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VILLAGE OF WARWICK

INCORPORATED 1867

CHAIRMAN: GEORGE AULEN

MEMBERS: WILLIAM OLSEN, JAMES PATTERSON, JESSE GALLO & RYAN
DENERLEY

Alternate: RAEY WEBSTER

VILLAGE OF WARWICK PLANNING BOARD MEETING OCTOBER 19, 2017

The monthly meeting of the Village of Warwick Planning Board was held on Thursday, Oct. 19, 2017 at Town Hall located at 132 Kings Hwy, Warwick, NY. Present were: George Aulen, Bill Olsen, Jim Patterson, Jesse Gallo, Ryan Denerley, Village Engineer, David Getz and Planning Board atty, Robert Dickover, John Cappello, Ross Winglovitz, John Christison, Michael DeCelestino. Others present were: Geraldine Driscoll, Margaret Bowes, Edward Sattler, Patrick Gallagher, Jackie Wright, Renelle Lorrain, Margaret McNeely, Dan Mack, Teri Mack, John Maxcy, Harry Clark, Jack Pennings, Rachel Berlin, Caroline Martin, Stephen Gross, Kerry Boland, Ruth Woods, Marcela Gross, David Gordon, Dave Smith, Tom Andreas, Rosanne Andreas, Joel Wadeson, Lauren Buturla, Tyler Carey, Fred Schweikent, James Carton, Glen Carter, Matt Lockwood, Susan Graf, Christopher Smith, John Gallagher, Christine Toohey, Gail Graf, Robert Angello, Janice Grave, Jeannine Dreyhaupt, Jim Sciarra, Judith Dickinson and others.

A MOTION was made by Jim Patterson, seconded by Bill Olsen and carried to accept the minutes of the September 21, 2017 minutes. (4 Ayes) {1 Abstention – Ryan Denerley}

Mr. Aulen – The Board received a letter from Hudson Highland Environmental Consulting which will be made part of the record. The Board received a draft the supplement of Part 3. It summarizes the information that was previously discussed and reviewed for the Negative Declaration adopted at the last meeting. Has the Board had an opportunity to review this? The entire Board responded – Yes.

A MOTION was made by Jim Patterson, seconded by Bill Olsen and carried to accept the supplement to Part 3 of the Long EAF. (5 Ayes)

Mr. Aulen read the public hearing notice.

Mr. Aulen – There is a purpose to this hearing; What it is about and just as importantly what it is not about. Tonight's hearing is concerned with a site plan proposal for an eating and drinking establishment at 16 Elm Street. The site plan before this board is the specific proposal for this project. It shows the location of buildings, driveways, parking, drainage facilities and the various accessory infrastructure elements that make up the proposal.

This hearing is designed to hear your comments on these specifics. We invite any comments or suggestions you may have regarding the site plan for the project.

The Board wants your comments, this hearing is designed to receive your comments. We will listen to you carefully. However, there should be and there will be dignity and order to our proceedings. In a moment the applicant's consultants will describe and outline the project. It is not possible to explain every nuance of what is proposed. The site plan has been and remains available for public inspection at the office of the Building Department.

When the applicant has concluded their presentation we will then turn to you for comments.

Just as it is not possible to explain every nuance of the project, it is not possible to answer every question you may have, at least not to any great extent.

If we spent all night answering questions we would never get to the task at hand.

That task is to learn from you what the Board or its consultants might not have yet considered.

Therefore, we ask you not to ask questions, but rather to raise issues.

Your questions will not likely be answered tonight but we will consider all of your comments and questions, and consider all of the issues you raise, into our future proceedings.

You are a large crowd. I am sure many of you wish to speak. In order to hear from you in an orderly fashion, please note the following ground rules for this portion of the meeting:

Everyone wishing to speak must sign in. There is a sign-in sheet. Before making a comment, you must identify yourself and give your address and we ask that you spell your name slowly for our records. The comment of each person is limited to 3 minutes. If time permits, we may hear from you a second time. The time of each person belongs to that person; it may not be assigned or transferred to any other person. The board is interested in issues but it is not interested in the number of people who share interest in each issue. Therefore, please, if the issue has already been raised; if the point has already been made, do not raise it or make it again. We will deal with each issue brought to us after the hearing is closed and in the normal course of the Board's procedures.

A MOTION was made by Bill Olsen, seconded by Jesse Gallo and carried to open the public hearing. (5 Ayes)

A MOTION was made by Jim Patterson, seconded by Ryan Denerley and carried to close the public hearing. (5 Ayes)

A MOTION was made by Jim Patterson, seconded by Bill Olsen to adjourn the meeting. (5 Ayes)

Attached please find the stenographer, Michael DeCelestino's report of the public hearing, Sign In Sheet and a letter from Hudson Highland Environmental Consulting.

Respectfully submitted,

Maureen J. Evans,
Planning Board secretary



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October 13, 2017

George Aulen, Chairman
Village of Warwick Planning Board
77 Main Street
Warwick, NY 10990

Re: 16 Elm Street

Dear Chairman Aulen and Honorable Members of the Board:

I represent a group of neighbors in the vicinity of 16 Elm Street. I am providing these comments on their behalf regarding the proposed Yesterday's Irish Pub at 16 Elm Street. I want to begin by objecting strenuously to the adoption of a negative declaration (neg dec) following the review of the Environmental Assessment Form (EAF) prepared for this project. Based on more than 30 years of preparing and reviewing environmental assessments prepared under SEQRA, I submit that the issuance of this neg dec was improper and without a sound basis. In fact, I believe the action taken by the Planning Board is the most egregious violation of the SEQRA standards that I have witnessed during the entire course of my professional career, and I have advised my clients to pursue an Article 78 legal action against the Planning Board both for making the neg dec decision, and for what appears will be the inevitable approval of the project. Based on what I present below in this letter, I strongly advise the Planning Board to rescind the neg dec and require further study, including to the point of issuing a positive declaration and requiring the preparation of a draft environmental impact statement (DEIS) that would be subject to public scrutiny and comment.

SEQRA

The standards that reviewing agencies such as the planning board must adhere to in conducting a SEQRA review have been well established by the courts in New York State. In particular, the standards for determining whether there might be at least one significant adverse environmental impact, requiring more study in the form of an environmental impact statement, apply here. To do such a declaration of significance, and in particular to justify a "negative declaration such as the Planning Board has done in the case of 16 Elm Street, SEQRA requires the lead agency to identify "the relevant areas of environmental concern" and to take a "hard look" at them. *Merson v. McNally*, 90 N.Y.2d 742, 665 N.Y.S.2d 605, 609 (1997) [citing *Matter of Chemical Specialties Mfrs. Assn. v. Jorling*, 85 N.Y.2d 382, 397, 626 N.Y.S.2d 1 (1995)]; *Kahn v. Pasnik*, 90 N.Y.2d 569, 664 N.Y.S.2d 584 (1997).

Where the lead agency issues a "neg dec", as the Planning Board has done in the case of 16 Elm Street, the agency must support their findings by a written, narrative "reasoned elaboration." See, e.g., *Board of Cooperative Educational Services of Albany-Schoharie-Schenectady-Saratoga Counties v. Town of Colonie*, 268 A.D.2d 838, 702 N.Y.S.2d 219 (3d Dep't 2000); *Group for South Fork, Inc. v. Wines*, 190 A.D.2d 794, 593 N.Y.S.2d 557 (2d Dep't

1993); *West Branch Conservation Ass'n, Inc. v. Planning Board, Town of Ramapo*, 177 A.D.2d 917, 576 N.Y.S.2d 675 (3d Dep't 1991); *Morrell v. New York State Dept. of Environmental Conservation*, 119 A.D.2d 1009, 500 N.Y.S.2d 586 (4th Dep't 1986).

The lead agency cannot therefore simply set forth a "conclusory statement, unsupported by empirical or experimental data, scientific authorities or any explanatory information." *Tehan v. Scrivani*, 97 A.D.2d 769, 771, 468 N.Y.S.2d 402, 406 (2d Dep't 1983).

The analysis supporting a negative declaration should be adequately documented, and "should take into account (1) 'the impacts which may reasonably expected to result from the proposed action' 6 NYCRR [§617.7(c)(1)] as compared against the criteria listed in 6 NYCRR [§617.7(c)(1)(i-xii)]." *Fernandez v. Planning Board of Pomona*, 122 A.D.2d 139, 141, 504 N.Y.S.2d 524, 526 (2d Dep't 1986).

When determining environmental significance using the criteria outlined in 6 N.Y.C.R.R. §617.7(c), the lead agency is responsible for the adequacy of the information contained in the EAF. *Kirk-Astor Drive Neighborhood Ass'n. v. Town Board of Town of Pittsford*, 106 A.D.2d 868, 483 N.Y.S.2d 526 (4th Dep't 1984), *app. dis'd* 66 N.Y.2d 896, 498 N.Y.S.2d 791 (1985); *Matter of LaDelfa v. Village of Mt. Morris*, 213 A.D.2d 1024, 625 N.Y.S.2d 117 (4th Dep't 1995).

"The threshold at which the requirement that an EIS be prepared is triggered relatively low." *Chinese Staff v. City of New York*, 68 N.Y.2d 354, 509 N.Y.S.2d 499 (1986). It only requires the reasonable possibility of at least one adverse environmental impact. In contrast, because it ends the SEQRA review, a negative declaration requires an affirmative finding of no significant adverse impact.

EAF Part 2

The purpose of Part 2 of the EAF is to identify potential adverse impacts that need further consideration by the reviewing agency to make a declaration of significance. The questions included in Part 2 provide suggested thresholds to help the reviewing agency identify what, if any, impacts may occur as a result of the project, and the potential magnitude of potential impacts. Those potential impacts that appear to be similar or exceed the thresholds provided are considered to have a moderate to large impact, and should receive further analysis and discussion in a Part 3. Because of its perceived potential adverse impacts, this proposal has generated a lot of controversy among not only immediate neighboring property owners, but also Village residents several blocks away. It is therefore difficult to conceive that the Planning Board would not find that the areas of concern raised by these residents deserve further scrutiny. However, that is precisely what has occurred. The Planning Board concluded that the proposed project will have no impact, or only a very small impact, despite very loud and persistent voices and uncontroverted professional evidence to the contrary.

In addition, the New York State Department of Environmental Conservation (NYSDEC) provides further guidance to assist reviewing agencies in making Part 2 determinations. In understanding the concept of what potential "moderate" and "large" impacts mean, the NYSDEC provides these definitions:

"Moderate Impact: These are impacts that are moderate in magnitude and that have more impact on environmental resources. Moderate impacts can also occur when the impact affects a larger part of the parcel or even extending to a small area just beyond the parcel. Moderate environmental impacts may be either isolated (only in one location), or of regional concern (in a larger area). They generally are longer lasting (duration measured in weeks or several months), are often reversible and can be more readily addressed through mitigation measures or project changes. The resources affected often have broader local or regional concern and often are activities or resources that are regulated or protected by some local, state, or national agency.

"Large Impact: These are impacts that are severe in magnitude or cover larger areas in the neighborhood or community. The environmental impacts anticipated could be irreversible, challenging to mitigate, of wide regional scale, or of long duration. A large impact may also be unlikely to occur, but if it does, would be very damaging to the environment. The resources affected often have broader local or regional concern and often are activities or resources that are regulated or protected by some local, state, or national agency." (Emphasis added)

There are many areas within the Part 2 in which it appears there should have been no question that there is a potential "moderate to large impact." Contrary to the conclusions reached by the Planning Board. I believe each of the following areas should be considered to have a moderate to large impact, and thereby requiring further discussion in a Part 3:

5. Impact on Flooding

The proposed action may result in development on lands subject to flooding.

Suggested thresholds:

- a. The proposed action may result in development in a designated floodway.
- b. The proposed action may result in development within a 100 year floodplain.
- c. The proposed action may result in development within a 500 year floodplain.

All three of the suggested threshold conditions exist on the project site, and further, all three designated types of areas are proposed to be developed to some degree and covered with impervious surfaces. The applicant has claimed that areas covered with gravel are considered to be impervious, with both paved and gravel covered areas being assigned a runoff coefficient number (CN) of 98. The applicant further claims that some of the gravel surface will be removed, and therefore actually have a beneficial impact. However, the majority of the area designated as being covered in gravel supports the thick growth of grass and other ground cover, which provides clear evidence that the CN is something considerably less than 98. These ground covers could not survive if the underlying medium was truly impervious. It is understandable why the applicant would want to take advantage of the presence of some gravel, and thereby represent that there is no impact because the area being covered with impervious is already impervious, but the existing site conditions clearly indicate pervious conditions currently exist. There is no doubt that replacing grass covered surfaces with macadam or other impervious surfaces will indeed reduce infiltration and increase stormwater runoff. To claim otherwise is disingenuous.

As an example of how this specific question is handled in other communities, I can cite an application in the Town of Philipstown in Putnam County where I am part of a team for a

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residential application called "Hudson Highlands Reserve." In that case, both floodway and floodplain for the Clove Creek is present on a portion of the property that is being completely preserved in a natural state, and is not proposed for development of any kind. In that case, the Planning Board nonetheless still concluded that the proposed project posed a "potential" moderate to large impact, and required that we provide a discussion on the topic as part of the Part 3 submission. The action taken by that Planning Board, while being conservative, was the correct way of handling this issue under SEQRA and satisfying the "hard look" standard. In the case of the 16 Elm Street proposal, where these areas are being directly impacted and covered with impervious surfaces, it should be incontrovertible that this constitutes a potential "moderate to large" impact.

10. Impact on Historic and Archeological Resources

The proposed action may occur in or adjacent to a historic or archaeological resource.

b. The proposed action may occur wholly or partially within, or substantially contiguous to, an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory.

NYSHPO lists the project site itself with an inventory #7148.00174, identified as "L&H RR Co., Rail Yard & shops." As seen in the graphic below, which overlays a 1933 survey of the rail yard

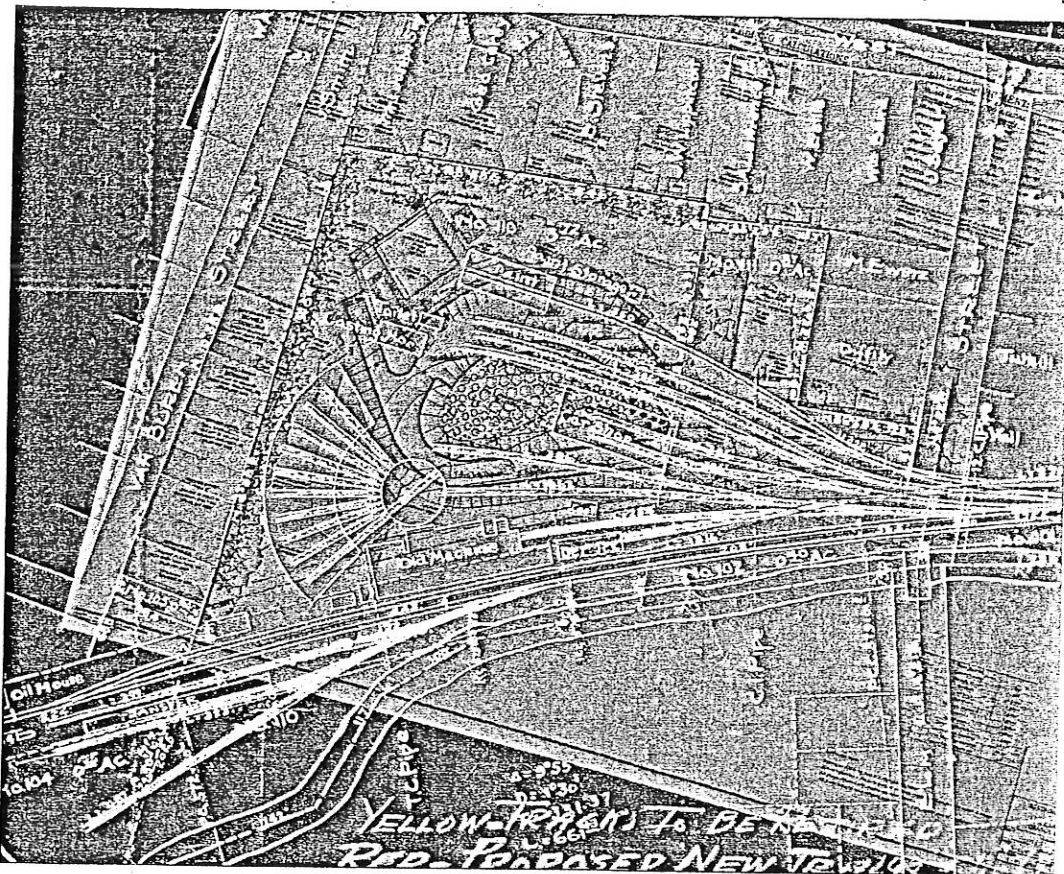


Figure 1: 1933 property survey overlaid on project plans

on the proposed project plans, proposed excavations for the building will occur in areas that were known to support the paint shop (where engines and cars were brought in to be painted) and the casting house, and a proposed excavation for the detention pond will occur where there had been the car shop and several railroad sidings. It is therefore clear that the proposed action has the "potential" for a "moderate to large" impact. Some mention was made of a letter from SHPO that may alleviate some responsibility on the part of the applicant, but this letter and any discussion regarding any archaeological investigation that may have preceded it needs to be addressed in a Part 3 and made available for public review. This is in part the purpose of a Part 3; to provide a place in the EAF for this type of elaboration.

13. Impact on Transportation

The proposed action may result in a change to existing transportation systems.

- a. Projected traffic increase may exceed capacity of existing road network.

Using ITE (Institute of Traffic Engineers) rates, a 190-seat restaurant could generate well over 500 vehicle trips per day, with 49 vehicle trips occurring during a peak hour. The provision of a bar at the same location could potentially generate as much as an additional 41 vehicle trips during the peak hour. All of this would occur on a minor collector street that was never intended for significant commercial use. On this issue, 3 of the 5 members of the Planning Board actually agreed that a traffic study should be required, but the Board then allowed the applicant to design what precisely would be studied. The resultant study, which was limited only to the Elm Street/West Street intersection and the length of Elm Street between West Street and the railroad tracks, was completely inadequate. At a minimum, the study should have also included the Elm Street/Orchard Street intersection and the Mitchell Corners driveway/Car Wash driveway as an additional 4-way intersection. Traffic concerns have been raised by residents on Welling Ave., who assert that their street is heavily utilized by traffic avoiding Main Street and the two lights in the middle of the Village, and they believe will be used as a primary access to the pub. By leaving out the Elm Street/Orchard Street intersection, the traffic study as designed fails entirely to address this concern. The timing of the traffic study also makes it inadequate as it was conducted during the summer, when school is out, and many local residents who normally would be utilizing the streets in question are on vacation. At a minimum, however, even the inadequate traffic study should be provided as part of a Part 3 discussion in the EAF.

15. Impact on Noise, Odor, and Light

The proposed action may result in an increase in noise, odors, or outdoor lighting.

- a. The proposed action may produce sound above noise levels established by local regulation.

This issue is probably the single most important area of concern for the neighborhood, largely stemming from the proposed outdoor seating with a speaker system, but also from the operation of venting equipment and other mechanicals. Chapter 145 (Zoning) of the Village Code provides guidance for the Planning Board in considering site plans. Paragraph 145-91, sub-paragraph 4.12 states, "*(s)tructures shall be located, constructed, and insulated to prevent on-site noise from interfering with the use of adjacent properties.*" The residents hired a professional sound engineer who provided an analysis to the Planning Board that, given the extreme close proximity of the proposed outdoor seating to the neighboring residential properties, it will essentially be impossible for the project as proposed to adhere to the Village

noise regulations, particularly the noise performance standards in section 145-104B(1) of the village code. In some cases, site development would come as close as 20 to 30 feet from the back doors of neighboring homes. It will be impossible to shield the noise generated by entertainment, customer voices, and outdoor equipment so as *"to prevent on-site noise from interfering with the use of adjacent properties,"* or to meet the numerical limitations in the code, as demonstrated by the residents' consultant (and unrefuted by the Planning Board).

The Planning Board's response was shockingly insufficient, and completely failed to take any steps to evaluate the potential impact despite the obvious problem, the overwhelming concern and the technical evidence submitted to them. Instead, the Board accepted the applicant's promise to take noise readings *after* the project was built and operating, but without any potential remedy if the expected noise violations actually do occur. With no analysis of the noise impact whatsoever, it is incredible that the Planning Board could then conclude that there was "no or small impact" and not require a more involved Part 3 analysis. Perhaps, if the Planning Board accepted that a potential large impact may occur and required further analysis, it would lead to the conclusion that outdoor speakers would be prohibited, or that the proposed outdoor seating be taken out of the plans in its entirety. By prejudging, with the complete lack of any credible basis, that there would be noise impact, however, the potential to make a finding that would lead to this type of mitigation is eliminated. As such, this level of review is clearly inadequate, and completely fails to satisfy the "hard look" standard required under SEQRA.

c. The proposed action may result in routine odors for more than one hour per day.

The restaurant operation will necessarily be exhausting cooking smoke and odors to the exterior of the building. The restaurant itself will be as close as 60 feet to a neighboring home. It is incontrovertible that this and other nearby homes will be impacted by the odors vented outside of the restaurant on a daily, year-round basis.

d. The proposed action may result in light shining onto adjoining properties.

While the applicant has taken steps to try to prevent outdoor lighting from shining directly on neighboring properties, the proposed project will unavoidably result in a significant increase in artificial light extending outside the bounds of the project site. Given the residential nature of the neighboring properties, and their close proximity, this should be considered a moderate to large impact.

16. Impact on Human Health

The proposed action may have an impact on human health from exposure to new or existing sources of contaminants.

h. The proposed action may result in the unearthing of solid or hazardous waste.

The project site has a history of heavy industrial use over a period of close to 100 years, during which there were no regulatory controls on the handling of hazardous materials. It is extremely likely that during this time, the site became contaminated with hazardous materials. It is particularly notable that a 1933 survey of the property shows an industrial structure used for painting and a casting house within the immediate footprint of the restaurant complex in areas that would be disturbed by excavation.

At least six rotted paint cans can be seen on the surface within the area designated on the 1933 property survey as the paint shop, as seen in Figure 2. The thickness of the steel used in the cans confirm that these cans were not recently dumped on the property. It would be expected that many more would be found beneath the surface.

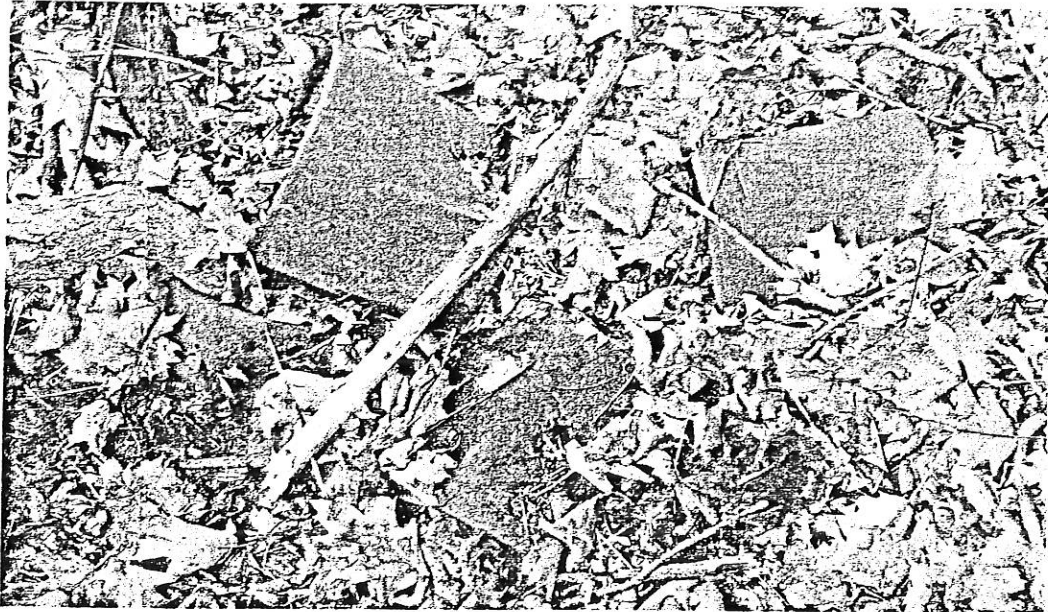


Figure 2: Paint Cans on Surface in Area of Paint Shop

Located closely nearby was also a building utilized for paint storage. Neighbors report finding some paint cans on the site with evidence of lead paint still intact. Similarly, a sample of slag waste (Figure 3) was observed in the vicinity of the casting house.



Figure 3: Waste Slag in Vicinity of Casting House

Other industrial structures located on the property, such as the machine shop, car shop, roundhouse, and railroad turntable, could all also be potential sources of hazardous materials extant within the property.

In addition, a 1949 survey (Figure 4) not only still shows the "old paint shop" still in place, but also no less than four features labeled simply as "tanks", with no indication as to what materials may have been contained in the tanks, or whether they were above or below ground. It is entirely possible that if below ground, they may still be in place, including within an area proposed to be excavated for a stormwater basin.

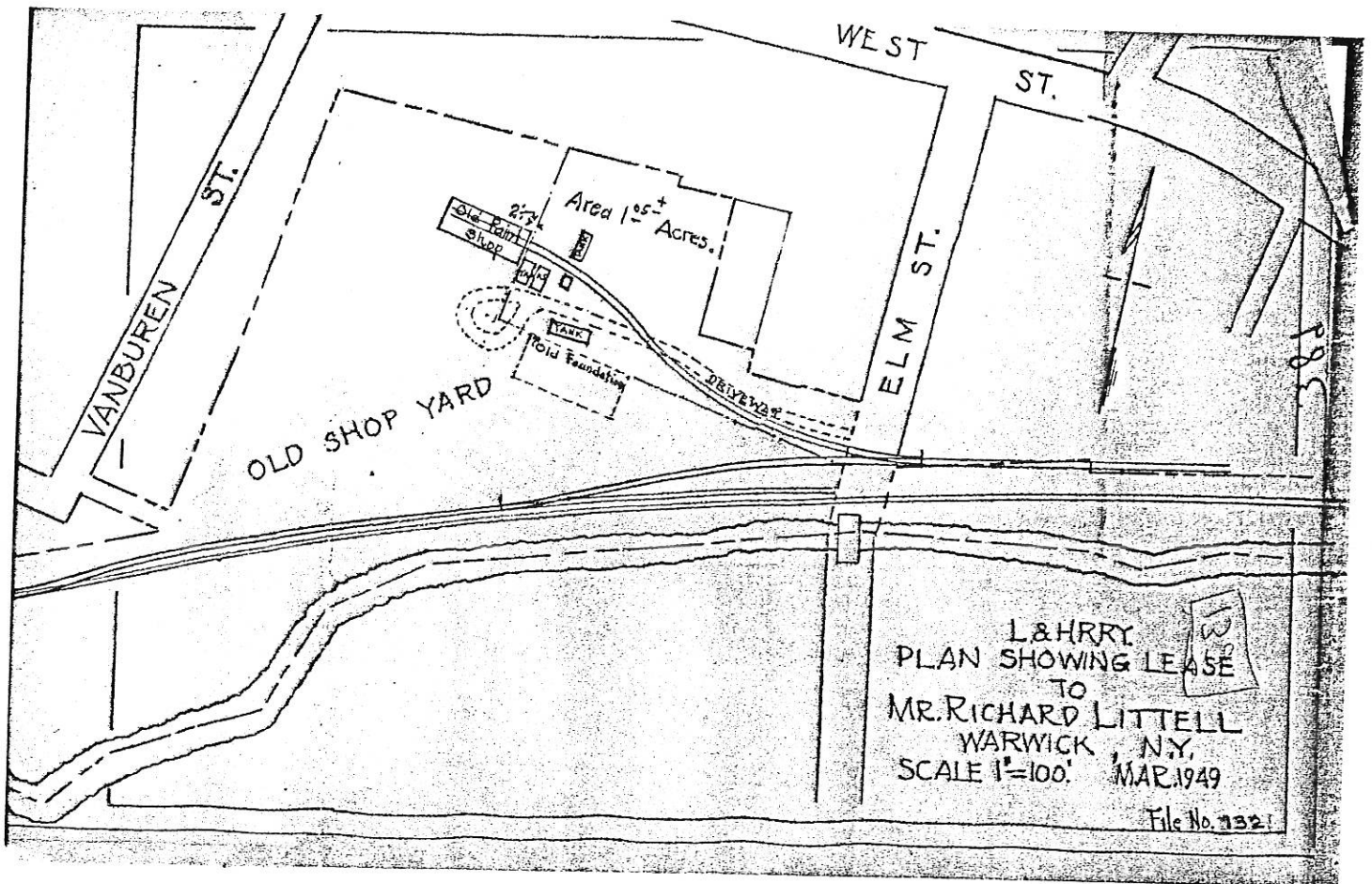


Figure 4: 1949 Survey Showing Paint House and Tanks

What appears to be a potential opening to an underground feature is also evident in close proximity to the proposed location of the restaurant and bar (Figure 5).

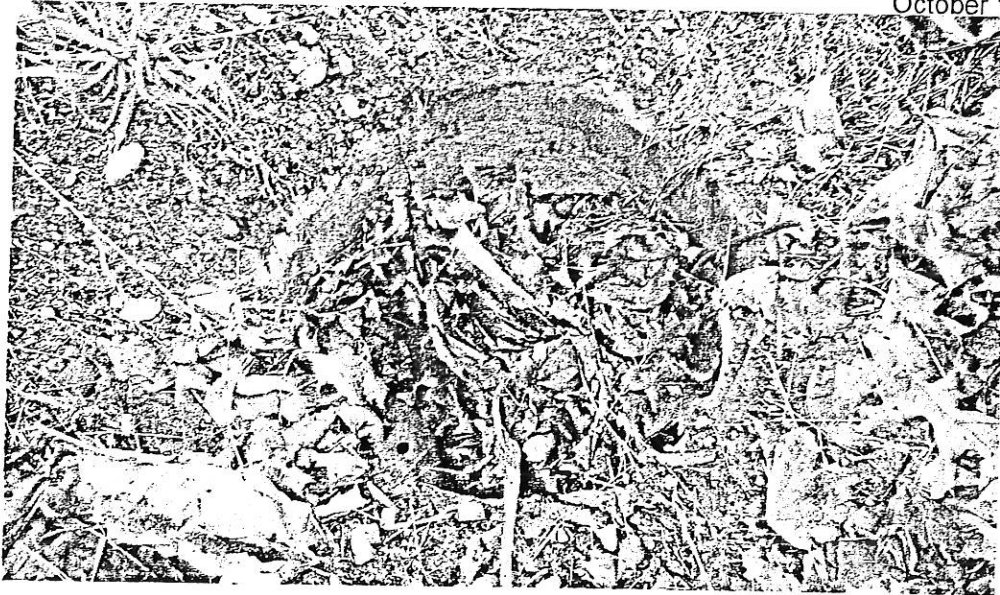


Figure 5: Unidentified Industrial Feature Near Building Site

Especially given the fact that the proposed use will be providing food services, it is imperative that the property be fully analyzed for hazardous materials before any such use is approved, and addressed in a Part 3.

17. Consistency with Community Plans

The proposed action is not consistent with adopted land use plans.

- a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s).

To avoid floodplain and floodway regulations, proposed building construction was targeted to the extreme northwest corner of the site, where it will be interjected into an existing residential neighborhood that dates back well over 100 years. The project is clearly in sharp contrast to and in conflict with the surrounding residential neighborhood, and will have no meaningful buffering. Chapter 145 (Zoning) of the Village Code provides guidance for the Planning Board in considering site plans. Paragraph 145-91 states that *"(i)n considering and acting upon Site Plans, the Planning Board...shall take into consideration the Public Health, Safety and Welfare, the comfort and convenience of the public in general...and of the immediate neighborhood in particular."* Further, in sub-paragraph 1.2., Chapter 145 advises, that *"(s)ite plans involving non-residential uses proposed adjacent to a residential district or residential uses shall be reviewed with regard to the impact of the development on such district or use."*

It is unlikely that the effect of the floodplain regulations upon the site's eventual development in this manner, and its impact upon the neighboring residential uses, were fully considered when the existing zoning designation was applied. It is difficult to envision how any development of the site as zoned could satisfactorily meet the guidance provided in Chapter 145. In some cases, site development would come as close as 20 to 30 feet from the back doors of neighboring homes. (See Figures 6 and 7 below.) It will be impossible to shield the noise

generated by entertainment, customer voices, and outdoor equipment so as *"to prevent on-site noise from interfering with the use of adjacent properties,"* especially considering the applicant's proposal to erect an outdoor deck that would be utilized for dining and potentially other activities. No fencing, no noise dampening materials, no architectural enhancements can possibly adequately mitigate the impact that would inevitably adversely impact the use and peaceful enjoyment of the residential properties by its occupants. An unavoidable concomitant reduction in property values for these residences will absolutely follow.

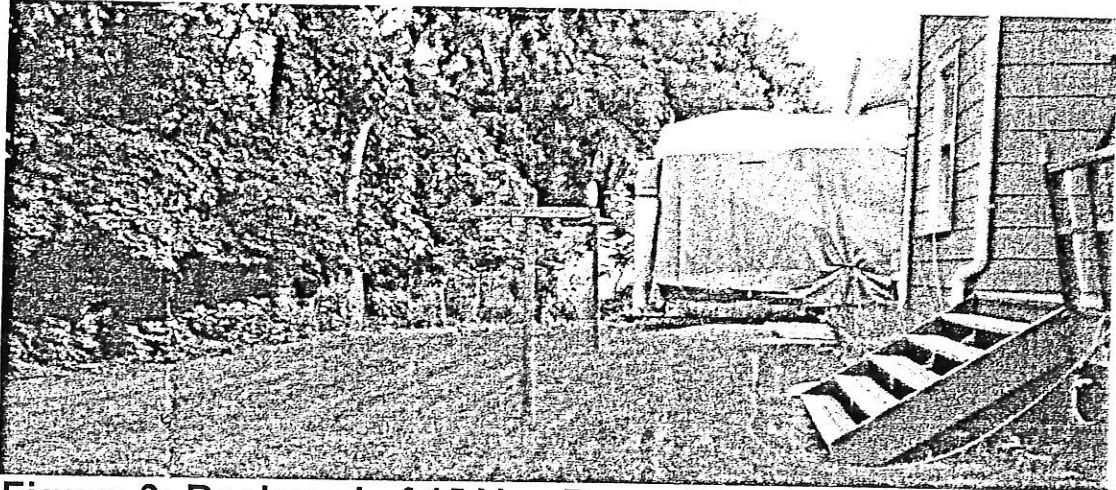


Figure 6: Backyard of 15 Van Buren Street. Property line is coincident with clothesline. Excavation will occur approximately 10 feet to left of clothesline



Figure 7: View at 15 Van Buren Street from deck seen above. Arrow points to blue flag that marks corner of proposed pub.

18. Consistency with Community Character

The proposed project is inconsistent with the existing community character.

e. The proposed action is inconsistent with the predominant architectural scale and character.

Chapter 145 advises in sub-paragraph C (Compatibility) that the Planning Board should seek to accomplish an objective that achieves *"architecture that is compatible with the character and scale of the surrounding neighborhood,"* including *"building size, height, massing and appearance."* Chapter 145 continues in sub-paragraph H to state that a *"building out of context with the surroundings can have a remarkable disruptive effect on the visual character of the Village...The exterior appearance of buildings erected in any neighborhood can adversely affect the desirability of the immediate area and the neighborhood for residential, business and other purposes."* The footprint of the proposed structure would be four to six times that of the surrounding homes, and effectively even larger when the attached deck is considered. The structure would be completely out of scale with these residences that are only a matter of feet away. For instance, the proposed 3500 square foot structure would be more than 5 times the 684 square foot footprint of the immediately neighboring house at 15 Van Buren Street pictured in Figure 6, which would make that home feel dwarfed by comparison, especially given its close proximity as depicted in Figure 7.

As noted in the Warwick Zoning Code contained in Chapter 145, the scale and proximity of the proposed structure, especially in combination with the noise, odor, and light impacts it will impose on the neighboring residential properties can be expected to *"adversely affect the desirability of the immediate area and the neighborhood."* With a loss in desirability, the property values of the neighboring properties will drop, as it is unlikely that families such as those that currently occupy the homes in the immediate area of Van Buren, West, and Elm Streets will continue to be willing to invest in these properties in such close proximity to what will be considered a nuisance use. It is far more likely that these homes will be turned into lower-valued rental properties with transient tenants, permanently changing the character of the community.

The project's inconsistency with neighboring uses and community character is also clearly evidenced by the neighbors' strong and virtually unanimous opposition to the project. Their voices have been evident in many contexts but have not yet formally appeared before the Planning Board because that Board refused to hear from them. Their first opportunity will be at the hearing next week, *after* the Planning Board has already determined on their behalf (without the benefit of their testimony) that they will not be impacted, and where their comments will be limited to just five minutes each.

Summary

The actions of the Planning Board in reviewing the EAF violate the standards of SEQRA that have been established by the courts. As noted in my comments above, the reviewing agency must take a *"hard look"* at all relevant areas of environmental concern, which this EAF fails to satisfy. In issuing a negative declaration, the Planning Board also failed to provide a written, narrative *"reasoned elaboration"* to support their decision. Instead, as has been found inadequate by the courts, the Board issued a simple *"conclusory statement, unsupported by empirical or experimental data, scientific authorities or any explanatory information."*

George Aulen, Chairman
Village of Warwick Planning Board
October 13, 2017

In my professional opinion, there are potential significant adverse impacts within the areas of flooding, archaeological resources, traffic, noise, odor, light, hazardous materials, community character and property values, all of which should have been considered as potentially moderate to large impacts requiring the preparation of a Part 3. I therefore believe the Planning Board should rescind the Negative Declaration as provided in the SEQRA regulations [see 6 N.Y.C.R.R. §617.7(f)] so as to require further analysis within a Part 3. I also believe the potential adverse impacts warrant a more intensive investigation that requires a positive declaration under SEQRA. As noted by the courts, "(t)he threshold at which the requirement that an EIS be prepared is triggered relatively low," and I believe that threshold has clearly been satisfied with the proposed action. Further study, with the opportunity for public participation and review, should be done within the context of an environmental impact statement (EIS) in, but not limited to, all these areas of potential adverse impact.

While the proposed development of this parcel may be considered "as of right" in accordance with the current zoning, the Planning Board is nonetheless empowered by SEQRA, Chapter 69 of the Village Code (Flood Damage Prevention), and Chapter 145 of the Village Code (Zoning) to completely reject the proposed use if it finds significant adverse environmental and/or social impacts, and in any event has the legal responsibility under SEQRA to fully investigate those impacts.

Serious consideration should be given to the possibility that given the presence of the floodplain, coupled with the site's recognized historical and archaeological significance, as well as the high potential for the presence of industrial contamination, and the high potential for impacts to the surrounding residential neighborhood, that the proposed use to provide food services on this particular parcel may be inappropriate. A reasonable conclusion may be, from a planning perspective, that the prior use as a parking lot may represent the highest and best use for this land. This alternative, along with the consideration of alternative sites for the proposed restaurant, should be considered within an EIS.

I have advised my clients to pursue an Article 78 lawsuit against the Planning Board either now, based on the decision to issue a negative declaration, or when the Planning Board votes to approve the proposed project (which it appears poised to do). I am hopeful, though, that the Planning Board will instead rescind the negative declaration, so that the residents of the affected neighborhood aren't forced to expend the effort and expense to use the courts to protect their rights. The Village Planning Board should be acting in the interests of all the residents of the Village, not against them.

Please do not hesitate to call me if you have any questions or wish to further discuss any of the points I have raised.

Respectfully submitted,



Stephen M. Gross
Principal
Hudson Highlands Environmental Consulting

DAVID K. GORDON
Attorney and Counselor at Law

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October 19, 2017

Hon. George Aulen, Chairman
Village of Warwick Planning Board
77 Main Street
PO Box 369
Warwick, NY 10990

Re: 16 Elm Street Site Plan Application

Dear Mr. Aulen and Members of the Board:

This office represents residents of the neighborhood surrounding the proposed restaurant-bar at 16 Elm Street (the "Project"). As discussed in more detail below and in other comments that have been submitted to the Board, the Project will have significant adverse impacts on the neighborhood and the community.

At this juncture the Planning Board ("Board") has already made a number of important missteps regarding the Project, which have compromised the public. The Board's actions so far have been uniformly dismissive and even hostile to the rights of the public, both to be heard and to be protected against the Project's impacts.

Among the Board's missteps has been its refusal to hear from the public until the present juncture. There was no reason to do so, despite the Board's apparent tactical reliance on an incorrect extension of a court case requiring a subdivision to have a public hearing after a SEQRA declaration of significance. This error among the Board's others have limited its ability to review and address the impacts, and badly prejudiced the public.

The site plan is a terrible proposal that would locate the building on the corner of the lot adjacent to the residential neighborhood, and would thereby deliberately saddle the neighbors with nuisances including noise and light among others. We understand that the purpose of the siting was to avoid reviewing and mitigating the impact of developing in the floodplain. However, at best, the proposal trades impact that could easily be mitigated – replacement of floodplain storage – with impacts to the community that the Board has so far shown no interest in mitigating, and could probably not be fully abated.

At this juncture the Board should correct its errors, or failing that, mitigate the impacts through its site plan review of the project.

1. Zoning noncompliance

The Project is defective and illegal because it fails to meet the required street frontage in the Zoning Code.

According to the bulk table in the Zoning Code, a restaurant use (Use Group K) may only be located on lots with 50 feet of street frontage. Zoning Code § 145-41. The plans for the project show only 47.8 feet of street frontage. For a restaurant site plan to be legal on a lot with less than 50 feet of road frontage such as 16 Elm Street, the applicant would need an area variance from the ZBA.

Under New York State law, the authority for determining whether a project complies with the zoning code is vested in the building inspector, with appeal to the ZBA, not the planning board.¹ Yet it appears that the Board has illegally taken it on itself to make this determination, so as to facilitate the Project, and has wrongly determined consistency with the zoning based on a three decades old variance for a completely unrelated and dissimilar project.

That variance does not cure this defect in the current application. As we wrote the building inspector on August 27, 2017, while a variance is said to “run with the land”, this means that the variance would transfer to a future owner undertaking the same use, and is not restricted to the original permittee.² It does not mean that the dimensional requirements are forever repealed for all future use of the property. In addition to being irrational and failing to reasonably apply the zoning code or protect the community, that interpretation would violate the basic tenet of New York law that a ZBA has no authority to re-legislate the zoning regulations established by the local legislative board.³

Additionally, the balancing test required for area variances is obviously project-specific. This includes, among other things, whether the variance would create a substantial or undesirable change in the character of the neighborhood or a detriment to nearby properties; whether the difficulty can be alleviated by some feasible method other than a variance; and whether it would cause adverse aesthetic, environmental or ecological impacts on the property or the neighborhood.⁴ The 1990 variance for a car storage lot was simply not granted to allow the proposed restaurant/bar, and depending on the ZBA’s judgment, might not be given the wide difference in impacts and circumstances. Nor could it have possibly been conditioned to protect the adjacent residential neighborhood from the noise, light and other disturbances from the

¹ *Swaniz v Planning Bd. of Vil. of Cobleskill*, 34 AD3d 1159, 1160 (3d Dept 2006) (“Planning boards are without power to interpret the local zoning law, as that power is vested exclusively in local code enforcement officials and the zoning board of appeals”).

² *St. Onge v Donovan*, 71 NY2d 507, 520 (1988); see e.g., *Feneck v Murdock*, 16 Misc 2d 789, 792 (Sup Ct Kings Co 1958).

³ See *Van Deusen v Jackson*, 35 AD2d 58, 59 (2d Dept 1970), *affd*, 28 NY2d 608 (1971).

⁴ See Warwick Code § 145-151; Village Law § 7-712-b.

proposed restaurant/bar. In fact, it was apparently a cursory approval without added conditions. Accordingly, there is no basis for the pretense that the prior area variance governs the current proposal.

Here, the Board is wrong on the substance and procedure, wrong to have considered the application to the present juncture, and wrong to continue. As we wrote the Board on June 15, 2017, the Board should cease review of this site plan application as it cannot be approved with this defect. Instead, the Board must either refer the Project to the building inspector for a zoning determination or counsel the applicant to apply to the ZBA for the necessary variance.

2. SEQRA responsibility to take a hard look and to mitigate impacts

The State Environmental Quality Review Act ("SEQRA"; ECL Art. 8) requires all agencies such as the Board to consider the potential adverse environmental impacts of its actions and mitigate them. In particular, SEQRA requires agencies to take a "hard look" at such impacts, and where there is the reasonable possibility of at least one such impact, to require an environmental impact statement to more fully assess and mitigate the potential problem.⁵

The proposed restaurant would be located virtually in the backyards of residences, and would violate the quiet residential character of this part of the village. It would cause significant adverse impacts on the neighborhood, including noise, visual impacts and other nuisances. As detailed below, there are also numerous other conditions on the site itself, including historic uses and toxic contamination from those uses that have not been adequately studied.

As a result, SEQRA required the Board to take a "hard look" by conducting further studies into these impacts. The Board's decision instead to end the SEQRA review by issuing a negative declaration was a dereliction of its responsibility, a violation of the law, and a slap in the face of the public.⁶

⁵ 6 NYCRR § 617.7(a).

⁶ The Board's inadequate SEQRA review was made worse by the fact that it refused to hear from the public. Apparently, the Board based its refusal to hear from the public during its SEQRA review on *Kittredge v Planning Board of The Town of Liberty*, 57 AD3d 1336 (3d Dept 2008). However, Nothing in *Kittredge* or anywhere else stops the Board from hearing from the public at any time. *Kittredge* found that it was necessary to have a hearing after a negative declaration, not that it was illegal to begin the hearing before the SEQRA declaration of significance. See 57 AD3d at 1338 ("We also agree with petitioners' contention that the Board improperly failed to hold a public hearing regarding the proposed subdivision after it issued its negative declaration"); *Id.* at 1340-1341 ("Town Law § 276 (5) (d) (i) (1) and Liberty Town

The Board should correct its error by rescinding the negative declaration and taking a hard look at the prospective impacts.⁷ Failing that, the Board should fully assess the prospective impact pursuant to its authority to review proposed site plans under the village code, and modify or reject the Project as necessary to prevent those impacts.

3. Site plan review

Numerous sections of the village's site plan review code require the Planning Board to ensure that the Project is consistent and compatible with its environment, especially its surrounding neighborhood. *See e.g.* Village Code § 145-91A, B, C, E, H, I. Among the code provisions that require the Board's specific attention and must result in substantial changes to the Project, or its outright rejection, are the following: "The Site Plan elements, including buildings, parking, drainage, pedestrian and vehicle circulation, signs and lighting, *will not adversely affect the potential of adjacent properties or the property under review from its highest and best use.*" Village Code § 145-91B (emphasis added). "All recreation areas, parking and service areas will be reasonably screened from the view of adjacent residential lots and streets in all seasons of the year." Village Code § 145-91E.

The code's focus on protecting adjacent properties is redoubled in paragraph 145-91 I governing the Project's design standards. In particular, the code requires the Board to address conflicts between existing residences and a proposed adjacent non-residential use:

Relationship of Buildings and Site to Adjoining Areas. Site plans involving non-residential uses proposed adjacent to a residential district or residential uses shall be reviewed with regard to the impact of the development on such district or use. The Planning Board shall encourage the use of a combination of landscaping, buffers, berms, screens, visual interruptions, and common building materials to create attractive transitions between buildings of different architectural styles and uses.

Code § 130-13 (D) (3) (a) (1) require that a public hearing be held after a lead agency has completed its initial review pursuant to SEQRA"). Moreover, *Kittredge* applied to and was based on the state law governing subdivisions, and there is no authority applying it to site plans. The Board here simply refused to do what most municipal boards do on controversial applications: hear the public's concerns prior to making a declaration of significance.

⁷ See 6 NYCRR § 617.7(f).

Village Code § 145-91I(2). The section recommends landscaping that will “dominate the site plan” and “facilitate conservation of the environment and preservation of community aesthetic character.” Village Code § 145-91I(8)(a), (b).

As currently proposed, the Project flagrantly violates all of these provisions. The Board must revise the project with conditions that will ensure the protection of the surrounding neighborhood, including but not limited to limiting amplified music, eliminating the outdoor deck, and moving the building away from the area of the site contiguous to the surrounding homes.

Visual and Community Character Impacts

The proposed restaurant building is located in the extreme northwest corner of the property, with the patio and walkways only about 30 feet from the property lines of the adjacent residences on West and Van Buren Streets. For years the property was used as a car storage lot, and as was required by the Board as part of the site plan approval in 1993, thick groves of trees were maintained to screen and separate the homes from the commercial use. The current site plan proposes to remove many of those trees, reducing the natural buffering, and the protections granted to the surrounding neighborhood by this same Board for the previous use.

The Village of Warwick Zoning Code (“Zoning Code”) anticipates the need for special scrutiny where, as here residential uses abut commercial. “Site plans involving non-residential uses proposed adjacent to a residential district or residential uses shall be reviewed with regard to the impact of the development on such district or use.” § 145-91 (I)(2). *See also* § 145-91(C), (E), (H). The code specifically calls for thorough visual buffering:

Landscaping shall be used to create boundaries and transitions between areas of differing development intensities as well as to separate areas of incompatible land uses. A buffer zone thickly planted with native trees and shrubs of sufficient width ***to entirely screen a non-residential use from a neighboring residential use shall be required.***

§ 145-91 (I)(8)(e) (emphasis added). The proposal not only does not add a thick buffer of trees to “entirely screen” the restaurant from the adjacent homes, it actually involves removing trees to push the building to the northwest corner of the site.

The Zoning Code also has additional requirements for parking lots, particularly those adjacent to residential neighborhoods. The current site plan proposal shows parking spaces as close as 50 feet to residential property lines. The code specifies:

Buffering of parking lots adjacent to residences (if applicable) shall be accomplished through landscaping sufficient to screen the nuisance characteristics of parking, such as headlights, noise and views of cars.

§ 145-70(A)(11). Again, the site plan proposed does not conform to this requirement and will permanently damage the neighbors’ ability to enjoy their homes.

Noise Impacts

Noise is a particularly significant concern because of the proposed large outdoor dining areas, featuring amplified music and conversation. The design standards in the Zoning Code require:

Structures shall be located, constructed, and insulated to prevent on-site noise from interfering with the use of adjacent properties In no case shall off-site noise exceed the standards contained in § 145-104 of the Zoning Law. Procedures for evaluating noise in common usage, such as the US Department of Housing and Urban Development's *The Noise Guidebook* (HUD-953-CPD) shall be used to determine impacts and mitigation.

§ 145-91 (I)(12)(a). This requirement calls for noise levels to be modeled and analyzed before a site plan is approved.

This office submitted the acoustic analysis of Mike Marri on August 14, 2017. In the analysis Mr. Marri calculated that conversation on the deck alone would likely exceed the required levels at the property line. When music is added via the speakers proposed for the outdoor dining area, noise levels would necessarily exceed the levels allowed in § 145-104 of the Zoning Law.

There is no countervailing evidence before the Board and the prospective impacts are amply attested by the neighbors. Under these circumstances it is a flat violation of the code (and SEQRA) to wait until the project is built to ascertain whether noise is a problem. The Board must fully analyze the activity proposed at the site plan review stage and ensure compliance with the standards in the code.

Toxic Contamination

Before any development of the site is contemplated, the Board must determine if there is any risk of toxic contamination. Dr. Caroline Miller, a groundwater chemist, submitted a letter on September 7 notifying the board of serious deficiencies in the soil and groundwater sampling used in the Environmental Site Assessment. Among other problems, she warned that heavy metal sampling was not properly completed. These issues must be addressed.

Alternative

Village Code § 145-91I authorizes the Board to "require submission of alternative design and layout proposals based on the standards in this section." Here, it is clear that an alternative design with the building moved farther (approximately 75 feet) to the southeast, so as to be in the center of the site, would mitigate many of the impacts on the community. While this would require further planning to mitigate the potential for flooding, it would provide a far better design value to the community.

Conclusion

Hon. George Aulen
October 19, 2017

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For the above reasons, the Board must cease its review of the Project. The present proposal stands in violation of the Village Code and SEQRA. If the Board nonetheless moves forward it must fully mitigate impacts as required under the Village Code. Finally, an alternative layout would be a far superior and more acceptable project.

Respectfully submitted

David Gordon

Please turn off cell phones

Sign in Sheet

October 19, 2017 Public Hearing

Name

Address

✓ 1) ~~Geraldine Driscoll~~
~~Lodge Driscoll~~ 14 Van Buren St

2) ~~HAZEL MESSINA~~ (25 WELLING AVE

3) ~~RUDY MESSINA~~ }

✓ 4) MARGARET BOWES 17 VAN BUREN ST

✓ 5) Edward Sattler 40 N Lynn St

✓ 6) Patrick Gallagher 57 West St

✓ 7) Jackie Wright 65, WEST ST.

✓ 8) RENEE WORRAN 13 GRAND ST.

✓ 9) Maggie McNeely 5 Welling Ward St

✓ 10) DAN MACK 14 Welling

✓ 11) TERI MACK 14 Welling

✓ 12) John Maxcy 47 West St.

X 13) HARRY CLARK Kings Estates

- ✓ 14) Jack Penning's 103 Hoyt Rd
- ✓ 15) Rachel Berlin Van Buren St.
- ✓ 16) Teri Mack 14 Walling Ave.
- ✓ 17) CAROLINE MARTIN 5 Cottage St Warwick
- ✓ 18) STEPHEN M. GROSS 71 COLONIAL AVE
- ✓ 19) Kerry Boland 15 1/2 Campbell Rd
- ✓ 20) ^{Ruth} Retha Woods 14 Ave West St
- ✓ 21) Marcela Gross Colonial Ave
- 22) FRANK FORNARIO 5 ASKE ST WARWICK
- 23) ROGER MOSS 17 DEER POOND Drive, WARWICK
- ✓ 24) DAVID GLOZDOL GARDNER HY.
- ✓ 25) DAVE SMITH WEST ST WARWICK NY
- ✓ 26) TOM ANDREAS 7 Cottage St WARWICK NY
- ✓ 27) ROSANNE ANDREAS 7 Cottage St WARWICK, NY
- ✓ 28) Joel Wadeson/Lauren Buturla 33 Polaski Hwy goshen NY
- ✓ 29) PETER CARR 14 UPPER HUNTER RD.
- ✓ 30) FRED SCHWIKEM 1630 82nd Ln Tpk

Name

Address

- ~~31)~~ JAMES CARTON R 9 W MARLBORO
- ~~32)~~ GLEN CARTER 11 VAN BUREN ST
- ~~33)~~ MAT LOCKWOOD 49 FOUR CORNERS Rd
- ~~34)~~ Susan Graf 60 WEST STREET WARWICK
- ~~35)~~ CHRISTOPHER SMITH 30 MAPLE WARWICK.
- ~~36)~~ JOHN GALLAGHER 387 KINGS HIGHWAY WAR.
- ~~37)~~ CHRISTIE TOOHEY 44 WEST ST
- ~~38)~~ Gail Graf 17 Cropsey Warwick
- ~~39)~~ Robert Agnello 14 Oakland CT
- ~~40)~~ Janice Gnaue 15 Oakland Ct.
- ~~41)~~ JEANNINE DREYHAUPT 44 ORCHARD
- ~~42)~~ JIM SCIARA 10 South Lynn
- ~~43)~~ Judith Dickinson 16 VAN BUREN ST

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1 CHAIRMAN AULEN: Okay. Good evening,
2 everyone. This is the Village of Warwick
3 Planning Board meeting for October 19th, 2017.

4 On the agenda are two items. The first
5 item is the acceptance of the September 21st,
6 2017 meeting minutes. Does anyone on the board
7 have any additions or corrections?

8 BOARD MEMBER PATTERSON: No changes.

9 CHAIRMAN AULEN: Okay.

10 BOARD MEMBER DENERLEY: No changes.

11 CHAIRMAN AULEN: Do I have a motion for
12 approval?

13 BOARD MEMBER PATTERSON: I'll so motion.

14 CHAIRMAN AULEN: Do I have a second?

15 BOARD MEMBER OLSEN: I'll second the
16 motion.

17 CHAIRMAN AULEN: Motion made in the
18 second. Any further questions?

19 All in favor?

20 BOARD MEMBERS: Aye.

21 SECRETARY EVANS: There's one abstained.

22 CHAIRMAN AULEN: One abstained? Okay.

23 Next item on the agenda is 16 Elm Street site
24 plan application. The applicants are sitting
25 over at the table. We can't see them over

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1 there. Okay.

2 The board received a letter dated October
3 13th from Hudson Highlands Consulting, and it
4 will be made part of the board's record on this
5 application. The board also received a draft
6 part three reasoned elaboration for the
7 negative declaration adopted at our last
8 meeting for our consideration. Summarized is
9 the information that was previously discussed
10 and reviewed.

11 Have the board members had an opportunity
12 to review it?

13 BOARD MEMBER GALLO: I did.

14 BOARD MEMBER PATTERSON: Yes.

15 BOARD MEMBER OLSEN: Yes.

16 BOARD MEMBER DENERLEY: Yes.

17 CHAIRMAN AULEN: Okay. May I have a
18 motion to adopt the written elaboration and to
19 supplement the a AEF with it?

20 BOARD MEMBER PATTERSON: I will make that
21 motion.

22 CHAIRMAN AULEN: Do I have a second?

23 BOARD MEMBER OLSEN: Second.

24 CHAIRMAN AULEN: Any further discussions?
25 Okay. Motion made and seconded. All in favor

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1 say aye.

2 BOARD MEMBERS: Aye.

3 CHAIRMAN AULEN: Closed. Motion been made
4 and approved.

5 Next item is -- next item is to open the
6 public hearing, which I will read the notice.
7 "Planning Board of the Village of Warwick,
8 notice of public hearing. Notice is hereby
9 given that pursuant to Section 145-93.C of the
10 Village of Warwick Zoning Law and Section
11 7-725-8.8 of the Village Law Site Plan, that
12 the Planning Board of the Village of Warwick,
13 New York, hold a public hearing on the 19th day
14 of October 2017, at 7:30 p.m., or as soon
15 thereafter the matter can be heard on that day,
16 at the Town of Warwick Town Hall, 132 Kings
17 Highway, Warwick, New York, on the application
18 of 16 Elm Street, LLC, the site plan approval
19 to allow construction of a new eating and
20 drinking establishment, grading and paving for
21 parking, and other improvements, on all land
22 for 16 Elm Street, for such purposes within
23 said village and zoned generally on the taxing
24 map as Section 210 Block 12 Lot 14, and for
25 such other purposes as may also come before the

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1 board. A copy of the plan is available for
2 public inspection at the office of the planning
3 board during regular business hours. All
4 persons interested are invited to attend. The
5 meeting is open to the public, dated Warwick,
6 New York, September 21st, 2017, by order of the
7 Planning Board, Village of Warwick, George
8 Aulen, Chairman."

9 Okay. At this time, I'll have a motion to
10 open the public hearing.

11 BOARD MEMBER PATTERSON: I'll open.

12 CHAIRMAN AULEN: Do I have a second?

13 BOARD MEMBER GALLO: Second.

14 CHAIRMAN AULEN: Motion made in the
15 second. All in favor?

16 BOARD MEMBERS: Aye.

17 SECRETARY EVANS: I'm sorry. Who
18 seconded?

19 BOARD MEMBER GALLO: Jesse.

20 CHAIRMAN AULEN: Okay. Before we begin,
21 let me try to orient -- try to orient all those
22 present as to the purpose of this public
23 hearing, what it is about, and just as
24 importantly, what is it not about.

25 Tonight's hearing is concerned with a site

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1 plan proposal for an eating/drinking
2 establishment at 16 Elm Street. The site plan
3 before this board is a specific proposal for
4 this project, shows the location of the
5 building, driveways, parking, drainage,
6 facilities, and the various accessory
7 infrastructure elements that make up the
8 proposal. The hearing is designed to hear your
9 comments on these specifics. We invite any
10 comments or suggestions that you may have
11 regarding the site plan for this project. The
12 board wants your comments. This hearing is
13 designed to receive your comments. We will
14 listen carefully. However, there should be,
15 and there will be, dignity and order to our
16 proceedings.

17 In a moment, the applicant's consultants
18 will describe and outline the project. It is
19 not possible to explain every nuance of what is
20 proposed. The site plan has been and remains
21 available for the public inspection at the
22 office of the planning board. When the
23 applicant has concluded their presentation, we
24 will turn to you for your comments.

25 Just as it is not possible to explain

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1 every nuance of the project, it is not possible
2 to answer every question you may have, at least
3 not to any great extent. If we spent all night
4 answering questions, we would never get to the
5 task at hand. The task is to learn from you
6 what the board, or its consultants, might not
7 yet have considered. Therefore, we ask you not
8 -- we ask you not to ask questions, but rather,
9 to raise issues. Your questions will not
10 likely be answered tonight, but we will
11 consider all your comments and questions, and
12 consider all of the issues you raise, in our
13 future proceedings.

14 You're a large crowd, I think. I'm sure
15 many of you wish to speak. In order to hear
16 from you in an orderly fashion, please note the
17 following ground rules. Everyone wishing to
18 speak must sign in. There's a sign-in sheet
19 that I now have. Does anyone else want to sign
20 in?

21 Okay. Before making comment, you must
22 identify yourself, give your address, and we
23 ask that you spell your name slowly for our
24 records, and the reporter's records. The
25 comment of each person is limited to between

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1 three and five minutes. If time permits, we
2 may hear from you a second time.

3 Comments, the time of each person belongs
4 to that person and it may not be assigned or
5 transfered to any other person. The board is
6 interested in issues, but is not interested in
7 the number of people who share interest in each
8 issue. Therefore, please, if the issue has
9 already been raised, if the point has already
10 been made, do not raise it or make it again.
11 We will deal with each issue brought to us
12 after the hearing is closed and in the normal
13 course of the board's proceedings.

14 At this time we'll have the applicant
15 describe the project.

16 JOHN CAPPELLO, ESQ.: Good evening. Can I
17 have my technical support here? Better height
18 wise, but the microphone is not working.

19 Hello. Can can everyone hear me now?

20 PUBLIC MEMBERS: Yes.

21 JOHN CAPPELLO, ESQ.: Good evening. My
22 name is John Cappello. I'm an attorney with
23 Jacobowitz & Gubits, and I'm here on behalf of
24 John Christison, and Yesterdays, and Elm
25 Street, LLC, the applicants here. I also have

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1 with me tonight, Ross Winglovitz, and Keith
2 Woodridge, from EPC, Enviromental Consulting &
3 Engineering, the engineering consultants on
4 this matter.

5 We're glad to be here before you. I can
6 tell you, in the process of this application,
7 Mr. Christison, and all of us, have made the
8 attempt to be transparent, to offer to meet
9 with the neighborhood's neighbors, to hear your
10 concerns, and we're anxious to hear them again
11 tonight.

12 Mr. Christison has been operating in this
13 village for over thirty years without incident.
14 He's been a good neighbor, a good resident of
15 the village, and he's looking to improve and
16 expand his business. So, in that process, what
17 I would like to do is to start off by just
18 orientating you, I know many of you may know
19 this, but to the property in question.

20 The property proposed to be developed is
21 16 Elm Street. It's located here in the light
22 blue on the map. It is -- formally was used as
23 a railyard, historically as an industrial use.
24 That was back in the 1930's. On the other side
25 of Elm Street, across from the property, is an

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1 area that was historically also used as
2 industrial, as a grain silo. Over the course
3 of the years, as this project was used
4 industrial, the village grew up around the
5 property, and homes were built, and a
6 neighborhood was built, as part of the village,
7 around the existing industrial use.

8 The property remains so, and when the
9 first zoning ordinance was adopted in this
10 village back in 1965, this property existed in
11 the exact shape and form as it exists now. It
12 exists with the same dimensions as it exists
13 now. So, it pre-existed prior to the zoning,
14 as shaped in the same manner as it does, as
15 impacted by the railroad. That property, at
16 the time the zoning ordinance was adopted in
17 1965, was zoned industrial.

18 In 1988, the village codified its zoning
19 code, and when it codified its zoning code,
20 that duly elected village board continued to
21 zone this parcel industrial.

22 In 2009, the village board redid its
23 comprehensive plan, which it reviewed and
24 commented on by the planning board, and zoning
25 was readopted again. This property remained

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1 zoned industrial. The neighborhood surrounding
2 it remained the same. In -- so, over the
3 course of, that makes fifty-two years, this
4 property has remained zoned for commercial and
5 industrial purposes. That was the will of the
6 several duly elected village boards of this
7 village. That will continued. That will
8 continued among the residents through several
9 comprehensive planning purposes. So, this
10 property has always been intended by this
11 village to be used for commercial and
12 industrial purposes.

13 Some of the uses that are permitted now on
14 this property are public utility facilities,
15 wireless telecommunication facilities,
16 manufacturing facilities, car washes, gas
17 stations, hotels, motels, and eating and
18 drinking establishments. An eating
19 establishment, unlike several of the other
20 uses, which are conditional uses, an eating and
21 drinking establishment is a permitted use in
22 the zoning district, has been, always has been,
23 over the course of those sixty-five years.

24 The property currently, in its current
25 non-conforming shape, has been used most

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1 recently as a parking lot for vehicles,
2 overstorage vehicles for Country Chevy,
3 Chevrolet. So, there's parking that exists on
4 this parcel. The parcel has been predominantly
5 cleared, and cars have been parked on there
6 pursuant to a use variance. So, the use that
7 exists today, is not a use that is permitted in
8 the zoning district to use, and is continuing
9 by virtue of a use variance. The use that is
10 being proposed, an eating/drinking
11 establishment, is a permitted use in this
12 village, and has always been a permitted use.
13 So, we are taking a non-conforming use, and
14 proposing to develop it in a manner that is
15 permitted, a permitted use, once again, since
16 1965, in this village.

17 We submitted the application for site plan
18 in January of this year, approximately nine
19 months ago. That application was submitted to
20 the building department. That application
21 showed the layout of this lot. This
22 application showed the dimensions of this lot.
23 This application demonstrated that this
24 property had been granted an area variance
25 regarding a certain small variance from the

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1 width of the lot. So, it had existed as a
2 pre-existing use, and was granted a use
3 variance for a -- and an area variance for this
4 approximately two foot dimension in width,
5 which was noted on that map that was submitted
6 to the building department and planning board
7 in January, and sent to the planning board for
8 site plan review and approval.

9 Now, we -- going, in going through the
10 nine-month review process with the planning
11 board, we sought to address several issues.
12 Now, I know there has been correspondence out
13 there that talked about environmental impact
14 statements, and citing case law. Let's say,
15 put into the record, that those cases cited
16 were for type one actions under SEQRA. This
17 action is nowhere close to the threshold for a
18 type one action. In fact, the recently adopted
19 type two actions, and existing type two
20 actions, which aren't even required to comply
21 with SEQRA, exempt buildings that are four
22 thousand square feet in size. This building
23 has a footprint of thirty six hundred feet.
24 With the second floor, it is marginally over
25 four thousand square feet. The reason the

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1 state has exempted these facilities from SEQRA,
2 that they made a determination, based upon the
3 issuance of negative declarations for the
4 number of these facilities, that it was the
5 planning board could handle these through the
6 site plan review.

7 However, I'm saying that, in recognition
8 -- that's fine. She kind of made me sound
9 better. But in recognition of that, we never
10 made a claim to be exempt, because we are
11 slightly over four thousand square feet. I'm
12 just trying to provide you the scope of this
13 application in context of a lot of what you've
14 heard.

15 Now, when we came into the planning board,
16 this was a former railroad yard, so we
17 submitted with our submissions fairly early, a
18 phase one environmental testing that had been
19 done for this site and another site that was
20 owned by the property owner, Mr. Petrucci, at
21 the time. Now, in that study, which was done
22 in 2013, they took an electromagnetic magnet,
23 went through this site, did certain digs on
24 this site. We provided the information that
25 showed that based on the information, the study

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1 which was prepared by William Going, who is an
2 entity which has prepared hundreds of these
3 studies, that has undergone -- put studies in
4 with the New York State Department of
5 Environmental Conservation, that specializes in
6 these matters. The reason that this study was
7 done, is that this information was given to a
8 bank, because, I don't know if most of us, when
9 we go to banks to lend money, they don't give
10 money away easily. So, they required this
11 information in order to consider financing for
12 the property. When we submitted it to the
13 planning board, we had to redact some of the
14 information that related to another property
15 that was owned by Mr. Petrucci that didn't
16 apply to this. There was some confusion
17 raised, so Mr. Christison then retained
18 Mr. Going to not only take out the information
19 from the other property and recharacterize the
20 study, but also to go in and do additional
21 testing, to make sure that this property was
22 clean.

23 That information demonstrated that there
24 was no issues with the property, that there was
25 no evidence of any contamination arising above

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1 the levels. That was submitted to the planning
2 board, to its engineer. It was fully reviewed
3 by the planning board. They made comments on
4 it, and there was also comments made by, I
5 believe a professor, which we took into
6 account, provided to Mr. Going, who then, on
7 September 14th, provided a detailed response to
8 that letter, identifying how that professor was
9 incorrect in her assumptions, according to
10 Mr. Going's professional opinion based upon his
11 years in the field. That was submitted to the
12 planning board. The conclusions were there.
13 He explained why her analysis wasn't
14 technically correct as it related to ground
15 water versus drinking water, and several other
16 inconsistencies in his letter. Like I said,
17 that was submitted to the board. The board got
18 that when they made their negative declaration
19 next month -- last month, so -- and once again,
20 Mr. Christison is buying this property to build
21 a restaurant on it. I have told him. He has
22 reviewed it. The banks have reviewed it. The
23 bank's engineers have reviewed it.
24 Mr. Christison does not want to buy a property
25 that is contaminated. Mr. Petrucci wants to

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1 make sure his property is not contaminated,
2 which is the reason he hired a renowned and
3 well-known soil scientist and expert to review
4 this, to make the appropriate determinations,
5 so the bank can rely on that in providing a
6 loan for construction of this restaurant. So,
7 that's the first issue I wanted to address.

8 The second issue relates to storm water.
9 I know there's been some issues raised by storm
10 water. Once again, Ross, who is a friend that
11 I've known now for almost thirty years, who
12 I've worked hand in hand with, and I've also,
13 actually, been in this room when Ross was the
14 engineer for the Town of Warwick on other
15 applications, and got raked over the coals by
16 Ross over the course of the years. He's a
17 professional engineer with experience, who has
18 designed a great number of small, medium and
19 very large drainage systems, that provided,
20 prepared and submitted a full, what they call a
21 SWIP, which is a storm water pollution
22 prevention plan. That SWIP was reviewed by
23 Mr. Getz, who is also a professional engineer.
24 They both concluded that it met all the
25 requirements for the New York State DEC

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1 guidelines for treatment and retention of storm
2 water. In fact, and I know maybe its disputed,
3 but one of the things we're going to hear
4 tonight is, it's okay, there are professionals
5 who disagree. It's the planning board's job to
6 review all that material and make a decision as
7 to what their appropriate decision would be.
8 So, Mr. Winglovitz has prepared that study, and
9 demonstrated that this is a gravel parking lot
10 that has existed as a parking lot, where cars
11 are stored, that has been acknowledged has been
12 used as a railroad yard since the 1930's, and
13 determined that, the project, after it's
14 complete, and you will see the site plan, Ross
15 is going to present that, but the project,
16 after complete, will actually have less, less
17 impervious surface than exists today. So,
18 there will be a net increase in pervious
19 surfaces to facilitate drainage on this
20 property.

21 There was a question, once again, given
22 the fact that this was a historic railroad yard
23 in industrial use, where these homes were built
24 and moved into the village, probably in order
25 to walk and work at this facility, because

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1 that's what a village is. A village is a place
2 where you have a mix of uses next to each
3 other. Towns are places where you have large
4 lots and big fields. So, as this area
5 developed around the industrial railyard, there
6 was issue raised that there might be something
7 there of archeological significance. So,
8 Mr. Christison hired a tracker, which is a
9 company that does archeological studies. They
10 did a phase 1A and a phase 1B study, and what
11 that entailed was a review of all the
12 documentation and paperwork and historical
13 records as it relates to the operation of this
14 facility, and then the phase 1B was actual
15 testing of the site. They dug pits there, and
16 they dug to see what could be recovered and
17 whether there was anything there of
18 archeological significance. That phase 1A and
19 phase 1B was submitted to this board. This
20 board, and its consultants, reviewed that.
21 They questioned the applicant on it, and it was
22 also submitted to the New York State Department
23 of Historic Office of Preservation, SHIPO, as
24 it's known. There are experts there whose job
25 it is to preserve and protect archeological

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1 resource, reviewed that plan, and they issued a
2 letter saying that based upon their
3 determination, there was no need for any
4 additional work to be done. So, that was
5 submitted to this board, and this board relied
6 upon all that information when they made a
7 determination that there wouldn't be an impact
8 of archeological significance.

9 So, once again, we have another
10 professional, people who are -- work in the
11 field, specifically that relates to the work
12 they would have done, who had the studies
13 independently reviewed, determined that there
14 wouldn't be any issues related to archeological
15 significance with this development.

16 Another issue that was raised was traffic
17 impact, because this is a restaurant in an area
18 that is somewhat residential on Elm Street, but
19 if you look at Elm Street, you will see this
20 property is adjacent to the Warwick Car Wash,
21 which is commercial. There is a multi-family
22 apartment building located under -- over here.
23 There's a martial arts center and a parking lot
24 located here, and there is an existing shopping
25 mall also located on Elm Street. So, the

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1 character of Elm Street itself is a mix of
2 commercial and residential uses, as well as
3 this industrial parcel, which is now, we
4 propose to be used for commercial. While we
5 didn't think the traffic could be generated by
6 a thirty-six hundred square foot eating and
7 drinking establishment that is pretty much a
8 neighborhood and local use, would generate a
9 lot of traffic, we went ahead and we hired Bill
10 Greely -- well, Mr. Christison hired Bill
11 Greely, who is a PhD and PE, working for Mazur
12 Consultants. Mr. Greely has been -- in fact,
13 he's, don't tell him I said this, he's older
14 than Ross and I, because he's been doing -- not
15 much, but he's been doing traffic studies for
16 well over thirty years. He has conducted most
17 of the traffic studies, once again, for most of
18 the large developments, medium developments,
19 and small developments, that have developed in
20 this region. Mazur Consulting, his company,
21 also consults several municipalities in the
22 area. So, he is a renowned, and probably the
23 most well-known traffic expert in this region,
24 who conducted this study. He took traffic
25 counts. He took the traffic counts between the

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1 June 19th and June 24th, but he also took into
2 account, the historical traffic patterns, and
3 read the studies that had been prepared as
4 related to this area, that has not seen a lot
5 of growth on this road over the course of the
6 years, and so based upon that, and his
7 professional opinion, he submitted a traffic
8 study to this board, as a professional traffic
9 engineer, as someone who specializes in this
10 facility, as someone who has designed these
11 facilities, someone who has prepared studies,
12 reviewed studies, and is imminently familiar
13 with those studies. He prepared those, and he
14 determined that based upon his counts that he
15 took on West Street, that there would be no
16 significant adverse impact associated with
17 development. He also, in doing that, took into
18 the historic count, and did an analysis showing
19 that at peak hour, that's a full hour, peak
20 hour mid week, peak hour Saturday, that leaving
21 the site and heading on Elm Street, toward
22 Orchard Street, there would be fourteen cars
23 leaving, which is one car every four point --
24 four and a half minutes, and nineteen cars a
25 minute.

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1 Now, whenever I do traffic studies,
2 whenever I get the results, you're not the
3 first people who chuckle. So, you can continue
4 to chuckle, and I have seen people get up there
5 and tell me how dam wrong I was and how wrong
6 Bill Greely was. I've only seen that at public
7 hearings, but after the developments were
8 built, I've never seen anyone come in and prove
9 that those studies and those analyses were
10 wrong, and that's because they're based upon
11 figures, they're based upon history, they're
12 based upon facts, not what you think traffic
13 will be, but what the historical counts that
14 are done on these facilities throughout this
15 nation and throughout this region has done.
16 That's why he has stayed in business. That's
17 why his traffic studies haven't been
18 challenged. That's why he hasn't lost. That's
19 why he was hired. So, you can be skeptical
20 about it, but you can't argue facts. We're in
21 a world where, you know, facts don't matter
22 anyway. This is science. The study is there.
23 It's prepared. He's given a professional
24 opinion, and his opinion is, that there will be
25 no adverse traffic impacts associated with this

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1 development, that would degregate any
2 intersections in this village, that will
3 require any further studies. Once again, those
4 studies were reviewed by the planning board and
5 its consultants, as part of the SEQRA review,
6 and based upon that, they made their
7 determination.

8 The final issue that was raised that we
9 did additional work on, related to noise. Now,
10 we understand that given the location of where
11 this site can go, and the only location that
12 would be adequately located on the site to
13 ensure the retainment of maximum number of
14 trees and the least disturbance in the flood
15 way, will potentially cause some noise impact,
16 and it's a legitimate question. That's why we
17 did have a meeting where we invited the public
18 to attend. The news reporter was there. We
19 were a little bit disappointed that there were
20 only a couple people that bothered to show up
21 to give us any input as to what we could do to
22 mitigate the noise impacts, but we still went
23 forward. On the planning board's
24 recommendation, we made several significant
25 revisions to the plan, which was including the

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1 porch that we enclosed. We enclosed the porch.

2 ROSS WINGLOVITZ: A portion of the porch.

3 JOHN CAPPELLO, ESQ.: A portion of the
4 porch, that would dampen any of the noise,
5 because there will be outside seating, and it
6 is outside seating at tables for sixty-eight
7 customers. It's not a beer garden outside.
8 It's not a bar. You cannot go outside and get
9 a beer poured. It's not a place where there's
10 going to be live music. That's all in the
11 record. We submitted that. If it's approved,
12 we would consent to it being a condition of any
13 approval. So, anything you've heard that said
14 this is going to be a beer garden or a party
15 place, it's going to be a place where people
16 could sit at a table and have dinner, and have
17 a drink outside on a nice evening.

18 Now, we've also, in response to some of
19 the concerns raised, the facility will be
20 fenced. There is a full landscaping plan.
21 Ross will present that, to show where
22 landscaping has been installed to buffer, to
23 the extent that we can, any noise leaving the
24 project. We've also relocated, at the
25 recommendation of our noise consultant, who is

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1 both the traffic consultant, who does noise
2 studies and work with the state in buffering
3 noise from the Thruway and other facilities, he
4 provided us guidelines and recommendations to
5 ensure that we enclose the dumpster
6 appropriately, so that will reduce noise, so
7 that we locate the HVAC in a manner that will
8 reduce noise. The outside seating and service
9 outside will cease at 11 p.m., both weekdays
10 and weekends, so there will be no outside noise
11 from there.

12 There will be, right now in the proposal,
13 table speakers. So, there will not be live
14 music out there, but there will be music that
15 can be played at the speakers, and we
16 acknowledge that that could potentially be an
17 issue. So, what we have consented to, and part
18 of the application, is to say that the town
19 does have -- the village does have a noise
20 ordinance, that we would comply with the noise
21 ordinance. Now, I know people, and we've seen,
22 and this is where I'm going to go to this,
23 certain interpretations of how the noise
24 ordinance should be interpreted, because it
25 really is hinged upon, at least a portion in

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1 the zoning code, is hinged upon background and
2 ambient noise. So, in the evening, the ambient
3 noise is less, but if you read that the way one
4 of the commentors on the plan has read it, all
5 of your commercial along Main Street, along --
6 in your entire village, actually, is located
7 closer than two hundred feet from a residential
8 district. So, if you read that in the manner
9 that you're -- the planning board was being
10 asked to read that, any person who closes a car
11 door, any facility that had parking, any
12 facility that had anything at all, because the
13 ambient noise level in your code is sometimes
14 exceeded by air. So, you would, if you read it
15 in that manner, you would be violating it by
16 virtue of every business in your facility.

17 However, what Mr. Greely has recommended,
18 and what we have committed to do, is to measure
19 the noise once we are up and operating. Well,
20 that's when you measure noise. You measure
21 noise when it's made. So, you determine --
22 thank you, but I'll handle it. You measure it
23 when it's made. So, if it determines that we
24 are above ambient levels with the speakers
25 outside, when this facility is opened up, we

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1 have agreed, and it will be in the record, that
2 those speakers will either be relocated, they
3 will -- additional buffering will be installed,
4 or acoustical fencing will buffer that sound,
5 or the speakers will be removed. So, that is
6 the best way to address that situation.

7 So, to sum up, all of this information has
8 been before the board, and once again, I am
9 going to reiterate, because I know people
10 sometimes don't like to hear it, but if you
11 bought a home in an area that was industrial,
12 that home was built when that area was
13 industrial, that property has been zoned
14 commercial since the time each and every person
15 here has owned the house in that area. This
16 proposal complies. We want to hear what you
17 said. If we can make it better, we would love
18 to make it better. It is a restaurant. It is
19 a moderately-sized restaurant. Thirty-six
20 hundred square feet is not a large restaurant.
21 There will be a max. If every person is
22 sitting outside, at every one of those outside
23 seats, the restaurant is full with every seat,
24 and the additional room that is available is
25 full with every seat, there would be two

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1 hundred and two patrons in that facility. Most
2 restaurants do not have every seat filled every
3 night. So, while there may be some areas, this
4 will be an eating/drinking establishment, that
5 will be a restaurant, that will be a restaurant
6 in an area that has been zoned commercial for
7 over sixty-five years.

8 We welcome your presentation, but with
9 that, I'm going to turn it over to Ross, to
10 present the site plan.

11 ROSS WINGLOVITZ: Good evening. For the
12 record, Ross Winglovitz, Engineering &
13 Surveying Properties.

14 John explained the location of the site on
15 Elm Street, just north of the railroad tracks,
16 top of West Street. The property itself is
17 about fifty-one thousand square feet, in a
18 zoning district that requires five thousand
19 square feet. So, the property is actually ten
20 times the minimum required in the zone. So,
21 it's a rather large property, and significantly
22 exceeds the zone.

23 The building proposed for the site, as
24 John said, has a thirty-six hundred square foot
25 footprint, and there will be forty-five parking

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1 spaces that are proposed to service the
2 facility, which is in conformance with zoning.

3 There is one driveway in off of Elm
4 Street, with a loop road. The driveway and the
5 loop road are going to be built within the
6 existing parking area primarily. Very small
7 portions will go outside of that. The area
8 around that will be landscaped, as part of the
9 plan.

10 Water and sewer service, I get all the
11 exciting areas, water and sewer service will
12 come from Elm Street. There will be two new
13 service connections to service the site.
14 There's adequate water and sewer available in
15 the village to service the project.

16 Lighting for the facility will be night
17 sky friendly, with shielded lighting, so they
18 don't have a big light dispersion area, and
19 they will be pointing down. The maximum pole
20 height will be about twenty feet around the
21 parking lot. The site sits down, so in
22 relation to the neighbors to the north and to
23 the west, we're about fourteen feet below those
24 neighbors, on the west side, and fourteen to
25 four feet below those neighbors on the north

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1 side. So, the poles are actually going to be
2 lower, virtually, in relation to those
3 properties, just because the property is much
4 lower than the adjacent residential properties.

5 As John mentioned, there is going to be
6 security fencing around the property. There is
7 an existing fence that is in place, that will
8 remain in place, for a portion of the property.
9 That's a chain-link fence. In addition to
10 that, the applicant is proposing a solid wood
11 fence around the property, where it abuts the
12 residential. That was something that was
13 discussed with the board, and they've
14 requested, and John was happy to provide. This
15 is, one, for security, and two, as a mitigation
16 measure, further mitigation measure for noise
17 and light.

18 In addition to that fence that's being
19 provided, there is additional landscaping
20 that's been proposed. There was a landscape
21 plan that was prepared a couple of times. It
22 has been reviewed by the board, and has been
23 revised several times in response to comments,
24 that provides additional evergreen screening in
25 areas where lawns from abutting properties

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1 approach into the lot. So, there is no
2 existing trees still left there. So, we
3 provided, not only a fence, but some evergreen
4 screening, in addition to the fence, to buffer
5 those properties.

6 Storm water, there's been a complete storm
7 water pollution prevention plan prepared for
8 the property. This is a redevelopment project.
9 There's a whole ordinance in the New York State
10 DEC design guidelines that speaks to this type
11 of redevelopment, and just for the record, the
12 redevelopment and the specific guidelines
13 regarding impervious surface, impervious
14 surfaces include, without limitation, paved
15 and/or gravel road surfaces, parking lots, and
16 driveways. So, our claim that the existing
17 gravel driveway is impervious is absolutely
18 consistent with the regulations. I've provided
19 a copy of this to David earlier, and I'll give
20 a copy to Maureen for the files, as well.

21 The site required flood plain permit as
22 part of the application. The parking area is
23 entirely within the flood plain, and there's a
24 small portion of the flood way on the property.
25 In applying for that permit, we had to

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1 demonstrate to the village that there will be
2 no net fill, meaning if we were going to fill a
3 flood plain, we could impact others by pushing
4 flood waters on other properties. The way we
5 designed the site is to make sure there is a
6 net reduction in fill. We provided more room
7 for flooding on our property, should it occur.

8 Noise, I just want to touch on that again.
9 That was a concern of the board throughout the
10 process and during the site inspection, and has
11 been in my notes, nine items. The solid fence
12 being provided, the additional evergreen
13 landscaping being provided near the area where
14 trees have been removed. We've relocated the
15 HVAC and generator from the rear of the
16 building, to the side of the building, where
17 it's at a lower elevation, and has been
18 screened with a wooden fence to help absorb
19 sound. We've relocated the patio. There was
20 an outdoor patio, which was originally near the
21 property line. That has been relocated further
22 towards the parking lot, away from the adjacent
23 residence. As John mentioned, we enclosed a
24 portion of the porch to provide further
25 mitigation, and we moved the dumpster location

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1 forward, further away from the adjacent
2 residence.

3 The building itself is proposed to about
4 forty-five to fifty feet from the adjacent
5 property lines. The zoning code requires ten
6 feet, so we're four to five times that required
7 setback to the adjacent properties.

8 Thank you very much.

9 JOHN CAPPELLO, ESQ.: I don't know if John
10 wanted to say anything, but one thing I
11 neglected to say, before I turn it back and
12 thank you to the board for your cooperation and
13 thank you for the public for listening, we're
14 anxious to hear what you have to say, and the
15 last thing I would like to reiterate, that --
16 not reiterate, I didn't say it before, but John
17 has run this facility for thirty years. We
18 have a letter of support from the police chief,
19 that in those thirty-two years, there have been
20 no incidents, his place has been run
21 sufficiently. It's been a good neighbor. It
22 employees nine full-time people, and five
23 part-time people, many of those, I believe six
24 of those, are village, either village or town
25 residents, or live in the vicinity. This new

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1 facility will take what it is a parking lot,
2 and will turn it into a tax rateable, that will
3 generate a fairly significant amount of taxes
4 for the village, turning what was an empty
5 parking lot into a viable facility that we
6 trust that once it's open and operating, many
7 of you will enjoy and locate and will be able
8 to have a good meal and a good time in walking
9 distance or a short distance from the village.

10 So, with that, thank you, and turn it over
11 to George.

12 CHAIRMAN AULEN: Thank you very much. I
13 have a question for the village engineer and
14 village attorney. Do they have any -- anything
15 they discussed or comments you have?

16 Dave.

17 DAVID GETZ: Just a couple. There was one
18 new item, or one clarification of an item
19 tonight. We're going to need some clear notes
20 on the plan regarding the noise, and the
21 process that Mr. Cappella mentioned, that it
22 will be measured, and then what measures will
23 be taken to mitigate noise, such as additional
24 acoustical treatment, or moving the speakers,
25 if necessary. We want to make sure that's

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1 clearly shown on the site plans. And also, the
2 village will require a bond for the landscaping
3 that serves for screening, so we can guarantee
4 that it will stay in place and it will serve
5 its purpose.

6 CHAIRMAN AULEN: Okay. Rob.

7 ROBERT DICKOVER, ESQ.: No, nothing.

8 CHAIRMAN AULEN: No comments from our
9 attorney.

10 Okay. I now have the sign-in sheet -- oh,
11 any of the board members have any questions?

12 BOARD MEMBER DENERLEY: Not at this time.

13 BOARD MEMBER OLSEN: No.

14 CHAIRMAN AULEN: I do have the sign-in
15 sheet. We have approximately forty people who
16 wish to speak. Keep that in mind for the
17 length of the meeting.

18 First person on -- unfortunately, do you
19 want to get the -- okay. I cannot decipher the
20 first name, but Driscoll.

21 PUBLIC MEMBERS: Jedge.

22 JEDGE DRISCOLL: I was helping somebody
23 get up. I don't know if -- but it sounds like
24 it's not on.

25 Can you hear me now?

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1 PUBLIC MEMBERS: Yes.

2 JUDGE DRISCOLL: Jedge Driscoll,
3 D-R-I-S-C-O-L-L. Good evening, Mr. Chairman
4 and members of the planning board.

5 CHAIRMAN AULEN: Would you please give
6 your address, also?

7 JUDGE DRISCOLL: Oh, sorry, 14 Van Buren
8 Street, Warwick, New York. I have lived in my
9 house at 14 Van Buren Street for twenty-seven
10 and a half years. My neighbors across the
11 street have lived there for fifty-one years.
12 We raised our children here and watched them
13 play in the neighborhood, ride bikes and
14 skateboard in the street and hang out. It has
15 always been a friendly, accommodating
16 neighborhood, where people are willing to help
17 their neighbors and look out for each other.

18 Time moves on, and as you get older, you
19 don't know how long you will be able to stay in
20 your house. This is why one of the things I am
21 concerned about is how the proposed Yesterdays
22 building will affect my property value. A
23 friend of mine is trying to sell her house in a
24 newish development off Route 94. Everyone who
25 has looked at it has said, I don't want 94 in

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1 my backyard. I can't imagine what people would
2 say if they could see a huge bar right across
3 the street from my house. From my front porch,
4 and all of the windows in the front of my
5 house, you can easily see the yellow signs that
6 are hanging on the trees that say, posted,
7 private property, and the small blue sign in
8 the ground that says, building corner. This is
9 where the proposed Yesterdays would be.

10 Added to that, if this proposal goes
11 through, there will be a huge change in our
12 quality of life. As you have heard, or will
13 hear, the increased lighting, the noise, the
14 traffic, the smells and pollution to air and
15 water from contaminated soil, will change the
16 way we live. No amount of bushes, trees or
17 six-foot fence, will change this.

18 Yesterdays will have a large parking lot
19 for its customers, but we, who live in the
20 neighborhood, all know that many people who go
21 to Halligan's or Fratello's, don't park down
22 there. They park on our streets, and walk to
23 their cars, so the police won't see them leave
24 and suspect them of too much drinking. We
25 know, because we hear them loudly walking and

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1 talking on the way to their cars at 2 a.m. in
2 the morning. Everyone knows, when you drink a
3 lot, you get louder.

4 A few years ago, when there was a big fear
5 of razorblades and other things put into candy
6 given out on Halloween, Don Frye created safe
7 homes for children to safely trick or treat.
8 Many of the included and surrounding streets
9 will be affected by the proposed Yesterdays.
10 With cars and motorcycles going in and out of
11 the ninety-seat bar, the thirty to sixty seat
12 dining area, and sixty something seated porch
13 and patio, the safe homes will be safe no more.

14 Please stop this from happening, not only
15 for our neighborhood, but for our village. If
16 it can happen here, it can happen anywhere. It
17 might become known as Yesterdays, the gateway
18 bar. This may just be the beginning.

19 Thank you for listening.

20 CHAIRMAN AULEN: Would you please keep
21 your applause down to the end of the meeting?
22 Thank you.

23 Okay. We have Lucina -- I guess they were
24 crossed off. Okay. Margaret Bowes.

25 MARGARET BOWES: Margaret Bowes, 17 Van

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1 Buren Street. The zoning designation for the
2 property at 16 Elm Street is, I believe,
3 actually, light industrial, and as such, only
4 those businesses that would create no nuisance
5 factor outside an enclosed building would be
6 permitted, and any business that is
7 appropriately scaled, nor well suited for a
8 residential neighborhood, would be permitted.

9 Unfortunately, Orange County's flood plain
10 prevents development on all areas of this site,
11 except that which directly encroaches on the
12 residential homes surrounding it. An area that
13 has, for many generations, provided a natural
14 screen of trees and plants, which lessen, to a
15 great degree, the impact of this property's use
16 on these homes.

17 So, now the village planning board is
18 being asked to approve a site plan for a
19 business that would not only be too large, and
20 totally unsuitable for residential
21 neighborhood, as outlined by the village zoning
22 laws, but will be contrary to the primary
23 purpose of zoning laws themselves, which is to
24 protect homeowners from devaluation, and
25 prevent new development from interfering with

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1 existing neighborhoods.

2 Our argument is not with Mr. Christison, a
3 respected business owner, who, though not a
4 resident of our village, has shown himself to
5 be a concerned and conscientious member of its
6 business community, nor is it with the
7 Yesterdays, that exists today, which has
8 certainly been an asset to our village for many
9 years. Our argument is with the proposed new
10 Yesterdays, and the harm it would inflict on
11 those homeowners whose property border its
12 planned site. Homeowners, who would see the
13 value of their properties, as well as their
14 right to peaceful enjoyment of it, greatly
15 diminish. If Mr. Christison's plans are
16 approved, the Yesterdays that stands in the
17 heart of downtown, the one which some have come
18 here tonight to defend, would be no more. In
19 its place would be a building more than three
20 times its size, standing within mere feet of
21 the small backyard of family homes, and a
22 neighborhood that has stood unspoiled for more
23 than one hundred years.

24 So, to all those who chose to come here in
25 support of these plans, I ask two simple

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1 questions. Would you want a thirty-six hundred
2 square foot bar/restaurant, open until as late
3 as 2 a.m., in your backyard? And would you be
4 here defending this plan, if what was being
5 threatened, was not your favorite place to eat
6 and drink, but your most important financial
7 asset, and your right to enjoy the peace and
8 quiet at the place you call home?

9 And to our planning board members, I ask
10 each of you to consider carefully all aspects
11 of this plan before making a decision, to think
12 long and hard about the negative impact
13 approval of this plan would have on our
14 community. For if that should be your
15 decision, you will need to be prepared to
16 explain to the residents and the homeowners of
17 Warwick, how lessening the property values of
18 more than twenty homes in the center of our
19 village, could possibly be beneficial to its
20 future. Thank you.

21 CHAIRMAN AULEN: Okay. Edward Stattler,
22 Sattler.

23 EDWARD SATTLER: Edward Sattler,
24 S-A-T-T-L-E-R.

25 PUBLIC MEMBERS: We can't hear.

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1 EDWARD SATTLER: Edward Sattler, 40 North
2 Lane, Warwick, New York, and that's
3 S-A-T-T-L-E-R. I have trimmed my comments.
4 I'll leave this on my way out.

5 The 1990 full EAF for 16 Elm refers twice
6 to an establishment of a forty-foot buffer
7 zone. On the page, title, both the
8 controversy, the 1990 applicant states, quote,
9 although it is true that the area directly to
10 the north and west of the property is currently
11 residential, a buffer area was created in the
12 zoning map, which includes a forty-foot minimum
13 residential buffer within the subject property.
14 There was always a need for a transition zone
15 between residential and industrial usage, and
16 the village planners have established this zone
17 with this forty-foot buffer, end quote.

18 I'm concerned that the currently proposed
19 structure sited almost entirely within this
20 buffer, which means those trees come down, and
21 the place that's protected the neighbors from
22 that commercial industrial zone, eliminates the
23 possibility for an effective buffer and
24 transition zone.

25 The 1990 EAF indicates the water table at

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1 a depth of zero to two feet, while currently,
2 the 2017 EAF indicates the average depth of the
3 water table on the site as greater than four
4 feet. I'm concerned that nowhere in this
5 application do I find a record of soil borings
6 adequate developing the applicant's reported
7 depth of the water table. Neither do I find in
8 the records of the board's proceedings relevant
9 to this application, any mention of the
10 planning board challenging the recorded depth
11 and congruity, which would have some impact on
12 storm water retention during the floods.

13 Both the 1990 and 2017 EAF, inadequately
14 addressed the industrial history of the
15 property as a railyard. This applicant's
16 archeology report places the historic railyard
17 on the south side of the creek, where the car
18 wash is, and not the north side, where
19 historically we know where it is -- or where it
20 was. Such egregious error calls into question
21 the validity of the entire archeology report.
22 I'm concerned that the planning board has not
23 required archeological study by industrial
24 archeologists with specialty in railroad sites.
25 And what we have seen thus far, what the

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1 archeology report does no more than mollify the
2 concerns of the New York State Department of
3 Parks Recreation & Historic Preservation. I
4 urge you to revisit Dr. Martin's letter, and
5 have it reviewed by an unbiased professional for
6 that independent third-party review.

7 I believe that the traffic study was
8 narrow in scope, as determined by the
9 applicant's representative at one of the
10 planning meetings, and not a study that was
11 developed and carried out by the professional
12 earlier mentioned. I'm concerned by the C
13 rating for the intersection of West and Elm, as
14 it is now, and agree with those concerns
15 detailed by Margaret McNeely in her
16 September 16 letter to the planning board.

17 The placement of the proposed structure is
18 not keeping with the adjoining neighborhood.
19 I'm concerned that the planning board has made
20 no such determination. If you haven't stood in
21 those backyards, you can't imagine how close
22 it's going to be. There needs to be
23 transition. There needs to be buffer, and what
24 you're going to have is a wall, and there will
25 be sound. I urge the planning board, again, to

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1 require professional and impartial visual
2 impact studies, including interactive
3 computer-generated before and after images from
4 all aspects, as well as a seven-day balloon
5 test marking all corners of the main structure,
6 HVAC, and other improvements at the design
7 elevation, and I know for projects such as
8 this, you don't do balloon tests, but a project
9 this close to those homes, absolutely requires
10 it.

11 In my mind, the duties of the planning
12 board, relative to the zoning board, should be
13 administered with a clinical detachment of a
14 professional. The applicant's merits have
15 nothing to do -- I'm sorry, an application's
16 merits have nothing to do with any applicant,
17 nor the own ventures, nor their standing in the
18 community. An application rises and falls on
19 its own merits, nothing more, nothing less,
20 nothing other.

21 Mr. Chairman, I'm concerned that some
22 decisions are being made based upon protection
23 of personal interests. Your comments that you
24 won't be able to hear this project from your
25 house, implies that there will be objectionable

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1 noise, but you won't hear it. I'm also
2 concerned that the board has indicated that
3 they don't want to be sued again, and decisions
4 are being made simply to avoid litigation. I'm
5 concerned that one planner's desire to review
6 drainage, at one of your meetings, was
7 summarily dismissed, told the matter had been
8 previously discussed, and it would not be
9 revisited. At the most recent meeting, there
10 was a board member with a concern about sound,
11 who was not really even acknowledged.

12 Local Law 145-3, purposes begins, there is
13 hereby established a zoning law for the village
14 of Warwick. 145-3(a)(e) lists the basic
15 tenants of the zoning and land use, to be
16 seemingly ignored by this board. Just because
17 a place is zoned commercial industrial doesn't
18 mean that you can build exactly what it is that
19 you wish would be there. The buffer zone, all
20 these edges where the conflict is, and for a
21 project to sit in what now is the buffer zone,
22 to me just seems ludicrous.

23 I'm concerned that the impact of this
24 proposed commercial development on surrounding
25 residential neighborhoods has not been properly

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1 evaluated, except by the neighbors, and that
2 any such development of 16 Elm will devalue
3 property over a wide swath, and hasten
4 transition from owner-occupied dwellings, to
5 absentee-owner rental properties. There's
6 already history in this village of
7 neighborhoods that have gone this way, and from
8 them, we can learn.

9 I'm appreciative of the noteworthy
10 professionalism of the planning board's
11 secretary and attorney. I appreciate, also,
12 the likely brilliance and diligence among the
13 current membership of the planning board that
14 never gets to see the light of day.

15 Tonight is this board's last opportunity
16 to renew or resolve the difficult work of
17 informed and transparent planning. I urge you
18 not to take the next step closer to Article 78,
19 and to not be found, in your actions, that
20 you've been arbitrary and comprecious, an
21 exercise of abuse of discretion. Thank you.

22 CHAIRMAN AULEN: Patrick Gallagher.

23 PATRICK GALLAGHER: Patrick Gallagher, 57
24 West Street.

25 CHAIRMAN AULEN: Please spell your name,

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1 sir. Spell your name for the reporter.

2 PATRICK GALLAGHER: Spell my name.

3 Patrick, P-A-T-R-I-C-K, G-A-L-L-A-G-H-E-R.

4 Does that take away from my five minutes?

5 First of all, I don't think that there's
6 anybody among the people that are objecting to
7 this, that have any genuine, or have had any
8 genuine dislike for John Christison or his
9 operation, or -- you know, the first letter
10 that I wrote about this, gave respect to John
11 Christison and to the current owner of the
12 property, because they both have been good
13 neighbors. This has knowing to do with how
14 well run his place is. It has nothing to do
15 with his personality. Nobody hates the guy.
16 We don't want a thirty-six hundred square foot
17 bar in our backyard, with two thousand square
18 feet of decks, and no one can tell me that
19 that's not going to be a major impact on our
20 neighborhood. Just because no one can tell me
21 that, doesn't mean that I'm right, but I don't
22 think anyone in this room, really, come on.
23 Stand in our backyards. We've asked this
24 planning board, and the village board, time
25 again, come stand in our backyard, and no one

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1 has done that. Why not? What is the problem?
2 Do you represent us? I'm going to read some
3 comments, and I'll quit.

4 The applicant did not anticipate a welcome
5 wagon, and came to this process with some of
6 the best legal counsel in the region, but if
7 the zoning is interpreted with the neighborhood
8 in mind, it does not support the proposal
9 you're obligated to do the right thing legally
10 and morally. This proposal, and handling of it
11 to date, do not pass muster legally or morally.

12 Part two, page eleven, question eighteen
13 of the 1990 EAF, will the proposed -- will the
14 proposal affect the character of the existing
15 community. In 1990 the question was answered
16 no. No, no building was there, one light.
17 Maybe it was right. I don't know. I moved
18 there in 1992. It was my neighbor already, as
19 is the car wash. I have never complained about
20 the Port Newark light lights over there,
21 because they were there when I was there. I
22 don't blame you. At the last planning board
23 meeting, the chairman of the planning board
24 chose to ramrod the response to the same
25 question, insisting that the answer regarding

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1 impacts to the neighborhood was, no impact. He
2 emphatically stated that the answer was no, and
3 his board followed along.

4 How can a proposal with twenty times the
5 lighting, and a building three to four times
6 the size of the residences that surround it on
7 three sides, not two, three sides, Elm Street,
8 West Street, Van Buren. You're making an
9 amphitheater to broadcast into Orchard and
10 Welling, but that's another point altogether
11 that's completely ignored. How can a proposal
12 with twenty times the lighting and a building
13 three to four times the size of the residences
14 that surround it on three sides, have no
15 impact? How can the introduction of a
16 thirty-six hundred square foot bar and two
17 thousand square feet of deck for outdoor
18 dining, have no impact? Walking past any
19 downtown Warwick Main Street establishment on a
20 busy night, makes that a foolish statement.
21 This statement defies reality and implies a
22 political prejudice or impairment on the part
23 of the chair.

24 Can any member of this board look me in
25 the eye, right now look me in the eye, please,

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1 and tell me -- I lost my place. Forgive me.
2 Very dramatic, very dramatic. I'll start over.
3 Can any member of this board look me in the
4 eye, tonight, here, in this public forum, and
5 state for the record, that this proposal will
6 have no impact on the neighborhood's community?
7 Right now, can you look my neighbors in the
8 eye? Can you look your own families and
9 children in the eye, and tell any of us, in all
10 honesty, that you believe that there will be no
11 impact on the neighborhood if such a proposal
12 were approved?

13 That's what it takes to get this done.
14 You have to state for the record that this will
15 have no impact on the neighborhood, no impact.
16 Come on, come to our backyards, turn a radio on
17 in the lot, it's over.

18 Parking of these cars were restricted and
19 a part three required for a variance in 1990.
20 They had to have been recently serviced --
21 pardon me. Would you like to speak? I'm
22 sorry. I didn't mean to interrupt you.

23 They had to have been recently serviced
24 prior to the storage on the lot. No leaking
25 fluids were specifically mandated. In 2017, in

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1 the same lot, next to the same creek, in an
2 expanded flood zone, every car in the bar lot
3 will be a potential source of non-point source
4 pollution in an area adjacent to the
5 Waywayanda. In the 1990 EAF, under the project
6 description, page three, section B, part 1G,
7 the question asked is, what the maximum
8 vehicular trips generated per hour upon
9 completion of the project would be, and the
10 answer is a maximum of ten to twelve car
11 movements per day, per day. In 2017, you can
12 easily have, according to the applicant's
13 proposal, fifty to sixty trips per peak hour,
14 if the estimate is not understated by the
15 applicant's engineer, and as he said, there's
16 also quibbling about that, but he's stating
17 fifty to sixty. That's what, ten, twelve times
18 more than what was 1990 approved? Houses are
19 still there. Mitchell's Corners is in. A lot
20 more traffic there. A lot more people in the
21 village.

22 Since that time, Elm Street and
23 surrounding streets have had traffic increases
24 as a result of Mitchell's Corner shops, the
25 martial arts center on West, near Elm, and

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1 Wheeler, and the increased population of the
2 village. Since that time, Elm Street and
3 surrounding streets have become ever busier,
4 and are used to avoid Main Street by many
5 drivers. The neighborhood has remained stable.
6 The justification for allowing more traffic and
7 eliminating parking spaces to accommodate a
8 business, whose owner stated on News 12 the
9 other day, that there already is no parking in
10 the Village of Warwick, is very questionable.
11 You're going to be eliminating parking on Elm
12 Street. It's a only a few spaces, but we don't
13 have enough to go around to begin with.
14 Everyone knows it. John is not the only one.
15 Additional traffic will impact Elm, Orchard,
16 Wheeler, Welling, West, Spring Streets, North
17 Street, Cottage, McEwen, Campbell and Hamilton,
18 and traffic will be competing with massive
19 chlorine tankers on some of these narrow
20 streets, when they leave Main Street. What
21 percentage of impaired drivers are you adding
22 to the mix if you allow this project to
23 approval?

24 Thank you for listening to me. Please
25 think long and hard about these things. This

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1 is our neighborhood. I'm going to -- I'm going
2 to spend everything I've got, because I'm
3 either going to give it up in property value or
4 I'm going to have to fight this. It's my home.
5 You came to my home.

6 CHAIRMAN AULEN: Thank you.

7 PATRICK GALLAGHER: We don't like dislike
8 John.

9 CHAIRMAN AULEN: Your time is up.

10 PATRICK GALLAGHER: We don't dislike you,
11 George.

12 CHAIRMAN AULEN: I'm having difficulty
13 deciphering the next name. Renelle Lorrain, 13
14 Grand Street.

15 RENELLE LORRAY: Hi. My name is Renelle
16 Lorrain. First name is Renelle, R-E-N-E-L-L-E,
17 last name Lorrain, L-O-R-R-A-Y. I live at 13
18 Grand Street.

19 I was here -- I'm here to address some of
20 the comments that were made by people that
21 wrote in, that don't even live here, about
22 Yesterdays and where it currently is, and how
23 fine a place it is, and how they brought their
24 grandchildren, et cetera, and I was always
25 under the impression that Yesterdays was

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1 supposedly a pub, and a pub by definition, is a
2 place that serves alcohol and food, and usually
3 in that order, but because of the size of the
4 place, the fact that it's enclosed, and the
5 limited seating capacity, kind of inhibits a
6 lot of the people that would go to a place like
7 Halligan's, where they go for a drink or two
8 after work to relax, or they'll go home and
9 have dinner after those drinks, or they'll have
10 dinner elsewhere, and then go there to have fun
11 and hang out. So, the thought of this type of
12 establishment now moving to a facility with
13 outdoor decking, and I was mistakenly under the
14 impression that the outdoor seating was for the
15 two hundred people, but that's for everyone,
16 but still, noise carries at night. I can hear
17 music coming from Pennings Orchard. I can hear
18 music coming from Railroad Green. The new --
19 just listening to what was presented, the new
20 parking spots on the facility itself, will now
21 be concentrated, forty-five of them, which is
22 in addition to wherever they're going to park
23 on the side streets, and currently, anyone that
24 drives to Yesterdays in town, has to park at
25 CVS or down below by the Chase lot, or if

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1 they're lucky, they got a spot on Main Street
2 in front, but now you'll have concentrated
3 vehicles right on the site, with exhaust fumes
4 blasting into the atmosphere and into the
5 backyards. People have to come out and have to
6 smoke. So, everyone will have to breathe in
7 secondhand smoke. Because the place is larger,
8 I'm sure it will have seating to accommodate
9 parties that are larger than four to six
10 people. In that case, most likely a lot of
11 bikers will come, because they tend to travel
12 in groups, large groups. They go past my house
13 all the time, and to have to listen to the
14 noise of them starting up from the parking lot,
15 leaving, a mass or whatever, that's very loud.
16 I can hear them as it is coming along Cherry
17 Street like it's a drag strip. They head out
18 on Grand Street, towards Liberty Green, and up
19 and over the mountain. I can hear that way off
20 in the distance, and it's very disturbing. The
21 people in these houses, when they come home at
22 night, expect to be able to enjoy, you know,
23 having dinner or watching TV, they shouldn't
24 have to shut their windows. They should be
25 able to do that at night.

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1 The other issue, also, is the odors
2 emanating from the kitchen exhaust. Why the
3 space has to have open decking, I don't know.
4 It is probably the first one now proposed
5 within the entire village. Every other place
6 is enclosed, so you don't really hear the
7 noise. If you wonder what it would be like to
8 live next to this place, you could stand across
9 the street from Fetch, Eddie's Roadhouse, when
10 he had those windows open, or any other place,
11 Halligan's, that people go to have a good time,
12 you know that when drinks are had, the
13 inhibitions wash away, and the later the
14 evening goes on, the louder people get. As a
15 great example, when I first walked in here, you
16 could hear everyone talking in this room, and
17 just imagine how loud that was, and if it was
18 right next-door to your house.

19 Did I forget anything? I think that's it.
20 Some people already mentioned the points I was
21 going to talk about. Thank you.

22 CHAIRMAN AULEN: Dan Mack.

23 DAN MACK: Hello. Can you hear me? No?
24 All right. It's going to be worth it.

25 First of all, I want to thank the planning

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1 board for your service. This is not easy for
2 any of us, and you've had to have your feet to
3 the fire for the last, at least, six months,
4 and some of you have been here. I've been
5 reading the minutes for Mitchell's Corners,
6 when the Dunkin Donuts, and Chairman Aulen was
7 on the board at that point, some of the people
8 in this room spoke. So, history sort of
9 repeats itself, and it's a difficult job you
10 have.

11 What I've heard mostly here tonight, and
12 I've heard it at the other meetings, is the
13 zoning law, there's both letter and the spirit
14 of the zoning law, and what you're spending a
15 lot of time on, of course, is the letter of the
16 law, setbacks, heights of lights. You know,
17 I've talked about the accomodations many of you
18 have asked for here and gotten through John and
19 Ross and John Christison, but there's also a
20 spirit in the law, and I spent a long time
21 reading the zoning law of the Village of
22 Warwick, and I just want to talk about a few of
23 the terms in that, and it's a harder thing to
24 sort of -- you can't measure some of these
25 words, but they're in the law and you have to

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1 sort of dwell on them. There's a, kind of
2 quiet in the room in general, but the law talks
3 about excessive dissimilarity in relation to
4 other structures. So, those are kind of petite
5 houses on West Street, Van Buren Street,
6 Cottage Street, and both the height of the
7 houses, the cubical content, the gross floor
8 area, the height of the building and the roof
9 of the -- there's a model on that table, is
10 quite different than the quality of the houses
11 surrounding it, and that's in the law. So, if
12 there's great dissimilarity, you have to take
13 that into consideration.

14 The idea of shouting or making noise
15 either inside or outside of a building, motor
16 vehicles, my wife will talk about that in a
17 minute. We have a very poignant letter from
18 someone who lives in the middle of the bar
19 culture in Warwick, and was not able to speak
20 tonight, but is a very dramatic letter.

21 The other is the impacts of growth must be
22 controlled to retain the character of the
23 village. This is tough. What is the character
24 of the village? How do we grow? What are the
25 growing pains we all have to have? Do we want

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1 to keep more business? There's a lot of
2 difficult questions, but I want to encourage
3 you to kind of do some soul searching in terms
4 of what the spirit of the zoning board is and
5 not just the metrix of it.

6 And also, with all of us here tonight, and
7 I respect the huge number of people here, and
8 I've never seen quite this thing happen in
9 Warwick, a greater role for the public must be
10 encouraged both at the community level and for
11 policy implementation. So, here you are, this
12 is kind of a good example of kind of democracy
13 in progress, but it's a difficult decision you
14 have to make. So, I want to really, again,
15 encourage you to look beyond just the numbers,
16 and get kind of the spirit of what -- how
17 Warwick can grow and how Warwick can retain its
18 nature as a village.

19 One thing that I think a mistake was made
20 in some of the zoning, that that particular
21 piece of property should have been designated,
22 limited office overlay, which was a
23 designation, if you haven't heard of that, to
24 protect our residential neighborhoods from
25 commercial neighborhoods. It's sort of -- it's

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1 another form of the buffer zone, and it has
2 very, very strict restrictions on how you can
3 -- what you can do in a limited office overlay.
4 With those many homes near there, I think that
5 was a mistake made by the village board when
6 they rezoned -- or when they looked at the
7 zoning of that property, and I think we're
8 having to live with the consequences of that.
9 And many of my other points were made by other
10 speakers. Thank you?

11 CHAIRMAN AULEN: Thank you. We have Teri
12 Mack.

13 TERI MACK: Good evening. My name is --
14 my name is Teri Mack, and I live at 14 Welling
15 Avenue, T-E-R-I, M-A-C-K, and I've been asked
16 to read, read a letter from someone who wasn't
17 able to be here tonight, who lives on Main
18 Street, and in the village, and his comments
19 are -- are relevant to the spirit of the master
20 plan, where it stated that development should,
21 one aspect, I don't know if it's D.4, I'm not
22 as good at that, but that should meet locally
23 generated need.

24 Dear planning board members, local
25 officials and Warwick neighbors, thank you for

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1 this opportunity to voice my opinion on this
2 matter. As a resident of this community, it
3 deeply troubles me and my family about the way
4 this village is heading. We rent an apartment
5 in the middle of the village. We were warned
6 about the train that comes through at all
7 different hours. To my surprise, that would be
8 the least of our noise problems. My wife and I
9 never thought the village had such a nightlife
10 and that so much partying was taking place.
11 Before renting in the village, we had lived in
12 an area of Warwick outside the village, where
13 the nightlife was unnoticeable, like it is for
14 most people in this town.

15 For the people that live on Elm Street and
16 the surrounding areas, I feel for you. You
17 will need to prepare for the following: Loud
18 talking, cursing, screaming down the block,
19 fights, arguments, slamming car doors, cars
20 with loud mufflers, people leaving beer cans
21 and trash in the street and on your property,
22 groups of people smoking and being loud. I've
23 witnessed a group of boys climbing a large
24 flower pot in the village Railroad Green, and
25 large packs of young adults that bar crawl

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1 anywhere between 1 and 3:00 in the morning
2 during most weekends, and during any given
3 event or holiday. Be prepared to be woken up
4 at least two times per night. I could go on,
5 but -- many other examples, but I won't give
6 them here. We've called the police many times
7 and notified our landlord, who wasn't aware of
8 this problem. Our landlord sent the mayor an
9 email about the problem, but to this day,
10 nothing has changed.

11 We're not New York City, and we shouldn't
12 try to be. We're a sleepy, little town, where
13 we have hard-working people who just want to
14 raise a family, are entitled to reasonable
15 peace, or so I thought. Thank you.

16 CHAIRMAN AULEN: John Marcy.

17 JOHN MAXCY: It's John Maxcy, M-A-X-C-Y.
18 I live at 47 West Street.

19 According to the Village of Warwick's
20 Zoning Law, article one, title and purpose, I
21 would direct attention to Section 145-3,
22 purpose, which states, A, to guide the future
23 development of the village in accordance with
24 the comprehensive plan, so that the village may
25 realize its potential as a place to live and

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1 work, with the most beneficial and convenient
2 relationships among the residential, commercial
3 and mixed use areas within the village. Letter
4 F, a greater role for the public must be
5 encouraged, both at the community level and for
6 policy implementation, and at the neighborhood
7 level, for land use implementation.

8 As early as April 2017, it was brought to
9 the attention of this planning board, as well
10 as the village board, the many environmental
11 concerns and negative impacts this development
12 would have on our community. On May 1st of
13 2017, we submitted a review by an environmental
14 consulting firm, hired by us, to the EAF
15 submitted to the board, showing numerous
16 errors, omissions and inaccuracies. As
17 previously mentioned by Mr. Sattler, during the
18 May 18, 2017 planning board meeting, the record
19 shows, when questioned about outdoor speakers,
20 the applicant's attorneys stated on the record,
21 that they will have, quote, little speakers on
22 the porch that only the patrons can hear,
23 unquote. The response of the chairman of this
24 board, also on record, was, guarantee, quote, I
25 won't hear it from my house, unquote.

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1 During the June 15, 2017 planning board
2 meeting, the record shows, when the issue of a
3 traffic study was raised, the chairman of the
4 board stated reluctantly, three of the board
5 members want a traffic study, so it has to be
6 done. The attorney for the applicant stated,
7 quote, the traffic study will show traffic here
8 will not be sufficient enough to warrant any
9 mitigation, because it will be a level A, and
10 traffic conditions will substantially be the
11 same, unquote. The engineer for the applicant
12 states, he does not think there is any traffic
13 concern on the opposite side of the tracks,
14 then suggests the traffic study be done from
15 the tracks to the north, on Elm Street, to the
16 intersection of West Street and Elm Street, to
17 which this board agreed.

18 This insufficient study ignored the
19 entrance and exit of the Mitchell shopping
20 area, and the entrance and exit of the car
21 wash, both within sixty feet of the entrance to
22 the proposed development. Also, and more
23 importantly, the study ignored a residential
24 neighborhood, with more than seventy
25 residential homes, south of the tracks, in the

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1 other direction, on Campbell Road, Hamilton
2 Avenue, Welling Avenue, Oakland Court and
3 Orchard Street, including an offset four-way
4 stop sign, at the intersection of Orchard
5 Street and Elm Street.

6 These are examples of concerns the
7 residents have with our fair, impartial, and
8 equal representation to this proposed
9 development in front of the planning board, and
10 the interpretation and adherence to existing
11 zoning laws. Our objective is to bring to the
12 planning board's attention, the many legitimate
13 concerns the residents have to this proposed
14 development at this location. Our objections
15 are not against the establishment, or its
16 owners. We are only asking the board to look
17 carefully at the negative impacts this proposal
18 will have on our community. This proposal is
19 out of scale for this location, and violates
20 the spirit of the village comprehensive plan.
21 Thank you.

22 CHAIRMAN AULEN: Harry Clarke. Everybody
23 is leaving when I called his name.

24 PUBLIC MEMBERS: He's gone.

25 CHAIRMAN AULEN: He left? Margaret

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1 McNeely.

2 MARGARET McNEELY: Thank you very much. I
3 have one chart. I think I'm tall enough here.
4 I'm Margaret, M-A-R-G-A-R-E-T, McNeely,
5 M-c-N-E-E-L-Y. Thank you. I live at 5 Welling
6 Avenue in the village. I'm going to talk about
7 two things, one very quickly. John covered
8 most of the issues about the traffic, but I do
9 want to show, and I'll return to the mic, if I
10 can do it, what the current traffic pattern is,
11 and some day you and I can have a cup of coffee
12 and talk about data generation and data
13 interpretation. They're different fields, and
14 I think it's always interesting to look at both
15 sides.

16 What I did was, I looked at what the
17 traffic study found, and any of you who went up
18 and down Elm Street at that time -- thank you.
19 I need a Vanna. The rubber count was placed
20 right near the entrance to the bar. So, what
21 they were picking up were all of the cars that
22 came down West Street, and some went back, then
23 other cars went out West Street. So, we have
24 some phantom cars in here, so I used averages,
25 but I started at 5 a.m., and that's when a lot

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1 of people start moving in that neighborhood.
2 They go to the bagel shop. The first bus is
3 about 5:00. So, if you look, we have a steady
4 rise, and the weekday is blue, up to, we peak
5 about noon to 1, then we have some traffic,
6 with people going to the pizza shop, about 5,
7 then it totally dissipates. On Saturday, we
8 have a very similar pattern, again, with the
9 peak at lunch, with people coming to Mitchell
10 Corners, car wash, whatever, and then it goes
11 down, down now, and then, interestingly enough,
12 it peaks again as people start leaving the
13 downtown bars. They finish dinner. They
14 finish their drinks. And as most of us who
15 live in the village know, it's a whole lot
16 easier to come Elm Street, to the Welling
17 Avenue Expressway, and scoot out, that heaven
18 forbid, get stuck by two lights downtown, and
19 that's what we're seeing in this spike.

20 If you look at the projections in the
21 traffic study, it's going to add fifty percent
22 to each of these. Some say that's not
23 significant. I walk my dog three times a day
24 on Elm, Mitchell Corners, Railroad Green,
25 Welling Avenue. I'm still alive, thank you

Proceedings

1 very much. Some days I come home questioning
2 it. Fifty percent traffic is a lot of cars in
3 that area. So, I would ask that, I thank the
4 three people who were in favor of the traffic
5 study, to do a full traffic study, look at
6 Orchard Street, look at Welling Avenue. In
7 fact, the traffic study that you commissioned
8 in 1995, interestingly enough, showed that
9 there were a hundred and forty cars on Orchard
10 Street on a Saturday afternoon. That's in
11 1995. West Street had four hundred and eighty
12 cars on it. That's 1995. Think about the
13 change in the village in twenty years, in the
14 number of cars. We have to look at the
15 complete traffic pattern for the bar and the
16 restaurant. You GPS 16 Elm Street, they don't
17 take you down Main Street, up around down into
18 Elm. They bring you Campbell, Welling,
19 Orchard, and in that way. If you're coming
20 from the south, you're not going to come
21 through the village. You're going to come that
22 way. So, I beg of you to finish the traffic
23 study, do a whole traffic study. Let's look at
24 the whole picture. Let's know what the real
25 data are at this point, so we're going to know

Proceedings

1 what will be the full impact of this bar.

2 Second thing, thank you. Yes, I need
3 this. This is the landscape. We've talked
4 about mitigation of the lights for the
5 landscape. So, what I did was, take the plan
6 and put the landscaping next to the lights.
7 So, what you see up here, and the landscape
8 plan is gorgeous, by the way. Where is John?
9 It will be beautiful. The spring trees, the
10 flowers, they're going to be great. To block
11 the light, we have eight-foot norvick pines
12 being planted there, and I just learned that
13 there is a fourteen-foot change. So, take the
14 fourteen feet, add the eight feet of the
15 norvick pines, which kind of grow, if they're
16 doing really well, three feet a year, typically
17 two feet, it's going to take at least four
18 years for those trees to get high enough to
19 block the motion sensor lights that are going
20 to be at the top of the building. Four years,
21 the trees don't do that well, it could be as
22 long as six years. I appreciate the ballards
23 that were were put there, with the arbovite.
24 That's great. Look down here in the parking
25 lot. That yellow rim is what's shooting out.

Proceedings

1 The lights in the parking lot aren't down.
2 They're forward. This is going to be daylight
3 most of the time. These are going to be
4 flashing on and off. We've got critters in our
5 neighborhoods. Motion sensors, they're making
6 us all crazy, and these are going to come right
7 over to everybody who lives here. The
8 landscape plan has been improved. It needs
9 more work. Thank you.

10 CHAIRMAN AULEN: Jack Pennings.

11 JACK PENNINGS: I just wanted to say hello
12 to everybody. I grew up on West Street,
13 Warwick. Forty years I've been here. I know
14 some of you people. I used to trick or treat
15 in your neighborhoodS. I have. I've stood on
16 those places and looking out that way. I'm
17 here for John Christison. I just have a few
18 things to say.

19 CHAIRMAN AULEN: Jack, would you please
20 spell your name for the Reporter?

21 JACK PENNINGS: Jack Pennings,
22 P-E-N-N-I-N-G-S. You got Jack, right?

23 All right. Okay. I'm not a big public
24 speaker, so I'll try to make this short and
25 sweet. My father and mother have gone to

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1 Yesterdays for four generations, deep in
2 Warwick. We go there because we like the
3 family atmosphere. It's not a bar to me. I
4 know the signs say, no bar. It doesn't say, no
5 restaurant. I'm not fighting with you guys.
6 We're all Warwickiens here, right? So, I just
7 wanted to say -- excuse me, I hurt my back this
8 week. I grew up on West Street, nice
9 neighborhood, love the neighborhood, trick or
10 treated there. My best friends were from West
11 Street. We sleigh rided off the hill into West
12 Street for years ago. Cars coming, you know,
13 that's not what we're all here about. He's
14 going to do what's right for the town, the
15 village, everything. I hear music from
16 Pennings Orchards every night, and I've gotten
17 used to that, and it's a lot louder out there
18 than it's going to be in here.

19 So, I just want to take two sides to every
20 view. There's two sides to everything. I just
21 wanted to say, we're not even allowed to have
22 volume on in his bar on the TV screen right
23 now, not even allowed to watch the Yankee Game.
24 So, I don't think you're going to have issues
25 with volume and stuff.

Proceedings

1 The other thing was, you've got a train
2 that runs through there pretty much at night.
3 I can hear it from my house. I know you guys
4 can hear it. So, I'm just saying, he'll do
5 what's right for the neighborhood, for the
6 village. My mother and father have been there,
7 my kids. We go to Yesterdays for the family
8 atmosphere. I can sneak out, go there, and
9 that's what draws me to Yesterdays. That's
10 what I think a lot of people go to Yesterdays
11 for. The character of John, I know that's not
12 in question, but when my father-in-law was
13 dying, and my wife and I often visited there
14 from the hospital, we walked there, and he
15 brought up the whole ICU food for all the
16 nurses and stuff. I'm like, I know that he'll
17 do the right thing for us, and I know that
18 we'll work together as Warwickians to get it
19 right.

20 The other thing was -- excuse me. I lost
21 my place too. I think America is about freedom
22 of speech, and it's about free enterprise, and
23 I think we're all here for that reason, and I
24 think he's been here. He's a hard worker. You
25 guys are hard workers. Let's get this together

Proceedings

1 and get him a nice restaurant that everybody
2 can be happy about.

3 CHAIRMAN AULEN: Rachel Berlin.

4 RACHEL BERLIN: Can you hear me? Rachel
5 Berlin, 12 Van Buren Street.

6 CHAIRMAN AULEN: Please spell your name.

7 RACHEL BERLIN: R-A-C-H-E-L, B-E-R-L-I-N.

8 A lot of people have already said what I
9 was planning on saying, but again, this is not
10 about Yesterdays, or about John Christison.
11 Actually, as a matter of fact, my son loves the
12 hamburgers at Yesterdays, and it is not about
13 that. It's about what doing what's right. If
14 you're a good neighbor, you won't invade a
15 quiet, private neighborhood, build an enormous
16 restaurant and bar, that will remain open to 2
17 a.m., and 1 a.m. during the week. That's not a
18 restaurant, that stays open til 2 or 1:00 in
19 the morning. I don't eat at that hour. I
20 don't know most people who do. Excuse me.
21 I'll pass what people have already said. But I
22 live across the street from the person whose
23 backyard, their deck is literally within feet
24 of this new restaurant. They've lived there
25 for over fifty years. I live across the street

Proceedings

1 from them. I just cannot even believe that
2 this planning board, or the village, would
3 support that, and do that to their neighbors.

4 Yesterday, I was getting ready for work,
5 and my windows were open. John was there, and
6 another man was there. I could hear both of
7 them, the entire conversation, clearly, in my
8 room. That's two people, two people. Just
9 because it is zoned industrial, doesn't make it
10 right.

11 Okay. Again, this is not about
12 Yesterdays. I wish that my son could continue
13 to have the hamburgers that he loves, but this
14 is not the right location. Thank you.

15 CHAIRMAN AULEN: Teri Mack is on again.
16 You don't want to speak again.

17 TERI MACK: No.

18 CHAIRMAN AULEN: Okay. Caroline Martin.

19 CAROLINE MARTIN: Thank you. Hello, and
20 thank you for the opportunity to speak. My
21 name is Caroline Martin, C-A-R-O-L-I-N-E,
22 M-A-R-T-I-N. I live at 5 Cottage Street, and
23 contrary to what Mr. Christison's lawyer has
24 said, I'm not a professor. I never have been.
25 Maybe he likes to embellish. I do have a PhD

Proceedings

1 in hydro geochemistry from Saint John's College
2 at the University of Cambridge, and I have a
3 full-ride scholarship here in New York, at
4 Columbia University, where my focus was
5 environmental geochemistry. I'm an expert in
6 ground water chemistry, geology, and the
7 environmental impacts.

8 I recently wrote a letter to the planning
9 board, summarizing my reading, my own bias
10 professional reading of the environmental site
11 investigation/remediation documents compiled by
12 William L. Going & Associates on behalf of John
13 -- is your name Christison or Christanson?

14 JOHN CHRISTISON: Christison.

15 CAROLINE MARTIN: Christison. Well, they
16 misspelled your name in your environmental
17 report. So, on behalf of John Christison and
18 his efforts to characterize the environmental
19 impact of his proposed development on Elm
20 Street. Despite the errors and oversight in
21 this document that I alerted the board to, the
22 environmental impact was deemed by the board to
23 be none. I'm sorry, but if you dig a hole in
24 the ground, there is an environmental impact,
25 and the purpose of an environmental

Proceedings

1 investigation is merely to assess the degree of
2 that impact. It should be impartial. It
3 should be objective. It should be succinct,
4 yes, perhaps not merely four pages, but it
5 should be thorough. It should be thorough.
6 Beyond the instructive introduction, the first
7 important goal of site investigation report,
8 should be the characterization of the
9 environment under question, such basic topics,
10 and I'm not offering an exhaustive list at all,
11 but current land use, vehicular access,
12 railways, electrical supply networks, proximity
13 to other constructions, the type of nearby
14 constructions, historical land use, were there
15 waste facilities, manufacturing plants, the
16 topography, the slope of the land, the height
17 above sea level, basic parameters, geology.
18 What is the bedrock? It wasn't mentioned in
19 the environmental report. Meteorology, the
20 weather, simple things, hydrogeology, aquifer
21 classification, previous work, engineering
22 difficulties, none of this was in the document
23 that I read. You're relying on this document
24 to attest to the environmental condition of the
25 proposed development.

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1 For the first time in my career, I
2 encountered an official report concerning
3 ground water, that fails to specify the depth
4 at which the ground water was recovered from,
5 the weather conditions at and preceding the
6 time of sampling, which greatly affects
7 parameters like the water table, which is why
8 there was probably a discrepancy between this
9 report and others, ground water composition
10 too, chemistry, is all affected by that. It's
11 not only that they weren't recorded. They
12 weren't considered. I mean, it's a very shotty
13 document.

14 I'm afraid, regarding the environmental
15 investigation, things got worse. Okay? A
16 heavy metals test was conducted, and one
17 sample, in 2013, for a different study. Yet,
18 the single sample had an arsenic concentration
19 that was found to be at the threshold of the
20 World Health Organizations guideline limits,
21 the Environmental Protection Agency's guideline
22 limits, which are the same, for drinking water.
23 Now, there has been mentioned that there's some
24 distinction between drinking water and ground
25 water that I'm apparently ignorant of. There's

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1 a continuum in the natural world, whether you
2 like it or not, between ground water and
3 surface water, tap water, and it's exacerbated
4 by excavation. Arsenic is responsible for
5 unimagineable health defects, when consumed
6 above this limit, and the main culprit is
7 contaminated ground water. So, given the known
8 potential for an arsenic risk, we only know
9 there's a potential for it, why it was not
10 deemed necessary to test for heavy metals at
11 all in the ground water, at varying depths and
12 locations on the site, during the 2017
13 investigation, it just defies explanation, and
14 tons of subsurface matter are going to be
15 turned up, the river that's deposit, later the
16 ground water.

17 I could say that I besiege you to properly
18 and responsibly investigate the environment of
19 the Elm Street property prior to development,
20 but dozens of people have been percipherously
21 doing this already. Instead, I would like to
22 say, that given your seemingly imposition to do
23 so at this late date, you should be legally
24 bound to do so. You may imagine that the
25 degree of environmental impact in such a case

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1 as Flint, Michigan, or more recently, in
2 Newburgh, New York, might never occur here, but
3 if you, the board, fail to have the environment
4 of the proposed Elm Street lot properly
5 investigated, the degree of your negligence
6 would be in alignment with such failures,
7 regardless of what transpires.

8 It's basic environmental geosciences that
9 have not been conducted, or at least they
10 haven't been communicated effectively, and
11 there's nothing you can't clean up. There's
12 nothing you can't engineer yourself around, but
13 you must, even if it's -- it doesn't lead to
14 anything, you must do it. We know enough about
15 the environment and how it should be respected
16 in this day and age to go ahead and do that.
17 Thank you.

18 CHAIRMAN AULEN: Steven Gross.

19 STEVEN GROSS: George, you should know my
20 name is Gross, all this time.

21 Steven Gross, spelled as in disgusting. I
22 live at 71 Colonial Avenue, although I used to
23 live --

24 CHAIRMAN AULEN: Excuse me. Did you spell
25 your name?

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1 STEVEN GROSS: I said, as in disgusting.

2 You got it?

3 CHAIRMAN AULEN: I just want to make sure.

4 STEVEN GROSS: Yeah. I used to live at 22
5 Van Buren Street, so I used to be a member of
6 this neighborhood. As this board knows, I'm
7 also a professional environmental planner.
8 I've been so for the last forty years, and I
9 also served five years on this very planning
10 board.

11 I've already submitted a letter to the
12 board in which I explained why the issuance of
13 a negative declaration on this project was
14 wholly improper and in violation of SEQRA. I
15 implore each of you to read that letter, as I
16 will not expend my time tonight repeating it.
17 For now, I will only say that I strongly
18 recommend that this board rescind the negative
19 declaration, and require the preparation of an
20 environmental impact statement that will be
21 subject to public scrutiny and comment.

22 Tonight, though, I wish to raise another
23 issue that is even more fundamental than the
24 SEQRA review. I want to speak about zoning.
25 Ed Sattler talked about the spirit of zoning

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1 before. I want to actually get into the
2 letter. Zoning was invented as a way to guide
3 growth into the most appropriate location, to
4 separate incompatible uses, and to protect
5 property values.

6 Now, at first glance, it would seem that
7 the village zoning code has failed this
8 neighborhood in that regard. The light
9 industrial zone borders directly on a
10 residential zone, and if this out-of-scale,
11 incompatible project gets built, these homes
12 will never experience another quiet night, and
13 their property values will plummet.

14 However, first of all, I'm going to
15 disagree with my old friend, John Cappella.
16 The earlier zoning on this property was not
17 exactly completely light industrial. As is
18 depicted on the previous approval in 1990 for
19 the car lot, drawn by Dave's office, there was
20 a forty-foot residential zone extending into
21 this property, from the surrounding residential
22 zone. So, the R2 zone is shown extending forty
23 feet into there, which would have had a severe
24 impact on this layout, and probably would have
25 prevented it from being drawn the way it is

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1 today, but the new zoning map developed in
2 2009, seems to have eliminated that protection,
3 unless the new zoning map, is actually drawn in
4 error, and the zoning district boundaries have,
5 indeed, remained the same, as they were under
6 the old zoning code.

7 And Rob, I think you might want to check
8 into that, before this board proceeds any
9 further.

10 However, even if the current zoning map is
11 correct, the fundamental fact is that,
12 according to the Village of Warwick's zoning
13 code, this proposed project is a prohibited
14 use. Now, I'm not saying that a bar and
15 restaurant is not allowed in a light industrial
16 zone. It is. But the zoning code also
17 provides a list of uses that are generally
18 prohibited in any part of the village. Section
19 145-23, general district regulations, states
20 that this list of prohibited uses, has been
21 included to illustrate by example, some of the
22 undesireable and incompatible uses, and are
23 thus prohibited. Take note of that last part,
24 incompatible uses and thus -- and are thus
25 prohibited. The list of prohibited uses

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1 include, as paragraph J, any other use that is
2 not of such a nature as to be detrimental to
3 neighboring properties, by reason of emission
4 of odor, noise, there's a laundry list of that,
5 but odor, noise, or any other factor that is
6 dangerous to the comfort, peace, enjoyment,
7 health, of the area or community.

8 Some of the interpretation of this
9 prohibition is subjective, some is not.

10 Clearly, this proposed bar and restaurant, in
11 such extreme proximity to the neighboring
12 homes, will unavoidably create conditions of
13 noise, and even odors from the vented kitchen,
14 that is detrimental to the comfort, peace,
15 enjoyment, health, of the community. This is
16 especially true given the insistence of this
17 use included deck, with outdoor seating, just
18 feet away from the neighboring backyards.

19 The zoning code further removes any
20 ambiguity on how to judge whether the noise
21 will adversely impact the neighboring property.
22 The general district regulations state, no land
23 or building should be used in any manner so as
24 to create any hazard to the public health,
25 peace or comfort, or to hinder the most

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1 appropriate use of land in the vicinity, and
2 that all such uses shall conform to the
3 performance standards described in Section
4 145-104, for the control of noise. And again,
5 Section 145-91, objectives in design standards,
6 also states, structures shall be located,
7 constructed and insulated, to prevent on-site
8 noise from interfering with the use of adjacent
9 properties. In no case, in no case, shall
10 off-site noise exceed the standards contained
11 in 145-104 of the zoning law.

12 So, turning to Section 145-104,
13 performance standards, we find a very detailed
14 scientific approach in determining precisely
15 when a use would have an unacceptable noise
16 impact, something that has to be done before
17 the project is built, not after, because once
18 it's built, it's too late. The same section
19 also sets the maximum permitted noise on
20 neighboring properties, stating that the noise
21 level shall not exceed, at any point, on or
22 beyond any lot line, the maximum decibel level
23 for the designated octave band as set forth in
24 the following table. Looking at that table,
25 using the octave bands for the range of just

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1 human conversation, noise at the property line
2 is allowed, by the zoning code, to be in the
3 range of thirty-eight to fifty decibels.
4 However, where a lot lies within two
5 hundred feet of a residential district, as it
6 does here, the zoning code goes even further.
7 Then, the maximum permitted decibel level is
8 reduced by another six decibels, yielding a
9 maximum at the property line, of just
10 thirty-two to forty-four decibels. It would
11 seem impossible that a bar with outdoor
12 seating, with outdoor speakers, can possibly
13 meet this standard at a mere distance of fifty
14 feet from the property line, and if it can't
15 meet this standard, then it is deemed, by
16 Section 145-33, to be a prohibited use, and
17 should not even be under consideration by this
18 planning board.

19 The zoning code was designed to provide
20 protections to property owners, but it is
21 wholly dependent on the people appointed to
22 this board, to understand its provisions, all
23 of them, in order for it to work. This is the
24 wrong use in the wrong place. Somewhere else
25 in the village, and I can identify places I

Proceedings

1 think it could go, is fine, but this is the
2 wrong use and the wrong place, and the zoning
3 code, read properly, confirms it.

4 CHAIRMAN AULEN: Okay. We're going to
5 have to stop for a few minutes, because she has
6 to change the tape.

7 (Whereupon, there is a short recess in the
8 proceedings.)

9 CHAIRMAN AULEN: Everyone, please be
10 seated again, because we're ready to go.

11 All right. The next person, Kerry Boland.

12 KERRY BOLAND: Hi, I'm Kerry Boland. I
13 live at --

14 CHAIRMAN AULEN: Spell your name for the
15 reporter.

16 KERRY BOLAND: Kerry is K-E-R-R-Y. Boland
17 is B-O-L-A-N-D. I live at 15&1/2 Campbell Road
18 in the Village of Warwick.

19 Article G, no land or building shall be
20 used in any manner so as to create any hazard
21 to public health, peace or comfort, or to
22 hinder the most appropriate use of land in the
23 vicinity, and that all such use shall conform
24 to the performance standards subscribed in
25 Section 145 for the control of noise.

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1 Vibration, smoke, dust and other atmospheric
2 pollutents, odor, radiation, fire, explosive
3 hazard and heat, liquid or solid waste, the
4 vehicular traffic emissions and use there from.
5 Based on this passage alone, from the village
6 planning board committee's guidelines, it would
7 seem clear that there was no way a bar with
8 outdoor decks, that sits two hundred people,
9 would advance past go. Yet, here we are, the
10 planning board clearly in favor of this
11 proposal, with no regard to the tax-paying
12 residents. While you were bulldozing this
13 proposal through, with no regard to article G,
14 or the populous that you were meant to serve,
15 you have destroyed my faith in the process.
16 You have consulted only the lawyers for
17 Yesterdays about the proposal, and not the
18 residents. You have taken their environmental
19 evaluation at its word. You've rejected a free
20 offer of a sound study. You have poo-pooed any
21 mention of wildlife, including the discussion
22 of clear cutting trees, including those that
23 house bats. You have determined that
24 construction starting at 8 a.m. on the site on
25 weekends, and occurring seven days a week, for

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1 a duration of nearly a year, is appropriate.

2 When filling out the federal paperwork, you
3 checked none, to the question, will there be a
4 noise impact on the immediate neighborhood, and
5 will there be a visual light impact at night on
6 the neighborhood. No, you said.

7 What sort of planning committee are you?

8 Maybe you should be called the, let's wait and
9 see how it goes committee, or the, whatever, as
10 long as I don't hear it at my house committee.

11 Planning is not the right term. Planning
12 involves thinking of all the factors and
13 impacts. Planning involves the future.

14 Planning involves honoring the active
15 participation of those directly affected.

16 Planning does not involve sticking a bar in a
17 middle of a residential neighborhood. That is
18 poor planning. Planning also involves thinking
19 about what a huge parking lot, outside a bar,
20 circled by a fence, could mean for the local
21 drug trade. Even the Burger King had had the
22 sense to get rid of the bushes that block the
23 view of the parking lot from the street, but
24 we're not allowed to talk about that, right,
25 because that would involve planning.

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1 John Christison's lawyer insisted at the
2 last meeting, that they only want the same
3 consideration given to Barrett's Tavern. I
4 looked up Barrett's Tavern and learned, it
5 closes at 11 p.m. During the day there is a
6 children's park behind it open to the public.
7 Some of its profits serve the historical
8 society. It is on Main Street, and there are
9 no residential properties encircling it. A
10 planning committee should say, this works for
11 our village, and a bar at 16 Elm does not, but
12 I'm not holding out for much anymore.

13 I'm forming my own planning committee, and
14 anyone is welcome to join. My plan is to come
15 to every meeting of yours in the future, to
16 make sure that you don't do to my neighborhood,
17 and the rest of the Village of Warwick, what
18 you have done to West and Van Buren Streets.
19 Thank you.

20 CHAIRMAN AULEN: Ruth Woods.

21 RUTH WOODS: My name is Ruth Woods,
22 R-U-T-H, W-O-O-D-S. I live at 79 West Street.

23 My concerns are about public safety, and
24 how the Jones chemical truck route is going to
25 interact with traffic, specifically bar

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1 traffic. The intersection of cars, alcohol,
2 chemical trucks, and UPS and Google Maps, is a
3 dangerous situation. All of this occurring in
4 a residential neighborhood.

5 The traffic study is grossly inaccurate,
6 mainly because it has not expanded. Several
7 people talked about that. It has a very
8 limited location of where the traffic study has
9 been done. Only one intersection is the
10 subject of that study, West and Elm. There are
11 many more intersections that will be impacted.
12 Those that have been excluded, among many, Elm
13 and Orchard, Welling and Orchard, Orchard and
14 Hamilton, Campbell and Oakland, Oakland Court
15 and Oakland Avenue.

16 The Jones chemical trucks currently go up
17 Howe Street and down West Street. Originally,
18 I had not thought of my neighborhood, Howe and
19 West, as being close enough. However,
20 regardless of all the other issues with noise,
21 et cetera, which will affect me, these trucks
22 contain lethal chemicals. These trucks will be
23 going, right now, up Howe Street and down West.
24 They are eventually going to be diverted, when
25 the bridge is worked on, to go over to the back

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1 of Orchard, around Hamilton, and up Campbell,
2 to Oakland Avenue and 94.

3 The assumption that bar patrons will only
4 use one route to get to and leave this bar is
5 pure negligence. In this digital age, it is
6 GPS and Google Maps that determine the route
7 taken. It is highly unlikely that a bar
8 patron, especially under the influence of
9 alcohol, will follow their GPS home. What
10 happens when a child is out playing, or a teen
11 is riding a bicycle, or an elderly or a
12 disabled person is going for a walk? What
13 happens when a driver under the influence of
14 alcohol follows their GPS into these
15 residential neighborhoods, and onto either the
16 new or old chemical truck route, and has a
17 collision, releasing lethal chemicals onto an
18 entire residential area? None of this has been
19 studied. None of this has been considered.

20 A traffic study does not only refer to the
21 number of cars during a particular time of day.
22 It is, who are the drivers of these cars, what
23 type of vehicle. Drivers under the influence
24 of alcohol, where is that in the traffic study?
25 Drivers driving trucks full of chemicals, where

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1 is that in the study?

2 I heard earlier, the attorney for
3 Mr. Christison say, related to the sound study,
4 we'll measure it when it's made. That cannot
5 be applied in this case, to considerations,
6 drunk drivers and GPS's and chemical trucks.
7 Are you going to wait for a horrible accident,
8 for the death of a child, or the release of
9 lethal chemicals onto the streets, causing
10 untold damage and harm, which will cost the
11 village greatly? That is negligence. Are you
12 going to apply that philosophy, wait until it's
13 built and see if something happens? It's
14 unacceptable. Thank you.

15 CHAIRMAN AULEN: Marcela Gross.

16 MARCELA GROSS: Marcela, M-A-R-C-E-L-A,
17 Gross, G-R-O-S-S, good evening, 71 Colonial
18 Avenue, Warwick. Originally lived on Van Buren
19 Street, where I know I would have heard the
20 sound from 16 Elm Street in my home. I
21 probably will not hear it on Colonial Avenue,
22 but one never knows.

23 Warwick was a railroad town, and for about
24 a century, this property served as the railyard
25 for the Lehigh and Hudson Railroad. As such,

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1 it's an important historic and archeological
2 site, but that also means, it's a site that is
3 potentially contaminated by hazardous waste,
4 which is now at risk of being exposed by the
5 site development. To date, the only
6 information regarding the potential presence of
7 hazardous waste at this site, has been
8 presented by the very people who have a vested
9 interest in downplaying the hazard that may be
10 there, but this is just the type of issue that
11 this planning board needs to take a hard look
12 at, and not just accept the applicant's say so.

13 Part of the problem, is that in 2017, we
14 don't fully understand what kinds of things
15 happened in a railyard, but coincidentally an
16 article appeared in my e-mail inbox, two days
17 ago, about a similar old railyard in Montana.
18 The parallel between Livingston, Montana, and
19 Warwick, New York, are vastly amazing, and I
20 want to share excerpts from that article with
21 you. As you listen, please remember that the L
22 & H railyard, amongst these buildings, a
23 machine shop, a repair shop, a round house, and
24 most importantly, a paint shop, precisely where
25 excavations from the pub/restaurant are now

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1 proposed.

2 The title of the article was, the railroad
3 put this Montana town on the map, but left
4 behind a toxic Legacy. For twenty-five years,
5 Bill Phillips, of this town in Montana, toiled
6 as a machinist in the railyard, and now he
7 suffers from asmetosis, a scarring of the lungs
8 caused by inhaling asbestos fibers. For nearly
9 a century, men dissembled and repaired
10 locomotives in the repair shops. They chipped
11 asbestos from the boilers, used nasty chemical
12 degreasers, and watched the mess swirl into
13 french drains directly into the ground water.
14 Nobody gave much thought to the enviornmental
15 hazards.

16 Decades later produced the necessary storm
17 into a hub for arts and tourism. Visitors
18 arrive in droves in summer, for live theaters,
19 art galleries, quality restaurants, and micro
20 breweries. Gee, sounds a little bit like our
21 town. But the remnants of the railroad
22 industry still lie beneath the idealic surface.
23 Livingston's industrial past left behind a
24 plume of diesel fuel and chlorinated solvents,
25 along with lead, asbestos, and a slew of other

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1 pollutants.

2 Old railroad workers mention track eleven,
3 the rail furthest from the maintenance shop.
4 When oil inside the diesel locomotives became
5 contaminated with water or sand, workers would
6 typically pump it out and salvage the
7 lubricant, but on a tight schedule, they would
8 put the train out on track eleven. Phillips
9 said, they grab you and say, go down to the
10 east end down there, and knock the plug out of
11 that valve, and you ride it back and forth
12 until it is empty, okay. Phillips once recalls
13 finding some two hundred gallons of fresh oil
14 on the ground, but by that point, it had been
15 dumping violent chemicals for decades.

16 Doug Thompson spent about eleven years
17 working in the paint shop, where he said men
18 often passed out from the noxious fumes. When
19 workers finished stripping down a locomotive,
20 there would be a mess of chemicals on the
21 ground, all over the place. Workers would take
22 a big pressure hose and spray it out the door.
23 Superintendents often said things like, it will
24 soak in, or it will evaporate.

25 Dick Murphy said he witnessed many large

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1 diesel spills at the railyard's fueling
2 station, where the company would often fill
3 several locomotives at once, and the automatic
4 shut-off valves didn't work. Murphy said this
5 happened often, and workers weren't paying
6 attention. Fuel would overflow. Diesel would
7 cascade down the length of the yard, back into
8 the round house, before anyone noticed.

9 I keep waiting for the shoe to drop
10 Thompson said of his own health. All of the
11 men he worked with in the paint shop are now
12 all dead. When you worked in the coal mine,
13 you knew what you were walking into. When you
14 were working in that place, you didn't know
15 what chemicals were probably around.

16 Today, decades after Livingston learned
17 about the mess the railroad left behind, the
18 clean up continues. A cinder pile, where the
19 railroad had discarded burned waists for years,
20 has been capped, locking in place large amounts
21 of asbestos. The biggest job left to tackle,
22 the underground plume of solvents, most
23 importantly, petro chlorihide ethelene, better
24 known as PCE, a volatile and dangerous chemical
25 used in degreasers and dry cleaning. Most

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1 people don't give much thought to the railyard
2 these days. Indeed, many of Livingston's
3 younger residents seem unaware there was, and
4 still is, a problem.

5 This article is much longer and paints an
6 ugly picture of what happened, and the type of
7 contamination that can be expected at a former
8 railroad site. The fact is, we don't know what
9 may be under our old railyard. No one has
10 truly investigated this former railroad site in
11 Warwick, for the potential for hazardous
12 materials, and it may, indeed, be contaminating
13 our ground water as we speak. An excavation
14 into the site, especially where something like
15 the paint house once stood, possesses the very
16 real risk of re-exposing dangerous hazardous
17 materials to both residents in the immediate
18 neighborhood, and to customers who will come to
19 this site to eat and drink. I don't know about
20 you, but I don't want to be eating food and
21 drinking on a hazardous waste site. This needs
22 to be studied. Thank you.

23 CHAIRMAN AULEN: Frank Bornario. Frank.
24 Roger Moss.

25 David Gordon. Oh, there you are. Got

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1 you. I didn't mess it up too much.

2 DAVID GORDON: Good evening. My name is
3 David Gordon, G-O-R-D-O-N. I'm an
4 environmental and land use attorney. My office
5 is in Poughkeepsie, at 42 Katherine Street.
6 Earlier this evening, we distributed a letter
7 that I wrote today to the board, comments, my
8 contact information and address is on the
9 letter.

10 Obviously, there's a lot to work through
11 tonight. Given the length of the meeting, and
12 your request to keep the comments within five
13 minutes, I'm going to skip over a lot of what
14 is in my letter, and just address a couple of
15 points in it, and a couple of points that were
16 raised tonight.

17 Among the points I'm going to skip over,
18 are my observation that several of the stages
19 of this project are not consistent with law, in
20 particular, the zoning, and also, the SEQRA
21 review that you culminated last month, for the
22 reasons that are stated wherein. So, I'll move
23 on to where we're at right now, which is the
24 stage of the site plan review, and in
25 particular, I want to address first, comments

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1 that some other folks have addressed, but I
2 think it's important to focus on a little bit
3 more, by the applicant's attorney this evening,
4 to the effect that, when it comes to noise
5 impacts, it's the sort of thing we measure
6 later.

7 When it comes to what you folks do,
8 reviewing a project, reviewing its impacts,
9 reviewing its impacts for compliance with the
10 standards, there's a lot of impacts you look
11 at, depending on the project. It could be
12 storm water. It could be traffic. When you do
13 these, you don't say, we're going to build it
14 first, and then measure it. When it comes to
15 storm water, you have an engineer, either the
16 applicant's engineer, your engineer, someone
17 else's engineer, who presents it to you, model
18 it. You look at it. You model it. You run it
19 through a computer program. It reports to you
20 what the impact is. You do an assessment
21 before you build it.

22 When it comes to traffic, you do the same
23 thing. When the applicant hired their
24 consultant, Mr. Greely, he didn't say, geez,
25 let's build it and see what happens. He took

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1 the current status, as far as he wanted to, to
2 assess it out. He looked at estimates of what
3 a project like this causes. He crunched it,
4 and he did an estimate for you, that became his
5 assessment, which you can choose to accept or
6 not. He did an estimate. He did an
7 assessment. You don't build it first, and then
8 try to figure out what happened. It's the same
9 with habitat. It's the same with fiscal
10 impacts, to the extent you want to take a look
11 at that. You don't built it first, and then
12 count the tax revenue, and count how much it's
13 going to cost you in terms of your municipal
14 services. You do an assessment.

15 There is absolutely zero difference when
16 it comes to noise. Noise is not something that
17 is incapable of assessment, and I want to, in
18 particular, quote to you, your code that
19 relates to site plan review, exactly what
20 you're doing now, exactly what you have to do
21 under the law.

22 Site plan review is governed by Section
23 145-91 of your code. In particular, Section
24 145-91(I)(12)(a) says, and I quote, structures
25 shall be located, constructed, and insulated,

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1 to prevent on-site noise from interfering with
2 the use of adjacent properties. Moving forward
3 one sentence, and I quote, in no case shall
4 off-site noise exceed the standards contained
5 in Section 145-104 of the zoning law. So, even
6 if Mr. Cappella wanted to argue to you that
7 those technical standards are really for what
8 happens after something is built, when you're
9 trying to figure out if somebody is in
10 violation, your site plan code, that governs
11 what you're doing right now, tells you
12 specifically to use that table. It doesn't
13 say, build it first and then figure it out.
14 You need to do it at site plan review. In
15 fact, it even tells you how to do it in the
16 next sentence, which I won't read. It tells
17 you which manual to use. I will tell you that
18 under SEQRA, you had the exact same
19 responsibility. You clearly didn't fulfill
20 that, which is one of the reasons why your
21 SEQRA review is deficient.

22 I noticed, earlier in the evening, that
23 your engineer asked the developer for more
24 specific information with respect to the noise
25 mitigation measures that will be taken. I

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1 would suggest to you, that it is not possible
2 to take that hard look at noise impacts, that
3 you have to do, when you're approving it, if
4 you don't know what the mitigation measures
5 are. I'm very eager to see what is in the EAF
6 part three that you approved this evening, with
7 regard to that question.

8 I would further note for you, that the
9 same section of the code, 145-91, says with
10 respect to visual impact, and especially with
11 visual impacts of a -- of a commercial use,
12 next to a residential zone, which is precisely
13 the case here, a buffer zone thickly planted
14 with native trees and shrubs of sufficient
15 width, to entirely screen a non-residential
16 use, from a neighboring residential use, shall
17 be required. To entirely screen, that's in
18 your code, governing what you need to do right
19 now, and it also governed what you should have
20 been looking at in your SEQRA review, which you
21 neg dec'd. That's the job right now.

22 I want to address one other issue that
23 came up tonight, that's actually very obvious
24 from the site plan that everybody else can see,
25 and that I know you've seen numerous times.

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1 This development, this building, is very
2 clearly, specifically located, in the far
3 northwest corner of this property, right
4 adjacent to the residential neighborhood. The
5 applicant's attorney briefly explained why,
6 they wanted to avoid the flood plain impacts.
7 What they've done, clearly, is to exchange one
8 set of impacts, on a flood plain, for another,
9 the impact on the neighborhood.

10 The applicant said something this evening
11 that I do not believe is true, and other people
12 have repeated it, probably because they've
13 heard it a lot, he said that, you can't build
14 in a flood plain. In fact, you can build in a
15 flood plain, but it requires more study and
16 more mitigation. What I will challenge the
17 board to do, what I would specifically ask you
18 to do, I would like to hear your engineer, at
19 some point, go ahead and explain what the
20 specific requirements are to build in a flood
21 plain, because the absolute assumption that you
22 cannot do this, is not correct, and we need to
23 know what presumptions you're using, moving
24 forward.

25 One final point. Patrick Gallagher, who

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1 spoke a little bit earlier, mentioned that he
2 wanted you to come and stand in his backyard
3 and take a look at this, and I did so during
4 the summer, when we had a little bit of a
5 picnic, and it's a little bit complicated. You
6 can see a lot of woods, and you can see in the
7 distance, and obviously we were concerned about
8 explaining a lot of things to folks. This
9 evening, I had the opportunity to stand, not in
10 his backyard, but he lives at, I believe it's
11 57 West Street, I was actually in his kitchen,
12 and I was looking out his back window, and
13 there's about maybe thirty feet of, you know,
14 cleared backyard, and then there's the
15 beginning of woods, and I was looking straight
16 through the woods, and the benefit of being in
17 the kitchen, as opposed to being in the
18 backyard, is that you're elevated, probably
19 about, maybe ten feet above the ground, I'm not
20 sure, fifteen feet, you were elevated, and I
21 was looking through the woods, and I hadn't
22 seen before what I saw then. What I saw was,
23 essentially, a patch of asphalt, gray asphalt,
24 through the trees, stretching from left to
25 right, across what appeared to be the entire

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1 lot. I said, what's that? He said, that's the
2 old racetrack. Clearly visible. And on the
3 near side of the racetrack there was some
4 grass, and then there was a fence, and then
5 there were woods, maybe about, maybe fifty feet
6 of woods or so, and I said, what's the fence.
7 He said, that's where the previous owner had
8 essentially limited the extent of the use of
9 his property, and then there was woods. And
10 then I said to him, where's the property line,
11 and he said, it's the -- he said, it's the
12 stone wall, and I'm looking through the woods
13 and I'm trying to see, where's the stone wall.
14 My eyes aren't very good now, and they never
15 were, and where's the stone wall. He said,
16 well, come on out with me. I said, I've
17 actually had kind of a tough week, I got a
18 littled banged up with a fall. I said, I don't
19 really want to go outside, just tell me. He
20 says, I'll go outside and show you. He walks
21 outside to the edge of his backyard, the
22 cleared area, before the woods, and he says,
23 it's right here. He stands there, basically on
24 his side of the woods. There's a stone wall.
25 That's the property line.

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1 So, what that indicated to me was, this
2 project is being built in those woods, past
3 that fence, essentially, right in his backyard.
4 I was able to see all the way through the
5 track. You're taking out, the applicant is
6 going to take out, probably half of those
7 woods. It's going to be literally in his
8 backyard, literally in his backyard. You've
9 heard everybody say that phrase. It is not --
10 they're not embellishing anything. It is right
11 there. And of course, it's not only right
12 there visually, it's also going to be right
13 there with their deck, with everything that's
14 going on, with their compressor, with
15 everything, and I just need you to understand
16 that. This is, this is a visceral, physical
17 intrusion on this living space. There's no
18 other way around it, and it is specifically
19 targeted for this part of this property, which
20 is -- which is well more than an acre, and
21 could clearly, under any planning principles,
22 as a lady previously mentioned, be moved to a
23 different part of the spot.

24 So, what we need you to do, when you take
25 your hard look, which you've already done with

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1 a couple other aspects, and with respect to
2 your SEQRA review, and you're culpable parties,
3 as well, I won't read this provision, we need
4 you to determine whether the impact on this
5 neighborhood, all these houses, is more or less
6 than the impact on that flood plain, and the
7 measures that the applicant would have to take
8 to mitigate those impacts. That's your job
9 going forward, and I would besiege you, to not
10 look any further. You need to do this right
11 now, and if you do so, it may actually be able
12 to mitigate the errors that have been made.
13 Thank you.

14 CHAIRMAN AULEN: Dave Smith.

15 DAVE SMITH: Hi, Dave Smith, D-A-V-E,
16 S-M-I-T-H. I've been a resident of the Village
17 of Warwick for twenty-three years, and I've
18 been an audio engineer for thirty years. I've
19 got credentials that go a long way back. I
20 rushed up here today from New York City, where
21 I was attending the Audio Engineering Society's
22 convention for the last two days. I've been to
23 the Super Bowl four times, working in audio
24 production. I was in Detroit in 2006, when ABC
25 broadcast, for the very first time, an HD Super

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1 Bowl. I was there doing surround sound for
2 that Super Bowl. I've worked for ABC. I've
3 worked for CBS. I've worked for ESPN. I've
4 worked for HBO. I eat, sleep and breathe
5 audio. I've garnered five, five Emmy awards in
6 my last thirty years. I've got bonafide audio
7 credentials. My area of expertise is sound for
8 film and television, and while I may not be an
9 expert in measuring sound levels for legal
10 compliance, I do know how to read a sound level
11 meter in the Village of Warwick sound code.

12 Village of Warwick Zoning Law Section B,
13 standards, one, noise, method of measuring.
14 For the purpose of measuring the intensity and
15 frequencies of sound, sound level meters and
16 octave band filters shall be employed. Octave
17 band analyzers calibrated with pre 1960 levels,
18 as designated by the American Standards
19 Association, Z-24, then 1953, octave band
20 filter set, shall be used. Sounds of short
21 duration which cannot be measured accurately
22 with a sound level meter, shall be measured
23 with an impact voice hooker in order to
24 determine the peak value of the impact.

25 So, sound needs to be measured in octaves,

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1 specific bands, low frequency, mid frequency,
2 high frequency. It's broken down into about
3 eight or ten octaves.

4 B, maximum permitted sound pressure
5 levels. The decibels resulting from any
6 activity, whether open or enclosed, shall not
7 exceed at any point, on or beyond any lot line,
8 the maximum decibel level for the designated
9 octave band as set forth in the following
10 table, except that where the lot lies within
11 two hundred feet of a residence district,
12 whether within or without the village. The
13 maximum permitted decibel level at any point on
14 or beyond the district boundaries, shall be
15 reduced by six decibels from the maximum
16 permitted level set forth in the table, and
17 further, it said that such reduction shall also
18 apply to any sound emitted between the hours of
19 9 p.m. and 7 a.m., and all day Sunday.

20 So, this is a very, very strict sound
21 code, and it's even stricter in residential
22 areas, and between the hours of 9 p.m. and 7
23 a.m., and all day Sunday.

24 Now, I can read out the individual octave
25 bands here, but I've got this meter right here

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1 showing you that.

2 Exemptions, C, the following uses and
3 activities shall be exempt from the noise
4 level regulations, noises not directly under
5 the control of the property user, noises
6 emanating from construction and maintenance
7 activities between 8 a.m. and sunset, the
8 noises of safety signals, warning devices,
9 emergency warning signals, and transient noises
10 of moving sources, such as automobiles, trucks,
11 airplanes and railroads. Yes, car doors
12 slamming are exempted. Cars driving away are
13 exempted. Airplanes are exempted. There's
14 nothing in here about sound pressure levels
15 above an ambient noise floor. This is about
16 sound pressure levels, period.

17 This is a realtime analyzer, commonly
18 referred to as an RTA. It measures the sound
19 pressure levels in decibels, or octave bands,
20 as prescribed by the code. I've calibrated
21 this to match the specifications prescribed in
22 that code, by the village town code. The red
23 bars represent those octave bands, and the blue
24 lines on there represent the maximum
25 permissible decibel level for that octave band.

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1 Any time any one of those red bars goes beyond
2 the blue line, the level of the sound code has
3 been exceeded. Now, while this may not be as
4 precise as what a noise compliance expert might
5 use, it's still highly accurate and more than
6 adequate to demonstrate what our sound level
7 looks like.

8 I've created an audio CD, Pat, do you want
9 to hit that, to demonstrate what level of sound
10 is permissible and in what level that sound is
11 out of compliance. My AB tech is -- hit power.
12 Hit play. Give it a second.

13 This is the sound of a restaurant exhaust
14 fan. Lower the volume so we're within the
15 specified. We're about fifty feet away. Lower
16 it more. You can still -- we're still
17 exceeding. Lower it some more. Play the next
18 track.

19 This is the sound of about fifteen people
20 on a patio at an outdoor restaurant, not
21 sixty-eight. Play the next track.

22 This is some canned music playing through
23 some tiny, little speakers. Play the next
24 track.

25 This is all of those three elements

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1 combined into one, at fifty feet away. Play
2 the next track.

3 This is the sound of a restaurant, with
4 all of its windows closed, people inside, the
5 music playing inside, people inside talking,
6 and exterior exhaust fan running. Right on the
7 edge. What we're listening to is approximately
8 fifty feet away from this meter, the same
9 distance as the proposed structure to the
10 nearest property line. At this low volume,
11 we've exceeded the village sound code. These
12 are not the sounds of a beer garden. It
13 doesn't take a rowdy crowd, rooting and
14 hollering, and raising a ruckus. It takes a
15 little dinner conversation, some light music,
16 and an exhaust fan fifty feet from the property
17 line. These are the sounds that the residents
18 of this neighborhood are going to have to
19 perpetually endure if this application goes
20 forward. No more quiet nights and peaceful
21 enjoyment of their properties.

22 While it's the responsibility of this
23 board to study this issue thoroughly, and
24 ascertain whether or not this establishment
25 could ever be in compliance with the village

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1 sound code, in my professional opinion, I have
2 absolutely no doubt, that if this bar is built,
3 it will consistently be in violation of that
4 code. The addition of trees and fence might
5 help to mitigate the sound level slightly, but
6 not enough to matter.

7 I'd like to commend the Village of Warwick
8 for adopting such a strict sound code. As a
9 full-time audio engineer, I'm grateful to live
10 somewhere that I can rest my ears. Now, I call
11 on this board to use the power vested in them
12 by the community they serve, and to fulfill
13 their responsibilities to that community. I
14 call on this board to observe the sound code
15 that they've adopted. I call on this board to
16 reject this application on the grounds that it
17 would violate that sound code. Thank you. I'm
18 available, if you have any questions.

19 CHAIRMAN AULEN: Tom Andreas.

20 TOM ANDREAS: Very impressive. My name is
21 Tom Andreas, A-N-D-R-E-A-S. I live at 7
22 Cottage Street.

23 A lot of this testimony, or hearing here,
24 is kind of codified and set in legal terms of
25 what I know in my heart to be the truth of this

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1 matter. I've lived in Warwick for nearly
2 twenty years on Cottage Street, about two
3 blocks from the proposed bar on Elm Street.
4 Like my neighbors, my home is my most valuable
5 possession, both emotionally and financially.
6 I've invested nearly two decades improving my
7 home, and at the same time, running my business
8 and raising a child. I have put everything I
9 have into my home. The lots are small on my
10 street. They're only fifty feet wide, and I
11 learned quickly just how important it is to
12 have good neighbors. A loud and thoughtless
13 neighbor can single-handedly ruin the quality
14 of life for everyone on the entire street. On
15 Cottage Street we know this. We all know each
16 other and we cooperate and get along.

17 I came to Warwick because it has a
18 reputation of a peaceful, rural, and yet a
19 vibrant village life, with a strong sense of
20 neighborhood and community, a great place to
21 raise a family, but now this seems to be in
22 question with the proposed intrusion of a
23 thirty-six hundred square feet restaurant/bar
24 in the middle of an established neighborhood, a
25 neighborhood which is over one hundred years

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1 old. There are dozens of families whose lives
2 will be changed forever, and whose property
3 value will be diminished forever if the plan is
4 approved. It makes me wonder what the village
5 planners are thinking. What is their plan?
6 I'm amazed the project is seriously considered.
7 This is a very large bar with outside seating,
8 and it will be less than fifty feet from
9 people's backyards. The advocates of this plan
10 are telling all these people in this
11 neighborhood, you don't need peace and quiet in
12 your backyard. What you need in your backyard
13 is a big bar, with lots of lights, with
14 non-stop music, and a bunch of strangers eating
15 dinner. What is more important for our
16 village, the quality of life of the people who
17 live there, or is it is to have as many
18 restaurants or bars that you can shoehorn into
19 the small space that we have? Do we truly
20 value our roots and seek to preserve a great
21 way of life, or do we want to squeeze in as
22 much commerce as we can, no matter what the
23 cost of the lives of the people who live there?
24 I wonder what the good folks on the planning
25 board would say about this.

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1 I don't have a problem with commerce in
2 general, or with Yesterdays in particular.
3 John Christison has run a nice place and I've
4 gone there many times, good atmosphere, nice
5 location, on Main Street, where it belong,
6 where you can run a restaurant and a bar until
7 2 a.m. and not ruin a neighborhood. I see the
8 supporters here with T-shirts, and I bet none
9 of them live near here on Elm Street, and
10 probably a lot of them don't even live in
11 Warwick.

12 The last time the site was considered for
13 use in 1993, it was considered essential to
14 maintain the buffer zone, to protect the
15 adjacent neighborhood. Now the plan is to put
16 this forty-foot tall building, with outside
17 dining and outside speakers, right in that
18 buffer zone. What changed in the village that
19 it is no longer necessary to protect the homes
20 adjacent to the site? Is the quality of life
21 of the villagers no longer important? Do the
22 people in the area now crave bars more than
23 they crave tranquility, or does the village
24 just need a larger tax base? If this
25 neighborhood is expendable, and it can be

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1 sacrificed so the village can expand its
2 commercial district, maybe my street, maybe
3 your street can be sacrificed too.

4 All the other businesses on Elm Street
5 shut down early in the evening. The people who
6 live there can enjoy their home in peace and
7 quiet when they come home after a day of work.
8 This bar will be in operation until 2 a.m.,
9 24/7, all yearlong. There will be no escaping
10 it.

11 This lot, while it is zoned light
12 commercial, was never used in this way in the
13 past, and it was never intended for this use.
14 It's absurd to consider it. I've never seen
15 anywhere like it anywhere else in the Hudson
16 Valley. It's ridiculous. This issue really is
17 a litmus test to see what the village planners
18 intend for our village and what they think is
19 more important. Do they want to manage growth
20 so as to provide safe neighborhoods to raise a
21 family, and great quality of life for the
22 people who live in Warwick, or do they consider
23 it more important to expand this misuse of a
24 village, and to hell with the families that
25 suffer the loss of their peace of mind and the

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1 loss of value of their home. If the village
2 approves this, they should adopt a new slogan,
3 Warwick, a great place to visit, but you
4 wouldn't want to live here. Thank you.

5 CHAIRMAN AULEN: Roseanne Andreas.

6 ROSEANNE ANDREAS: Hello, my name is
7 Roseanne Andreas, R-O-S-E-A-N-N-E,
8 A-N-D-R-E-A-S. I live at 7 Cottage Street.

9 My husband and I have been Warwick Village
10 residents for seventeen years, and we fell in
11 love with the Warwick Village charm and enjoyed
12 raising our daughter here. We live on Cottage
13 Street, a few blocks from Elm Street, and we
14 know the reality of village life in Warwick,
15 and we do not want Yesterdays to be built here.
16 People who write to newspapers, or are out of
17 town visitors say how much they love visiting
18 Yesterdays on Main Street. The current Main
19 Street location for Yesterdays, is the right
20 location, as my husband said, for this type of
21 business. It's great because it contains all
22 the sounds, odors, parking. It does not
23 interfere with neighbors lives. The potential
24 Elm Street location is a village lot that, with
25 this proposed three thousand, six hundred

Proceedings

1 square foot building face to face with many
2 neighbors right next-door, in addition, with a
3 three-tier deck, serving people and music until
4 2 a.m., seven days a week, will affect not just
5 immediate neighbors from any blocks, but for
6 many blocks around. It will also affect
7 traffic safety on many streets, not just for
8 neighbors, but visitors to our village.

9 I can hear everything. As far as noise
10 level goes, living on Cottage Street, we hear
11 sounds all the way from Railroad Avenue. So,
12 if anyone says to you, you live on Cottage
13 Street, you will not hear anything from Elm
14 Street, they're very wrong. I wanted to give
15 you an idea of the sound level for what we
16 experience. We hear it all. We do not want to
17 hear a place like Yesterdays until 2 a.m. from
18 Elm Street. We also hear Halligan's bar on
19 West Street. Many people hang outside the bar
20 all night long, and loud music, partying,
21 talking, and the traffic of West Street, we can
22 hear it all. The same type of sounds would be
23 heard from yesterdays on Elm Street.

24 People -- the driving is really a big
25 concern, as we've already spoken about, but

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1 there's a lot of times that I hear when people
2 are coming up Elm Street and going up to West
3 Street, they floor it, burn rubber. We hear
4 that kind of stuff all the time with driving.
5 So, one of my biggest concerns are not also
6 just for locals, but visitors, people are
7 trashing West Street. When they're partying,
8 they start throwing glass things out the
9 window. So, it becomes dangerous. And also,
10 I'm glad somebody mentioned Jones chemical
11 deliveries, and no doubt, there will be
12 somebody, some people leaving Yesterdays on Elm
13 Street, with one too many drinks, and God
14 forbid they have an accident with a Jones
15 delivery truck carrying tons of chemicals, we
16 would be toast. So, I'm surprised that that
17 was only brought up from one other person. So,
18 I think that's really, really important.

19 I'm concerned about property values going
20 down. It wouldn't affect just my street, the
21 people who live around there, but I'm concerned
22 about my own street. I feel that it's horrible
23 for the people there. They -- they can't even
24 hang out in their own yards there. Their
25 values of their houses will go down

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1 drastically. The charm of the village life
2 will come overrun by all the things I
3 mentioned, and I feel like Warwick will become
4 party town, no more charming Warwick Village.

5 So, basically, for these people also
6 living right around the proposed property, I
7 mean, how could they even go in their backyards
8 and enjoy a cup of tea, enjoy time with their
9 family, visitors, or anyone? It would just be
10 horrible. I don't think anybody in here would
11 enjoy having that kind of situation in their
12 own backyard. So, we're homeowners who pay
13 taxes and we do not want this restaurant/bar to
14 be built on Elm Street. I'm sure there could
15 be a different type of business establishment
16 there, that both the village homeowners, and
17 the village, could benefit from and be happy.

18 Although I really have enjoyed going to
19 Yesterdays on Main Street with my family and
20 friends, it's just Elm Street is the wrong
21 location for Yesterdays. That's it. Thank
22 you.

23 CHAIRMAN AULEN: Joel Waitson.

24 LAUREN BUTURLA: Joel is not herE, because
25 he wasn't able to come in. There was too many

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1 people --

2 CHAIRMAN AULEN: You're Lauren then.

3 LAUREN BUTURLA: I'm Lauren, yep.

4 CHAIRMAN AULEN: Okay. Just spell your
5 name for the --

6 LAUREN BUTURLA: Yeah, sure. Lauren,
7 L-A-U-R-E-N. Last name is Buturla, B, as in
8 boy, U-T-U-R-L-A. My address is 7 Conklintown
9 Road in Chester, but I was born and raised in
10 this town my whole entire life. I left for a
11 period of four years to take an adventure and I
12 came back. I have been in John's establishment
13 from day one. He's treated me nothing but
14 family, but my brother-in-law's letter is as
15 stated: "I'm writing this letter in support of
16 John Christison and his restaurant Yesterdays.
17 I would like this letter to be read at the
18 board meeting discussing the new location of
19 his restaurant. Yesterdays to me is not just a
20 place where my family gathered -- is and has
21 been a place where my family gathers to eat and
22 celebrate occasions. Four generations of my
23 family, from my grandfather, to my own
24 children, have enjoyed spending time there. We
25 know it as a family-friendly restaurant that is

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1 part of our small community. Many of my
2 friends and their families have grown up eating
3 there, and continue to go there with their
4 children. My grandfather especially enjoyed
5 his dinner out there every Thursday night with
6 his grandsons.

7 The owner, John, has treated my family
8 like part of his own. He sits and talks with
9 us every time we're there, and when my
10 grandfather was sick and in the hospital, John
11 would visit him and take him dinner, always
12 his favorite, English beef stew with extra
13 potatoes. That really made my grandfather feel
14 special, that someone, other than family, would
15 take the time to come see him and sit with him.
16 When Pop passed away, John came to the wake to
17 visit with the family. That meant so much to
18 us, as -- and it is a blessing for a small
19 community. We enjoy our family time together
20 at the restaurant, and the company of John and
21 Peggy. There's -- they're always so excited to
22 see us with our young children. We look
23 forward to continuing our family tradition and
24 celebration at the new Yesterdays when it
25 opens. I am certain that there are many other

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1 families that feel the same way. We wish John
2 and the staff nothing but the best. Sincerely
3 yours, Joel."

4 I, though, as a person, also, besides my
5 brother-in-law, you know, have always enjoyed
6 going to John's place, and the main reason I go
7 to John's place is because you don't have to
8 listen to the loud noise, and you can go there
9 and talk and have a conversation with
10 everybody, and John is always a welcoming
11 person there. There's never music playing
12 allowed. I've never been in the bar when there
13 was ever any kind of problem. I've been to all
14 of these bars in town, and can guarantee, you
15 go to every single bar on one night, you're
16 going to have a problem, but if you walk into
17 John's bar and you stay there for a month on
18 end, no one is ever in there with a problem,
19 because that's not the kind of place it is.
20 So, I think that everybody's -- yes, I get that
21 everyone, it's in between their houses, and I
22 understand that, but John's establishment isn't
23 that kind of an establishment, and until you've
24 stepped foot in John's establishment, I don't
25 think anyone can really judge it for that. He

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1 -- he is a really good person of the community.
2 He's helped us all out. I know any -- me or
3 any of my friends or family members would go to
4 John if we had a problem, he'd be the first one
5 that would help out.

6 So, John, I wish you luck.

7 JOHN CHRISTISON: Thank you.

8 CHAIRMAN AULEN: The next person I cannot
9 decipher the first name, but I believe the last
10 name is Carey, C-A-R-E-Y.

11 TYLER CAREY: That's me. Tyler Carey,
12 T-Y-L-E-R, C-A-R-E-Y, 14 Upperhill Road,
13 Warwick.

14 Members of the community, members of the
15 board, thank you. I've known John and Peg
16 Christison as neighbors, friends, and as the
17 proprietors of Yesterdays, since my wife and I
18 moved to Warwick over thirteen years ago. My
19 motive for speaking tonight is not to try to
20 change the dynamic between those who oppose the
21 new location for their family-friendly
22 restaurant, and those who support it. The
23 minds on both sides of this issue seem
24 resolute, and I want to be respectful in the
25 face of disagreement.

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1 My only motive for speaking tonight is to
2 try to debunk the mention of Yesterdays patrons
3 that has been painted in the media and
4 discussions, for both future considerations of
5 Yesterdays and to defend his current
6 restaurant.

7 My experience at Yesterdays have not
8 included exposure to the rowdy elements
9 suggested as the barbarians lurking at the
10 gates of the new location. The people I know
11 who frequent Yesterdays include upstanding
12 members of the community, such as members of
13 the Knights of Columbus, community volunteers,
14 teachers, business owners, first responders,
15 chefs, college professors, and families,
16 including my own. During the time we've lived
17 in Warwick, Yesterdays has served as the host
18 to numerous birthday parties and events for
19 members of my family young and old. My middle
20 child is even lobbying hard for her first job
21 to be as a waitress at Yesterdays ten years
22 from now, when she can be legally employed.

23 The parents who I know that bring their
24 children to Yesterdays, would not be doing so
25 if it was truly were the frat house atmosphere

Proceedings

1 that's been suggested. It's doubtful that any
2 of us will part tonight with a different
3 position than we came in with. I ask that any
4 decisions be made by the board based upon
5 objective information, and I ask that we, as a
6 community, move on from trying to paint those
7 that we disagree with as monsters. Warwick is
8 too wonderful of a community to find itself
9 involved in this offenseive conflict. We need
10 to return to respectfully disagree.

11 CHAIRMAN AULEN: Fred Schweikert.

12 FRED SCHWEIKERT: S-C-H-W-E-I-K-E-R-T.

13 I don't live in your town. However --

14 CHAIRMAN AULEN: Welcome to Warwick.

15 FRED SCHWEIKERT: However, I've been
16 eating at John's place since I moved to New
17 York State back in '99. I'm a retired chef.
18 He used to come to my place, the Duck Cedar
19 Inn. Thank you. John has had a consistantly
20 good restaurant. He doesn't have a shot glass
21 in his restaurant. It isn't that type of
22 place. It's a family place. He and Peggy run
23 a real clean restaurant, good food, and a nice
24 atmosphere.

25 I heard a lot of talk tonight about

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1 traffic and whatnot. Traffic always settles
2 itself, as everybody knows. You've driven in
3 this town. You got traffic. You're going to
4 deal with it. So, to me that was just idle
5 talk.

6 There's never been a drunk driving ticket
7 issued as a result of somebody leaving his
8 restaurant. You can ask the police department
9 that. The train stories from out west was
10 nice, all that stuff. It doesn't apply here.
11 You guys have a business here. He's rateables.
12 He's making money for the town. Everybody has
13 their little aspect, or, oh, he can't built it
14 in my backyard. What happens when your
15 neighbor has a loud party? Do you call the
16 police for that? But nevertheless, that
17 happens. That's never happened? It's never
18 happened in your town? That's ridiculous.
19 That's ridiculous. You're painting a picture
20 of a loud bar. He doesn't have a loud bar?

21 CHAIRMAN AULEN: Address the board, not
22 the audience, please.

23 FRED SCHWEIKERT: Forgive me for that,
24 forgive me for that, and I'll also try to keep
25 to the five minute thing you also set, and

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1 also, no applause that you also said, and none
2 of that was taken care of either.

3 The town board, you already zoned it.
4 It's done. You know, it's -- it's there. As
5 far as I'm concerned, it's a restraint of
6 trade. John and Peggy has done a very good
7 business here. They have done very good work
8 in the community, and they will continue to do
9 so. He's an employer, rateables. It's one of
10 the things that brings people into this lovely
11 town that you have, and I think it will
12 continue, as long as everyone cooperates.
13 That's all. Thank you.

14 CHAIRMAN AULEN: James Carton.

15 PUBLIC MEMBERS: He left.

16 CHAIRMAN AULEN: Glen Carter.

17 GLEN CARTER: Good evening. My name is
18 Glen Carter, G-L-E-N, one N, as in no, last
19 name Carter, C-A-R-T-E-R. You'll have to
20 forgive me if I may appear a little scattered
21 brain tonight, but I intend to speak
22 extemporaneously.

23 I've been at every meeting of the planning
24 board since late winter, as well as the village
25 board meetings, which, for some of you who

Proceedings

1 don't live there, may not realize --

2 CHAIRMAN AULEN: Excuse me. Please talk
3 to the board.

4 GLEN CARTER: I am talking to the board.
5 I'm talking to the most important people in
6 this room, which are the citizens of this town.

7 Okay. A couple of things: I never
8 thought that I would wake up and look up in a
9 dictionary what the meaning of nibby was, and
10 you see a picture of my backyard, but I live
11 within a stone's throw, no more than fifty feet
12 from the business end of this established
13 business proposal, and right at the outset, I
14 would just like to say unequivocally, that I
15 don't want it in my backyard, and it's not
16 because I have anything against the applicant
17 as a man, but that's not the entity that's up
18 for discussion and comment. It's a legal
19 fiction, and I would -- I would also like to
20 bring up the fact that I'm aware that this
21 property has been around as the railroad yard,
22 the Lehigh and Hudson River Railway, which was
23 in business for over a hundred years, and I
24 happen to know as a fact, although apparently
25 facts aren't allowed here, that's only science,

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1 but up until 1972, the primary way of clearing
2 the weeds for the maintenance of way was DET.
3 There's also a paint shop, where they used
4 exclusively oil-based paints, and alca-based
5 paints, lead-based paints, and the -- the
6 assessment form that was filled out as part of
7 the application process, whereby they
8 obstensively did some archeological dig and
9 looked for the presence of contaminants. Any
10 reasonable person would know that it's common
11 knowledge that you will not find what you are
12 not looking for, and I suggest that this
13 property, the only reasonable outcome for your
14 decision of what you should be deciding on, is
15 whether or not the property should be condemned
16 and a moratorium placed on this whole entire
17 project, until such time as the property
18 owners, which hopefully will be the village,
19 can establish some sane science to determine
20 all those -- all those factors.

21 And the other thing I would like to say,
22 that having attended all the meetings, what I
23 witnessed, I will reiterate what I said at the
24 village board meeting, what I witnessed at more
25 than one occasion on the planning board

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1 meetings, amounted to, in my estimation of
2 things, a ritualistic reading of documents, one
3 of which was seventeen pages long. A bunch of
4 questions were asked, and not once was the --
5 did anybody consult the people that live in the
6 immediate vicinity, on all three sides of the
7 property, living there. Nobody came and asked
8 me for any input, do you have concerns, do you
9 have objections, do you have any thoughts on
10 the matter. The word compromise was never
11 uttered in any of the proceedings and, indeed,
12 most of the time we were met with blank stares,
13 and an admonishment that this is not a question
14 and answer period.

15 I have a question right now by way of
16 commenting on the proceedings thus far. Why in
17 God's name are we having a hearing at the end
18 of this process, and not all the way along,
19 from the time the application was first filed?
20 The day that the planning board filled out the
21 EAF, that was the day that learning stopped.
22 You are incapable of receiving anymore new
23 knowledge that would have bearing on the entire
24 affair, and again, I respectfully submit that
25 this has nothing to do personally with John

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1 Christison, the applicant. Okay? I have been
2 on the receiving end of his -- his, you know,
3 his generosity, and we all know that he's
4 appealable. We all know that he's enrolling,
5 by virtue of how many people showed up to
6 support him, and we all know that he has a lot
7 of influence in this town. It has nothing to
8 do with him personally. My concerns are the
9 application as it stands, which is the only
10 thing that can be considered, by virtue of its
11 title. That thing, that plan, is -- is the
12 only thing that you can consider, and I would
13 suggest that you fix the broken process by
14 which you're trying to arrive at a
15 determination, and have an ombudsman, you know,
16 appointed people that can actually intervene
17 between the people that have objections and the
18 board, because it just doesn't feel right, and
19 the controversy that this project has stirred
20 up is palpable. You can feel it in the air.
21 Okay? You may not be able to measure it, but
22 it's palpable, and it doesn't have to be.
23 There should be no controversy.

24 My main reason for being against this, and
25 again, I don't want it, and it's not because

Proceedings

1 it's in my backyard. It's because it doesn't
2 reflect the highest good of all of the citizens
3 of this fine town we live in. It benefits one
4 merchant and his employees, and I humbly submit
5 that you better pay attention to that.

6 And the other thing that I would like to
7 say is, my concern is -- is also in the future,
8 because if you pass this, I don't want to wake
9 up one morning and find out and learn from my
10 neighbors that the failed, bankrupt, or
11 whatever, out of business Yesterdays bar, is
12 now the sales office for about twelve
13 condominiums. Thank you.

14 CHAIRMAN AULEN: Matt Lockwood.

15 MATT LOCKWOOD: Matt Lockwood,
16 L-O-C-K-W-O-O-D. I live at 49 Four Corners
17 Road.

18 John asked me to be here today, because
19 I'm a regular at his place. I have to say that
20 there is a lack of understanding, on the
21 opposition side, of what his place is. I have
22 a feeling that many of them have not even been
23 there. It is a restaurant. I have seen
24 families there a million times. It is very
25 quiet. It is not a place that's going to cause

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1 disruption. This new place is going to be a
2 new place. It's not going to be new customers.
3 It's not going to be new patrons. We're the
4 same people and we have always been quiet.
5 We're not the rest of the Warwick late night
6 scene. He's also the earliest bar to close.
7 He is not the one that's always late. It's
8 actually, New York State, 4 p.m. -- sorry, 4
9 a.m. I am exhausted, and thank you, everyone,
10 but I have to say, John has been there for me
11 many times over. I had moved to Warwick about
12 five years ago. In fact, I saw my real estate
13 person here earlier today. I worked with her
14 quite a bit, and I feel like this is my new
15 home. This is my community, and I'm very proud
16 to be here. There has been so much going on in
17 Warwick, and I'm happy to see that it's
18 constantly growing and constantly changing.
19 Since I've been here, I've seen a gay pride
20 parade. I've seen Uber come into town.
21 Everything is amazing up here. I'm happy that
22 I moved here. I don't want to see this process
23 get impeded by people who are angry because
24 their shack is over across the line. I
25 appreciate everything that John has done for

Proceedings

1 me, and I promise that I will always be here
2 for him. I guess that's all.

3 CHAIRMAN AULEN: Okay. Thank you.

4 THE COURT: It looks like G-R-A-F.

5 SUZY GRAF: Good evening. My name is Suzy
6 Graf, G-R-A-F, and I want to thank you, after
7 all these months, for the opportunity to speak
8 finally. Having said that, I find that mostly
9 -- most of my thoughts have been covered
10 previously.

11 The one point I will make, as Dan did
12 earlier, the thing that my mind keeps circling
13 around is the difference between the spirit and
14 the letter of the law, and you can say that
15 this is zoned light industrial, that this is
16 allowed usage. However, if something is
17 broken, we teach our children to try to fix it.
18 In this case, I would say, if the zoning law is
19 incorrect, and will be a detriment to the
20 neighborhood surrounding this new proposal, we
21 should revisit that, which has been my thought
22 since the beginning. Look at the code, before
23 we compile the mistakes here.

24 One other comment. As I found it
25 interesting that the neighborhood was

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1 characterized as growing up around the railroad
2 line in the 1930's, considering my house was
3 built in 1815. Thank you.

4 CHAIRMAN AULEN: Christopher Smith.

5 CHRISTOPHER SMITH: Hi, I'm Christopher
6 Smith. I resides -- S-M-I-T-H. I reside at 30
7 Maple in Warwick.

8 My family and ourselves, we've been
9 residents of Warwick Valley for over
10 twenty-five years, and in that time, we've seen
11 a lot of progress and change in Warwick. The
12 Warwick of twenty-five years ago is certainly
13 not the Warwick that we see today, and we've
14 gotten to more of a retail, more of a dining
15 experience, and yes, that has brought people
16 from the outside. I think also people who had
17 that experience, have then come and bought
18 houses in this area. Warwick being a magnet
19 for people coming in. But also we see there
20 are buildings that are fully occupied. We see
21 a tax base and employment which is very
22 positive. If I look at the property, and it's
23 unfortunate, I see or hear the points of
24 everyone here, same time, I look at, as a
25 resident of Warwick, what could happen if this

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1 property -- if this plan does not go through.
2 I would think maybe a house to sell condos
3 would be wonderful. I'm not an expert on
4 building laws, but I don't think if you have an
5 industrial property, you can suddenly put
6 condos on there. I would be more concerned
7 that there would be some type of industrial
8 infrastructure that could bring other types of
9 trucks, other types of issues into Warwick
10 which we really do not want to have.

11 So, if I look at the reality, if something
12 is going to go on this property, I would rather
13 have it be somebody who is a good citizen,
14 somebody who is really, as I've heard today,
15 take a number of steps to be able to address
16 the concerns of those people involved, and for
17 me, I think that's a key point to say here. I
18 look at seeing this, it's an empty property
19 right now. I pay taxes. Village of Warwick
20 taxes are not low. It would be nice to have an
21 increased tax base for us to be able to
22 continue to invest in Warwick, whether it's the
23 services, supports that we have. So, to have
24 an empty property that's paying very little in
25 taxes, suddenly become a new building that's

Proceedings

1 paying taxes, have additional people being
2 employed, that are also, you know, helping
3 support the local community, but let's also
4 realize that the building that -- the space
5 that the current place takes, will probably be
6 filled by another restaurant, and that, in
7 turn, will generate additional employment.

8 So, I would come back here and support
9 this initiative, because I look at what could
10 be the options. We are progressing. We can't
11 live in the past, and I think that this is a
12 very positive step, and I appreciate the fact
13 that steps are being taken to do things in the
14 right manner.

15 And the last point, I would like to
16 commend John, because I think he's really been
17 above board. I think some of the comments that
18 have been made, have been maybe a little
19 misrepresenting of what does go on, et cetera,
20 and I think he's held his head high in this
21 community, and I think he's tried to make a
22 great effort to maintain that position and try
23 to take the higher ground, and for that, I want
24 to compliment him. I also want to compliment
25 you guys. It's been a long night for you guys,

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1 a lot of talk back and forth, a lot of complex
2 issues. I wish you well on this, but again, I
3 do support this initiative. Thank you.

4 CHAIRMAN AULEN: John Gallagher.

5 PUBLIC MEMBERS: He left.

6 THE COURT: Christie Toohey, T-O-O-H-E-Y.

7 CHRISTIE TOOHEY: My name is Christie
8 Toohey, T-O-O-H-E-Y. I live at 44 West Street.
9 I live in the Bermuda Triangle of sounds in
10 Warwick. I hear everything. I hear everything
11 from railroad from my porch, as if I was
12 standing in front of it. I hear Halligan's all
13 night. I see the body prints of their drunken
14 play in my garden, in the morning, with my all
15 my fresh roses, as I try to make Warwick
16 beautiful. I pick up their glass. I pick up
17 their trash. I pick up everything that happens
18 at night in Warwick, in the morning, before I
19 go to work, and it's not appreciated, but you
20 have to know, as the people who sit on this
21 board, that that is the fruit of your labors
22 past. That is what has been allowed in this
23 town. It is what has been allowed to continue
24 in this town, as far as how we expect our
25 businesses to maintain and how we can preserve

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1 our right to live within the village, within
2 walking distance of all that we hold dear. I
3 have nothing but respect and admiration for all
4 of Main Street. Moving here eight years ago, I
5 am thrilled with what we have accomplished in
6 the past eight years here. It's fantastic.
7 The amount of work that Main Street does in
8 this village is incredible. I have never seen,
9 and I have lived in many places, and worked in
10 many different facets of hospitality, I have
11 never seen a community band together and work
12 so hard, in order to create one positive place
13 and atmosphere for everyone here, but this
14 process is the first time that I have seen, not
15 everyone being listened to with any regard
16 whatsoever. If this goes through, even if all
17 the flowers are pink and rosey, and the sound
18 does not disimprove in the Village of Warwick,
19 I really don't agree with what has been said so
20 far. If you have a question, not that you've
21 sat in the backyards, but you're welcome to my
22 front porch. It's a real big eye-opening
23 experience. I have personally directed traffic
24 at three major accidents directly in front of
25 my house. There's a U-Mack directly across the

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1 street. There's no less than a hundred
2 children in there every single day. There's a
3 dance hall behind me. They're just as busy.
4 Parking is at a premium in Warwick, but traffic
5 is a problem, as well. So, I fully back all of
6 my neighbors in their regard about traffic in
7 the Village of Warwick. I see it all the time.
8 I live there. I hear it. It's crazy. I
9 actually kind of laugh at the part where the
10 train goes by, and school gets out at the same
11 time, it's kind of hilarious, but it's about
12 safety for the children that visit U-Mack, and
13 it's about safety of the children that visit
14 the dance hall next-door, and it's about our
15 pedestrian traffic, which we all know is an
16 issue throughout the entire village, not
17 particularly at this particular intersection.
18 The pedestrian walkway at the corner of West
19 and Wheeler, is not guarded. It does not have
20 a nice pretty sign like the rest of Warwick
21 does at every other intersection throughout the
22 entire village. It's completely disregarded,
23 very poorly painted, and does not have a
24 pedestrian walk sign. So, before you go
25 mucking it all up and putting another couple

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1 hundred cars a day, perhaps, look at what's
2 already going on at this intersection. I'm not
3 saying that I really want a stoplight blinking
4 in front of my bedroom every day. I don't, nor
5 do I want drunken patrons that walk West Street
6 or walk Elm Street all night either. That's
7 not my goal. I'm not -- I'm not in not support
8 of your project. I love your project. I love
9 it in any lot, other than this one. If you
10 change your lot, give me a shirt, I'll wear it
11 every day.

12 CHAIRMAN AULEN: Excuse me. Please talk
13 to the board.

14 CHRISTIE TOOHEY: I'll wear his shirt
15 every day.

16 CHAIRMAN AULEN: You can wear whatever you
17 want every day, but please talk to the board,
18 please.

19 CHRISTIE TOOHEY: I'm speaking with regard
20 to the fact that, as residents, we are not
21 protected from any of the noise violations
22 currently occurring in the village. You have a
23 noise ordinance, and you do not give it enough
24 teeth. The only point of having an ordinance
25 and a rule is if it's objectively enforced.

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1 You do not objectively enforce the noise
2 ordinances currently in place in this village
3 whatsoever. The bars continue to rant and
4 blair at night. The bodies continue to roll
5 out. I have found blood on the sidewalk many
6 mornings outside of an establishment on the
7 corner of West and another street below me.
8 It's abusive. It's abusive to me, and the
9 other property owners. I'm sad that another
10 three city blocks of our village are going to
11 be exposed to that potential, because while I
12 love John and I love his establishment in our
13 village, there's no guarantee that we're going
14 to have John forever. There's no guarantee
15 that he is going to be the one that maintains
16 this and takes care of the employees at this
17 place. There's nothing to say that in the
18 future, it won't get sold to someone who runs
19 Newburgh waterfront right now, and that it
20 wouldn't be run with the established guidelines
21 of what they consider good practices. It needs
22 to be kept in consideration, that while we all
23 love John, that's a threat, and that's a big
24 point that needs to be made. For all those
25 that support his -- his amazing work in this

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1 community, just as I do, that needs to be
2 taking into consideration, not just all us that
3 we'll have to deal with the noise and all that
4 during the construction and everything else,
5 but the fact that we could be welcoming in a
6 far greater beast than you understand, not
7 being able to predict the future and not being
8 able to plan for it accordingly today. Thank
9 you?

10 CHAIRMAN AULEN: Gail Draf, D-R-A-F, Gail.

11 PUBLIC MEMBERS: She left.

12 CHAIRMAN AULEN: She left. Okay. Robert
13 Danielle. Sounds close, yeah. 14 Oakland
14 Court.

15 PUBLIC MEMBERS: He left.

16 CHAIRMAN AULEN: Janice Graven.

17 JANICE GRAVEN: My name is Janice Graven,
18 J-A-N-I-C-E, G-R-A-V-E-N. I live at 15 Oakland
19 Court.

20 I didn't plan on speaking tonight, but as
21 I sat here and listened to everything going on,
22 it really saddened me. I'm not an
23 environmental engineer, and I'm not -- I don't
24 have any professional reports, but I do have
25 the experience of living in this village for

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1 twenty-two years.

2 I came here from Nyack, New York, and
3 bought a house here twenty-two years ago, and I
4 didn't to buy in the village. It wasn't all
5 that I could afford. I chose to buy in the
6 village, because I loved old homes and I loved
7 the leafy streets and the charming houses, and
8 over the years that I've lived here, I've seen
9 the neighborhood greatly improve, as the
10 downtown also has, and it's been a pleasure to
11 be a part of that.

12 Our block has recently turned over three
13 or four houses, and the houses have gone for a
14 very good price. So, people are realizing the
15 investment of the work that they put in trying
16 to maintain their properties, and adding to the
17 charm of our village, because people do come
18 here to our village, not only for the
19 establishments, but they come for the beauty of
20 our village, as well, and part of that beauty
21 are the downtown streets, and the neighborhoods
22 that people are regularly moving into.

23 I feel like I've been a really good
24 neighbor. I frequent the downtown stores,
25 rather than going to larger establishments, and

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1 big book stores on-line. I'm not really much
2 of a cook, so I out eat out in the village all
3 the time. My neighborhood has served the
4 children of Warwick every Halloween. Upwards
5 of twelve hundred children come to our doors on
6 Halloween, and we fit the bill for that candy
7 out of our own budgets and out of our own
8 pockets, to make the experience of living here
9 in Warwick wonderful for the families that live
10 here.

11 I don't know about the traffic reports
12 that you've studied, but I know what I
13 experience. I can barely get out of the top of
14 my street on a weekend, trying to pull out from
15 Oakland Court onto Oakland Avenue with the
16 traffic. I know the traffic has been letting
17 out with the tie quan do and all that. I don't
18 have to go over that. I think people have
19 spoken about that.

20 I worry about the parking, if there's
21 going to be forty-five spots. This
22 establishment is a lot bigger than that. We're
23 is the overspill? Where are those people going
24 to park? They're going to park on my street.
25 And when they leave, I'm not saying Yesterdays

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1 has people spilling onto the streets. I've
2 eaten there. It's a nice establishment, but
3 the establishment that's being proposed is not
4 the same establishment that exists. People are
5 going to be walking into my neighborhood after
6 drinks. We actually had a neighbor wake up,
7 because we do live in a village still, probably
8 where the people shouldn't, but they live with
9 the doors unlocked at times, they woke up to an
10 inebriated woman sitting in their kitchen, 2:00
11 in the morning. She had lost her way and could
12 not find her way back to her car.

13 Somebody spoke about the noise ordinance
14 already. It doesn't always get followed. The
15 vast -- you know, we were talking about common
16 sense, and that it's not followed. We get
17 woken up by street cleaners at 4:25 in the
18 morning, and they're still going at 6:30 a.m.
19 So, that's not being enforced.

20 You know, this has knowing to do with
21 about character assassination of -- of an owner
22 of an establishment in our community. It
23 really doesn't. I love Warwick. I love it
24 here, and I'm grateful that I live here, but
25 one person doesn't get to decide what's right

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1 for a village, and, you know, Jack Pennings had
2 mentioned that, you know, let's get him a
3 restaurant. He has a restaurant. We only have
4 the homes we have. We have our homes as our
5 investment. We have our neighborhoods where
6 we're raising our children. There's little
7 kids that play in the street and yards, and as
8 it is, we have -- on Oakland Court, we have
9 cars speeding up those streets, sometimes at
10 fifty miles an hour, and he has a right to have
11 a restaurant. I don't feel that it has to be
12 in that spot, and is his right to have that
13 restaurant kind of coming at the cost of all of
14 these neighborhoods. These are some of the
15 neighborhoods that draw people to our
16 community. Oakland Street, and Oakland Court,
17 there's a realtor here, that is a favored
18 street. When a house goes for sale on that
19 block, people want in, and we're going to
20 decimate neighborhoods for one establishment.

21 You know, somebody else mentioned about
22 having fond memories of gatherings at this
23 establishment with their families and how much
24 they appreciate it and loved being there and
25 the memory, and I get that, but you know what,

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1 some of these families, at least I'm not -- my
2 backyard doesn't back to it, some of these
3 families are trying to make those memories in
4 their own backyards. And as far as the noise,
5 I live three blocks, approximately, from
6 Railroad Avenue. I can sit on my porch at
7 night and I can listen to the concerts. I
8 don't say anything about that, because it's one
9 of the draws for our community. So, there's
10 certain things that you do put up with for your
11 community as a draw, because we know we have to
12 make money for specific things. I'm a block
13 and a half, barely, from a restaurant that
14 wants to have outdoor seating until who knows
15 what time at night. Maybe I don't know all the
16 specifics, but I guess just as a neighbor, and
17 if you really -- I'm sorry, but I really feel
18 if you were to search your heart, and that's
19 not trying to play on your emotion, I would
20 think that if it were any of you, if you have
21 young children, if you raise your family in an
22 area, if it was the investment that you had to
23 rely on for your retirement, I think you would
24 choose a different spot for this restaurant as
25 well. I guess that's all I have to say.

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1 CHAIRMAN AULEN: Jeanine Ritehart.

2 PUBLIC MEMBERS: It's all been said.

3 Thank you.

4 CHAIRMAN AULEN: Thank you very much.

5 That's the last person who wanted to speak.

6 So, at this time --

7 PUBLIC MEMBERS: Can I speak?

8 JIM SCIERRA: Okay. My name is Jim

9 Scierra, S-C-I-E-R-R-A. I don't normally speak
10 to the board or on here, so that's kind of why
11 I waited. I apologize for that. But after
12 hearing everybody, I kind of realized, I've
13 lived in this village, in Warwick, for sixty
14 years, and I may be one of the seniors here.
15 Boy, that was a scary thought.

16 When I purchased my house, and related to
17 the planning board, at 10 South Flynn Street in
18 the Village of Warwick, one of the first things
19 I did, my wife and I, was to analyze what was
20 around us, and what was around us was probably
21 the biggest concern that maybe people
22 overlooked, and that was Jones chemical. It
23 was a tough thing bringing up a family, but I
24 made the decision, when I purchased my house at
25 10 South Flynn Street, knowing that this

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1 factory was basically in my backyard.

2 I speak with heavy heart, because I know
3 some of these people, and I understand their
4 hardships, and I'm not here because he's a good
5 guy, whatever it is. I'm just here because I
6 want the planning board to do what's right, not
7 based on your feelings, their feelings, my
8 feelings. Are the setbacks the proper way? Do
9 you -- do you feel that the traffic study was
10 done? You guys are, I'm going to consider, the
11 professionals. If they were done the right
12 way, and the environmental was done the right
13 way, I think you have your facts to make your
14 decision, and I appreciate what you're doing.

15 It's funny how the sound and the noise, I
16 -- I -- maybe I listened to the lawyer here
17 differently than what some other people heard.
18 I heard him say, they will take care of, if
19 it's too noisy, we will take care of it. Well,
20 I -- I appreciate the professionalism of the
21 sound person, but if there's no noise there
22 now, how can I take care of what's not there?
23 How do I assess something that's not there? I
24 just -- I want -- put it in documents that it
25 has to be handled, just -- just put it in

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1 documents, and Warwick is a great town, and I
2 love my village, and I live within sound
3 distance of Elm Street, walking distance.

4 So, I just ask that you guys, everybody,
5 do the right thing. You guys know the code,
6 the setbacks, the lighting, everything. It's
7 not opinion stuff. It's fact stuff. I'm
8 sorry. So, thank you for your time. Thanks
9 for getting me on.

10 CHAIRMAN AULEN: Okay. The last person,
11 anyone who hasn't spoken wants to?

12 JUDITH DICKINSON: My name is Judith
13 Dickinson, J-U-D-I-T-H, D-I-C-K-I-N-S-O-N. I
14 live on 16 Van Buren Street, immediately across
15 from the restaurant/bar that's going to be
16 built.

17 I'm concerned, it hasn't been mentioned
18 about food odor mitigation, french fries, fried
19 food. What and how? What is planned to
20 control odors? What are the allowable levels
21 of odor and how is that measured and enforced?

22 Another practical use for Elm Street
23 property, a solar farm and public parking lot,
24 which is very much needed by the village. A
25 solar farm would help reduce air pollution and

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1 generate energy and revenue for the village.

2 It's generally assumed that once

3 Yesterdays bar and restaurant is built and

4 established, that sooner or later it will be

5 flipped or sold to another owner, manager, and

6 would change drastically from what has been

7 promised. What is the definition of a

8 restaurant? It serves food, and maybe also

9 drink, in the morning, noon, and evening, until

10 around 10 p.m. People are usually not eating

11 dinners. They go home, or they stay and they

12 continue to drink. The bar serves food for

13 some at the same hours, except almost

14 exclusively alcohol is consumed after 10 p.m.

15 I appreciate all of your time and for

16 listening.

17 CHAIRMAN AULEN: Excuse me, ma'am, do you

18 have something additional to add to the

19 discussion?

20 PUBLIC MEMBERS: I just wanted to pose a

21 question and make a comment, because -- may I?

22 CHAIRMAN AULEN: Go ahead.

23 RENELLE LORRAY: Renelle Lorrar,

24 L-O-R-R-A-Y. I'm just curious. The current

25 Yesterdays is -- is characterized as a family

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1 style restaurant, everybody loves to go and
2 have a good time, but the new place is a
3 bar/restaurant, where nearly half of the
4 patrons would be occupied at the bar, and the
5 rest to eat. Now, I'd like to know, what
6 family style restaurant is open until 2 in the
7 morning, that has their children there? It's
8 more a place where people are going to drink,
9 and that's the issue.

10 CHAIRMAN AULEN: Okay. Thank you very
11 much. Okay. That is the last person to speak.

12 STEVE GROSS: I'll be quick. I'll try.
13 Steve Gross. I just wanted to -- I want to do
14 a little wrap up.

15 One of the last speakers said to you, if
16 the environmental studies were done correctly,
17 then you have your answers. I think what has
18 been demonstrated tonight by some of the expert
19 people, is that they were not done right. You
20 have my letter, as well, where I pointed out
21 the deficiencies in the SEQRA review. There
22 are many thresholds where you should have at
23 least required the part three, and I think this
24 strong basis for requiring environmental impact
25 statement, and one of the reasons I would like

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1 to see an environmental impact statement, and
2 focused on just certain issues, is that you saw
3 the quality of the people and the credentials
4 that are right here in Warwick, that if given
5 the opportunity, presented in an environmental
6 impact statement, where they have the
7 opportunity to do review and comment on the
8 environmental process, which is cannot happen
9 with the EAF, that you can get some very strong
10 input on the sound, on the ground water, on
11 hazardous materials. We're here. We're here
12 to help this board.

13 I think the first step that this board
14 should take, and you have the ability to do
15 this, it's legal, is to rescind the neg dec.
16 There's been plenty today, and this is actually
17 a very legal point for you to rescind the neg
18 dec, because there's been plenty today
19 presented, to show that you really do have more
20 to study, and that there really are potential
21 environmental impacts that need to be examined.

22 So, that's what I'm going to ask for. I'm
23 going to ask this board to rescind the negative
24 declaration, reopen SEQRA, do the study, do the
25 noise study that you're required to do, do a

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1 further investigation into the hazardous
2 materials, and consider the comments of your
3 local PhD very seriously, she makes some very
4 good points, and -- and give deference to the
5 residents that are really going to be truly
6 impacted here.

7 One of the fears I have, I invested on Van
8 Buren Street. I've lived in the Town of
9 Warwick since 1965. I know some of you don't
10 realize that. I moved into the Village of
11 Warwick in 1989, on Van Buren Street. We
12 invested in our house, our first house. We
13 restored it. We thought the architecture was
14 great. We ripped up the carpeting, sanded down
15 the floors, restored it. That street has a lot
16 of potential, and somebody else just recently
17 bought what had been the worst house on the
18 street, and fully restored that one now, or
19 renovated it now, that backs up to this
20 property.

21 When I lived on that street, someone talks
22 of Halloween, we were inundated, because it's
23 that kind of street. We saw people coming in
24 with vans, with Jersey plates, with kids
25 pouring out. It's that kind of street. What

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1 my fear is now, that especially those houses
2 that back up to this property, when this
3 happens, their property values are going to
4 plummet. The people that will probably be
5 willing to buy those houses are not going to be
6 people that want to occupy them. It will
7 probably be for rental. They'll probably buy
8 them to rent out, and I think the quality of
9 the neighborhood is going to go down, and it
10 won't be that street where the kids are piling
11 out to go trick or treating.

12 You -- I laid out before, a very, I feel,
13 strong legal argument that gives you the basis
14 to turn this thing down. You don't -- you're
15 not required to approve it. There are strong
16 legal arguments that you can turn it down, and
17 stand on them, resist any challenge, any legal
18 challenge. So, but I think the first step is,
19 you have to rescind that neg dec, and you have
20 to do the proper environmental study, and let
21 these residents do a proper review through the
22 remainder of the SEQRA process. Thank you.

23 CHAIRMAN AULEN: I would like to call to
24 close, motion to close the public hearing.

25 BOARD MEMBER PATTERSON: I make that

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1 motion.

2 CHAIRMAN AULEN: A motion has been made.

3 BOARD MEMBER DENERLEY: Second.


4 CHAIRMAN AULEN: Second, a motion has been
5 made second. Any further discussion? All in
6 favor, aye.

7 BOARD MEMBERS: Aye.

8 CHAIRMAN AULEN: Closed, public hearing is
9 now closed.

10 * * * * *

11 Certified to be a true and accurate

12
13 A handwritten signature in dark ink, appearing to read 'Michael DeCelestino', is written over a horizontal line.

14 Michael DeCelestino

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