I'm going to quote you:

3 "The potential impact in relation to the
4 health, safety, welfare and comfort and
5 convenience of community -"

6 It's right here in black and white. I
7 sent it to Joe and I sent it to the Town
8 Attorney and we had a meeting.

9 Am I right Joe?

10 MR. LACIVITA: Yes.

11 MR. BLAIR: And I was told that they were
12 going to do a do over and I never heard any
13 more about it.

14 CHAIRMAN O'ROURKE: A do over. That's a
15 new term. Did that come from the Town
16 Attorney?

17 MR. BLAIR: The point is this: The Board
18 acted, in my opinion, by ignoring this section
19 of the law that they did not make a
20 designation and there was going to be more
21 discussion.

22 Does anybody here remember a vote that
23 says we're going to make it a two-way road?
24 Does anybody here remember that, beside
25 Victor, that the decision was made by this

1 Board?

2 CHAIRMAN O'ROURKE: Yes, I do remember.

3 MR. BLAIR: I was there. We didn't hear
4 it.

5 CHAIRMAN O'ROURKE: I've missed one
6 meeting in three years.

7 MR. BLAIR: We didn't hear it. The thing
8 that we were concerned about is the traffic
9 safety. We have over 120 houses in that
10 neighborhood. Now, the traffic coming down
11 Burton into Turner is going to be horrendous.

12 CHAIRMAN O'ROURKE: These people pay
13 their taxes. They have the right to develop
14 their property. It's America. You pay your
15 taxes.

16 MR. BLAIR: Mr. Garrity, God bless him,
17 was there 110 years. He had a farm exemption.
18 That was legal. He didn't pay the same amount
19 of taxes that I did for 40 years, but he got
20 away with it because he said I have an
21 agricultural entity here. He didn't grow one
22 god damned tomato. He had a bunch of horses.

23 CHAIRMAN O'ROURKE: He followed the law.

24 MR. BLAIR: We begged the other Board to
25 give us a little support for the neighborhood.

1 We love this neighborhood. We don't expect
2 them not to build there. We don't expect to
3 have another 150 cars coming down Turner lane.

4 CHAIRMAN O'ROURKE: Let me tell you one
5 thing. Whether this development ever got built
6 or not, the traffic on Turner Lane is going to
7 triple anyway. You understand that. It's used
8 right now as a cut through.

9 FROM THE FLOOR: But it's within reason.

10 CHAIRMAN O'ROURKE: Now we get into it's
11 within reason.

12 FROM THE FLOOR: I live over on
13 Schuyler Hill Road and when I initially
14 attended these meetings I was told that a road
15 could not be put across federal wetlands. That
16 was the original statement. Then you allowed
17 Burton Lane to be developed. Now all the
18 sudden you're using Burton Lane as an excuse
19 to build a road. The houses on Burton Lane
20 shouldn't have been built.

21 FROM THE FLOOR: Wasn't that Mary
22 Brizzell's property?

23 CHAIRMAN O'ROURKE: It's sad to a degree.
24 I agree.

25 MR. BLAIR: You folks have to step up to

1 the plate and say, listen, we're going to do
2 this right gosh darn it. We're going to do it
3 right this time. We're not going to let those
4 baboons that were sitting in our seats dictate
5 that we should screw up the next 25 or 45
6 years. I'm appealing to you guys. Please, use
7 what we're saying to you that this is not a
8 great set up.

9 CHAIRMAN O'ROURKE: I disagree. I think
10 that there has been more thought and more
11 planning in these 21 lots than all of Burton
12 put together. And again, maybe that's no
13 solace. Maybe it's not. I don't live exactly
14 where you live, but I do understand what
15 you're saying. The right to develop this
16 property - this is the least impact in this
17 area.

18 FROM THE FLOOR: Three houses would be
19 the lease impact. Let them put in three
20 houses.

21 CHAIRMAN O'ROURKE: Are you going to buy
22 the rest from the Garritys?

23 FROM THE FLOOR: They don't need it.

24 CHAIRMAN O'ROURKE: They don't need it so
25 you'll pay extra in your taxes?

1 FROM THE FLOOR: Burton was a mistake to
2 extend it. You're going to exacerbate the
3 whole problem.

4 CHAIRMAN O'ROURKE: For the health and
5 welfare of the people in that development,
6 there has to be a second means of egress.

7 MR. NARDACCI: C.J., how long is Burton?

8 CHAIRMAN O'ROURKE: Right now,
9 2,300 feet.

10 MR. NARDACCI: And what is the state
11 standard for cul-de-sac for emergency
12 services?

13 CHAIRMAN O'ROURKE: It's ridiculous. It's
14 like 800. It's over three times.

15 MR. NARDACCI: It's over three times what
16 the state standard is for cul-de-sacs for
17 emergency services.

18 FROM THE FLOOR: I went to a meeting and
19 they said that the original plan for Burton
20 had a stub street to Turner lane. That's
21 exactly what it said on the plans. When we
22 asked at the meeting when they were approving
23 it they said, that's a totally different
24 entity. We can't talk about that. So it was
25 approved with a stub street on land that

1 wasn't even being developed yet; assuming that
2 some day they were going to do it. That was a
3 mistake and that's where it all started.

4 MR. CAPONERA: I have the minutes that
5 I'd like to read into the record again for
6 this gentleman who didn't think that it was
7 voted on by the Board. I'd like to read this.
8 These are the minutes from the meeting on
9 October 14, 2008. I'm going to read the
10 appropriate language.

11 "Senior Planner DeLaughter advised the
12 Board that additional comments have been since
13 received from the Chairman of the Town Highway
14 Safety Committee reinforcing their position
15 that a two-way street connection should be
16 made between Burton and Turner Lane and
17 address residents concerns."

18 Then getting down to the last paragraph.

19 "A motion was made by Member Holland,
20 seconded by Member Platt with a vote of six to
21 zero. The Board granted concept approval to the
22 proposal on the motion by Member Cosgrove,
23 seconded by Member Silo with a vote of six to
24 zero, subject to incorporating the various
25 departments comments in the final plan."

1 CHAIRMAN O'ROURKE: That was my
2 recollection, as well.

3 FROM THE FLOOR: What was the date of
4 that meeting?

5 CHAIRMAN O'ROURKE: October of 2008.

6 FROM THE FLOOR: These minutes reflect
7 the following:

8 "Member Cosgrove said that the Board
9 needs to consider the input given from the
10 neighbors."

11 That's us. We're on this side.

12 He said that the Board needs to consider
13 the input given by the neighbors prior to
14 making a decision.

15 When the hell did they make the decision
16 when we were here and nobody made it? This
17 isn't right.

18 CHAIRMAN O'ROURKE: I was here.

19 FROM THE FLOOR: You were here. We were
20 here, too. It wasn't right. I have the minutes
21 here. This is the printed evidence.

22 MR. CAPONERA: That's the October 12th
23 meeting. The meeting that you voted was
24 October 14th.

25 FROM THE FLOOR: Where was the public?

1 MR. STELLATO: The discussion was on
2 August 12th. In October the staff comments came
3 in.

4 CHAIRMAN O'ROURKE: Right, but they
5 didn't change. They didn't change the two-way
6 road.

7 Those are the steno notes?

8 MR. CAPONERA: These are the published
9 notes of the meeting.

10 CHAIRMAN O'ROURKE: There was no steno at
11 that point?

12 MR. LANE: No, there was no steno back
13 then.

14 CHAIRMAN O'ROURKE: If you believe those
15 notes, I've got land in Florida for you.

16 MR. NARDACCI: One of the upgrades that
17 we made is now we have steno notes at every
18 meeting.

19 CHAIRMAN O'ROURKE: I used to find some
20 nice stuff in those notes. If they were
21 Pinocchio, their nose would be this big.

22 FROM THE FLOOR: You folks have to help
23 us out and stand up and let's do it right.

24 MR. ROSANO: Sir, I want to ask you a
25 question. Which laws and rules do want me to

1 break to make you happy?

2 FROM THE FLOOR: I'm not asking -

3 MR. ROSANO: I've listened to you for a
4 long enough and now it's my turn. So that I
5 don't and this Board doesn't get sued, the
6 Town of Colonie - and you're going to pay the
7 bill for the lawsuit which we're going to
8 lose. So, just tell me which law you want me
9 to break and I'll be more than happy to take
10 into consideration.

11 FROM THE FLOOR: You don't have to break
12 the law. It's here in black and white.

13 CHAIRMAN O'ROURKE: Let's not get
14 confrontational.

15 FROM THE FLOOR: That's exactly what it
16 says. You have to take it into consideration
17 the neighbors. Somebody wrote that. Somebody
18 passed the minutes on the Board. You don't
19 have to break the law. We just want you to do
20 something right here. You're going to screw up
21 an entire neighborhood because you're afraid
22 of being sued.

23 MR. SULLIVAN: C.J., what would prevent
24 someone from leaving Burton and taking a right
25 on Route 9 and then taking another right on

1 Turner?

2 CHAIRMAN O'ROURKE: Nothing.

3 MR. SULLIVAN: I don't see what relevance
4 this connection has.

5 CHAIRMAN O'ROURKE: I don't either.

6 MR. ROSANO: Again, you're going to pay
7 the bill and I'm going to pay the bill after
8 we lose. Again, they're still going to get
9 their project to go through because they
10 already have their concept. There are no do
11 overs. He already has his concept. It's
12 already been passed by a legal Board of the
13 Town of Colonie.

14 FROM THE FLOOR: But this is not correct,
15 as per these minutes.

16 MR. ROSANO: Ma'am, there are mistakes
17 made on court cases all the time.

18 FROM THE FLOOR: But you have an
19 opportunity to correct it.

20 MR. ROSANO: I can't correct a decision
21 that has already been made by a Board. I would
22 love to. There are a lot of things here I'd
23 like to change.

24 CHAIRMAN O'ROURKE: Honestly, this Board
25 right now - it's not up for vote, but we are

1 not bound by concept. We're not bound to say,
2 okay, we gave you conceptual approval - there
3 could be arguments about it, but they do have
4 a neg dec on the SEQRA which allows them to
5 say that the Board found that there is no
6 significant impact, environmentally.

7 FROM THE FLOOR: How is that not
8 significant environmentally?

9 CHAIRMAN O'ROURKE: Because they were
10 issued a negative declaration ma'am.

11 FROM THE FLOOR: By who?

12 CHAIRMAN O'ROURKE: By the Planning
13 Board.

14 FROM THE FLOOR: Can we review what the
15 Corp of Engineers has come up with? I'd like
16 to review that. I haven't seen it.

17 MR. NARDACCI: What we said tonight is
18 that we'd like to see if we could post that
19 information on the Town's website so that it's
20 made available.

21 MS. VAIDA: There is no vote being taken
22 tonight.

23 CHAIRMAN O'ROURKE: Counsel was
24 wondering, sir, the meeting that you had with
25 Joe and the Town Attorney - do you have the

1 date of that meeting?

2 FROM THE FLOOR: It was in 2008. It was
3 at Town Hall. Jean Donovan was there, the Town
4 Attorney was there, the Board President of
5 Albany Rural Cemetery was there, I was there,
6 and Joe was there. There was someone that was
7 there taking some notes. Paula Mahan was
8 there.

9 CHAIRMAN O'ROURKE: And they told you
10 that they were going to do a do over.

11 FROM THE FLOOR: I was told at the
12 meeting there that I have to read the Land Use
13 Law. I finally got the Land Use Law and read
14 it and brought that one to their attention.
15 They said, we didn't pay attention to that.

16 MS. VAIDA: So what was said, is what
17 we're trying to find out.

18 FROM THE FLOOR: Jean Donovan and they
19 said that right at the meeting - Joe verified
20 it - that they were going to review it and
21 there would be another hearing on this
22 property.

23 MS. VAIDA: Is that true, Joe? Do you
24 know what happened?

25 MR. LACIVITA: I think that we

1 subsequently brought it before the Board a few
2 times.

3 CHAIRMAN O'ROURKE: Just legally to let
4 you know, if they were already issued a SEQRA
5 determination, there is only four months that
6 you could bring an Article 78 and go back and
7 change it.

8 FROM THE FLOOR: How would I know that?

9 CHAIRMAN O'ROURKE: The attorney should
10 know that. I'm not an attorney, but I know
11 that. The head of the Planning Department
12 should know that. If you're in a meeting and
13 he told you hey, we'll bring in another
14 meeting, he knows that there is only 120 days,
15 once SEQRA is determined.

16 Victor is laughing. He knows I'm right.

17 FROM THE FLOOR: If procedures weren't
18 directly followed, for some reason or other -

19 CHAIRMAN O'ROURKE: After 2008 Victor,
20 when did we have meetings?

21 MR. CAPONERA: They were on
22 November 7, 2007 - that's when we made the
23 presentation of the 27 lot subdivision. The
24 Board asked us to speak to the neighbors and
25 we did on December 11, 2007 and January 29,

1 2008. After those meetings we then came back
2 in front of the Board on 2/26/08 and had
3 further comment from most of the same people
4 that are speaking tonight. They were saying
5 the same things and similar comments. Then, we
6 came back on August 12, 2008. I don't know
7 when Joe met with these folks. Then we came
8 back on October 14, 2008 for concept.

9 CHAIRMAN O'ROURKE: With a SEQRA
10 determination.

11 MR. CAPONERA: Correct, with a neg dec
12 and here we are three years later.

13 MR. NARDACCI: Was there an extension?

14 MR. CAPONERA: Yes.

15 CHAIRMAN O'ROURKE: Last year.

16 MS. VAIDA: It sounds like there might
17 have been a meeting after your meeting. There
18 was a vote taken. That's what it sounds like.
19 There is no vote being taken tonight and there
20 has been no final determination made on the
21 project. That's going to be done next month
22 and nobody has made up their minds one way or
23 the other how they are going to vote on this.
24 Everyone is going to take into consideration
25 everything that's been said tonight.

1 MS. STANDISH: I don't have any problems
2 with the south side of the street being built.
3 I do have a problem with the change of the
4 character of our neighborhood. It changes the
5 safety for the kids and the bikers and people
6 who like to walk their dogs.

7 CHAIRMAN O'ROURKE: I disagree. Public
8 Safety says that this is the -- we're bound by
9 their determination. They're telling us that
10 this is the safe way to do it. So, you're
11 asking us, as a Board, to take the Public
12 Safety Department that was just rated number
13 one in the country and tell us that they're
14 wrong.

15 MR. NARDACCI: I'd like to know what the
16 opinion is of the residents of Burton Lane.
17 You would get a totally different opinion.

18 MS. STANDISH: If I was living on Burton
19 Lane, I would be singing a different tune. But
20 they also had other options and they did not
21 choose to go that route.

22 CHAIRMAN O'ROURKE: I understand your
23 frustration, but at this point I'm going to
24 close this.

25 I do need to call a public hearing for

1 January 11, 2011 at 7:00, first on the agenda.
2 Do I have a motion for that public hearing?

3 MR. MION: I'll make that motion.

4 CHAIRMAN O'ROURKE: Second?

5 MR. NARDACCI: Second.

6 CHAIRMAN O'ROURKE: All those in favor?

7 ***(Ayes were recited.)***

8 CHAIRMAN O'ROURKE: So January 11th, this
9 will be back before this Board for final
10 determination; one way or the other.
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16 ***(Whereas the proceeding concerning the***

17 ***above entitled matter was adjourned at***

18 ***10:55 p.m.)***

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CERTIFICATION

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

NANCY STRANG-VANDEBOGART

Dated January 5, 2011