

# MINUTES

Town of Wappinger Planning Board  
June 20, 2016  
Time: 7:00 PM

Town Hall  
20 Middlebush Road  
Wappingers Falls, NY

Summarized Minutes

<b><u>Members:</u></b>	Mr. Valdati	Chairman	Present
	Ms. Bettina	Acting Chairman	Present
	Mr. Flower	Member	Present
	Mr. Malafronte	Member	Present
	Mr. Marinaccio	Member	Present
	Mr. Pesce:	Member	Present
	Ms. Visconti:	Member	Present

**Others Present:**

Mr. Roberts	Attorney for Town
Mr. Gray	Town Engineer
Mr. Stolman	Town Planner
Mrs. Roberti:	Zoning Administrator
Mrs. Ogunti:	Secretary

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## **SUMMARY**

**Public Hearing:**

BJs Wholesale Club	Discussion on July 6, 2016 and Adjourned Public Hearing to August 1, 2016
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**Discussion:**

Obercreek Subdivision	Resolution approved as amended
Eduardo Lauria Luxury Apartments	Public Hearing on July 6, 2016

**Ms. Visconti:** **Motion to accept the Minutes from the June 6, 2016 meeting.**  
Mr. Bettina: Second the Motion.  
Vote: All present voted Aye.

**15-3336 / 4066 BJs Wholesale Club / Gas Station:** The Town of Wappinger Planning Board will conduct a Public Hearing on an amended Site Plan and Special Use Permit application for an addition of a gasoline filling station for members on 86.817 acres in an SC Zoning District. The property is located at **1404 Route 9** and is identified as **Tax Grid No. 6157-02-707773** in the Town of Wappinger (Zarin & Steinmetz) (LA 2-10-16)

Present: David Steinmetz Zarin & Steinmetz  
Jody Cross Zarin & Steinmetz  
Josh O'Connor Bohler Engineering  
John Duroncheck Petroleum Expert  
Peter Thomas BJs  
Michelle Johnson BJs

Others Present: Ed Phillips Keane & Beane  
David Gordon CDP Energy Group  
Nathaniel Parish Parish & Weiner, Inc.

**Ms. Visconti:** **Motion to go into Executive Session.**  
Mr. Malafronte: Second the Motion.  
Vote: All present voted Aye.

**Ms. Visconti:** **Motion to come out of Executive Session.**  
Ms. Bettina: Second the Motion.  
Vote: All present voted Aye.



TOWN OF WAPPINGER PLANNING BOARD  
WAPPINGERS FALLS, NEW YORK  
2 - - - - -X  
3 PUBLIC HEARING: BJ' s WHOLESALE CLUB/GAS STATION  
4  
5 - - - - -X  
June 20, 2016  
6 Town Hall  
20 Middlebush Road

7 Wappingers Falls, New York

7:12 p. m.

8

**B E F O R E:**

9 **PLANNING BOARD MEMBERS:**

**ROBERT VALDATI, CHAIRMAN**

10 **JUNE VISCONTI**

**BRUCE FLOWER**

11 **ANGELA BETTINA**

**CARLO PESCE**

12 **RALPH MARINACCIO**

**FRANCIS A. MALAFRONTI**

13

14 **PRESENT:**

**BARBARA ROBERTI, ZONING ADMINISTRATOR**

15 **ROBERT J. GRAY, P. E., TOWN ENGINEER**

**ALBERT ROBERTS, ESQ., TOWN ATTORNEY**

16 **DAVID STOLMAN, TOWN PLANNER**

**BEA OGUNTI, PLANNING BOARD & ZONING BOARD OF APPEALS**

17 **SECRETARY**

18

**A P P E A R A N C E S:**

19 **FOR THE APPLICANT:**

**DAVID STEINMETZ, ESQ.**

20 **JODY T. CROSS, ESQ.**

**LAW OFFICES OF ZARIN & STEINMETZ**

21 **81 Main Street, Suite 415**

**White Plains, New York 10601**

22

**PUBLIC HEARING—BJ' s WHOLESALE CLUB/GAS STATION**

2 **CHAIRMAN VALDATI: Okay. You are the**

3 **applicant' s person?**

4 **MR. STEINMETZ: Yes, Mr. Chairman.**

5 **CHAIRMAN VALDATI: Can we, therefore, begin**

6 **with a presentation.**

7 **MR. STEINMETZ: Good evening --**

8 **MS. ROBERTI: Can we open the public hearing?**

9 **MS. VISCONTI: A motion to open the public**

10 hearing. Sorry about that.

11 MS. BETTINA: Second.

12 CHAIRMAN VALDATI: All in favor?

13

14 (Board responds.)

15

16 MR. STEINMETZ: Good evening, Mr. Chairman,  
17 members of the board. David Steinmetz from the law  
18 firm of Zarin & Steinmetz. I am pleased this evening  
19 to be here representing BJ's Wholesale Club. With me  
20 this evening, my colleague, Jody Cross, whom you have  
21 all met before and has appeared previously; Josh  
22 O'Connor from Bohler Engineering, our project engineer  
23 will be presenting this evening with me as well; John  
24 Dzwonczyk, our project petroleum consultant, will be  
25 speaking as well on a number of issues. Tonight, we  
PUBLIC HEARING-BJ's WHOLESALE CLUB/GAS STATION

2 also have with us Peter Thomas, BJ's senior vice  
3 president and director of real estate and property  
4 development. Here's Peter. And Michelle Johnson, the  
5 operations manager here at BJ's.

6 I think you all know we're here tonight to  
7 discuss the proposed special permit and site plan  
8 amendment to allow BJ's to operate a gasoline filling  
9 station at its current facility at its current club  
10 here in the town. And I think you're also all  
11 obviously well aware, BJ's has been here in the town  
12 for over 20 years. It has been, a -- we believe, a  
13 valuable contributor to the fabric of the community,  
14 both from a retail standpoint, from an employment  
15 standpoint, and looks forward to remaining healthy,  
16 viable, and contributing here in Wappinger.  
17 BJ's is located in the SC or the shopping  
18 center zoning district. And gasoline filling stations  
19 were added last April as a special permit use in the  
20 SC zone. So BJ's is proposing, in accordance with  
21 that recent zoning amendment, to add gasoline filling  
22 in a vacant underutilized portion of its existing

23 parking lot. It would consist of six fuel pumps or 12  
24 fueling stations. There would be a covered canopy, a  
25 kiosk for the attendant, and its location will be  
PUBLIC HEARING–BJ' s WHOLESALE CLUB/GAS STATION

2 quite consistent with what your comprehensive plan  
3 acknowledged was an underutilized section of this  
4 property and required further economic development for  
5 re-use for commercial purposes.

6 Most importantly, this gas station would  
7 provide competitively priced gasoline for members of  
8 BJ' s. This is not a gasoline station that anyone can  
9 simply drive up to. Its design and its concept is to  
10 be for use of the BJ' s members. So gasoline would not  
11 be sold to the public at large.

12 Now, for those of you that may not realize it,  
13 wholesale clubs, which we' ve all watched evolve over  
14 the last two or three decades, wholesale clubs today,  
15 the new ones that are being built, are being built  
16 with gasoline filling stations. They' re offering more  
17 services and products to their members.

18 In addition to the new clubs that are being  
19 built, the older clubs, like this one that' s 20 years  
20 old are now being retrofitted with gasoline filling  
21 stations. So what' s being proposed here at your BJ' s,  
22 is not unlike what my client is doing elsewhere  
23 throughout the region. In fact, Jody and I -- Jody,  
24 John, and I, were recently involved just down the  
25 Taconic at the Yorktown BJ' s, which is probably a  
PUBLIC HEARING–BJ' s WHOLESALE CLUB/GAS STATION

2 similar vintage to yours, where they too sought to  
3 introduce gasoline filling. And we were successful in  
4 securing approval for gasoline filling to be added to  
5 an underutilized section of that parking lot as well.  
6 The application that we have before the town is also  
7 to update and modernize their pylon sign on Route 9,  
8 and for two variances that would be required in  
9 connection with the application.

10 One: This particular sight is less than 200

11 -- 2, 500 feet from another gas station, and the site  
12 borders the R20 residential zoning district. So we're  
13 very well aware that in addition to a site plan  
14 approval and a special permit, we will be in front of  
15 your zoning board. But maybe more important than all  
16 of that, we're very mindful of the fact that the  
17 community has articulated concerns.

18 My client, our development team, we are  
19 monitoring and listening and reviewing not just the  
20 paid for opposition from a neighboring gas station  
21 owner, but we're watching and listening to the  
22 neighbors. And I know there are a number of folks and  
23 residents here who have concerns. And they have every  
24 right to articulate those concerns and to get answers.  
25 And that's what we're here for tonight at the public  
**PUBLIC HEARING-BJ's WHOLESale CLUB/GAS STATION**  
2 hearing.

3 We know that there has been a fairly massive  
4 misinformation campaign out there, and that's why BJ's  
5 -- and that's why their senior vice president is here  
6 tonight, because we want to make sure you, as you  
7 always do, will make an informed decision based upon  
8 empirical data and the reality of the situation and  
9 not based upon hyper -- hyperbole or inaccurate  
10 information.

11 So we heard about the water and the aquifer  
12 concerns and the fear of contamination to the aquifer,  
13 we're going to address that. We've heard concerns  
14 expressed about wetlands, we're going to address that.  
15 We're very well aware of the traffic on Route 9, and  
16 quite frankly think we're not going to be contributing  
17 to the traffic along Route 9 because the same vehicles  
18 that enter the site with club members today, will  
19 enter the site as club members if there were a gas  
20 station there. And we're prepared to also address and  
21 make the community understand why there would be no  
22 adverse visual impact.

23 You're going to hear tonight from

24 Mr. Dzwonczyk, who is really one of the -- one of the  
25 areas leading experts on facilitating, operating, and  
securing and safeguarding gas stations. John's going  
3 to talk to us about what BJ's does that is, in fact,  
4 state of the art and is quite unlike what a lot of the  
5 other gas stations in the area currently have, and how  
6 this facility would meet or exceed all of the  
7 necessary regulatory requirements.

8 Now, I know you're all aware that 1336 Route  
9 9, LLC, the owner of the nearest gas station has hired  
10 counsel and a paid consultant to raise concerns and  
11 oppose this application. And we know Keane & Beane  
12 quite well. I've worked with the firm quite  
13 frequently. I know Mr. Parish quite well, in  
14 addition.

15 As the owner of another gas station, I'm  
16 convinced their client knows fully well that there are  
17 a panoply of available safeguards and protective  
18 measures that can be implemented. They don't want to  
19 tell you that, and they won't tell you that, but  
20 that's why we brought our folks here to make sure that  
21 it's clear. I agree, Mr. Chairman, I was disappointed  
22 at, I don't know, 2, 3, 4:00 this afternoon to receive  
23 the materials from my colleague at Keane & Beane. And  
24 I genuinely, on behalf of my client, I appreciate it,  
25 because for the record, this is now the third time,  
the third time that Keane & Beane has chosen at the  
3 last second on the day of the hearing to come in and  
4 make a filing. And I must tell you, though I don't  
5 know Mr. Phillips personally, I know several of his  
6 partners quite well, it's not the conduct that I am  
7 accustomed to from Keane & Beane, it's not the conduct  
8 that this board should receive from Keane & Beane, and  
9 I really appreciate the admonishment, because my team  
10 and the applicant work very hard to meet the  
11 submission deadline.

12 I scrambled, as our team did, to review those  
13 materials. A lot of those materials were available to

14 the opposition weeks ago, but they chose to package it  
15 and send it to us now. It's improper, it's  
16 unprofessional, and it's not what I would expect from  
17 those folks. So I will attribute it not to them, but  
18 to their client motivating them to perform in that  
19 fashion.

20 I must applaud them though, because they did  
21 something that I think was really important; they  
22 brought to all of our attention the fact that there  
23 are dozens upon dozens of spills of petroleum in and  
24 around the area, both from gas stations, other  
25 commercial businesses and residences. So the issue of  
petroleum spills is not something that's never  
3 occurred in Dutchess County, never occurred in  
4 Wappinger, doesn't occur on the Route 9 corridor. In  
5 fact, there are quite a few that the DEC is dealing  
6 with. What I found disturbing, based upon my review  
7 after I got that material, was that they chose not to  
8 disclose the violation and infraction on their  
9 property for tank failure leading to soil  
10 contamination that lead to a DEC investigation in  
11 2006. So they were very keen, no pun intended, I  
12 apologize, to bring to your attention that there are  
13 lots of oil spills, but they made sure to not show you  
14 that at 1336 Route 9, there, in fact, was a problem.  
15 I'm sure it's been addressed or the DEC would be out  
16 there, as they're always out there endeavoring to  
17 protect us. I'm sure it's been addressed or your  
18 town's professional staff would be out there. But I  
19 think the fact that they're here tonight is really  
20 quite frankly summarized by anti-competitive behavior.  
21 I get it. Nobody likes to know that there might be  
22 another candy store, gas station, retailer, wholesaler  
23 coming into their market and offering the same  
24 services or the same product at a lower price. And my  
25 client consistently is able to generate not just goods  
3 towels and the dog food, but they're actually able to



4 sell gasoline at a slightly lower, more competitive  
5 price.

6 We saw -- we saw the gas cartel in Yorktown  
7 come out and oppose that application. They see this  
8 in other communities. We're not surprised to see  
9 members of the gas cartel come out here in Wappinger  
10 and try to do the same thing.

11 So competition's one thing. I don't really  
12 think it's part and parcel of why we're here. I think  
13 the environmental issues are what we should be  
14 discussing. I also find it disturbing, and the public  
15 should know, the record should be clear, that our  
16 neighboring gas station owner chose to sue not us, but  
17 to sue the town and claim that you and your  
18 professional staff had not done your jobs correctly in  
19 enacting the zoning recently. So we'll see that get  
20 played out in the courts. Unfortunately, that's  
21 costing the town money and many of us unnecessary  
22 time.

23 We said the gas station's going to be located  
24 in an underutilized portion of the property. It's not  
25 going to be located on Route 9; it's not going to be  
visible from Route 9. It's only going to serve  
3 members of the BJ's club.

4 Tonight, you are going to hear comments, I'm  
5 sure maybe from some members of the public, but I know  
6 you're going to hear it from the paid opposition that  
7 the gas station facility, or the proposal, should not  
8 receive a negative declaration under SEQRA. Now, the  
9 interesting thing is, I believe counsel for the  
10 neighboring property owner knows better, which is why  
11 he concedes in the materials, Mr. Chairman, that we  
12 got today, quote, potential significant adverse  
13 environmental impacts can be mitigated. They concede  
14 in their own written materials today that's masked  
15 between eight, nine pages of legal writing, and a host  
16 of exhibits. They concede that the environmental  
17 impacts that we're dealing with can be mitigated.

18 My team is here to assure you that they can be  
19 mitigated. I'm here to advocate that I think working  
20 in conjunction with your qualified professional staff  
21 and your board, better than any other gas station in  
22 the Town of Wappinger, this will be a safe,  
23 responsible and careful gas station.

24 But why they make comments about a mandatory  
25 EIS befuddles me. I find the comments in today's  
letter that your board must adopt a positive  
3 declaration, it lacks legal merit. I find it  
4 baseless, because your planning board is not shirking  
5 your -- shirking or advocating your responsibility by  
6 entertaining a negative declaration. Virtually every  
7 application you consider comes before you and few end  
8 up with a positive declaration. That means you  
9 adopted a negative declaration under SEQRA. Every  
10 time you adopt a neg dec, are you shirking your  
11 responsibility? No. You're identifying the issues  
12 that need to be examined; you're taking a hard look at  
13 those issues; and you're ensuring that they're  
14 adequately addressed and mitigated. That's what we're  
15 doing here. We're taking -- we're not taking and  
16 undeveloped piece of property and putting a gas  
17 station on it. We're not taking a property that  
18 doesn't have asphalt and vehicles traveling over it  
19 and putting a gas station on it. We're actually  
20 repurposing and reusing. We're doing precisely what  
21 the law and public policy encourage us to do when we  
22 have an underutilized asset; we're trying to make  
23 better use of it.

24 So despite the fact -- and quite frankly, I  
25 had been told that there would be a rather substantial  
crowd here tonight. There are folks here, and I'm  
3 sure there are many folks that want to speak against  
4 it. But I'm pleased to let you know that tonight, for  
5 the record, we have a very simple petition that was  
6 signed. We put it out over the weekend. So we gave  
7 it three, four days: 1200 signatures from residents

8 of the town and the immediate surrounding area  
9 supporting the notion of their BJ's introducing a  
10 gasoline filling station on the property. We'll keep  
11 the petition out there as the process goes forward and  
12 we'll, I'm sure, amass a number of additional  
13 signatures. So I would like to hand to Bea, the  
14 original of approximately, I think it's 1189  
15 signatures, in support of our application. We're  
16 pleased that the community jumped behind this quite --  
17 quite quickly.

18 We believe we've addressed the concerns that  
19 have been raised in our prior written submissions, but  
20 we know we need to make the record clear. We know  
21 there are going to be questions that need to be  
22 answered, and we're prepared to answer those  
23 questions.

24 So I'm -- I'm going to delay no further  
25 introducing Josh O'Connor from Bohler, to come up and  
Again, as Mr. Steinmetz said, my name is John O'Connor  
3 with Bohler Engineering. I've been working on this  
4 project for the past few months, and I'm fortunate to  
5 be here on a number of occasions. In that process,  
6 we've been able to work with your board, with  
7 Mr. Gray, with Mr. Stolman, and work through the  
8 engineering development of the project.

9 To talk a little bit about where we are today:  
10 As you can see on our -- on our large and kind of  
11 large scale plan here, the area in green is the  
12 existing parking lot. We're proposing to remove the  
13 existing parking lot and replace it with the filling  
14 station as you see here. And just to point out, this  
15 is Route 9, the entrance to the plaza, this is your  
16 Super Stop & Shop and the existing BJ's facility here.  
17 Here's a closer view of it.

18 We've addressed the parking in the area.  
19 We've prepare traffic impact statements and internal  
20 traffic and parking circulation was also analyzed to  
21 validate that we are not eliminating necessary parking

22 for the plaza. Beyond that, in removing the parking,  
23 we're able to decrease the impervious cover for the  
24 area. We have a charge by New York State DEC to  
25 manage our storm water runoff, and we achieve a lot of  
that by just simply removing a lot of the paved  
3 surfaces, replacing it with green infrastructures. We  
4 have a swale and other treatment practices. We're  
5 also adding additional landscaping. And we're  
6 providing four parking stalls for use for, you know, a  
7 couple of tenants -- a couple of patrons may need to  
8 park for short periods of time, but that's  
9 predominantly for staff. You can see on the plan,  
10 there's a kiosk. That's for the staff operator of the  
11 gas station. And it's worth noting that it will be  
12 staffed at all operational hours.

13 I think that covers the majority of the  
14 engineering comments. Again, it's been a pleasure to  
15 work with Mr. Gray. We do have -- at this point, I  
16 believe we've addressed all of the concerns raised by  
17 -- by his office and engineering to do with the  
18 project. And unless there are additional changes that  
19 are required by the board during (indiscernible) the  
20 public hearing, we should be all set to go with this.  
21 CHAIRMAN VALDATI: Mr. Gray?

22 MR. GRAY: Yes. We worked -- as the board  
23 knows, we worked right along with (indiscernible)  
24 addressing the storm water issues, the access issues,  
25 various comments and we're satisfied.

CHAIRMAN VALDATI: Good.

3 MR. O'CONNOR: And pardon me, I'll go over a  
4 couple of other items Jody pointed out I should touch  
5 base on. One of the items that's been brought up by  
6 the neighbors and opposition respectfully, is the  
7 adjacent wetlands. So if you're looking at the parcel  
8 here, as I pointed out, this is the proposed location  
9 for the fueling station. The wetlands lie in this  
10 area above the parcel.

11 MS. VISCONTI: How far are they away from the

12 proposed gasoline station?

13 MR. O'CONNOR: In the neighborhood of 700  
14 feet. Obviously, it's a line that fluctuates, and it  
15 varies.

16 I'll actually point out a couple of our other  
17 plans here. We did conduct a view-shed analysis of  
18 the project in preparation for our actual zoning  
19 hearing. And I'll show you these. So we've done a 3D  
20 render of the fueling station. And many of you will  
21 recognize this as the access drive and approach to the  
22 BJ's, which you can see in the background. So just  
23 to, kind of, position you: You've made the right or  
24 left into the entrance of the plaza. You've  
25 beared [ph.] to the right, and you're heading toward  
BJ's before that -- as you know, that sharp left that  
3 goes toward BJ's. And this is that big hill that's  
4 there. And obviously, this photograph, it's from  
5 Google, and it was taken during the summertime. And  
6 you can see there's leaves on the trees, but here's  
7 the canopy. And then this is an accurate depiction  
8 and representation of the height the canopy would be  
9 above the ground and where it is. I do have another  
10 closer render that depicts the canopy as you're at  
11 that turn and making that hard left. And obviously,  
12 it's not significantly visible from inside the plaza.  
13 It is not visible, at all, from Route 9 or from any of  
14 the surrounding businesses, with the exception of the  
15 businesses contained within the plaza.

16 We've gone a little further, and we've  
17 prepared what we call a view-shed section for the  
18 closest adjacent residents, which is here on Old  
19 Hopewell. And you can see that there is a significant  
20 natural buffer and existing buffer of trees through  
21 this -- through this area. And we also make note that  
22 the grade of the gas station is 25 feet below the  
23 grade of that finished floor. So even without the  
24 trees, the way the topography works in this area, even  
25 if it was clear, the topo, the ground, would clip your

view of that canopy.

3 MR. STEINMETZ: Nonetheless Josh, how long is  
4 that vegetated area.

5 MR. O'CONNOR: The vegetated area specifically  
6 is in excess of 400 feet. This distance here is 600  
7 -- oh, pardon me. We're calling out 600 feet of  
8 undisturbed vegetation -- that's my mistake -- that  
9 would remain. And obviously, we control what's on our  
10 property. And that's the adjacent parcel's vegetated  
11 area. That covers us for view-shed.

12 So as you can see, we've demonstrated, I  
13 think, more than adequately that we are not imposing a  
14 significant visual impact on the community at large  
15 with this application.

16 Jody, is there anything else?

17 MR. STEINMETZ: That's good.

18 MR. O'CONNOR: Thank you.

19 CHAIRMAN VALDATI: Thank you.

20 MR. DZWONCZYK: Thank you, Josh.

21 Good evening, everyone. My name is John  
22 Dzwonczyk. I'm a professional engineer in the State  
23 of New York and 45 U.S. states. BJ's hires my firm,  
24 JGD Associates, to do their fueling design for both  
25 the propane, which they've already had installed here  
at this club, and the gasoline service stations.

3 We've had a relationship with BJ's for, I would say,  
4 since 2010. In that time, probably 30 or so BJ's  
5 sites have been developed with our assistance.

6 I'm very comfortable with the subject matter. I  
7 probably have participated, both as an employee of  
8 Getty Oil Company and BP Oil Company, and then my own  
9 firm, over 2000 service stations in most of those 45  
10 states.

11 I hope tonight to make you comfortable with  
12 what BJ's is doing, why this is a good project, both  
13 from a commercial standpoint, which of course you're  
14 interested in because you want whatever's built to be  
15 successful, and from a standpoint of general

16 development within the town; you would like to have  
17 things that are environmentally sensitive and so  
18 forth.

19 First of all, I stole Josh's site plan to  
20 orient everyone. If you've looked at them, you have  
21 the canopy with six, what are called MPDs under it  
22 here. And those are multi-product dispensers, as you  
23 all know, because you fill your own cars up. One car  
24 goes on each side of them. This is a channelized flow  
25 here. So that at BJ's, as you probably know if you've  
ever seen them, I think the nearest site is in  
3 Brookfield, Connecticut. It's 39 miles away, would be  
4 a good example if the -- you know, the board wishes to  
5 look at, you know, how those BJ's operate things.

6 You'll get an idea what you'll have here.

7 But anyway, generally, BJ's channelizes flows  
8 so they only go in one direction. You don't have cars  
9 coming in every which way jockeying for position. You  
10 just wait in line at the nearest pump. And there's a  
11 single row of MPDs that have the cars coming in on  
12 each side of them. The -- BJ's provides a hose that's  
13 long enough to get to both sides of the car. So if  
14 you, like, forgot what car you were driving or, you  
15 know, what side the tank is on, you have a long enough  
16 hose to get there.

17 For peak times, BJ's has employees who direct  
18 traffic in effect, which is something you don't often  
19 see at gas stations, but that enables people to get  
20 through safely and efficiency -- efficiently.

21 At BJ's, you will notice that the attendants aren't  
22 selling coffee or going to use their lottery tickets  
23 or anything. They're actually operating the fueling  
24 facility, which is really what you want.

25 I'll be telling you a lot about the  
environmental features of this service station, but  
3 here are the tanks. The tanks are, you know, towards  
4 the BJ's store side, which you know, makes them just a  
5 little bit farther even than the canopy and the pumps

6 from the house that Josh was talking about down here.  
7 And of course, here's the existing Gulf branded  
8 service station here and the house, they are much  
9 closer than the proposed BJ's is.  
10 With that, I'll bring up our little See 'n Say  
11 or see and tell -- show and tell project of what --  
12 what goes into a BJ's service station. And feel free  
13 to ask me any question you want. I think about the  
14 things that I think about, but I can answer your  
15 questions if you have any that I didn't mention.  
16 But let's start with the underground storage tanks.  
17 This is a representative of a typical BJ's. It's a  
18 little bit different because in the case of this site  
19 plan, the tanks are laid end to end. This is a  
20 side-by-side representation, but it's easier to see;  
21 so we depict it like this as a general purpose  
22 explanation.  
23 So what we have here are fiberglass  
24 underground storage tanks, double wall. In between  
25 the double walls is a solution of brine. In other  
words, a salty water that is monitored here. There's  
3 a monitor right here that has -- the brine comes up to  
4 a certain level, and it has a level monitor that  
5 senses whether the brine has leaked out or something  
6 is leaking into it causing it to rise. So that's a  
7 way to continuously monitor very sensitively the  
8 integrity of the tanks.  
9 The inner wall contains the product. Then you  
10 have the brine. And then you have the outer wall  
11 which keeps the environment out. So in between the  
12 brine acts as a detection agent in the system. So  
13 that's the tanks themselves.  
14 The trucks come along and fill the tanks. One  
15 of the questions I noticed, I only again, briefly read  
16 the 50-page document that came in to me around 4:00,  
17 but one of the things they were talking about is the  
18 size of the tanks. In my opinion, the larger tanks --  
19 you've got two 20,000-gallon tanks for regular and one



20 22,000 that's split between premium and diesel. The  
21 larger tanks actually enable BJ's to have more draw  
22 down in the times -- peak times, you know, let's say  
23 you can't get deliveries or whatever, but they're able  
24 to take -- more often take full loads of product,  
25 which is important, because when we talk about what  
are the, you know, potential worries with the whole  
3 zoomed out petroleum delivery system, it comes down to  
4 the road in the big tanker. You know, the tanker is  
5 just a single-wall tank that's regulated by DOT. So  
6 you got them running up and down Route 9 anyway. But  
7 those tankers have to come in and hook up to the  
8 tanks.

9 If there's ever going to be a modern  
10 likelihood of a problem, it's all that connecting and  
11 disconnecting. Well, if you only have to connect the  
12 truck once, because you have a big enough tank to take  
13 the full 8500 gallons, which is typically what's on  
14 the truck. Then the less often you hook up and  
15 disconnect, the less chances you have for any kind of  
16 spills or drips.

17 Now, in the event of a spill or drip, you've  
18 got containment spill buckets. You've heard that  
19 term, I'm sure, somewhere, that are double walled, in  
20 the case of BJ's, and they're tested also. So that  
21 every year they can be tested, and that's part of --  
22 the state requires that. So that, you know, they're  
23 tested for integrity. The sumps are actually a  
24 tertiary containment for that and for the piping. The  
25 sumps that are -- these chambers, let's say, they look  
like maybe turrets or something on a ship. They're --  
3 the piping is double wall that goes between the sumps  
4 and the dispensers. The piping communicates with the  
5 sump, if there was ever anything in between the inner  
6 and outer piping, whether it's something from the  
7 outside or something from the inside, it spills into  
8 the sump. Sump is continuously monitored, and if  
9 there's ever a slightest trace, I would say,

10 practically speaking, a half-inch, three-quarters of  
11 an inch of product in the sumps, it sounds an alarm in  
12 the kiosk.

13 In the letter that I sent you, it was  
14 referenced in that 50-page document, but in the back  
15 of that letter I gave you all BJ's procedures, what  
16 they do when such and such a thing happens. So I  
17 would like to say you can have all this great, you  
18 know, environmental protection, but your operations  
19 are going to largely determine how good of an  
20 environmental performance you have, and I think that  
21 BJ's has a pretty solid environmental record.

22 So any way, we have double wall piping going  
23 out from the tanks with the various products to the  
24 dispensers. Now, the dispensers, a lot of people call  
25 them pumps, but that's like kind of a throwback term.  
You know, they haven't -- mostly it's not pumps for --  
3 since the '70s anyway, probably before that in a lot  
4 of cases, but the pumps are actually in the tanks.  
5 They're submersible pumps that you might have on your  
6 wells or whatever. And then they push a product out  
7 to the dispensers, and then they're in series. The  
8 dispensers have sumps underneath them for the same  
9 purpose. Should anything be leaking in the -- in  
10 between the inner and outer pipe, that is  
11 communicated back to the sump. These sumps are all  
12 continuously monitored, six of them, and you can  
13 identify where -- if in the event of a leak, you could  
14 identify where that leak occurs and then you can take  
15 appropriate action. And again, the information that I  
16 gave you illustrates what BJ's responses are to  
17 various things.

18 In addition, like you see a lot of the  
19 existing gas stations that are out there, there are  
20 monitor wells in the ground, to say if there was a  
21 concern, did something get out of the system, then  
22 you're checking in your backfill here which is loose.  
23 You know, in other words, it's porous enough to

24 communicate with the monitor well to give you an idea  
25 of did we actually spill anything.  
So all together, we have, like I said,  
3 attendants that are paying attention to the operations  
4 and to the monitoring system. And so you have a  
5 fairly comprehensive operation that I think would be  
6 exemplary for gas stations in general. Really, the  
7 attendants focus on the operations, and the system is  
8 the latest and greatest that is required by the State  
9 of New York. And I think I caught in the letter that  
10 of course it will be done like that, but what's  
11 inherent in that of course is like if you were  
12 building it today, of course it would be done like  
13 that. If you built it 20, 30, 40 years ago, you might  
14 not be up to snuff. So to answer, you know, the  
15 \$64,000 question of does this, in my opinion, create a  
16 significant impact on the environment, I would say,  
17 you already have gas stations in town that are  
18 probably not up to the standards that this is; so I  
19 would say probably not. With that, I'll take any  
20 questions.

21 CHAIRMAN VALDATI: Anyone on the board?

22 Great. Continue.

23 MR. DZWONCZYK: Sir, is there --

24 MR. MALAFRONTE: One question. Is the whole  
25 containment area monitored where the tanks are?

MR. DZWONCZYK: Well, you've got what you call  
3 monitor wells here. And here, that's --

4 MR. MALAFRONTE: That's a (indiscernible). I  
5 mean the whole --

6 MR. DZWONCZYK: The inside of the tanks are  
7 completely monitored.

8 MR. MALAFRONTE: Outside of the tanks, there's  
9 that whole containment area that you put the tanks in,  
10 is that (indiscernible)?

11 MR. DZWONCZYK: There is no --

12 MR. MALAFRONTE: Requirement.

13 MR. DZWONCZYK: There is no containment. When

14 you say “containment area,” this is (indiscernible).

15 The containment is the tanks themselves.

16 MR. MALAFRONTI: That’s it.

17 MR. DZWONCZYK: Yeah. There is no -- nothing

18 between here, the outside of the tank and the rest of

19 the world, to answer your question. You know, but you

20 do have a way to look and say this monitor well is in

21 the rest of the world, what does it look like in

22 there.

23 CHAIRMAN VALDATI: Okay. Please continue.

24 MR. DZWONCZYK: That’s my -- the end of my

25 prepared remarks. If I have missed anything, I’ll be

happy to answer your questions.

3 CHAIRMAN VALDATI: Your colleagues.

4 MR. O’CONNOR: Yes. Mr. Valdati, thank you.

5 I just realized I would like to share another bit of

6 information with the board before we go to the more

7 formal comment period here.

8 We’ve also looked extensively at the location

9 of the fueling stations in and around the BJ’s. And

10 you can see the BJ’s is here. This is 1336 Route 9.

11 This is the Mobil on the corner of Myers. And there

12 are a couple of other gas stations in and around the

13 area. As far as --

14 CHAIRMAN VALDATI: Excuse me. Do you know the

15 distance between the Mobil and the proposed site?

16 MR. O’CONNOR: Yes. Well, pardon me. I do

17 have a series of distances here, and I’ll walk through

18 them. What we’ve looked at was the distance from each

19 gas station to the nearest residence, the distance

20 from each gas station to the nearest residential

21 parcel or zone. And then we looked at the distance

22 between the gas stations along the roadway and then on

23 a straight line basis. So along the roadway is along

24 the frontage you would drive to get to it. The code

25 is explicit and says it’s a straight line distance.

But there is a reason to think that, you know, if you

3 have to drive a mile to go around a circle to get to

4 something, it's not perceived as in proximity, even  
5 though as the crow flies, it may be.

6 So as I said, I have the distance prepared  
7 between the proposed fueling station here and the  
8 Gulf, and that is about 400 feet along the road.

9 MS. CROSS: 400 feet, a straight line.

10 MR. O'CONNOR: What?

11 MS. CROSS: 400 feet, a straight line.

12 MR. O'CONNOR: A straight line. Pardon me.

13 Yes. 400 feet on a straight line. That's about 3500  
14 feet if you're to follow the actual access to it, but  
15 I think key to draw your attention here is none of the  
16 gas stations in the Town of Wappinger meet the  
17 existing requirement for separation to a residential  
18 district or a residence.

19 CHAIRMAN VALDATI: Can you repeat that again,  
20 Josh, please?

21 MR. O'CONNOR: None of the gas stations in the  
22 Town of Wappinger currently meet the requirement for  
23 separation distance to a residence or a residential  
24 district.

25 CHAIRMAN VALDATI: Okay. So your proposal for  
BJ's is below the threshold.

3 MR. O'CONNOR: For the distance to the  
4 residential district, it is below the threshold. It  
5 is consistent with what has been developed with  
6 fueling stations in the Town of Wappinger since  
7 fueling stations have been developed in the Town of  
8 Wappinger. Going as recently as the rehab of the  
9 Valero Mart, which is immediately adjacent to numerous  
10 residences.

11 CHAIRMAN VALDATI: That's in the village.

12 MR. O'CONNOR: Pardon me, you're right. The  
13 village line is right through here. That's right.  
14 I'll move on to the next.

15 CHAIRMAN VALDATI: Yes, sir.

16 MR. PARISH: I'd like the board to ask a  
17 question. The existing gas station that you're

18 referring to --

19 CHAIRMAN VALDATI: Would you state your name,  
20 sir.

21 MR. PARISH: Oh, yeah. Nathaniel J. Parish,  
22 Nat Parish. I'm here as a consultant. I'll be  
23 talking late, but I just want a question on this  
24 point, which is: Of these gas stations, the existing  
25 stations that he's now cited, which of those were  
installed after the town created the present special  
3 permit requirement for gas station; which happened  
4 after that under that clause?

5 MR. ROBERTS: I don't know that that's  
6 appropriate.

7 MR. STOLMAN: Well, whether it's appropriate  
8 or not, you're going to ask the board questions, the  
9 board's going to get answers, but we're not going to  
10 answer all the public's questions tonight.

11 MS. VISCONTI: It will be in the minutes to  
12 review.

13 MR. PARISH: I don't understand. I thought I  
14 can ask a question and the board --

15 MR. STOLMAN: No.

16 MR. PARISH: -- will ask them to answer it.

17 MR. STOLMAN: No. That's not the way it's  
18 being conducted; correct?

19 CHAIRMAN VALDATI: Correct.

20 MR. STOLMAN: We're going to get answers for  
21 everybody, but not tonight.

22 MR. PARISH: So when will we get the answers.

23 MR. STOLMAN: As soon as the applicant  
24 provides the answers.

25 MR. PARISH: Oh. So we can put answers to the  
board now, but he doesn't have to answer them?

3 MR. STOLMAN: That's correct.

4 MR. PARISH: Okay. Thank you.

5 CHAIRMAN VALDATI: Yes, Mr. Horan [ph.].

6 MR. HORAN: Just one question regarding the  
7 sump. Where -- physically where is the sump located

8 with respect to the tanks?

9 MR. DZWONCZYK: Mr. Chairman, may I --

10 CHAIRMAN VALDATI: Yes.

11 MR. DZWONCZYK: -- answer the question?

12 Each one of these items here, these  
13 cylindrical items are sumps on the tanks, and then you  
14 have sumps, they're rectangular and they're in plan  
15 view. They're, you know, prismatic, let's say in 3D  
16 form under each of the dispensers. So you've got six  
17 sumps there and you've got, one, two, three, four,  
18 five, six, seven sumps under the tank.

19 MR. O'CONNOR: Mr. Chairman, if you'd allow  
20 me, I'd like to, in short, at least to the best of my  
21 ability tonight, address Mr. Parish's question.  
22 I don't know explicitly which were built when,  
23 but the point is, the special use permit, when that  
24 was required is not necessarily relevant. It's the  
25 zoning regulations dictates the distance. As part -  
in regard to the point that I was making; it's the  
3 distance between the different facilities, the gas  
4 station to a residential district, a gas station to a  
5 gas station. That's not part of the special use  
6 permit portion of the code. That distance has been  
7 longstanding when --

8 MR. STEINMETZ: Josh --

9 MS. CROSS: Okay --

10 MR. STOLMAN: We cannot have this dialogue.

11 The point Josh is bringing up is something that the  
12 ZBA is going to take up, number one.  
13 Number two, we'd like an answer to the  
14 question, but not tonight, because I believe the board  
15 is operating the way I explained it. So we don't want  
16 rebuttal tonight. We don't want responses tonight.

17 MR. O'CONNOR: Thank you.

18 MR. STEINMETZ: Thank you, Mr. Stolman.

19 CHAIRMAN VALDATI: Okay. Anything further on  
20 your side?

21 MR. STEINMETZ: Not at this time,

22 Mr. Chairman. Thank you.

23 CHAIRMAN VALDATI: Okay. Anyone else care to  
24 speak?

25 MS. COLLINS: Can residents speak now or -  
CHAIRMAN VALDATI: Certainly.

3 MS. COLLINS: Okay. I have a couple of --

4 CHAIRMAN VALDATI: State your name and  
5 address, please.

6 MS. COLLINS: I will get to that. My name is  
7 Ingrid Collins, and I live on 49 Losee Road in the  
8 back of BJ's.

9 Now, we were here before the board about 25  
10 years ago when -- whenever it was when BJ's first came  
11 in. We had formed a neighborhood association at the  
12 time, which is still in existence, which is called  
13 Citizens for Responsible (indiscernible). Now, I have  
14 not actually -- you know, we're not actually in the  
15 process of activating all these neighbors and stuff,  
16 but I just want to make a couple of points.

17 First, as to the signatures that were  
18 collected, I just wondered about, since the gas  
19 station is only for BJ's members, I wonder how many of  
20 these signatures are actually from BJ's people and how  
21 many are from town's people that don't even have  
22 access to this gas station? So that's beside the  
23 point.

24 Now, as far as the gas stations are concerned,  
25 there's four gas stations within two miles in this  
town. We certainly don't need another one. And  
3 especially one that is not accessible to all of the  
4 people in the town. So it's only a few select people  
5 that are BJ's members that would be using it. And yet  
6 the town will face a possible problem if anything  
7 happens, and this goes into the wetlands, which of  
8 course nobody says it will, it will impact the water  
9 of an entire region. It goes into the -- it might go  
10 into the aquifer, and you know, cause all sorts of  
11 other problems.



12 Now, another point as far as water is  
13 concerned: I don't know if anybody brought up the  
14 fact that when BJ's was constructed, there were three  
15 separate wells dug on the BJ's property. Now, I  
16 haven't heard anybody mention anything of where these  
17 wells are. You can't put that -- those tanks anywhere  
18 near those wells. I mean, that's ridiculous. They'll  
19 be poisoning their own water if anything happens. So,  
20 you know, I mean, that needs to be addressed as to  
21 exactly where are these wells. That's another point.  
22 Now, as far as the residents that are way less or  
23 fewer than a thousand feet, you know, what is going to  
24 happen with these people? They have a right to be  
25 heard, that -- you know, that this should not happen  
according to the laws of the town. The regulation  
3 says it has to be a thousand feet. Same goes for the  
4 distance to the nearest gas station. That's also way  
5 under the limit that it ought to be.  
6 Now, other concerns: Yeah, I just happen to  
7 find an article not too long ago that addressed  
8 something that, you know, may seem insignificant to  
9 you, but I think it's quite something that ought to be  
10 looked into which is the fact that any gas station in  
11 any area has what is called small spills all the time.  
12 Anybody putting gas into a car is likely to have a few  
13 drops come out or the tankers coming in. Now, there  
14 was an impact study done on what -- what that amounts  
15 to and what happens to that gas, and if I may just  
16 quote one sentence here that says, "that,  
17 conservatively, the research estimate that roughly  
18 1,500 liters of gasoline are spilt at a typical gas  
19 station each decade." All right. So you say, okay,  
20 ten years that's a long time. Right.  
21 My last question is -- has to do with the fact  
22 that what happens if BJ's disappears; right? Is there  
23 a reason for BJ's putting in all of these gas  
24 stations? Is it maybe that their business isn't doing  
25 as well, and so, you know, with the extra gas

stations, they might like to elicit to get more  
3 business. So what happens if they -- if they leave  
4 the area; right? What happens with these tanks? Are  
5 they going to be required to remove them? That's a  
6 question I would like to have answered. You know,  
7 what happens with this tanks? Because if they're not  
8 monitored, they'll certainly cause problems in the  
9 future.

10 Also, to put them in, has anybody looked into  
11 the soil that's underneath it? Everything in the area  
12 is shale, it has to be blasted in order to, you know,  
13 to do any kind of excavation. Do they have to blast?  
14 How is that going to impact neighbors? As far as  
15 neighbors are concerned, properties that are near gas  
16 stations lose value. There's no doubt about that.  
17 You can read that anywhere. There's lots of people  
18 that will research to find out if there is a gas  
19 station in a neighborhood, and that decreases the  
20 value of the property.

21 So you know, ultimately, I don't understand  
22 why the DEC hasn't been involved in the first place.  
23 And as they're saying, the wetlands aren't so close.  
24 The wetland border right on the property on the  
25 backside where the trucks for -- come in for BJ's. We  
go all there -- by there all the time to see just how  
3 bad it is because they dump cars. There's all sorts  
4 of crap that's been dumped into these wetlands  
5 already, just on the existing BJ's plan. So, you  
6 know, they can't tell me how dutiful they're taking  
7 care of these wetlands. So I think that the DEC ought  
8 to be involved and ought to, you know, find out if  
9 that's something that could even be considered. Thank  
10 you.

11 CHAIRMAN VALDATI: Thank you. We shall take  
12 your items and comments under advisement.

13 Yes, sir.

14 MR. TOMASIC: Good evening. My name is Peter  
15 Tomasic. I've lived in this town for over four years,

16 but your action tonight, a thousand people want to  
17 thank you for what you did. BJ's deserve putting a  
18 gas pump on property. If you have a car that you put  
19 in 30, 40 gallon gas a week, the BJ's prices anywhere  
20 from seven cents to ten cents per gallon less than  
21 anybody else. So I urge you to give it to BJ's  
22 permission to proceed with the business, not come back  
23 on a big parcel (indiscernible).

24 I was here in this building too many times and  
25 too many people complained about my building. A lot  
of people have nothing but junk on their property.  
3 They come in just to waste your time. Please, look  
4 favorably and give permission to BJ's to go forward.  
5 Let's go forward for the town. The more money for the  
6 town. You get more taxes. Everybody going to be  
7 better off. There is only few people own the gas  
8 station from Fishkill to Poughkeepsie, three people.  
9 (Indiscernible) give it to BJ's; so let them have  
10 another guy run the gas station. I want to appreciate  
11 your action. Thank you very much.

12 MS. OGUNTI: Could you spell your name,  
13 please?

14 CHAIRMAN VALDATI: We will take your comments  
15 under advisement.

16 MR. TOMASIC: Thank you.

17 MS. OGUNTI: Can you spell your name, please.

18 MR. TOMASIC: Peter --

19 MS. OGUNTI: Peter.

20 MR. TOMASIC: Tomasic, T-O-M-A-S-I-C.

21 MS. OGUNTI: All righty. Thank you.

22 MR. TOMASIC: You're welcome.

23 CHAIRMAN VALDATI: Anyone else care to  
24 comment?

25 Yes. Yes, Ms. Olivieri.

MS. OLIVIERI: No, go ahead. You can go. Go  
3 ahead.

4 CHAIRMAN VALDATI: You were too late.

5 MS. IVANOFF: Hi. I'm Ilse [ph.] Ivanoff. I

6 I live on 43 Losee Road, and my property abuts BJ's.  
7 And as far as the distance is concerned from my house,  
8 I have a map here that has a scale of one inch to 50  
9 feet. And using my ruler, the distance is not even  
10 ten inches. So that is not even half the distance  
11 that the gas station should have from my property and  
12 from my house.

13 I also was surprised at the petitions that the  
14 gentleman -- I didn't know -- nobody asked me what --  
15 any of the neighbors close by to sign a petition. I  
16 didn't even know a petition like that existed. I  
17 wanted to make sure that you understand that we are  
18 being, how should I say, not -- not taken into  
19 consideration.

20 CHAIRMAN VALDATI: Thank you. We'll take your  
21 comments under advisement.

22 MS. IVANOFF: Thank you.

23 CHAIRMAN VALDATI: Ms. Olivieri.

24 MS. OLIVIERI: Concetta Olivieri. I obtained  
25 my information -

MS. BETTINA: Excuse me. Excuse me. You need  
3 to come to the podium, please. Thank you. Can I get  
4 your name and address.

5 MS. OLIVIERI: Concetta Olivieri, 207 Old  
6 Hopewell Road.

7 MS. BETTINA: Bea, do you have that?

8 MS. OGUNTI: Yes.

9 MS. BETTINA: Okay. You can go ahead.

10 MS. OLIVIERI: I obtained my information from  
11 the Wappinger Water and Sewer District online. The  
12 water availability when in the town is constrained by  
13 a bedrock aquifer that is diminishing in volume, and  
14 limited access to subsurface sand and gravel aquifers  
15 associated with Sprout Creek and Wappinger Creek,  
16 nearly two-thirds of the town's soil that provides  
17 severe limitation to septic suitability and most of  
18 the remainder provide moderate limitation.

19 One in ten households participating in the 203 Water

20 and Sewer Survey before failed or marginal septic  
21 systems, and most had systems that had been replaced  
22 at least once.

23 In addition to water quality problem, some  
24 town residents find that they cannot get enough water  
25 from the individual well systems. One quarter of all  
residents that participated in the 203 Water and Sewer  
3 Survey, reported marginal substandard or supply  
4 problem. Residents on Cedar Hill Road, Losee Road,  
5 Sucich Place, Fowlerhouse Road, Peggy Lane,  
6 Appleblossom, Peters Road and (indiscernible)  
7 Condominiums have significant issues.

8 When Adams Fairacre was built -- was built, a  
9 water main was added that services Adams and Mercedes  
10 Benz. That dealership -- and that is now called a  
11 dead end pipe. There is a water main that crosses  
12 Route 9 by BJ's, come across near Performance Motors,  
13 runs south on Route 9, goes to Indian Village, comes  
14 through Corporate Park, crosses Route 9, and dead ends  
15 at Adams. The (indiscernible) field is adjacent to  
16 the Wappinger Creek and the Hilltop ball field is  
17 adjacent to Sprout Creek. The board needs to protect  
18 what little water we have left, and they have to start  
19 protecting it now.

20 I am very close to where BJ's is. I am in the  
21 footage distance. I have a well and septic. Now, I'm  
22 close to Gulf also, but Gulf is down on Route 9. I  
23 don't see the oil running uphill, just like I can't  
24 push other products uphill, like the town got me stuck  
25 in their sewer district. Okay. So I don't have no  
fear of Gulf. But BJ's is flatland across. And why  
3 is it flatland? Because the Town of Wappinger Board,  
4 when they put their application to build BJ's, that  
5 back parking lot was supposed to be 11 feet down.  
6 That's why there's a beautiful hill there, because  
7 BJ's didn't want to move the rest of the dirt. So I  
8 don't see giving them oil tanks, gas tanks, any kind  
9 of tanks for anything. What are the operation hours

10 of this business? How often is a man going to be  
11 sitting there? What's the operation to get gas? BJ's  
12 doesn't run 24 hours. Is that going to run 24 hours?  
13 These are the questions you have to ask. Do we need  
14 it? Do we need another gas station? I don't think  
15 so. And I don't want my well and septic contaminated,  
16 and I want to know where the 1189 names came from.  
17 BJ's also sent me a card. Oh, you want your gas 10  
18 cents -- I belong to BJ's. I spend \$200 a week there,  
19 which I'm not going to do anymore, because you people  
20 have to protect us.

21 CHAIRMAN VALDATI: Thank you. Anybody else?

22 Yes, sir.

23 MR. A. GILCHREST: My name's Alex Gilchrest,  
24 and I live not nearby. I live in Wappingers Falls  
25 over by the airport. (Indiscernible) my voice trails  
off; so I apologize if it sounds like I'm yelling at  
3 you, I just want my voice to reach the back of the  
4 room as well.

5 MS. ROBERTI: Can we have your address?

6 MR. A. GILCHREST: 16 Lane Gate Road. So I'm  
7 kind of approaching this from an economic standpoint.  
8 I'm an economist, and when I was thinking about this,  
9 it occurred to me that really the market's not failing  
10 here. Okay. What we have, we have six gas stations  
11 within like two miles. The average gas price at these  
12 six gas stations is 2.36 right now. And the U. S.  
13 average is 2.35. Dutchess County average, 2.48.  
14 Already this area is performing well. It's already  
15 below the Dutchess County average. So it's a  
16 competitive market.

17 Now, if I could just ask a quick question: I  
18 don't know if you can answer or not. Is there a plan  
19 in place to remediate Brownfield gas stations right  
20 now for the Town of Wappingers?

21 MS. BETTINA: We'll get back with you.

22 MR. A. GILCHREST: Okay.

23 MS. BETTINA: Your question will be answered.

24 MR. A. GILCHREST: Okay. I'm asking that for  
25 a reason.

MS. BETTINA: Okay. Go ahead, please.

3 MR. A. GILCHREST: So it seems to me that  
4 there are two risks here. And one risk is  
5 environmental, and it's significant, and we all know  
6 what it is. And the lady who was -- I kind of agree  
7 and concur with the lady who spoke about these tiny  
8 little oil spills, gas spills. You know, a person's  
9 filling up a tank for their tractor, and a little bit  
10 spills and it looks like oh, it's evaporated. It  
11 hasn't evaporated. It's goes through concrete and it  
12 goes into the water and the water table. So -- and  
13 that's -- you know, we all know benzene, NAPA, all the  
14 things that have been -- the petrochemicals.  
15 The second risk is business loss. You know,  
16 it's extraordinarily competitive to run a gas station.  
17 The margins are already razor-thin, and what really  
18 gas stations make their money on is the other stuff.  
19 It's not the gas. So to take away the traffic to  
20 these other gas stations so that a large business can  
21 add one product line, BJ's wants to add a product line  
22 for an enormous cost, an enormous environmental cost  
23 and enormous cost to business in the area.  
24 So it seems like maybe -- maybe they just  
25 won't build that product line, and maybe the Town of  
Wappingers stands up and says, We're not like that.  
3 We're not that kind of town anymore. Times are  
4 changing. The town board is adopting some  
5 environmental -- new environmental regulations. It  
6 seems like maybe the Town of Wappinger can put a stake  
7 in the ground.

8 MS. OGUNTI: Can you spell your last name?

9 Can I have the spelling of your last name, please?

10 MR. A. GILCHREST: G-I-L-C-H-R-E-S-T.

11 MS. OGUNTI: All right. Gilchrest.

12 CHAIRMAN VALDATI: Yes, ma'am.

13 MS. UNGAR: Hi. Good evening. My name is

14 Christina Ungar, and I reside at 8 MacFarlane Road. I  
15 prepared a few remarks.

16 First of all, I want to thank you for holding  
17 this public meeting. I'm opposed to the construction  
18 of this gas station. At the time that the Alpine  
19 Shopping Center was constructed, my mother, who  
20 resided at 8 MacFarlane Road, experienced noticeable  
21 sediment in her well water which required a filter to  
22 be placed on her incoming water supply. There was no  
23 problem with her well pump, and she had no problem  
24 with water prior to the rock blasting that took place  
25 during the construction.

We believe a large amount of sediment was  
3 caused by a disruption to the aquifer due to blasting.  
4 The filter put in place in the early 1990s remains in  
5 place today. Our drinking water is directly affected  
6 by what happens with the aquifer and the Alpine common  
7 area.

8 Since this aquifer is directly located within  
9 the vicinity of the proposed gas station, potential  
10 contamination of our drinking water from a fuel leak  
11 or spill is a major concern to us.

12 In addition, I would like to point out that  
13 businesses come and go. Not that, you know, anyone  
14 expects BJ's to leave the area. Things do happen and  
15 business plans do change. The location of this gas  
16 station is not ideal, nor easy for another business to  
17 acquire. It is not located on, nor visible from a  
18 main road, making it undesirable for a different  
19 owner. The town faces a risk that these storage tanks  
20 will sit abandoned and deteriorate in the event that  
21 BJ's closes.

22 Since this station is only available to BJ's  
23 members, which is a very limited portion of the  
24 general population, and there are already four gas  
25 stations within a one-mile radius, does the town truly  
wish to accept the environmental impact risks that  
3 this gas station carries?



4 In conclusion, I urge the board to evaluate  
5 this proposal carefully. And in the event that you do  
6 decide to move forward, please protect our town and  
7 water by legally requiring BJ's to fully remove the  
8 storage tanks and test the surrounding ground for  
9 contamination in the event that BJ's no longer does  
10 business there.

11 If homeowners cannot have abandoned tanks then  
12 businesses should not be allowed to either.

13 CHAIRMAN VALDATI: Thank you.

14 MS. BETTINA: Thank you.

15 CHAIRMAN VALDATI: Yes, sir.

16 MR. BEALE: Good evening. William Beale.

17 Councilman for Ward 1, 45 Tuscany Drive. I had a  
18 number of residents reach out to me expressing  
19 concerns, rightfully so, about this project. I spoke  
20 to a number of planning boards expressing my concerns  
21 about the project. I fully respect BJ's and their  
22 opportunity to create a gas station. I do believe in  
23 the free market, and I believe they do have a right to  
24 do a project such as this. However, I think we need  
25 to remember one thing, and the number one issue is the  
environment. And we need to fully evaluate what

3 potential side effects something like this could  
4 inadvertently cost. And when people talk about the  
5 potential for blasting, I would like more information  
6 on that, if blasting is going to be required. People  
7 talk about inadvertent sediment in their wells from  
8 the first development at that location. I'd like more  
9 information on inadvertent side effects that could  
10 occur that may not be inside the box. Things outside  
11 the box that could occur in a situation like this that  
12 I think we need to -- we have a right to our residents  
13 to take a look at, because you know, we do have a  
14 number of gas stations within X number of miles on  
15 Route 9, obviously.

16 BJ's obviously is a great partner in our  
17 community, but I believe we have a first right to our

18 residents, and the businesses have a privilege to  
19 exist in our town. So if we could -- and I fully  
20 appreciate the work you're doing on this. I know  
21 you're taking a lot of extra time to read these  
22 memorandums and do research, but I would appreciate if  
23 you could get back to me with that information on what  
24 inadvertent side effects could occur in a situation  
25 like this. And I appreciate it. Thank you.

CHAIRMAN VALDATI: Thank you.

3 Yes, sir.

4 MR. PHILLIPS: Good evening, Mr. Chair,  
5 members of the planning board. My name is Edward  
6 Phillips of Keane & Beane P C. I am the paid  
7 opposition. I wish you all a happy first day of  
8 summer. My remarks tonight will be short, even though  
9 it's the longest day of the year.

10 I was here twice before. In March, I was here  
11 when this matter was on for a vote on a negative  
12 declaration and the room was essentially empty. We  
13 didn't have the whole team here from BJ's that night.  
14 Mr. Steinmetz wasn't here. Representative from BJ's  
15 was not here. I don't believe the engineer was here  
16 either, yet it was on the agenda for a vote on a  
17 negative declaration. We appeared. We were working  
18 with the planning board secretary to get some  
19 documents and information. We got that information.  
20 We came in. We did see some procedural -- in our mind  
21 was procedural missteps. We brought those to the  
22 board's attention, and you adjourned the matter to  
23 another meeting. I appeared at that meeting. Again,  
24 hardly anybody here. But something happened between  
25 the two meetings.

In April, I think the applicant woke up and  
3 realized that there was a lot of information that it  
4 hadn't provided to this board. Questions that we had  
5 raised back then. We've been talking about the  
6 aquifer, but in April, a letter from the engineer goes  
7 in, a letter from counsel goes in, and now I think you

8 start to have the type of record that you need to make  
9 an informed decision about the environmental impacts  
10 that this project might have.  
11 So we're here tonight a third time. And yes,  
12 I have submitted a lengthy letter which points out  
13 essentially, I think, tells you more about the -- what  
14 in our view is the most significant of the several  
15 potentially significant adverse environmental impacts,  
16 and that's the potential to contaminate this principal  
17 aquifer along the project site. And I think what --  
18 respectfully what Mr. Steinmentz so exercised tonight  
19 is the recognition that there's something there,  
20 there's something to this. No one disputes that the  
21 aquifer is there. No one disputes that you have  
22 residents who are relying on it. You've heard  
23 comments from some of them tonight. And frankly, I  
24 don't think you've heard tonight -- you've had a great  
25 presentation, and I think you've gotten a lot of  
interesting information from the applicant, but I'm  
3 hearing that for the first time and I know you're  
4 hearing that for the first time. What are we asking  
5 for? We're asking for this board to issue a positive  
6 declaration that continues that process, that allows  
7 you to continue to ask questions. That allows you to  
8 retain your own expert. BJ's will pay for it.  
9 They're required to do it; it won't cost the town any  
10 money. So you can stress test some of what you're  
11 hearing tonight. You can ask more questions. The  
12 public can continue to be involved as they are  
13 tonight. They can come to a public meeting and ask  
14 those follow-up questions. That's what we're asking  
15 for.  
16 And I'm not sure if I need to -- the  
17 applicant's own engineer when he summed up his  
18 presentation -- I want to get this right. He said in  
19 terms of the potential environmental impacts, probably  
20 not. I think was his exact words, probably not.  
21 Now, the standard under SEQRA is -- is the action, is

22 the project not -- is it going to have a significant  
23 impact, could it have a significant impact. I think  
24 that's -- what you heard tonight is a concession by  
25 their expert. But you can't stand up -- you just  
can't stand up and guarantee you that there won't be a  
3 spill despite -- and I'm sure that they will deploy  
4 the latest technology. They're required to do that.  
5 But as I pointed out in our submission, there's always  
6 human error.

7 We -- we gave the planning board a copy of an  
8 article about a spill in Massachusetts, a very  
9 significant spill. Now, if that type of incident  
10 occurs over a principal aquifer, I think you need to  
11 know what happens next. What are the consequences?  
12 Are there any other protective measures, apart from  
13 what you've heard tonight that may go above and  
14 beyond, given the location of the project site, are  
15 prudent measures for this applicant to step up and do?  
16 I think those are the types of questions that you can  
17 and should be asking.

18 In the letter submission that I've given you,  
19 I've given you a listing of -- the DEC has a great  
20 website on spills. It's not just petroleum spills.  
21 It's all types of hazardous liquids. But again, it  
22 underscores the point that accidents happen. And when  
23 you're dealing with a resource like we are here, I  
24 think it's incumbent upon the board as lead agency to  
25 do all of its due -- all reasonable due diligence to  
make sure that this applicant is mitigating, if it  
3 can, mitigating those impacts to the maximum extent  
4 expressed.

5 So I just want to address one or two  
6 additional things that I heard tonight. The -- and I  
7 know you know that -- I didn't know that I would be  
8 hearing about a tank failure or a spill on my client's  
9 property or that we would be getting a petition handed  
10 up tonight, but I certainly have questions about that.  
11 I can tell the board that the spill that you heard

12 about at the current station, at the current Gulf  
13 station, that's ten years ago. My client was not in  
14 ownership at that time. It's owned by 7-Eleven before  
15 my client owned the property. I'm just sitting -- did  
16 some quick research: 7-Eleven has 57,000 locations,  
17 has 45,000 employees. They're a big company. And I'm  
18 willing to bet that they know how to do it right too,  
19 and I'm willing to bet that, at some point, they made  
20 an application, maybe similar to what you've heard  
21 tonight, and they gave all kind of assurances to a  
22 board that they're very sophisticated, it will be the  
23 best of the best in terms of safety measures but  
24 again, accidents happen. Okay. I mean, air bags, all  
25 right, air bags have been around for 40 years. Who  
would have guessed that we have 30 million air bags  
3 that need to be recalled now, because why? Because  
4 people design them, people install them, people build  
5 them and mistakes happen.

6 I don't want to take up any more of your time,  
7 but I guess I just want to close with the idea of what  
8 we're asking for. What we're asking for not -- is not  
9 the beginning of the -- not the end of the process.  
10 What I'm suggesting is that you take the first step  
11 towards a process that will involve more information,  
12 more questions and answers, more opportunity for  
13 public input, give this the thorough review that it  
14 deserves. Thank you.

15 CHAIRMAN VALDATI: Thank you.

16 MS. BETTINA: Thank you.

17 CHAIRMAN VALDATI: Sir.

18 MR. PARISH: I just want to distribute a --

19 CHAIRMAN VALDATI: Who are you?

20 MR. PARISH: Nat Parish of Parish & Weiner

21 Consultants with offices in 297 Knollwood Road in  
22 White Plains, New York. I'm a licensed professional  
23 engineer in the State of New York and a full member of  
24 the American Institute of Certified Planners. In a  
25 previous letter, I attached my whole resume. I assume

it's still in the record. I want to distribute these  
3 papers, because it will help -- I'll give it to you  
4 for the record, and then it will make my presentation  
5 briefer since I won't have to tell you everything  
6 that's in here. So with that, I'll take a moment and  
7 distribute it. I think I got enough for everyone.

8 MS. BETTINA: It will be all right. We can  
9 share and --

10 MR. PARISH: I was just saving some for them  
11 over there.

12 MS. BETTINA: Okay.

13 MS. VISCONTI: I got one. Thank you.

14 MS. BETTINA: Thank you.

15 MR. PARISH: David, I'll email you one.

16 I'm going to try hard not to lecture the  
17 board. You know, a friend of mine was a member of  
18 planning board and once told me, Don't lecture the  
19 board. They're going to make their own decision, and  
20 they don't like to be lectured. So what I'm going to  
21 do is share some thoughts with you.

22 And first of all, I have to admit that I am a  
23 paid consultant. I'm not an advocate, because I'm  
24 going to present my thoughts to you for whatever  
25 they're worth, and then the board's going to consider  
them. You have a wonderful planning consultant. You  
3 have an excellent town engineer. Maher Associates is  
4 a very good firm. You have a lawyer. And they're all  
5 going to help you make the decisions. So all we want  
6 to do is try to present my thoughts about a framework  
7 of the things we're considering today.

8 Now, in the argument -- one thing that I noted  
9 that David said, and he's a brilliant advocate for his  
10 client. I don't blame him for bringing the point up,  
11 but it's really not relevant. This business about  
12 discount prices: Isn't BJ's -- everybody -- not  
13 everybody can go there, but for a small annual fee  
14 everybody can be a member. It's not an exclusive  
15 club.

16 Secondly: This whole business of discount  
17 prices -- we have a market economy in this country.  
18 There's a bunch of gas stations, they all compete with  
19 each other, with prices, you all see it there. And  
20 that's how prices are set. He can't guarantee you  
21 that their price over a period of time will be higher,  
22 lower, sideways. BJ's could be bought by another  
23 company, go out of existence.  
24 So whatever decision a board makes, any board,  
and says Oh, I'm wonderful, but based upon the fact  
3 that you're going to have a use that's going to be in  
4 place for a long, long period of time. Whoever's  
5 going to run it, however they're going to do it, it's  
6 going to be a gas station in this case. So I think  
7 that's how you have to look at it, not from the point  
8 of view whether it's BJ's or Joe Schmoes.  
9 Now, I got to tell you, I was an advocate --  
10 an advocate -- a planning consultant and maybe an  
11 advocate for a major project in Yonkers. You can see  
12 it there as you pass Home Depot, Costco. I wouldn't  
13 come before a board and say Oh, they're going to be  
14 cheaper. But obviously, some people might think that  
15 that's the case. You know about Home Depot and  
16 Costco. I don't know to this day whether every  
17 product in Home Depot or Costco is cheaper or not than  
18 any other store in Yonkers. So I would never go and  
19 make that statement, but that's the way I look at it.  
20 Now, the way I look at this thing, first of all before  
21 getting into the SEQRA issue, there's a special permit  
22 provision that was written into your zoning ordinance  
23 specifically said Hey, we're going to allow gas  
24 stations provided they meet a whole bunch of criteria.  
25 That's the business that's in there now. It didn't  
and says Oh, I'm wonderful, but based upon the fact  
3 that you're going to have a use that's going to be in  
4 place for a long, long period of time. Whoever's  
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22 provision that was written into your zoning ordinance  
23 specifically said Hey, we're going to allow gas  
24 stations provided they meet a whole bunch of criteria.  
25 That's the business that's in there now. It didn't  
say we're going to allow gas stations. It says  
3 special permit. And it says The planning board, when  
4 it considers this special permit, they ought to think  
5 about A -- take into consideration A, B, C, D.  
6 Now, A is a very important thing because it  
7 says you're going to take into consideration whether  
8 it's -- it follows the laws and plans and policies of  
9 the town as they've been put into the record. Well,  
10 what are those? That is the special permit provision  
11 that says here that what's relevant is that it's in  
12 accordance with the zoning ordinance. Well, this is  
13 not in accordance with the zoning ordinance, because  
14 the zoning ordinance requires you to be 2500 feet from  
15 another gas station. It requires you to be 2000 feet  
16 from -- I'm sorry, a thousand feet from a residential  
17 area. That's what's required.  
18 Now, anybody who's going to come around, I  
19 think, and argue, wait a second, there's five gas  
20 stations out there that meet different dimensions,



21 well, wait a second, that's old law. We have a lot of  
22 situations in America, in zoning ordinances, and all  
23 kinds of things where things happened once that didn't  
24 make sense. That had to be changed, that evolved. So  
25 this new law that the town put into effect, I think in  
2015, was that -- or whatever year it is, but it's  
3 fairly recent, put into their ordinance says, Hey, we  
4 ought to protect the residential areas in this  
5 following way. We ought to protect the whole  
6 environmental issue by putting these standards in. So  
7 to say, Hey, we're going to ignore them now when we  
8 look at a special permit, I don't think that would  
9 need to test the law.

10 So I -- as I look at it, this plan that is  
11 being proposed is -- it's got a problem in that it's  
12 not one that meets the requirements of the special  
13 permit. David may say and David's a bright guy, Wait  
14 a second, that's a ZBA thing. And I say Yeah, it's  
15 also a ZBA thing because we believe that if your board  
16 were to say Hey, this is okay, then the ZBA goes on to  
17 see whether a variance could be granted.

18 But I think your board has to consider, in my  
19 opinion, if I was sitting there, I'd say Hey, I think  
20 we have to consider the special permit parts of the  
21 law. So from that point of view, there's really very  
22 little to say about going ahead with this project. It  
23 doesn't meet the distance thing. If it was a minor  
24 variation, 10 feet, 15 feet variation, fine. If it  
25 was -- if it didn't have that -- those problems.

Now, it has a second part, Item C of the  
3 special permit thing says, well -- I'm going to  
4 paraphrase it. It says, well, look at the  
5 environmental issues. Well, certainly there's an  
6 environmental issue here. First of all, there's the  
7 storage tank issue. There's the surface flow of  
8 pollutants issue. There's the fact that there is an  
9 approximate wetland where surface flow can get the  
10 pollutants. So those are issues.

11 Now, as an attorney just said, the fact that  
12 your own consultant says it's probably not  
13 significant, well, that's starts to create a no, no,  
14 because if you're considering the SEQRA regulations,  
15 Section 617.7, Item 2, I'm going to read it so that  
16 David doesn't say that I'm not quoting it correctly.  
17 It says, "To determine that an EIS will not be  
18 required for an action, the lead agency must, and I  
19 underline must," it's not underlined here, "the lead  
20 agency must determine either that there will be no  
21 environmental -- adverse environmental impacts, or  
22 that the identified adverse environmental impacts will  
23 not be significant." Well, he said they'll probably  
24 not be significant. Here it says "will not be."  
25 So for the record, the applicants have conceded that  
there might be a significance. So you have a choice,  
3 as I see it. You can continue this hearing -- the  
4 hearing and consider it on its own terms and whether  
5 the terms are met, or you can stop the process and say  
6 Hey, this doesn't fit, we don't have to consider this  
7 application further. Or you can go on and say Hey, we  
8 want to consider it if that's what you want to do, and  
9 I don't know why, but you certainly can do it and say  
10 Wait, wait a second, now we got to do a SEQRA review.  
11 Now, it comes to a SEQRA review, you have Exhibit A  
12 here today, why a full EIS is needed. Forgetting the  
13 law and everything, but it's the logic.  
14 You know what happens in a full EIS? The  
15 report -- the verbal report that he gave, and I'll  
16 talk a little bit about. The verbal report that he  
17 gave was a very, very technical report. I went  
18 through civil engineering curriculum, and I find it a  
19 little bit hard to follow sitting there, and I'm sure  
20 every layperson would. But normally in a SEQRA  
21 process, a full EIS, that would have been submitted  
22 for the record in writing. There'd be a document,  
23 everybody could take hours to review it. What would  
24 happen is probably if they thought they needed an

25 outside expert, they would bring in an outside expert  
to review that for you. Not for me, but for you. The  
3 public would then have those things in writing. This  
4 hearing would be based on a document that would be  
5 sitting here with all of this information that's been  
6 there at least 30 days before the hearing started, and  
7 everybody have reviewed it, analyzed it. You would  
8 have a hearing. After the hearing, the stenographer's  
9 record would be there. Everybody would have it. And  
10 then you'd have a final environmental impact statement  
11 in which the public, your board, your consultants  
12 could raise all of the questions, and they would be  
13 answered in writing. So there would be very great  
14 clarity about it. All of the experts -- and then for  
15 the record, you'll make a finding statement.  
16 Now, that's a structured process. This is a  
17 process where you come to a hearing, and you give a  
18 whole lecture. Now, that lecture, I should say, when  
19 I was taking hydraulics in college, we had a guy who  
20 had written a lot of books on hydraulics. He was a  
21 Russian -- Russian immigrant, but very, very smart,  
22 and he went on -- Ivan (indiscernible) was his name.  
23 I sat in class, and I didn't understand half of what  
24 he was talking about. But I went back later and took  
25 out the hydraulics book and carefully studied it to be  
able to analyze and see what it all meant. So  
3 throwing all this information at you reminded me of  
4 that. It's too much to swallow in one evening, to  
5 absorb. I'm sure you have very good public  
6 stenographer that wrote some of that down, but it  
7 really should have been given in the form of a report  
8 to your board, to the public in a private environment  
9 where everybody can study it. David can study it.  
10 Your engineer can study it, you can bring an outside  
11 consultant. And that's the process that's needed; a  
12 structured process to come to a reasonable conclusion.  
13 But to summarize, I still think -- I doubt very much  
14 that there's any basis for granting a special permit,

15 that's as I view it. And I represented clients, both  
16 applicants; I've been a review consultant for boards.  
17 And I've been a review consultant, advocate, if you  
18 will, David, for people who have concerns about a  
19 project. And I think in this one, when you look at  
20 the way the -- in the end, you have to weigh the  
21 potential impacts versus what advantages are to the  
22 community. And if the only advantage is some vague  
23 thoughts about a few cents less per gallon of gas,  
24 then I think there's hardly any reason to consider  
25 that it has any advantages. Thank you.

CHAIRMAN VALDATI: Thank you, sir.

3 Yes, sir.

4 MR. GORDON: Good evening. My name --

5 MS. BETTINA: We need your name and address.

6 MR. GORDON: My name is David Gordon, and I'm

7 an environmental attorney in Poughkeepsie. And I'm

8 representing CPD Energy Group in gasoline petroleum.

9 And I'll be brief. I know you've heard a lot and what

10 I'm going to say tonight really echoes those letters

11 to the planning board dated May 16th. I know you have

12 those in your file. So I'll just take a few minutes

13 and just sort of reflect on those issues that -- from

14 what you've seen tonight.

15 The first thing is that under SEQRA, the

16 standard -- and this is -- Mr. Parish touched on this.

17 The standard for a negative declaration is essentially

18 your certification that there are no significant

19 adverse environmental impacts. You've looked at this.

20 You feel comfortable. You understand it. And I would

21 venture to say that, at this point -- I sat on a

22 planning board for a number of years. I don't think

23 that I (indiscernible) to know to be able to certify

24 that there is not going to be any significant adverse

25 environmental impact, particularly as you've heard

with respect to the ground water. There obviously is

3 more information that needs to be deduced.

4 And the standard for a positive declaration,

5 essentially, that there might be a significant adverse  
6 environmental impact, and you need to get more  
7 information in a standardized format as Mr. Parish  
8 alluded to, in a format that you can look at, that we  
9 can look at. And I would submit to you that, at this  
10 point, you are looking much more at a positive  
11 declaration than a negative declaration. There's just  
12 no way we can certify, at this point, that there are  
13 not going to be any significant adverse environmental  
14 impacts.

15 And in particular, as you know, we're dealing  
16 with issues of potential groundwater contamination and  
17 the issues of separation from neighboring communities.  
18 I was kind of struck that people were saying that  
19 well, the other gas stations are equally close or  
20 presumptively equally close to residences.

21 Again, the history of regulations of --  
22 history of environmental law, is that sometimes things  
23 occur and we find that there's a problem with it.  
24 Over time there are certain experiences. In this  
25 case, there are spills. And so you pass a law. And  
the law says in the future, we're going to do things  
3 differently because we want to avoid some of the  
4 things that happened in the past. And the answer to  
5 that is not for an applicant to come here and say,  
6 Well, everybody else is doing it a certain way,  
7 therefore, we don't have to. That is essentially the  
8 negation of the environmental law and the problems  
9 that we have. So as Mr. Stolman indicated, that's an  
10 issue ultimately for the ZBA in terms of the variance.  
11 But I disagree with them that this board's obligation,  
12 in addition to doing your special use permit and your  
13 site plan approval, there's also, of course, SEQRA.  
14 You are the lead agency. You're preparing the SEQRA  
15 review. You're preparing the SEQRA determination.  
16 And that SEQRA determination is going to be used by  
17 the ZBA to inform the decision on the variances. And  
18 it's particularly appropriate here, because the

19 decision that we're talking about is fundamentally an  
20 ecological one. It's one about the susceptibility of  
21 groundwater to contamination. So this is something  
22 that the ZBA will probably take -- will probably put  
23 some credence into. And so it is your responsibility  
24 to hear and to understand the issues related to the  
25 potential for groundwater contamination.

I just want to touch on one other issue. It  
3 is an issue that I alluded to in my May 16th letter,  
4 and also a speaker about a half an hour ago alluded to  
5 as well, and that's the issue of economic competition.  
6 And in particular, you may hear some applicants say  
7 from time to time that economic competition is not an  
8 issue under SEQRA. It is an issue when it can create  
9 negative impacts in the community, particularly  
10 impacts relating to blight, loss of businesses, loss  
11 of jobs and things of that nature. And that's a  
12 situation here.

13 BJ's has a business model. And in my letter  
14 on May 16th, I alluded to some of the aspects of it.  
15 There is a memo that they provided to you in the  
16 application materials. And it's Memo Number 204. And  
17 it goes through their process of setting prices.  
18 Every day they report back on the prices in the area,  
19 and the prices are then set by essential offices.  
20 This is right in the memo. And their goal is to keep  
21 gas prices a certain percentage lower than the gas  
22 prices in the area. It's essentially a loss leader  
23 for them. They can make money and other things.  
24 Some people spoke about economic competition. When we  
25 have fair economic competition, then the market will  
the lead agency, but you're in the exact same  
3 position, and those two sentences are as follows:  
4 Contra -- and this is the case of the town board, the  
5 neg dec -- the application. It says, "Contrary to the  
6 town board's apparent conclusion," and then it quotes,  
7 "a town board reviewing a big-box development should  
8 consider the impact of the development on the

9 community character of the neighboring village that  
10 might suffer business displacement as a result of the  
11 approval of the big-box development.” That quote is  
12 actually directly from the SEQRA handbook.  
13 And then one more sentence that I’d would like  
14 to quote to you. “Because there is no evidence in the  
15 record before us that the town board acting as lead  
16 agency, even considered the impact of the project on  
17 the community character of the village, we conclude  
18 that it failed to take a hard look at that impact  
19 requiring annulment of the resolution adopting the  
20 negative declaration on that ground as well.” To put  
21 it simply, the negative impact of a business when it’s  
22 targeting this type of activity on other businesses  
23 and on the economy of the town and on the loss of jobs  
24 and on the community character is a SEQRA issue. It’s  
25 something that you do need to look at. And this is  
the context that squarely presents that. It’s a box  
3 store adding a service that’s going to directly  
4 compete with existing businesses, and we know that  
5 it’s going to compete on a model that -- and I don’t  
6 mean to be pejorative to say that it’s unfair, it’s  
7 just economically going to produce a situation where  
8 you’re going to lose existing businesses and existing  
9 jobs. And that’s something that you do need to look  
10 at, otherwise, in New York State, the standard  
11 procedure is that the determination would be  
12 vulnerable, if you did not.  
13 So I would refer you again to that letter. I  
14 can make the decision available to you, if you want.  
15 Again, it doesn’t have a site, but it’s the Matter of  
16 Wellsville Citizens versus Wal-Mart. Thank you.  
17 CHAIRMAN VALDATI: Thank you.  
18 Anyone else care to comment?  
19 MR. DZWONCZYK: Mr. Chairman, I’m John  
20 Dzwonczyk, again. Evidently, my use of the word  
21 “probably” was more than some people could hear, but I  
22 want to explain why I purposely used the term

23 “probably” when I said -- I wasn't like personally  
24 recording it, but perhaps this gentleman was. We have  
25 on this plan here the competing gas stations, which  
for some reason, some of the opposition doesn't want  
3 to talk about, but they are there. So here we have  
4 the other gas stations. I would say that the fuel  
5 delivery system at a gas station, it's a mechanical  
6 system. Okay. Say it's like a car. What car are you  
7 likely to have a problem with? Your 2016, your 2010,  
8 your 1985, your 1990? Probably the older ones. So I  
9 can't tell you, because these glasses have given me  
10 the ability to see things that are a foot in front of  
11 me, because I can't see them anymore because of  
12 presbyopia, which is what you get when you're old.  
13 And they don't see into the future. So I can't tell  
14 you that no, there can't be any problem with this  
15 thing but I can tell you with certainty, from a  
16 statistical standpoint, this will not have a  
17 significant impact on the environment. Okay.  
18 Can I guarantee it, no, I cannot. I think in  
19 his entertaining presentation, Mr. Parish, you know,  
20 said that it can be guaranteed. No engineer can stand  
21 in front of a board and say this can be guaranteed.  
22 You know, there's just not that ability. But what we  
23 can say from a statistical standpoint, this is not a  
24 significant impact, and I think that's what's being  
25 looked for in this board. I wanted to clarify that.

CHAIRMAN VALDATI: Thank you, sir.

3 MR. DZWONCZYK: Oh, and I think there was  
4 another question. I did submit a rather lengthy  
5 letter that covered everything on April 20th, I think  
6 Mr. Phillips pointed out. So if you want to read  
7 that, it's in there.

8 CHAIRMAN VALDATI: Thank you.

9 Anyone else care to comment?

10 MR. STEINMETZ: One very brief final comment,  
11 Mr. Chairman.

12 I didn't know David Gordon was going to be



13 here representing CPD, and I'm not certain of your  
14 board's familiarity with CPD. We will put that in  
15 writing as a follow up. But it is my understanding  
16 that Mr. Gordon's client -- if there's anyone who's in  
17 the room who's got potentially more to lose if BJ's  
18 were to be successful, CPD owns, I believe, 12 gas  
19 stations -- owns or operates 12 gas stations within a  
20 five-mile radius. I will get back to the board on  
21 that, but I think while it is fresh and while you -- I  
22 know David well. David's an excellent environmental  
23 attorney, but to get up and talk about SEQRA and  
24 impacts and failed to disclose really what's at stake  
25 here, I think blemishes the record. So we look  
forward to responding in writing. Mr. Parish is  
3 right. Everything should be clear to your board.

4 That's one of the reasons, and the public should know,  
5 the stenographer at the front of the room here is my  
6 client's stenographer, because we wanted to make sure  
7 that everything that was stated for tonight's records,  
8 regardless of the notes that are being taken, is taken  
9 down accurately by Marci, as she always does. That  
10 will be made part of the record. We will submit that  
11 to your board so that you've got it, and allows us to  
12 then respond properly and thoroughly in writing before  
13 your next meeting.

14 So we appreciate your time and the opportunity  
15 to make our presentation. We appreciate all of your  
16 patience, and we look forward to proceeding  
17 cooperatively with your board.

18 CHAIRMAN VALDATI: Thank you.

19 Anyone else care to comment?

20 Yes, sir.

21 MR. GORDON: David Gordon again. I'm  
22 surprised Mr. Steinmetz wasn't aware that I submitted  
23 two letters on this already to the board. I made no  
24 bones about the fact that I'm representing businesses  
25 that could be impacted by this, and I explained why  
and what the legal standard is for that. As I said, I

3 will make one other point, just as David and his team  
4 feels that his client, BJ's, is a valuable member of  
5 the community for what they're doing, what they're  
6 telling, what they've (indiscernible); so too are my  
7 clients. And as it turns out economically, in my  
8 view, you are looking at a bigger loss to the  
9 community if this were approved, than you would you  
10 get right now.

11 In fact, somebody previously mentioned that  
12 there would be a positive tax impact in the community  
13 if this were approved because you'd be extending --  
14 presumably you'd be extending BJ's tax base. In fact,  
15 there would be a negative tax impact because other  
16 businesses will close. You will lose jobs. You will  
17 lose economic base. And so my (indiscernible) and  
18 again it comes with the case that I mentioned, is that  
19 the loss of economic base in the community is a SEQRA  
20 impact, and this board needs to fully understand it  
21 and fully understand the impact of BJ's operations and  
22 how it can help conduct its business on that community  
23 asset. And you know, I look forward to  
24 Mr. Steinmetz's response, and we'll go from there.  
25 Hopefully the hearing will continue, and hopefully we  
will do a positive declaration, and we will get more  
3 into it. Thank you.

4 CHAIRMAN VALDATI: Thank you.

5 Anyone else?

6 Yes, Ms. Olivieri.

7 MS. OLIVIERI: I just want to clarify: Are  
8 you going to close this hearing?

9 CHAIRMAN VALDATI: Who?

10 MS. OLIVIERI: Before we go to the zoning  
11 board or are you going to do it as the gentleman said,  
12 give a positive declaration instead of negative? I  
13 was wondering. I was at the meeting when you were  
14 going to issue that negative declaration, and they  
15 tried to stop it. Because we wondered: Why do you  
16 give a negative declaration before a public hearing?

17 CHAIRMAN VALDATI: I didn't.

18 MS. OLIVIERI: Is that the rule.

19 CHAIRMAN VALDATI: We didn't.

20 MS. OLIVIERI: But you've done it before,  
21 because I know Ms. Visconti was upset that  
22 (indiscernible).

23 CHAIRMAN VALDATI: We did not give a negative  
24 -- negative declaration.

25 MS. OLIVIERI: You didn't give it?

MS. BETTINA: We don't have to go into this.

3 It has nothing to do with this right now.

4 CHAIRMAN VALDATI: What I'm going to say is  
5 that at our last meeting, we did not give a negative  
6 declaration. We didn't do that, just to correct you.

7 MS. OLIVIERI: Right.

8 CHAIRMAN VALDATI: Secondly, we're going to  
9 speak on any new material. Anyone has something else  
10 that has not been mentioned yet, please reinforce it.  
11 We'd love to take it under advisement.

12 Yes, sir.

13 MR. D. GILCHREST: So I'm just going to make  
14 this very brief.

15 MS. BETTINA: State your name and address,  
16 please.

17 MR. D. GILCHREST: Sure. My name is Duncan  
18 Gilchrest.

19 MS. BETTINA: Thank you.

20 MR. D. GILCHREST: 16 Lane Gate Road,  
21 Wappingers Falls. I just want to make this really  
22 quick. On behalf of someone who is a millennial and  
23 who is part of the youth generation of Wappingers  
24 Falls, I just want to say that I oppose the gas  
25 station. I care about the well-being of the  
environment of Wappinger Falls, I care about the  
3 well-being of the people and local business of  
4 Wappingers Falls, and I just want to put that out  
5 there.

6 CHAIRMAN VALDATI: Thank you.

7 MS. BETTINA: Thank you.

8 CHAIRMAN VALDATI: All right. What is the  
9 pleasure of the board?

10 MS. VISCONTI: Are we able to adjourn the  
11 public hearing --

12 MR. ROBERTS: Adjourn the public hearing --

13 MS. VISCONTI: -- to a date certain?

14 MR. ROBERTS: -- to a date certain.

15 MS. BETTINA: I make a motion to adjourn the  
16 public hearing to June 18th.

17 MS. VISCONTI: What date do you want to do it?

18 Are we waiting for the applicant to respond --

19 MS. BETTINA: July 18th.

20 MS. VISCONTI: Well, what are we expecting?

21 Are we expecting that all of this is going to be  
22 answered by then, or are we going to be asking more  
23 public input, period?

24 MR. STOLMAN: Both.

25 MS. ROBERTI: July 18th.

MS. VISCONTI: Are we going to have some of  
3 these things written and returned to us?

4 MS. BETTINA: Yes.

5 MS. VISCONTI: All right. Then I make a  
6 motion that we adjourn the meeting to July 18th.

7 MS. BETTINA: Second.

8 MR. STOLMAN: We're adjourning the public  
9 hearing.

10 CHAIRMAN VALDATI: Roll call vote, please.

11 MS. OGUNTI: Mr. Malafrente.

12 MR. MALAFRONTE: Adjourn, yes.

13 MS. OGUNTI: Mr. Marinaccio.

14 MR. MARINACCIO: Adjourn, yes.

15 MS. OGUNTI: Mr. Pesce.

16 MR. PESCE: Yes.

17 MS. OGUNTI: Ms. Visconti.

18 MS. VISCONTI: Yes.

19 MS. OGUNTI: Mr. Flower.

20 MR. FLOWER: Yes.

21 MS. OGUNTI: Mr. Valdati.

22 CHAIRMAN VALDATI: Yes.

23 Okay. So this public hearing is adjourned.

24 It is not closed. It's adjourned.

25 MR. STEINMETZ: One point of clarification,

Mr. Chairman, just for our team: I wasn't clear

3 whether you were holding written comment period open.

4 Obviously, the public hearing is adjourned. We're

5 going to respond -- so that the board is clear, we're

6 going to respond to that which we heard this

7 evening --

8 MR. ROBERTS: That's correct.

9 MR. STEINMETZ: -- so that it isn't like a

10 constant moving target. I want to make sure that

11 we're all -- I don't want to show up or have our team

12 here and have you say you didn't respond to the

13 comments that came in on July 17th. So we're going to

14 do everything we can to thoroughly respond to

15 everything we heard tonight, and we will get that to

16 you as quickly as possible and we look forward to

17 appearing here on the 18th.

18 CHAIRMAN VALDATI: Yeah. Don't have it like

19 this one here.

20 MR. STEINMETZ: Yeah. You're not going to get

21 that from us.

22 MS. BETTINA: As a reminder -- as a reminder,

23 we will not be accepting things the day of the

24 meeting.

25 MR. PHILLIPS: Understood. And you won't get

that from us.

3 MS. BETTINA: Not by anybody.

4 MR. PHILLIPS: It would be helpful if I could

5 get clarification on when the applicant will be

6 submitting his responses so there is enough time for

7 me to respond, if I see fit, in a timely manner.

8 MR. STEINMETZ: Mr. Chairman --

9 MS. BETTINA: Excuse me. The meeting isn't

10 over yet. Thank you. Go ahead, please.

11 MR. STEINMETZ: I'm allowing staff to --

12 MR. STOLMAN: July 5th.

13 MR. STEINMETZ: Mr. Chairman, what I would  
14 suggest -- we will certainly comply with the July 5th  
15 deadline. I see no reason why anyone, including the  
16 opposition, can't submit their responses on the same  
17 date. They know the issues that we're going to  
18 address, and if they want to address those, they  
19 should certainly feel free; nobody can stop them from  
20 doing so. If they want to respond to what we put in  
21 writing, I guess that's why we're coming back on the  
22 18th.

23 MS. BETTINA: Yes, I would say so.

24 MR. PARISH: Mr. Chairman, if I may, on this  
25 scheduling business. When will we have the copy of  
the stenographic record to review and to have expert  
3 review in time to prepare a document for your board?  
4 I mean, this project will be here forever if it  
5 happens, and whether it takes another two weeks or so  
6 to get a good record going, I would think, we would  
7 like to have the stenographic record whenever it's  
8 ready so that particularly all of the technical thing  
9 can be examined carefully by Mr. Stolman, by us, by  
10 anybody else who wants to examine it and have time to  
11 respond.

12 I don't know that everybody -- I'm going away  
13 for the July 4th weekend. I'm not going to work over  
14 that weekend. So -- and I don't know when she's going  
15 to finish. I'm sure it takes time to produce a  
16 record. So I would question whether the time is there  
17 to allow to read, get it, review it, prepare, and be  
18 able to have a response to you. And I agree, you  
19 can't get to respond the day of the hearing. So to be  
20 fair about it, establish a date when we get the stuff,  
21 give us time to review it, and then time to give you  
22 things and have it -- sure, you should have it a week  
23 or two weeks before you have a board meeting, all of  
24 the documents in front of you, but that can only

25 happen if we have the stuff from them. They can -  
(indiscernible).

3 MS. BETTINA: Counsel?

4 MR. PARISH: David --

5 MR. STOLMAN: I think they're trying to figure  
6 it out.

7 MS. BETTINA: So just hold on a minute.

8 CHAIRMAN VALDATI: How long will it take --

9 MR. PARISH: Mr. Chairman, anybody -- we will  
10 pay -- we'll agree to pay the printing cost of the  
11 copy, because it's the same thing as under a FOIL  
12 where you can ask for it, and we have to pay the  
13 printing cost. We'll pay the printing cost. That's  
14 not an issue.

15 MR. STEINMETZ: Mr. Chairman, we will make the  
16 transcript available as soon as we possibly can, but  
17 my good friend, Nat Parish, who's been doing this more  
18 than a couple of years, I'm convinced will leave here  
19 tonight knowing precisely the topics that we all have  
20 to address. This isn't Nat's first public hearing,  
21 and I gather it's probably not Ed's either. We'll get  
22 them the transcript, but the thing that bothers me,  
23 and I'm going to say it nicely with a smile is, you  
24 guys had no problem whatsoever dumping on all of us on  
25 the day of the hearing and making sure that we had to  
would only give the BJ's group a week to put all this  
3 together, and then it only gives our professionals  
4 about a week because they have to have their review on  
5 the 15th. You might want to move it to August 1st.  
6 That would give everybody and you more time to review  
7 this.

8 MS. VISCONTI: I will amend my motion to  
9 adjourn the public hearing to August 1st.

10 MS. BETTINA: Second.

11 CHAIRMAN VALDATI: Roll call vote.

12 MS. OGUNTI: Mr. Malafrente.

13 MR. MALAFRONTI: Aye.

14 MS. OGUNTI: Mr. Marinaccio.

- 15 MR. MARINACCIO: Aye.
- 16 MS. OGUNTI: Mr. Pesce.
- 17 MR. PESCE: Aye.
- 18 MS. OGUNTI: Ms. Visconti.
- 19 MS. VISCONTI: Aye.
- 20 MS. OGUNTI: Mr. Flower.
- 21 MR. FLOWER: Aye.
- 22 MS. OGUNTI: Ms. Bettina.
- 23 MS. BETTINA: Aye.
- 24 MS. OGUNTI: Mr. Valdati.
- 25 CHAIRMAN VALDATI: Aye.

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**Discussion:**

**11-5159/Obercreek Subdivision and Lot Line Re-alignment:** To vote on a resolution on a proposed 14 lot subdivision and lot-line re-alignment on 32.95 acres in an R-40/80 zoning district. The property is located on **New Hamburg Road & Marlerville Road** and is identified as **Tax Grid No. 6057-02-997768/ 6157-01-030738** in the Town of Wappinger. (Chazen)(LA April 8, 2011) (Neg Dec 2-3-14) (PH opened 10-7-13) (PH closed 1-22-14) (Preliminary Approval 02-3-14) in the Town of Wappinger. (Lund)

<b>Ms. Visconti:</b>	<b>Motion to approve the Resolution as amended.</b>
Mr. Pesce:	Second the Motion.
Vote:	All present voted Aye.

6/20/16

**RESOLUTION  
TOWN OF WAPPINGER PLANNING BOARD**

**RE: OBERCREEK SUBDIVISION – RESOLUTION OF FINAL SUBDIVISION PLAT APPROVAL**

---

At a regular meeting of the Planning Board of the Town of Wappinger, Dutchess County, New York, held at Town Hall, 20 Middlebush Road, Wappingers Falls, New York on the \_\_\_\_\_ day of \_\_\_\_\_, 2014 at 7:00 P.M.



The meeting was called to order by the Chairman Robert L. Valdati and the Planning Board member attendance was as follows:

Robert L. Valdati	_____
Angela Bettina	_____
Bruce M. Flower	_____
Francis Malafronte	_____
Ralph Marinaccio	_____
Carlo Pesce	_____
June Visconti	_____

The following resolution was moved by \_\_\_\_\_ and seconded by \_\_\_\_\_.

WHEREAS, the Town of Wappinger Planning Board has received an application from Obercreek, LP (the “Applicant” and “Owner”) for Final Subdivision Plat Approval for the creation of a 14-lot average density subdivision; to realign lot lines and transfer land to an adjacent parcel to the west, identified as Parcel B; for the creation of a new (non-building) lot, identified as Parcel A, to accommodate a common septic area to serve the above mentioned 14-lot subdivision; and the provision of a sewer connection to the existing dwelling on the property identified as Parcel C on the plans (the “Project” or “Proposed Action”); and

WHEREAS, the proposed lot sizes of the 14-lot subdivision range from 0.91 acres (Lot 13) to 13.00 acres (Lot 6); and

WHEREAS, the subject properties are known as Tax Lots 6057-02-997768 (25.74 acres), 6057-01-010700 (0.82 acres) and 6157-01-030738 (7.21 acres) on the Town of Wappinger Tax Assessment Maps and have frontages on both New Hamburg Road and Marlerville Road within an R-40/80 One-Family Residence District (the “Subject Property” or “Site”); and

WHEREAS, the proposed lot realignments involve Tax Lot 6057-02-920813 (Alexander Reese property) identified as Parcel B on the plans; and

WHEREAS, the Project also involves Tax Lot 6057-02-986691 (0.89 acres) identified as Parcel C on the plans, which parcel is not proposed to be part of the average density subdivision; and

WHEREAS, the Applicant has submitted an Application for Preliminary Subdivision Plat Approval dated 8/19/13; a Full Environmental Assessment Form (Part 1 and 2) dated 3/7/11, last revised 8/9/13; a report entitled *Federal Protocol Mist Net Survey for Indiana Bats (Myotis sodalists)* dated September 2011 and prepared by Barton & Loguidice, PC; a *Phase 1A Literature Review and Sensitivity Analysis & Phase 1B Archaeological Field Reconnaissance Survey* dated August 2012, and a *Phase 2*

*Archaeological Investigation* dated August 2013, all prepared by City/Scape: Cultural Resource Consultants; an Agricultural Data Statement dated 10/3/11, a Stormwater Pollution Prevention Plan dated 10/28/13 and prepared by the Chazen Companies; and a Tree Survey Report dated 6/13/13 that includes a sheet entitled *Obercreek Farm Subdivision, Map of Tree Survey* dated 7/5/13 and prepared by the Chazen Companies; and

WHEREAS, the Applicant has also submitted for review the following plans generally entitled “Obercreek Farm Subdivision,” prepared by the Chazen Companies, dated 3/7/11 and last revised 6/3/16 unless otherwise noted:

1. Sheet T1, “Title Sheet;”
2. Sheet SP1, “Final Subdivision Plat” dated 6/1/16;
3. Sheet SP3, “Subdivision Plan;”
4. Sheet SP3, “Grading, Erosion & Sediment Control and Tree Removal Plan;”
5. Sheet SP4, “Utility Plan;”
6. Sheet SD1A, “Sewer & SSTS Details;”
7. Sheet SD1B, “Sewer & SSTS Details” last revised 4/4/16;
8. Sheet SD2, “Site and Erosion & Sediment Control Details;”
9. Sheet SD3, “Water and Stormwater Details;”
10. Sheet PP1, “Sewer Profiles;” and

WHEREAS, five common driveways are being proposed to provide access to all of the proposed lots except for Lots 10, 13 and 14:

- A common driveway for Lot 1 and the adjacent property;
- A common driveway for Lots 2, 3 and 6;
- A common driveway for Lots 4 and 5;
- A common driveway for Lots 7, 8 and 9;
- A common driveway for Lot 11 and 12; and

WHEREAS, as required by Section 240-20.A(1) of the Zoning Law, the Applicant has shown that each proposed lot can provide independent access over its own frontage; and

WHEREAS, proposed Lots 10, 13 and 14 will each have their own driveway; and

WHEREAS, Lot 6 of the 14-lot average density subdivision will be restricted from further subdivision and this restriction will be written into the deed of this parcel; and

WHEREAS, a portion of the project site is located within the Wheeler Hill Historic District (National Historic Register #90NR03290); and

WHEREAS, the Applicant has performed Phase 1A Literature Review and Sensitivity Analysis, Phase 1B Archaeological Field Reconnaissance Survey and a Phase 2 Archaeological Investigation (the Phase 2 Report); and

WHEREAS, the Phase 2 Report concluded that “...the Windridge Estate site is not eligible for the National Register of Historic Places...the proposed project will not impact a significant cultural resources [sic]. Therefore, no further work is recommended...”; and

WHEREAS, the Applicant has conducted field surveys and prepared a report entitled *Federal Protocol Mist Net Survey for Indiana Bats (Myotis sodalist)* since the New York State Department of Environmental Conservation indicated that a potential Indiana Bat habitat documented within two (2) miles of the project site; and

WHEREAS, in a letter dated 7/31/13 the New York State Department of Environmental Conservation (NYDEC) stated that the project would not result in an incidental take of the protected species (*Myotis sodalist*); and

WHEREAS, in order to ensure protection of the Indiana Bat, the Applicant is proposing that tree removal will only occur between October 31 and March 31; and

WHEREAS, the Proposed Action was referred the Dutchess County Department of Planning and Development (DCDPD), and in a letter dated 11/23/13, of the DCDPD indicated that it had “No Jurisdiction;” and

WHEREAS, the Applicant has executed a Memorandum of Understanding (MOU) with the Dutchess County Water & Wastewater Authority (DCWWA) to operate the Community System wastewater treatment infrastructure once completed, and the MOU requires the Applicant to submit easements on the newly created lots to the DCWWA that occur along, over or under the main sewer collection lines and allow the DCWWA to test inspect, operate, maintain, repair and replace the Community System and all of its components; and

WHEREAS, in a letter dated 5/6/16 the Dutchess County Department of Public Works stated that it maintains a prescriptive right to discharge stormwater across the property at the location that has existed prior to the project proposal, and any alteration of this draining course resulting from the proposed development shall not preclude or adversely affect the County’s prescriptive right related to water discharge; and

WHEREAS, the Planning Board is familiar with the Subject Property and its surroundings, and has reviewed the Project in accordance with the standards for approval contained in the Zoning Law and the Land Subdivision Regulations; and

WHEREAS, the Planning Board determined that the proposed 14-lot average density subdivision would result in the creation of thirteen (13) new building lots within the Town of Wappinger; and

WHEREAS, the Planning Board determined that the Proposed Action is a Type I action with respect to the State Environmental Quality Review Act (SEQRA) and Wappinger Environmental Quality Review (WEQR); and

WHEREAS, after circulating a Notice of Intent and receiving no objections from any of the Involved Agencies, the Planning Board assumed the status of Lead Agency in April 2011; and

WHEREAS, on 2/3/14 the Planning Board adopted a Negative Declaration, finding that the Proposed Action will not result in any significant adverse environmental impacts and thereby ending the SEQRA process; and

WHEREAS, on 2/3/14 the Planning Board granted Preliminary Subdivision Plat approval to the Project; and

WHEREAS, a public hearing on the Final Subdivision Plat was waived by the Planning Board because the Final Plat is in substantial conformance with the Preliminary Subdivision Plat; and

WHEREAS, the Planning Board is familiar with the Subject Property and its surroundings, and has reviewed the Project in accordance with the standards for approval contained in the Town Zoning Law, Land Subdivision Regulations and Wetlands Chapter of the Town Code; and

**NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:**

1. The Planning Board hereby adopts and incorporates the recitations and statements set forth above as if fully set forth and resolved herein.
2. The Planning Board hereby finds that a proper case exists for requiring that additional parklands be suitably located for playground and other recreational purposes within the Town of Wappinger since, in accordance with the Land Subdivision Regulations, thirteen (13) new building lots will be created within the Town of Wappinger as a result of the fourteen (14) lot average density subdivision. Further, lands appropriate for reservation for recreational purposes do not exist on Site, and therefore a fee in lieu of the reservation of land for recreational purposes in an amount based on the fee in existence at the time the Planning Board Chairman signs the Final Plat shall be submitted to the Town.
3. The Planning Board hereby grants Final Subdivision Plat Approval for the Project, as defined above, and as shown on the Final Subdivision Plat Drawings subject to the following conditions

and modifications which must be satisfied prior to the signing of the Final Plat by the Chairman of the Planning Board:

- a. The Applicant/Owner shall endorse a copy of this resolution and submit it to the Planning Board for its files.
- b. The Applicant shall prepare and submit a Final Subdivision Plat in accordance with Appendix A, Section A-5 of the Town of Wappinger Land Subdivision Regulations.
- c. The Owner shall submit a copy of the current deed to prove its ownership of the Subject Property.
- d. The Applicant shall fund a post-approval escrow account in accordance with Section 122-16 of the Town Code.
- e. The Applicant shall submit a statement signed by the Town's Tax Collector that all taxes due on the Subject Property have been paid in full.
- f. The Applicant shall apply for and obtain street addresses for the fourteen (14) lots from the Dutchess County 911 Addressing Office, and shall submit evidence of the same to the Planning Board.
- g. The Applicant shall comply with the following items subject to the review and approval of the Town Engineer:
  - (a) The plat shall be revised to show the 3 rod or 4 rod r-o-w along New Hamburg Road as was determined when the water main extension was constructed. The correct metes and bounds shall be shown for all lots fronting on New Hamburg Road, and the lot areas shall be corrected as necessary.
  - (b) The plat (Sheet SP1) shall show the proposed private road names, as shown on the plan (Sheet SP2). The metes and bounds deed descriptions shall be reviewed.
  - (c) The plat (Sheet SP1) shall show references to the required stormwater maintenance for each parcel. The actual requirements shall be detailed on a new drawing showing the post construction stormwater management requirements for each lot. It appears only one plan sheet showing the entire subdivision with all the notes would suffice.
  - (d) Various easement and agreement documents that are subject to the review and approval of the Attorney to the Town shall be addressed when the plat is filed.

- i. The “no further subdivision” deed covenant for proposed Lot 6 is subject to the review and approval of the Attorney to the Town, to assure the Planning Board that it is in a form satisfactory to assure the continued integrity of Lot 6 (to implement and maintain the average density subdivision for lots 1 through 14). The Attorney to the Town shall advise if the deed covenant shall be referenced on the plat. The metes and bounds deed descriptions.
- ii. The Highway Superintendent, if he agrees, shall recommend to the Town Board that the Town shall accept the proposed private sewer line within the public right-of-way of Marlerville Road, including the proposed clearing. The Applicant shall prepare a metes and bounds deed description for the proposed sewer line r-o-w/easement (based on the new r-o-w with the dedication (comment c below) and the Town Board must pass a resolution to grant the r-o-w/easement with any restrictions it considers appropriate, as recommended and approved by the Attorney to the Town.
- iii. The plat shall show the full extent of the highway r-o-w dedication for 25’ from the center of Marlerville Road along Lots 10, 11, 12, 9, 8, 7, 13 and 14. The Marlerville Road r-o-w dedication metes and bounds deed description for the dedication at Lot 10 shall be reviewed.
- iv. The three lot shared driveway easements must further be filed as private roads. The metes and bounds deed descriptions shall be reviewed.
- v. The plat shall further show the Town easements for the drainage discharge from the County Road. The metes and bounds deed descriptions shall be reviewed.
- vi. The sewage service area boundary is subject to the review and approval of the Attorney to the Town, to assure the Planning Board that it encompasses all lots as needed to implement the subdivision. The sewage service area agreement shall include old tax map parcel 6057-02-986691 that is reconfigured as Lot 15 but that is outside of the average density subdivision boundary, since Parcel C is proposed for sewer service. The metes and bounds deed descriptions shall be reviewed.
- vii. Regarding the agreement with the DCWWA:
  - a. The agreement between the Applicant and the DCWWA is subject to the review and approval of the Attorney to the Town to assure the Planning

Board that it is in a form satisfactory to implement the subdivision. A draft MOU has been prepared.

- b. The Attorney to the Town shall advise if a local tax district shall be approved to assure that the DCWWA fees are properly paid.
  - c. The agreement shall include the scope of the DCWWA service to be provided, a clear definition of the service area, (i.e. identify the lots and parcels shown on the plat and any other properties of Reese or Obercreek LP to be served), and A clear definition of who will own and maintain the sewage collection system outside of the DCWWA parcel (Lot A on the plat). If necessary, a homeowner association or similar shall be established to insure proper maintenance of the sewage collection system both on the private lots and within the r-o-w of Marlerville Road.
- viii. Any individual or shared homeowner stormwater management maintenance agreement is subject to the review and approval of the Attorney to the Town.
- (e) The provisions for water supply and sewage disposal are subject to the review and approval of the DCHD. It appears that DCWWA will operate the sewage treatment facility.
  - (f) The SWPPP Acceptance Form shall be completed by the design engineer and then signed by the Town for filing with the NYSDEC by the Applicant.
- h. The Applicant shall execute a drainage easement and drainage agreement with the Town to clarify the responsibility for maintenance of the drainage system subject to the review and approval of the Town Attorney.
  - i. All required signatures and seals (owner, engineer, surveyor) shall be shown on the final drawings before the Final Plat is presented for Planning Board signature.
  - j. Evidence of all required permits or evidence that such permits will be granted, and outside agency approvals (e.g., DCDPW, DCWWA) shall be provided.
4. Within five (5) business days following the date of the adoption of this resolution, a copy of this resolution shall be filed with the Town Clerk.
5. Conditional approval of the Final Plat shall expire one hundred eighty (180) days from the date of this resolution unless all of the items contained in Conditions 2 and 3 above have been certified as completed. However, the Planning Board may extend for periods of ninety (90) days

each, the time in which a conditionally approved plat must be submitted for signature if, in the Planning Board's opinion, such extension(s) is/are warranted by the particular circumstances.

6. The Planning Board Chairman shall endorse a copy of this resolution certifying its correctness. The Owner and Applicant shall also sign a copy of this resolution after it has been initially endorsed by the Chairman acknowledging receipt of a copy of the resolution. When all of the items set forth in Conditions 2 and 3 above have been satisfied, a copy of the Final Subdivision Plat, revised as necessary, shall be submitted for endorsement by the Planning Board Chairman, certifying that the plans comply with the terms of this resolution, at which time, the Chairman shall also endorse this resolution in the space provided below, certifying that the Applicant has complied with the above conditions of approval and that the Final Plat is authorized for filing with the County Clerk, Division of Land Records.

After said filing, two (2) copies of the Final Plat certified by Dutchess County and six (6) copies of the certified copies of the Final Plat shall be submitted to the Planning Board. One (1) certified copy of the Final Plat shall be retained by the Planning Board and the other certified copy shall be transmitted to the Town Clerk along with a signed copy of this resolution.

Regarding the six (6) copies of the certified copies of the Final Plat, one (1) copy each will be provided to the Town Building Inspector, Town Engineer, Town Planner, Town Highway Superintendent, Town Zoning Enforcement Officer and the Dutchess County 911 Addressing Office.

7. In accordance with the Town's Schedule of Fees, the Applicant shall be responsible for the payment of all application review fees incurred by the Planning Board in review of this Project which are in excess of the application review fees paid by the Applicant to-date. Such fees shall be paid within thirty (30) days of the notification to the Applicant that such fees are due. If such fees are not paid within this thirty (30) day period and an extension therefor has not been granted by the Planning Board, this resolution shall be rendered null and void. Refunds of any remaining funds within the escrow account for the applications will not be made until six (6) months after the filing of the subdivision plat.
8. Prior to the issuance of the first Building Permit for the Project the Applicant shall record all required easements, declarations, etc. in the Dutchess County Clerk's Office and shall provide fully executed copies and proof of recording to the Town Attorney.

The question of adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

Robert L. Valdati, Chairman      Voting: \_\_\_\_\_



Angela Bettina Voting: \_\_\_\_\_  
Bruce M. Flower Voting: \_\_\_\_\_  
Francis Malafronte Voting: \_\_\_\_\_  
Ralph Marinaccio Voting: \_\_\_\_\_  
Carlo Pesce Voting: \_\_\_\_\_  
June Visconti Voting: \_\_\_\_\_

The resolution is hereby duly declared adopted.

Dated: \_\_\_\_\_, 2016  
Wappingers Falls, New York

\_\_\_\_\_  
Robert L. Valdati, Chairman Date  
Town of Wappinger Planning Board

\_\_\_\_\_  
Obercreek, LP Date  
Applicant and Owner

The following endorsement hereby confirms that the Applicant/Owner have fulfilled Condition 2 and 3 of this Resolution of Final Subdivision Plat approval.

\_\_\_\_\_  
Robert L. Valdati, Chairman Date  
Town of Wappinger Planning Board

**15-3338 – Eduardo Lauria Luxury Apartments:** To discuss a site plan application to construct a 13,200 sf. building consisting of residential units and 450 sf. of commercial space on 1.10 acres in an HB Zoning District. The property is located at **102 Old Post Road** and is identified as **Tax Grid No. 6157-04-625489** in the Town of Wappinger. (Paggi)

Present: Larry Paggi – Engineer

**Ms. Visconti: Motion to set a Public Hearing on July 6, 2016.**

Mr. Pesce: Second the Motion.  
Vote: All present voted Aye.

**Ms. Visconti:** **Motion to adjourn.**  
Mr. Malafronte: Second the Motion.  
Vote: All present voted Aye.

Respectfully Submitted,

Adjourned: 9:42pm

Bea Ogunti  
Secretary  
Planning Board / Zoning Board of Appeals