

A regular meeting of the Town of Victor Planning Board was held on November 15, 2016 at 7:00 p.m. at the Victor Town Hall at 85 East Main Street, Victor, New York, with the following members present:

PRESENT: Jack Dianetti, Chairman; Joe Logan, Vice Chairman; Ernie Santoro, Heather Zollo, Al Gallina

OTHERS: Wes Pettee, Town Engineer Consultant; Don Young, Town Attorney; Kim Kinsella, Project Coordinator; Cathy Templar, Secretary; Mike Guinan, Town Board Liaison; Barry Buffan, Sue Stehling, Bill Stehling, Lee Wagar, David Nankin, JoAnn O'Brien, Don O'Brien, Chip Testa, Kav Malli, Melody Burri, Kent Kikka, Debra Hogan, Kay Hoyt, Steve Hoyt

CORRESPONDENCE RECEIVED

- Debra Hogan re: Conserve
- Dave Anderson re: Victor Crossing

BOARDS/COMMITTEES UPDATES

Town Board reported by Mike Guinan

- 11/14/16 mtg
 - Release of Letter of Credits for Victor Chevrolet
 - Acceptance of the land at the intersection of East Victor Road was approved for grading
 - Conservation easement request for 710 Brownsville Rd. Applicant will be returning to the Planning Board.

Planning Board reported by Kim Kinsella

- 12/6/16 meeting
 - Workshop for Fishers Ridge at 5:30
 - Conserve public hearing continuation located on Co Rd 42
 - Sunset Manor Subdivision located at 826 Co Rd 9
 - Victor Crossing continuation from this evenings mtg
 - Gullace Subdivision tabled from the 10/25 mtg located on Co Rd 9
 - Fishers Ridge located on Route 96 to deliberate on the FEIS
 - Royal Car Wash informal discussion at 607 Rowley Rd

TABLED FROM MAY 12, 2015 SEQR DELIBERATION – PUBLIC HEARING CLOSED

VICTOR CROSSING - MODIFICATION - 400-441 Commerce Dr
Owner – Main Street Stop LLC
Zoned – R2 and within the 96/251 Overlay District
SBL # 6.04-1-78.000

Applicant is requesting the elimination of the 11 pm to 7 am operating hour restriction from the 2006 Findings Statement.

Chairman Dianetti – I just wanted to remind everyone that the public hearing has been closed on this application. This is an opportunity for the Planning Board to deliberate publicly and provide feedback to the applicant on the FEIS. This is done before we would take a formal vote on this which possibly could happen at the December 6th meeting. It's an important meeting for us to have and try to iron out anything that hasn't been addressed yet.

Mr. James Boglioli, Attorney for Benderson Development addressed the Board.

Mr. Boglioli – I'm just going to summarize where we are and how we got here, then it's your document so I'll turn it over to you. In 2006 the Planning Board adopted the SEQR Findings for this project and granted a site plan approval and subdivision approval for the project to be built. In 2006, at the time the project was proposed, we were unable to study the impacts to the project. So at that time, the studies that were taken were based on what we "expected" of the project. I think if you take a look at those studies while they didn't expect impacts to the abutting neighbors due to the setbacks, the topography and a lot of the things built into this site such as screening. The Planning Board did adopt a number of conditions on the SEQR Findings, most notably those were an hours of operation restriction from 11:00 pm to 7:00 am, the site could not operate during that time, no businesses could be open. In addition there was a restriction to noise, no trash could be picked up during that time or deliveries at that time, no snowplowing could occur behind the bldgs during that time unless there was an emergency snow situation where they had to get trucks back there because the snow was piling up. As far as lighting, there was an after hours lighting plan that was adopted as part of that which required us to turn off 35 poles after 11:00 pm, the remainder of the lights could stay on. Then odor filters would for the restaurants.

September 2014 we requested to remove the hours of operation from 7:00 am – 11:00 pm only with what relates to the operations of the tenants serving clients. We specifically noted that we did not want to change the hours of operation with respect to the trash, loading and deliveries, snowplowing behind the bldgs. None of that was requested to change. The only thing we were requesting was to change the hours of operation so the tenants could see customers during hours that were different than what they were limited to.

No other request for changes were asked for. There is no increase in the after hours lighting plan. We sought simply to modify the lighting plan and to shift the lights that would be turned on and off closer to the fronts of the stores and leave more of the central lights off because you're not going to have a heavy parking situation later in the evening. The same lighting levels are kept through out the site so even if you granted this approval, there would be no increase in light after 11:00 pm to any of the neighboring properties. This project doesn't increase any lighting levels. As I noted, there are no changes or restrictions to snowplowing, waste hauling, deliveries, permitted square footages, buffers, landscapes or setbacks.

The request is made because when this project was originally approved it was driven mainly by the Walmart. We were thinking about how the Walmart could impact. We had no other tenants at that point. I don't think collectively we looked at some of the other types of tenants that would be interested in a site like this such as restaurants, fitness centers which have hours of operation that are different. Planet Fitness is open 24 hours, you have a business like

Orange Theory that opens up at 4:00 am so people can come before work and work out. You'd be limited. Panera across the street opens at 6:00 am, they could not come to this site. They were looking at this site at one point. So through the time we realized we had an operation issue with respect to other tenants besides the Walmart that would like to be here; restaurants, fitness centers, possibly day care. So we did a DSEIS (Draft Supplemental Environmental Impact Statement) that was submitted to you in September with the request. It covered noise, traffic, odor studies and alternatives. At that point, all of the studies were taken during the winter, leaves off and snow on the ground, the absolute worse case scenario. There is no buffer, there's snow on the ground to reflect any light that is there and because there were no leaves on the trees, you had the highest possible situation with the noise. Those studies were taken when the shopping center was in full operation. We did not try to short cut those studies.

The studies mirrored the studies taken in 2006 with respect to those approvals as far as all of the receptors. We looked at the same areas, studied the exact same thing we did in 2006. The difference is in 2006 you had no shopping center to study and now you have a shopping center that is 95% built and fully operational. So you can see what the actual impacts are.

All the studies at that time showed that lifting just the hours of operation with respect to the tenants would not have a significant adverse impact, we provided that to the Board. on May 18, 2015 the public comment period was open. On June 6, 2016 the public hearing was held. On July 2, 2015 the public comment period was closed. After that time, at the close of the public hearing, we got the transcript, we prepared a Draft Supplemental Environmental Impact Statement for the Board. That FSEIS took every written comment and every oral comment that was received, broke it down in a chart, had responses for every one of those. As part of that we resubmitted to the Board. The Board then had a meeting in April 2016 and at that point we received some additional comments from LaBella about some additional items that they wanted studied. Those related to both noise and lighting.

With respect to lighting, they were mainly focused on reflection from sites, surfaces and clouds. For noise, they wanted to look at intermittent noise uses, reflection of noise off sites and bldgs and atmosphere conditions. We submitted updated studies addressing those comments. Those were incorporated in the revised DFSEIS (Draft Final Supplemental Environmental Impact Statement).

One other item that the Board asked us to look at was another alternative and that was a Special Permit type system where the Board could grant exceptions for individual uses such as a restaurant that wanted to be open to 11:00 or 12:00 pm or 1:00 am. Or if we had one that wanted to open at 4:00 am, all of the noise would be contained inside. We did put that alternative analysis into the FEIS that we provided to you.

So we responded to LaBella's comments, we updated the studies. They showed no change in the impacts as far as this ----. The majority of the noise is from the highway exchange, not from our site. We don't have anything going on, big noise producing or generating from the site. As far as the lighting, I know this Board has taken the night time trip there. Our night time setting included a number of pictures, line of sight drawings and number of other items. These lights are all downward shielded, night sky compliant, they're not visible. Even if you approve this, the light levels will not change at the site, so there'll be no change in lighting levels.

That is where we are now. We submitted that to you in July. It's now the Board's document and you are here to deliberate and I can answer any questions.

Mr. Pettee – Just to recap from earlier this year, in 2016 this proposed revision initially was filed with the town approximately September 2014. On April 6, 2016 LaBella issued a letter and in that letter we suggested the project sponsor dig a little deeper in an effort to explain discrepancies between what the document predicted in terms of conditions and what was being reported by residents who offered their comments. Specifically our comment asked them to look at the potential for reflective illumination both from the site and from a cloudy sky and also some more into how residents might be able to hear things like car doors closing, etc.

Mark Tayrien looked at the revised document that they submitted earlier this summer and he has come to the conclusion that they have done as we had sought in our letter and seems to have addressed what the concerns were. We certainly wanted to give the Planning Board an opportunity to look at what they submitted and provide their comments if you have any additional comments.

Mr. Young – Wes and James have done a good job getting us from where we were to today. So what do we do now? What is the task before us? We are towards the end of the SEQR process which began 2 years ago for this *hours of operation modification* request. We have to decide whether we are going to accept this FEIS as complete and accurate. By approving this, this becomes the Board's document. You sign on to everything that is in here. This is not the applicant's document. The Draft EIS was the applicant's document. You need to decide whether it was complete or not.

This Final will be the Board's document. So you want to be sure you understand what is in it. From the Town Engineer's standpoint, they don't find any inaccuracies or technical issues with the studies or the conclusions of the studies, that's how I understand it.

Now the question is if the Board has any issues or questions with it. Do we need to revise it? We need to get to a point where we can move on and approve a final document. Once we do that, the final step in the SEQR process is to make Findings. We are revisiting an old SEQR by way of the Supplemental Impact Statement and because of that, the Findings that will ultimately be adopted which is the next step are going to build off and speak to the original Findings. The original Findings is where the hours of operations limit came in. So our Findings for this application will need to address that by either modifying the hours of operation's limitations by either eliminating them or maintaining them or maybe something in between.

The applicant has mentioned alternatives. What are some that are suggested? One is a Special Use Permit process where you would look at each individual tenant that might come in. That to me would be a very unique approach. I'm not saying that it couldn't work, but usually a Special Use Permit process is applied to the zoning district or a bigger area, not to one particular plaza. But we could certainly talk about that more if you favor that approach.

Another option that is in the document is to allow the hours of operation change for out parcels only. Another option is to allow nothing, just to say no all together. Then the requested action is to remove the hours of operation.

The way this FEIS is before you now, all of the studies are attached in the Appendices and the FEIS concludes that there are no significant adverse impacts as a result of the removal of hours of operation. That's what it says now. So the way this document concludes is because there are no impacts, there is no reason to do any of the alternatives or the no action, you might as well go ahead and approve the removal of the hours of operation. Again, that's what the document says now and is before you.

So you need to decide if you are on board with this. If you approve the way that it is now, in my opinion the conclusion will be that the hours of operation should be lifted because that is what this document concludes, the way it's written now.

The other unique thing about this action, usually when you're done with SEQR, you address the substantive underlying application; site plan, subdivision, etc. Here there really isn't any. Technically, it came in as a site plan but you're not changing anything on the site, you're not changing the subdivision plat. You're only looking at this one Findings so it's unique in that way. When you're done with the SEQR for paperwork reasons, we'll go ahead and deal with the site plan/subdivision application but for all intents and purposes what you're really looking at is this FEIS and the Findings Statement. Once you're done with that, we'll need to do some clean up but essentially that's all you're doing. You're determining whether the house should be extended or not.

At this point are there any questions for Wes or I? Again, the charge for us now is to determine whether this is in a position to move forward or not.

Chairman Dianetti made a statement to the residents that came in after the start of the meeting that this is an opportunity for the Planning Board members to have a public discussion of what direction to go regarding the FSEIS. During this discussion we won't be taking public comments. Our policy is that at a meeting there will be an opportunity for public comment on agenda items and that will come at the end. This is for the Board to deliberate and have their opportunity to discuss this project. We've had public hearings, have gathered a great deal of information and now have the document in front of us that the applicant has put forward. We'll now turn to the Board members for them to provide their input.

Ms. Zollo – I was not on the Board when this was approved. Don you said that this document is saying there are no adverse environmental impacts, correct?

Mr. Young – It's saying essentially the impacts are so minimal....

Ms. Zollo – ...I think what we've heard from the public and in particular to the people who live in the surrounding neighborhoods directly adjacent to the site and the neighborhoods beyond that this is false. There are impacts that are adverse, that the noise carries and while you have these studies done by these people who don't live in the neighborhood, they're saying that the neighbors are not impacted by the noise. I think that is not accurate. We've heard from the residents and they discuss the noises that they are hearing from this property.

One of the things that is in the document and was stated tonight is that the noises from extending the hours from the car doors, the car alarms and the backup alarms and all of those things are negligible because we've got ambient background noise. Well the ambient background noise has been amplified by the fact that when the project was built, all the hills were flattened and the trees were removed. So all of the highway noise goes directly into the neighborhoods without any buffering at all. I just don't think that's an accurate statement to say that it's not an adverse impact and that it's so negligible that we won't notice it because I think the neighbors have all stated in their public comments that the noise is noticeable.

There is also a statement about the odor and that because the closest residential property is 200 ft from the site that the odors won't be noticed by the residents. But the odors carry and supposedly they are supposed to have special filters on the fans. If they do, they don't work

because the odors are significant and they carry through the neighborhoods. I think that section of the document needs to be revised to address the fact that the odors do carry and they have an adverse impact because it's not negligible when you're out in your yard and you're smelling greasy fried foods.

There were several places in the document where in response to the resident's comments about the hours of operation and lighting and noise that this is the only plaza that has restricted hours in the town. But it is also the only plaza that is surrounded on 3 sides by residential homes so I think that should also be added into the document.

It also mentioned in the comments the hours of numerous restaurants in the town; the Distillery, Thirsty Turtle and so on. Those are all on pg 24 and again, none of those are adjacent to residential properties and none of them are open 24 hrs except for the Denny's which is also not adjacent to residential properties. It also mentions that Uno's hours as being open until midnight and that's only true on Friday and Saturday nights, so I think that should be corrected. It also mentioned fitness centers in town and their hours on pg 25, those are also not adjacent to residential properties so I think that should be added. I already mentioned this background noise level that is mentioned in numerous places.

I think one of the former Planning Board members who spoke at the hearing made it clear that the project was approved "because" the hours were restricted to mitigate the impacts on the residents and I think that is still true, that we need to continue to mitigate the impacts to the residents around the property. That's all I have for right now.

Mr. Santoro – This was a project that was strenuously opposed by many of the people in the town, most of the people who live very close by but others as well. It took about 10 years or so before it finally got to the point of approval and the only reason it was approved was because of this agreement that was reached. I'd like to see something in there about that. I voted for it at the time but only because of that agreement. We're now going to be stuck with something that abrogates that agreement, I can't vote to approve this.

Mr. Logan – I tend to agree with Ernie that the hours of operation were very important approval item that I think we all felt was a good mitigating factor to the activities going on at the site. I think the site trip that we did last February was a little eye opening in how well the lights are working, the fact of the lower levels. You could hear noise carrying up from there because it's awfully quiet when there is a lot of snow so any direct door closing and things like that, that happens on site can carry. But admittedly they are not that loud but you hear them.

I guess my comments, as you expressed earlier James was focused on maybe having special use permits for individual businesses rather than just opening it up to all businesses at the site. I think one of the biggest risks of doing that is you end up with the all night sales at Christmas times and other events like Black Friday. One of the biggest challenges for us is having a lot of activities going on during certain times of the year.

I have a real challenge in opening up the entire plaza especially for the reasons that Ernie stated is the public really depended on that to mitigate further the impacts of a very large development next to residential. I would be open to individual or specific site applications for a special use for the businesses that may come in so the timing and placement would be very important.

Ms. Zollo – I would just say that with the special use permits, you're still negating as Ernie said, the reason that the restrictions were put in place in the first place.

Mr. Santoro agreed.

Mr. Logan – That's my perspective.

Mr. Gallina – So a "homework assignment" for Wes if he hasn't already done it, as Wes indicated one of the last take aways was for the applicant to essentially close the gap of the discrepancy between the residents' position on the impact to the environment and the applicant's studies and come back with an answer. Then Wes, do you believe that it has been satisfactorily rationalized?

Mr. Pettee – That's a difficult question to answer. The substance they have provided, I think they have adequately provided a response to our comments but I really feel it's up to the Board to be able to make that call as to whether you feel what they have in there is rationale and makes sense. I hate to deflect the question back to you guys but that's a tough question for me to answer. If you want, we might want to offer James the opportunity to describe a little bit more what they did to provide that amendment based on our input.

Mr. Boglioli – I'd have to have my experts here if you wanted to hear from them on both those issues. Basically as far as the light goes, we're not asking to increase the light levels even if you change the hours of operation. From 11:00 pm to 7:00 am, even if you granted it, the light levels are not changing. So this application has no impact on light. So whatever light levels currently exist that the neighbors are seeing, there will be no change.

Mr. Young – Can you tell us why there would be no change.

Mr. Boglioli – There's no change because we're not asking to change the after hours plan to increase the total light. There are 30 poles that get turned off every night, 30 poles will still need to be turned off every night. That drops your light levels to a level that was adopted by the SEQR Findings and simply put, all we're asking to do is to relocate some of those light poles so you have lights in the middle of the parking lot off and moved closer to the bldgs. The lights closer to the bldgs are actually more shielded by the bldgs than the lights that are in the middle of the parking lots. The Board has been out there and these lights are not visible.

Mr. Gallina – So in the extreme condition where 100% of the plaza would be open 24/7, why then would you feel it would be appropriate to reduce the lighting after 11:00 pm where it's not necessary from now until then.

Mr. Boglioli – Because you see a significant drop in traffic.

Mr. Gallina – Assuming again, in worse case conditions, that it was 24/7 that every store is open and you have traffic going on in every one of those stores.

Mr. Boglioli – We're willing to accept the lighting levels so not to impact the neighbors. That's a choice that we're willing to make. What I'm willing to tell you is if you're willing to agree with that, there would be no change, if you were to go 24/7. That's what I'm saying.

Mr. Gallina – So is there an opportunity to reduce the lighting from dusk to 11:00 pm also?

Mr. Boglioli – You see more of the parking lot used at that point and that's what our traffic study shows, from the peak hours 6:00-8:00 pm you have people at Walmart and they're back in the parking lot, you have significantly more people back there, that's why the lights are on. If you go there at 11:05 pm when everything is closing, most people park near the stores. Right now, that's what we're offering. I didn't want to change the lighting levels.

All the neighbor's comments regarding lighting, nothing is changing. There is no additional impact in granting this because we're not changing it. The studies show there is no additional impact because we're not changing it. It's hard to discern why things are different, why they feel differently. The studies actually analyze data. They took photos, they analyze light levels. The noise study set receptors along the boundary lines. They recorded --- noise for 24 hours. If someone closed a door, the noise receptor picked up on it. It wasn't like something was ignored. What the study showed is the noise is going to increase by 1.6 .dB(A) DEC under their noise policy says 3 or below is not --- and we're at 1.6. So it's not like these studies were taken haphazardly. We have 24 hours worth of noise collection with receptors at the property line and that's not even to the houses. When noise is most audible which is winter with leaves off, people are not in their backyards at 11:00 or 12:00 at night and their windows are closed. We took the worse case scenario and modeled it and you're not going to have the impacts.

I'm willing to discuss a special permit position. What we're looking at is a handful of our tenants to go onto this site. Our conclusion is based on in this study which your consultants reviewed is that they're not significant adverse impacts and that's the question.

Mr. Gallina – So the other side of the equation for the applicant to be here is commercial impacts, you're unable to find viable tenants.

Mr. Boglioli – We're unable to find tenants such as a fitness center that would open in the morning. SEQR is a shield and it's supposed to protect you against impacts. In 2006 we couldn't with certainty identify those impacts. Even though our studies in 2006 showed there would not be significant impacts, these conditions were put on the project. Now we can study those and the result of that right now is keeping out for instance Panera.

Mr. Gallina – That's where I was going. I think you said the occupancy level today is 90%-95%. Would it be fair to say that the gap to your competitiveness for that 5%-10% as opposed to doing a case by case special use permit that we could have some type of arrangement that said up to 5% or 10% of the occupancy and that would give you some flexibility to work with but to minimize the impact from a standpoint of having it be the entire site.

Mr. Boglioli – Currently where we are looking as our most important areas are the outparcel sites. It has two vacant tenancies, our ----- and the building out front which has a vacancy. We have some internal vacancies which may be a fitness center. I think just to say 10% is hard

because its not.....I think we were approved at 355,000 sf, not sure of that number, we'll probably end up 15% vacant.

Mr. Gallina – I'm not opposed to the hard numbers as much as the concept that says can we put some boundary conditions on this that would be more palatable for the local residents to give them a feeling that there is a minimal downside risk.

Mr. Boglioli – As I noted the severe noise generating issues, we're not asking to change. I'm not asking to have trash picked up or have deliveries made. That's behind the bldgs, that's where you're going to see the noise. Back in 2006 that was a significant interest at that point because we didn't want Walmart loading at 2:00 in the morning, backing up, running their engines, all the noise going up the slope into the neighbors. We're not asking to change that. The back of the bldgs remain just a quiet as they do now.

Mr. Gallina – I guess the concern would be again, without knowing the tenant again worse case scenario you could think of that would be all night long noise, lights, adverse affects. Again, if we could minimize the footprint that might be a compromise position that we could find palpable.

Mr. Boglioli – We would also find that palpable even if we looked at the outparcels that we were looking at because that limits the square footage, there's the building in the middle, the building out front, we have a little building that we haven't built next to the longer building in the middle. That's really what we're looking at as vacancy at this point. Some of those uses open up and it's a morning issue. A fitness center generates no noise, everything is enclosed inside. But we can't get a single fitness center here because no fitness center starts at 7:00 am.

Mr. Gallina – So to build on that again, is it truly a 24 hour request or is it 5:00 am to 1:00 am? Just anything I think bounds or limits of the hours.

Mr. Boglioli – And I think there is a bit of over reaction about it because it's open 24 hours. What I'm saying is, no plaza in Victor is limited to anything below 24 hours but no business except Planet Fitness and Denny's is open 24 hours that I'm aware of. We're not looking to have, that's why I'm willing to accept a special permit situation because I don't think we're going to have businesses looking to be open 24 hours. What we are looking at is having the flexibility to have a restaurant that if they want to be open until 1:00 am inside like the Distillery, they can go to this site. If I have a corner bakery like Panera and they open at 6:00 am so you can get your coffee and bagels on your way to work, they can come into the site. Neither generating noise. So that's why we're looking for that flexibility. We're not looking to have all of the businesses open 24 hours.

Mr. Gallina – Again to the extent that we take the request at face value, that's what we would enable versus having some more reasonable boundary conditions which might meet your business needs without.....

Mr. Boglioli -And we're flexible coming up with that kind of a solution for this.

Mr. Boglioli showed a map of the plaza on the overhead screen, pointing out the outparcels.

Mr. Boglioli – Basically, this new building is constructed and both the end caps are vacant (located in the middle of plaza). There is a building where this pit is, is approved but not yet constructed and there is a small building here that is half vacant that was originally approved as a sit down restaurant (referring to Chipotle).

Mr. Gallina – Once again, they are the farthest distance from the residents.

Mr. Boglioli – Correct, but you have a shopping center right next door up the road that has no hours restrictions.

Ms. Zollo – They have no restaurants. Are you aware of where the residents are located? (Yes) The Five Guys and the new restaurant are pretty close to some of the people on the street.

Mr. Boglioli – It's over 200 ft to the property line.

Ms. Zollo – Which sounds like a lot but it's really not very far.

Mr. Young – Where would you put a fitness center?

Mr. Boglioli – We are speaking to a small fitness center tenant that could go in one of the vacancies in this building (referring to the long building in the center). But they won't confirm on the site with the hours of operation issue.

Chairman Dianetti – One thing that I want to clear up is I've been questioned by several people regarding the true intent of your request and I think that the application has been very specific that you are looking to be able to be open 24/7 to have businesses able to operate. It's always been in the forefront of this. Your goal is to have 24/7 operations so I just want to let everybody know that's been very clear right from the beginning. What I'd like to do now is to look at specific things that we asked you to look at and address. One was noise and I just want to know if the Board members are satisfied that the noise issue is resolved with this document?

Mr. Santoro – No

Ms. Zollo – No

Mr. Logan – Well, Heather brought up a comment that when they constructed the site, they did a huge amount of earth work and leveled it out. I don't think that changes the dynamic of the site the way it is now. Yes, it's different from when it was not developed versus when it was completed but I think James you're saying, over and above the noise levels that are there now, it wouldn't be any significant change.

Mr. Boglioli – That's correct. What you have to look at is what's there now, are we going to make it worse because what's there now exists. I can put restaurants there with patios with outdoor music, I'm allowed to do that. I have offered in this document to prohibit any outdoor

music if we get restaurants. I'm adding additional restrictions to ask for some additional leeway. So I could have a restaurant there open until 11:00 pm with live music on the patio every day of the week. That's a permitted use. We are restricting that by adding this.

The other thing that I've done is, Heather has brought up the filters. The filters that were originally approved in the SEQR Findings were just filters and the systems are filters. What we've done with the filters here is to lower the micron amount than what was originally approved. So I'm also offering, if this got approved, is to increase the filtration on any new restaurants. We actually made Chipotle comply with that because I thought we'd be further along. So Chipotle has a better filter system than the filter system that would be required by this document, not the filter that was required by the last document. If you read those sections, those are improvements above what you previously approved. But I can open restaurants and if I had a fitness center that opened at 7:00 am that could go in there too. I'm not asking for any uses that aren't allowed and those could go to 11:00 pm. What you are asked to look at, in my opinion, will this application be worse than what currently exists? What do these studies show? You can disagree but the studies show that's not the case and SEQR is supposed to protect...its' not a sword to stab the project. In 2006, yes were our expectations that this would generate noise and had to have the restrictions? There were because no one knew what was going to happen with this. But now you look at it 10 years later and you actually have the information that says no it doesn't have the impacts. It's hard to say "I disagree" when the studies say these are the numbers, we didn't make the numbers up and they are based on actual equipment put on the property lines. I understand that there are Board members that don't want to approve it but that's where we are, you have to look at the facts and I'm willing to be very flexible as far as special permits, certain areas of the site. We're looking to fill those vacancies with some of the tenants the center should have. We have a fitness center we're talking to. We have not been able to get a decent restaurant here, we've been at this 10 years. That's where we are and I'm willing to be flexible on that. Yes, is our main goal to lift the hours of operation? Yes, but I looked at all of the alternatives and this Board can adopt any one of those alternatives which is why I put them in there. It could be a special permit, it could be just the outparcels. So I've been more than flexible and put those in there but our position is if you look at the studies, there is no impact so why would we take less...in the document, I'm not saying we couldn't negotiate less. I take the position that if the studies had shown that if you're open till 2:00 am, you have an impact but if you close at 1:00 am, there is no impact, then I'd have to adjust this document and ask to be open until 1:00 am.

Mr. Logan – So Jack your question about whether or not they had satisfactorily addressed the comment on noise, I would say yes with the understanding that we have not opened this up to the entire site. It would be looking at strategic areas of the site that would be appropriate for a 24 hour operation.

Ms. Zollo – So you are actually considering 24 not restricted hours that Al suggested? My question is...let's say a certain percentage of the site can be open from 5:00 am or 6:00 am until 11:00 pm or 12:00 pm or even 1:00 am. Then 2 years down the road, they're going to come back and say they want these hours extended and still want the 24/7. Is the ultimate goal to get the 24/7 so that Walmart can be open 24/7? Is that what we're working towards?

Chairman Dianetti – The applicant has already stated that they would prefer to be able to be open 24/7. So we're talking as a Board about modifying that and Joe is just saying there may be logical reasons to provide some mitigation to the applicant that some areas may be able to be open longer hours at different time.

Mr. Logan- I threw out 24/7 because that's what the applicant is asking for. When I say a special permit, we need to approve whatever hours would be suggested. I'm not just going to say 10% would be 24/7.

Ms. Zollo – But then there is always the potential that.....

Mr. Logan -Of course but you don't have to say yes.

Ms. Zollo – Because one of the things that I didn't bring up earlier is whenever you go by the Walmart in Henrietta, there's always 4 or 5 tractor trailer trucks idling in that parking lot and they stay there overnight. From what I've heard anecdotally that its common knowledge that Walmarts allow people to pretty much camp in their parking lot. So I think we need to be aware of that.

Mr. Logan – That may be something we do from the other perspective that if we're going to allow certain operations longer, those operations would not include idling vehicles, overnight camper parking that Walmart is somewhat famous for.

Mr. Boglioli – We don't allow overnight idling trucks there which is why you don't see them on this site. In Henrietta they do but this site someone could park there overnight and not be there, how would you regulate that? We don't allow that to happen which is why you don't see that on the site. I have no problem making that condition because that's why you don't see any trucks at this site parked in the parking lot.

Mr. Logan- I'm not sure if you understand my position on it any clearer.

Ms. Zollo- The Planning Board on the original approval said the restricted hours were important to that approval in mitigating the impacts to the residents. Although these noise studies say that there is no impact, they're studies, not people and they don't live there. We sit here week after week and we listen and all of these studies, noise studies, traffic studies, every other kind of study and the experts are always telling us there is no impacts, no impacts, no impacts. Well there certainly is an impact. The people in this town experience those impacts.

Mr. Boglioli - And I think it's very interesting because in 2006 all the Board had was studies, they didn't know what the impacts were going to be which is how we got here. Now we have studies of the actual impacts and we're saying we shouldn't believe these studies, we should just stick with what we did in 2006 which was studying a vacant site. The information now is significantly better than 2006 and that's what we provided you. That's where we are and to say we should stick to 2006 because we thought there was going to be an impact in 2006, doesn't look at what's happening today. The question is "significant adverse impacts". You were up to

the site, hearing a door clang is not a significant adverse impact. Hearing a truck idle all night would be a significant adverse impact. The study show the information is below significant.

As far as the lights go, I keep saying it's almost impossible to determine that this project has a significant impact on the lighting because lighting is not increasing. So our only issue becomes noise as far as I'm concerned. The traffic itself was reviewed and said there was no significant adverse impact because there's not going to be the traffic. As far as odors, I'm offering better filtration than currently had permitted. So if I'm allowed to have restaurants, you're going to get better filtration.

As far as lighting goes, we're not asking to change the lighting. So there's no increase. So the issue becomes noise. Noise is 1.5 dB(A), anything below 3 is not significant, that's DEC. I'm willing to be flexible on where we go with this but you're only issue becomes noise because lighting is not increasing, odors getting better, traffic is not an issue. I don't think the noise generated by people coming at midnight or 1:00 am, a few cars parked in the parking lot is significant.

Mr. Santoro – The reason why we had this agreement was so that we would have “no” impact. Significant is another question. No impact is why we reached that agreement.

Mr. Boglioli – There was never going to be “no” impact.

Mr. Santoro – Whatever there was that existed between 7:00 am to 11:00 pm that was what was in the agreement which is what you have.

Mr. Boglioli - What these studies show is that it's not going to get any worse, it's not going to change from the 7:00 am to 11:00 pm.

Mr. Santoro – That doesn't face the question about what the agreement was. It was to be “no” impact.

Mr. Boglioli – SEQR Findings is not an agreement.

Mr. Santoro – Back then they were.

Mr. Boglioli – SEQR Findings...that was a condition we were taking to get the project approved. Now we're looking at new information. The Board can do what they want with the information. You can disregard it and you can deny the application and that's your prerogative.

Chairman Dianetti – We started out with noise, we jumped to odors and lighting. Let's look at lighting; Al did you want to comment on the noise factor first?

Mr. Gallina – I have no reason to dispute the data that has been provided.

Chairman Dianetti – How about lighting?

Mr. Gallina – Again, to the extent that there is no change to the lighting plan then I would have to say it would be a “0” impact.

Mr. Logan – Same

Ms. Zollo – He’s saying there is no impact because it’s not going to change. That remains to be seen if the lighting that will be closer to the building. It’s not something that we can tell at this point.

Mr. Santoro – One of the things that was a great disappointment to me was finding out after this was constructed that the skylights in the Walmart let light escape. That was never disclosed that there would be light all night long inside the building that would escape through the skylights. That was very disappointing to me.

Chairman Dianetti – How about traffic?

Mr. Santoro – If you increase the hours, there’s going to be more traffic and it has to be more noise. I don’t think logically you can say there isn’t.

Ms. Zollo – With regards to traffic, the whole point to this application to extend the hours is to generate more business as I’m hearing the applicant say. So they put the Planning Board in the position of dealing with the finances of the project. Of course then if their goal is to generate more business then of course there’s going to be more traffic.

Mr. Logan – The level of traffic during the busiest time of the operations, the way I would see a later operation happen would not be nearly the same, after 11:00 pm. As Ernie said, no impact...if you didn’t allow later operations, you would have “0” impact because he wouldn’t be having any more traffic. If you allowed operations after 11:00 pm, yes of course you’re going to have some impact. How significant is that....you get cars moving in/out of the site, the residents see/hear that but it doesn’t appear the engineering shows that it’s significant meaning it’s still something. I can’t say its “no” impact but I guess it depends on the level of the plaza that’s open later than 11:00 pm and earlier than 7:00 am, to say that it’s really significant.

Mr. Boglioli – And if I may, the traffic they were studying was the impact on the adjacent roadway system. That’s what we’re talking about for traffic. Will more cars come to the site? Yes but that becomes a noise and light issue not a traffic issue. Traffic was studied originally in 2006 of what impact was going to be on Route 96 and the abutting roads. What the studies showed, your Traffic Engineer stated in a letter is that the traffic generated at night is going to have no impact on the abutting road system because the traffic levels are so low along those road systems, it will be a negative adverse impact. That’s what the study showed. That’s when the study was done in 2006. So we just updated that study.

Mr. Logan- Those comments I would agree that there are no impacts to the traffic network within the town for late operations at that intersection.

Mr. Boglioli – Because the issue in 2006 is what is this project going to do to Route 96. I think it’s interesting what Heather said because she says every expert comes here and says there’s going to be no impact. What’s interesting in 2006 we posted a bond for traffic improvements

that were going to be triggered with a study that was going to be done at a later date which we have done but never executed because what it showed was the need wasn't there. So a lot of these studies are much more conservative than given credit for. So the traffic generation is not at those numbers.

Chairman Dianetti – The last thing was hours of operation. I think there is a definite divide here with hours of operation. Ernie you're opposed to changing the hours of operation because it's the basis of the approval. (That's right) Heather feels the same way. Joe....

Mr. Logan- I'm less to the letter and more to the fact that I'd like to see the town have successful businesses in the town. If the entire site was successful, you'd be getting more traffic and more use to the site. The only way to do that is either grow more in popularity in Victor so that those sites could be built on that aren't necessarily a restaurant that are restricted by limited hours or you permit some of those sites to have additional hours by permit, not by having the entire plaza that way. That's my feeling about it.

Mr. Santoro – My concern about special permits is where do you stop? You grant one and the next one wants one too.

Mr. Logan – I'm certainly open to look at what you do to permit those whether it's the central out building core, limited by percentage like Al suggested, or something that someone else may introduce. Having "0" opportunity to expand it when they have shown in my opinion that the impacts are negligible, certainly not significant is counter productive to the success of that plaza. I'm not just thinking success of the plaza to the developer's profit, I'm looking at you want something that is fully built out and thriving so the town benefits from it as well. Again, that's my perspective.

Mr. Gallina – I certainly think the restricted hours were a very reasonable limitation and terms to mitigate in an unknown environment. I think as the applicant has indicated, we now have an as-built condition and I have no reason to repute the Findings that there will be minimal over no significant impact with extending the hours within limitations. Again, I would personally be a proponent of looking at the outparcels and not allowing 24/7 but maybe 5:00 am to 1:00 am but limiting it to the outparcels only which again in most cases, further minimize the impact to the residents. I think that meets what the applicant is indicating is their business problem, is restaurants, early morning facilities, Bruggers, those type of places. I think to me is logical versus unlimited use of the entire parcel 24/7 would be an unreasonable extension of the hours.

Mr. Pettee – I just wanted to offer the Planning Board some SEQR perspective on noise and sound levels. During the course of the discussion, I looked up some SEQR documentation from NYS DEC. *Assessing mitigated noise impacts – Thresholds for significant sound pressure level increase. The goal for any permitted operation should be to minimize increases in sound pressure level above ambient levels at the chosen point of sound reception. Increases ranging from 0 to 3 decibels should have no appreciable effect on receptors. Increases from 3 to 6 decibels may have a potential for adverse noise impact only in cases where the most sensitive of receptors are present. Some pressure increases of more than 6 decibels may require a closer*

analysis of impact potential depending on existing sound pressure levels and the character of surrounding land use and receptors.

Some pressure levels increasing 10 decibels result in a perceived doubling of sound pressure level. The perceived doubling of the sound pressure level results from the fact that sound pressure levels are measured on a logarithmic scale. An increase of 10 decibels deserves consideration of avoidance and mitigation measures in most cases.

The above thresholds are indicators of impact potential should be viewed as guidelines subject to adjustment as appropriate for the specific circumstances one encounters.

I just wanted to share that. If the Planning Board members wanted to see more of that in detail, I can get that information to them.

Mr. Santoro – How many decibels does a car alarm put out?

Mr. Boglioli – It's at the point of receptor and the noise increase would be 1.6 at the property line.

Mr. Santoro – How many decibels does a car alarm put out?

Mr. Young – Depends where the person hearing it is.

Mr. Santoro – The source, at the source how many decibels?

Chairman Dianetti – James, I think one of the things people are talking about is its not just noise or just light, it's the cumulative effect. What is that cumulative impact because these things are all tied together some how? So it's not the individual items, what is it when you put them all together, what's that impact on people's lives? I think that is one of the things people are concerned about.

Mr. Gallina – There are definitions around the levels, not just noise but other things. If we were to interpret no impact, I don't think we could put one more project in the town. If the criteria is "0", I can name a dozen projects that have just been approved.

Chairman Dianetti – You can't change anything without having an impact. That's being arbitrary when you say there can't be any impact. So where do we go from here in terms of direction? Where do we go as far a preparation of the document that would be acceptable to the majority of the Board and whether the applicant is responsible for that or if the Board wanted to take it over and finish it?

Mr. Young – If we need more data or more information from the applicant, certainly we can ask for it. Otherwise, at this point, it's time for the Board to take this document and meld it into whatever it is the Board agrees it should be. Some specific questions that I have for James. Our delivery will be if anything is going to be allowed anywhere on the site whether by special permit or just the outparcels. Are we going to continue to limit deliveries and trucks....

Mr. Boglioli – There will be no change in deliveries and trucks. They can only come into the site from 7:00 am to 11:00 pm.

Mr. Young – Anything we can do about the Walmart skylight?

Mr. Boglioli – I have reached out to Walmart and as I said, this is not changing that situation. I've asked them to look at some sort of screening. They have looked at it, they can't figure out how to screen the skylights at night. They have, I think, 180 of them. They are an LED item to improve energy efficiency. You actually see them more in a lot of the big boxes now. I will follow up with them again but this application as I noted, doesn't change that.

Mr. Young – I didn't know there were that many.

Mr. Boglioli – We didn't know that when we got the project approved because that was a construction item for Walmart, we don't generally deal with their internal construction, how they build the bldgs. So that was not known to us at the time. It was a surprise, we would not know that it would shine up because most people don't look down on the bldgs either. I have reached out to them, they have not figured out a system to cover the skylights.

Mr. Logan – So they can't just get motorized screens inside the building that cover the windows?

Mr. Boglioli – I have tried to get them to do that. I'll reach out to them one more time. It's such a substantial issue with them and I'm not going in for them. I would take limiting the hours of operations to the outparcels. I didn't involve them. They are not part of this application. From the onset, I knew I would take that which is why I gave you that as an option. I asked them once because I said maybe if I mention that and we get into a discussion about them and they said no so I really dropped it with them. I'm not looking to get them open 24 hours. I'm here because we have vacancies and potential tenants. And, they were not able to screen their skylights even if I said that we'd have this discussion. So that's where we are with it. I'd be happy to bring it back to them. I would assume they would not do it, just to do it for the restaurants. They are not as interested in them as I am.

Chairman Dianetti announced that he would like the Board and Town Engineer to go into an Attorney/Client privileged meeting. Started at 8:15 pm.

Chairman Dianetti reopened the meeting at 8:30 pm.

Chairman Dianetti stated that he would like to have more discussion amongst the Board members. Chairman Dianetti asked the Board members for any additional comments.

Mr. Gallina – Again, back to the applicant. There is pretty much universal concerns around the 24/7 discussion. I was curious if we were to look at restricted hours, what you believe would be reasonable to essentially fill those outparcels.

Mr. Boglioli – We're looking at 5:00 am to 1:00 am. Maybe 4:30 am to 1:00 am. The only one that I'm concerned about is the fitness center as they start a little earlier, employees need to get there around that time. Most restaurants are not open past 1:00 am. That's really what we're looking at. I can get that information from the tenant as far as the fitness center goes.

Mr. Logan – Just a general comment. We did discuss and have discussed in the past this concept of a special use permit. It seems to make more sense to just make sure that we identify where the most appropriate place for businesses that would need additional hours and I'm focused on the outparcels that are centrally located, buffered by the perimeter bldgs, things like that. It seems like that would satisfy your target with this application. (Yes)

Ms. Zollo – I don't have anything more right now.

Mr. Santoro – Nor do I

Mr. Gallina – So Jack based on all of the previous discussions that we have had across all of the Board members, would it be appropriate for Wes to try to incorporate some of the concerns that we've processed to date as part of the final SEQR.

Mr. Pettee – We've been taking notes through out the course of the meeting and I think we have some items that we want to make sure are in your revised FEIS. Being that it is your document, we as your consulting staff can go ahead and make these modifications that you direct us to do and bring this back to you at the next available meeting. At some point, when you are satisfied with the document, that's when you would adopt it as your Final EIS. Is there a notification process after you've accepted this FEIS? Then a cooling off period?

Mr. Young – Once the Board is satisfied with this document, the Board would approve it and then there would be a filing of a notice of completion of this document with the DEC and internally with the Town at the Clerk's office. Then there would be a 10 day "cooling off" period which means we can't do anything else for another 10 days which wouldn't be a problem because we wouldn't meet for another 14 days or so. At that point, we get to that Findings documents where we essentially deal with the substantive issue of the hours and what we want to do.

For the purposes of being clear, I think what's going to end up happening; the developer gave us a working document and we're going to take this and make it our document. I'm going to try to echo some of the things that I've heard tonight and correct me if I'm wrong. Then Wes and I will collaborate to modify this document in a way that will satisfy the Board. Then at the next available agenda we will present this to the Board and decide whether it is where it needs to be or not. I think what the applicant has told us is that if we're not willing to do 24/7 which seems to be what I'm hearing, that the best the applicant could live with would be allowing close at 1:00 am at the latest and open at 5:00 am at the earliest.

Mr. Logan – With the caveat that James has alluded to that people do have to come in before that opening time to open things up within the facilities so they can open the doors at 5:00.

Mr. Young – So business hours would be up until 1:00 am at the latest and open at 5:00 am at the earliest. I think also what I'm hearing from the Board is that any hours of modification that the Board is considering is only in respect to the outparcels and not with respect to the bldgs proper, if you will.

Mr. Logan- Not the perimeter structures.

Mr. Young – The ones that are in the middle.

Mr. Logan- The ones that are excluded are the perimeter parcels. The outparcels are in the middle, the central core. You expressed they have two end caps that are not leased and then there is the undeveloped pad next to it.

Mr. Boglioli pointed out the outparcels that are being referred to.

Mr. Young – Some of the issues that in the Board's opinion are not highlighted enough in this document that would prevent the Board from saying 24/7 beyond the fact that in 2006 was found, the studies that were presented include intermittent noises such as car alarms, car doors closing, customers or employees that might be loud or boisterous in the morning or at night. Those are some of the issues that the Board had issues with from the extent of not allowing 24/7 at all and not allowing any hours extension for the outside or the main plaza properties, only for the outparcels. In addition to that, we've heard this before, the Black Friday situation. That's another issue why the Board is not willing to extend 24/7 or any extension at all for those parcels on the outside of the plaza.

Mr. Gallina – With the rationale that the studies that have been conducted would not mirror that extreme condition.

Mr. Young – Exactly, that's an extreme condition that the current conditions would mitigate. Because of that, the Board is looking at the outparcels only and only looking at the 5:00 am to 1:00 am. Again, right now the documents conclude that since there are no significant adverse impacts we should just do 24/7 for the whole plaza. What the Board feels is that there are some significant impacts, again the things that I've mentioned; Black Friday issues, car doors, alarms, loud customers that we are concerned with. So yes, it's not a case that there aren't any issues, there are potential issues and because of that we're not willing to do 24/7 for the whole plaza, we're not willing to do 24/7 for any of the plaza. But we are willing to consider up until 1:00 am and reopening 5:00 am for the outparcels of the plaza.

Mr. Gallina – I think just one more bill to the rationalization of the outparcels is that the applicant has demonstrated a commercial disadvantage to anywhere other than the outparcels.

Mr. Young – Ultimately, with SEQR we are weighing the detriment to the community against the benefit of the applicant. The Board recognizes that there are some detriment right now to the applicant and that is they are not able to fill some of the outparcels. That issue doesn't seem to exist in the substantial material with the rest of the plaza so the Board doesn't see any reason to lift the hours of restriction there.

So that's all of the comments and correct me if I misstated or over stated. Wes and I will work together to revise this document so its more in line with what the Board feels and then represent it to the Board when its complete and the Board can think about moving forward with the revised document.

Mr. Santoro – Do we have any timing issues?

Mr. Young – No I don't think we have any issues on our end. Maybe we can turn this around for one of the next upcoming meetings.

Mr. Santoro – It's none of those issues where if we don't act, it's deemed approved?

Mr. Young – No that is not an issue here.

A discussion took place on what agenda this would be on. December 6th was decided upon.

Chairman Dianetti asked Mr. Boglioli if he had any questions and he did not. Chairman Dianetti asked for public comments due to this being an item on the agenda.

Mr. Chip Testa from 300 Meadowlark Lane – Since when is 95% occupancy of a shopping center or plaza not considered full occupancy? And why does this Board consider they have to always bend when you promise this would be the established hours and are going to stay the established hours. Why do we always have to come up with special permits? That's one question you can consider that on your own.

The other one is, don't consider at all that giving them this piece is not going to stop them from coming back for more next time because they will because they did this time, history shows that. Third, you should all know that 5:00 in the morning, 5-7 is quiet time. The roads, there is less road noise out there, less ambient noise so when a snowplow comes and backs up and beepers go off even in the middle or to plow the road, that is very loud. Our windows aren't the best, the front of my house faces the south of their property. When he says there will be no more plowing in the back of the out buildings, well there isn't now at 7:00, we still hear them, we hear them during the day, early in the morning backing up. I don't think you'd like that in your backyard. But it seems you've made up your minds how you're going to go with this.

Ms. Debra Hogan from 580 Sauer Farms Dr – I'm extremely disappointed in the Board tonight and I just wanted to say that. I feel for Benderson but you know what, they agreed to and signed up for this and that's the reality of the situation. They might have never been able to occupy anything but they agreed to that and this Board, thank you Heather, thank you Ernie for saying what you did. I know Joe we have to balance things but reality is reality and that was a promise that was made to those people who live around there and the Board should honor that.

Mr. Kav Maule from 325 Meadowlark Lane – As discussed earlier, the whole premise that this development was approved was due to the restricted hours of operation and let's not forget that, please. Its obvious, at least to me, the objective for the developer is to have the 24/7 allowed so that Walmart can remain open for 24/7 because that's been the objective right from the first time that this project was first proposed. So let's not forget that.

Then if we're discussing about restricting the hours of operation, extending the hours of operation, allowing certain businesses to come in, certainly they will be impacted about lighting, the cars are going to need headlights to drive in and out, there's going to be noise, of course added car alarms, the potential of snowplowing. Surely the fitness centers and late night restaurants are not the only businesses that are only the ones out there that want to move into

this. There's got to be 100's of other businesses that can operate within the current operating hours. I would very much doubt that Planet Fitness is operating at capacity at the moment. We don't need another fitness center, at least that's what I think. So please take that into consideration. Thanks

Ms. Kay Hoyt from 587 Mill Street, Fishers – I'm a life time citizen of Victor and when they opened Walmart that is what they said, they would not be open after 11:00 and before 7:00. I do not live near there but I know the impact that this does have on us as a community. I also know that putting a restaurant or bar in there, Saturday in Ontario County is 2:00 in the morning for bars. So that's another hour to think about too.

I am not happy with all of the traffic that has been coming by Walmart and I try not to shop up in that area as much as possible, I go other places because trying to get up there on a Saturday or Sunday is horrible and trying to get in there to go get coffee or something else, it wouldn't be feasible for me to even think about going up there. And 95% occupancy is great. We see a lot of places that don't have that and I really don't think they really need that to be fulfilled. We have a lot of money coming to Victor right now with all of the businesses and I think they can do without those extra hours because it's really the community that we're worried about, not the businesses that are there. We want to keep the people who are living here happy. Thank you.

Chairman Dianetti asked for any other comments from the residents and there were none.

Chairman Dianetti asked the Board for any other comments and there were none.

Motion was made by Ernie Santoro seconded by Joe Logan RESOLVED the meeting was adjourned at 8:50 PM.

Cathy Templar, Secretary