

**RE: VICTOR CROSSING**

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**PUBLIC HEARING**

*June 09, 2015*

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IN THE MATTER OF  
VICTOR TOWN Planning Board  
RE: VICTOR CROSSING

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Public Hearing in the Above-Titled Matter:

Location: Victor Town Hall  
60 East Main Street  
Victor, New York 14564

Date: June 9, 2015

Time: 7:00 p.m.

Reported By: TAMMY B. FIGLER  
Alliance Court Reporting, Inc.  
183 Main Street East, Suite 1500  
Rochester, New York 14604



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A P P E A R A N C E S

Appearing on Behalf of Benderson Development Company,  
LLC:

James A. Boglioli, Esq.

Benderson Development Company, LLC  
570 Delaware Avenue  
Buffalo, New York 14202  
jamesboglioli@benderson.com

Appearing as Victor Planning Board Members:

Ernest Santoro	Chairman of the Board
Al Gallina	Board member
Wes Pettee	Town engineer
Don Young, Esq.	Town attorney
Katherine Evans	Director of Development
Heather Zollo	Board member
Jack Dianetti	Board member

\* \* \*



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## 1 P U B L I C H E A R I N G

2 TUESDAY, JUNE 9, 2015;

3 (Proceedings in the above-titled matter  
4 commencing at 8:10 p.m.)

5 \* \* \*

6 TOWN SECRETARY: (As read): Victor  
7 Crossing Plaza. Benderson Development is requesting a  
8 change in the hours of operation for the 93 acre  
9 commercial shopping center to allow the shopping  
10 center to operate between the hours of 11 p.m. to  
11 7 a.m., which is restricted by the previously issued  
12 SEQR findings and approvals.13 Existing light bulbs within the parking  
14 field -- within the main parking field along the  
15 entrance drive would remain on between the hours of  
16 11:00 p.m. to 7:00 a.m. while the area behind the  
17 buildings would be maintained as shown on the current  
18 after-hours lighting plan. The project will continue  
19 to restrict deliveries between 11 p.m. to 7 a.m.,  
20 which is consistent with the 2006 Finding Statement.21 The project will also continue to restrict  
22 snowplowing and trash pickup behind the building  
23 between 11 p.m. to 7 a.m.24 Both were printed in the "Daily Messenger"  
25 on June 3rd.

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1 P U B L I C H E A R I N G

2 MR. BOGLIOLI: Good evening. My name is  
3 James Boglioli. I'm an attorney with Benderson  
4 Development, 570 Delaware Avenue, Buffalo, New York.

5 We're here with respect to Victor Crossing  
6 Supplemental DEIS Public Hearing. I do have a copy of  
7 my presentation. I'll give it to the secretary to  
8 keep for the record.

9 Before we get started, this presentation  
10 is going to be a little different than the one you  
11 just witnessed, because we're going to hear the  
12 comments on the DEIS, they're going to be taken by the  
13 stenographer, and we'll respond to them in writing as  
14 part of the FEIS. So I will not be answering  
15 questions as we go. We'll address those with our  
16 experts. Any types of questions will be submitted to  
17 the FEIS.

18 So I'm going to present the DEIS, what the  
19 study said, what we are asking for, and then we can  
20 turn it over to the residents, as I'm sure they would  
21 like to speak.

22 MR. CHAIRMAN: It's referring to the Draft  
23 Environmental Impact Statement and the Final  
24 Environmental Impact Statement. Those are the  
25 acronyms.



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2 MR. BOGLIOLI: As the Board is aware,  
3 Victor Crossing received approval in 2006. At that  
4 time this site was fully vacant. It was a former sand  
5 mine that sits in a depression that went through a  
6 number of a years for approval. A number of  
7 restrictions were imposed as part of the approval,  
8 most of which was the maximum development for the site  
9 being limited to 323,287 square feet, and that no  
10 building would be greater than 100,000 square feet.

11 The tenants began to occupy the site in  
12 2010, and currently we have 314,125 square feet built,  
13 and we have 95 percent of the buildings built and all  
14 the infrastructure in.

15 As part of the 2006 approval, a Draft  
16 Environmental Impact Statement was completed, a public  
17 comment period was held, a public hearing was held, in  
18 fact, a number of public hearings were held -- I had  
19 hair during those hearings -- and a Final  
20 Environmental Impact Statement was prepared. In  
21 September 26, 2006, the Planning Board adopted SEQR  
22 findings on this project.

23 The Planning Board adopted a number of  
24 specific measures to mitigate the potential for  
25 significant impact. And while I stress



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1 P U B L I C H E A R I N G

2 "potential," at that time the Board recalls there was  
3 nothing at the site, not a single building, no weight  
4 in measure of what they actually were.

5 We have studies that anticipated what  
6 those impacts would be, and as a result, at that time  
7 certain mitigation measures were adopted. Those  
8 mitigation measures included the following -- which  
9 are up there on the slide.

10 A limit of the hours of operation, so the  
11 site had to close from 7 a.m. to 11 p.m. That's on  
12 page 26 of the original SEQR findings. That was  
13 specifically directed towards the operation of  
14 businesses, so no business could be open during that  
15 time; limited to snow plowing behind the buildings,  
16 which would be only permitted during snow emergencies;  
17 limited to waste hauling; and limited to any  
18 deliveries for the any of the businesses on site.

19 In addition, we studied noise and  
20 mitigation measures were adopted. Those mitigation  
21 measures included a significant vegetation buffer,  
22 topography, the fact that the site sits 30 to 40 feet  
23 below some of the majority of -- some of the abutting  
24 residences.

25 Setbacks, the site exceeds 150 to 250 feet



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## P U B L I C   H E A R I N G

1  
2 on almost all sides to the nearest residential  
3 property lines. The houses are set further back than  
4 that.

5           And fencing, we put up an 8-foot fence on  
6 top of retaining wall around the entire site.

7           We also addressed lighting as part of that  
8 study. That's on pages 23 and 35 of the SEQR  
9 Findings. We included an after-hours lighting plan.  
10 Basically, that turned off a number of lights on site  
11 to lower the foot candles to .06 foot candles after  
12 11 p.m. That was done, as I noted, by turning the  
13 lights off on certain areas of the site.

14           And, finally, we addressed odors as part  
15 of the approval. Restaurants are a permitted use as a  
16 right on this site. There are three small restaurants  
17 located on site now, including Five Guys, TCBY and  
18 Subway, and all are located in the outer ring of  
19 buildings, not on the internal buildings. In he 2006  
20 SEQR findings said that the use of filters would be an  
21 adequate mitigation to those odor issues -- potential  
22 odors from restaurants.

23           Our requested action is only to remove the  
24 11 p.m. to 7 p.m. [sic] restriction with respect to  
25 hours of operation for shoppers. We, as part of that,



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## P U B L I C   H E A R I N G

1 we agreed to modify the after-hours lighting plan.

2 We're going to change the poles that are turned on and  
3 off, but maintain the foot candles that were  
4 originally approved. So we're going to shift the  
5 poles they're on to the site driveways in the areas  
6 closest to the stores, because late hours that's where  
7 people would park when they come into restaurants, and  
8 then turn all the lights off to maintain the foot  
9 candles. We are also not going to change any of the  
10 lighting behind the buildings, so whatever they see  
11 now, will remain exactly as they see it now. There  
12 will be no change to the back of the buildings.

13  
14           With respect to that, we are seeking no  
15 change to the following: As mentioned in the Public  
16 Notice, we're seeking no changes in the restriction on  
17 snowplowing behind the buildings. We will maintain  
18 that restriction.

19           No change to the restriction on waste  
20 hauling. You may hear residents get up -- I believe  
21 it was April 20th we had an issue with a waste hauler.  
22 There was a new driver. They showed up at 4:30 in the  
23 morning. We were alerted by the town. All our leases  
24 contain these restrictions. We sent certified mailers  
25 to every tenant in the shopping center. A property



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## P U B L I C   H E A R I N G

1  
2 manager went and spoke to every tenant and spoke to  
3 the waste hauler, and that was quickly halted. So we  
4 don't live on site, but the minute we're made aware  
5 that someone comes -- it typically happens when they  
6 send a new driver and they're unaware -- we make them  
7 aware and they stop. There's been no issue of  
8 deliveries; there have been no issue with waste  
9 hauling, that I know of, besides that date.

10           And we're not looking to lift the  
11 restriction on deliveries behind the buildings. We're  
12 going to maintain that. Nothing else changes. The  
13 permitted square footage is not going to change;  
14 buffers remain the same; landscaping remains the same;  
15 setbacks remain the same.

16           For the record, this is the copy of the  
17 letter that went out. It went to every tenant of the  
18 shopping center. This is the one that went to the  
19 Dollar Tree.

20           As the Board is aware, we did submit a  
21 Supplement Draft Environmental Impact Statement. I'm  
22 going to call that a DEIS going forward. It's a lot  
23 of words. The DEIS can now study what we couldn't  
24 study in 2006. It can actually study the shopping  
25 center as built. 95 percent of the buildings are up,



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## P U B L I C   H E A R I N G

1  
2 and all the infrastructure is in, traffic is at the  
3 site. We can now study what we couldn't study before.

4           The Supplement DEIS has been prepared by  
5 D&S Associates and has a number of specific sections:  
6 Visual impacts, traffic, noise and odor, were all  
7 issues that were studied.

8           In addition, we looked at two  
9 alternatives, a no-action alternative, and then an  
10 alternative of changing the hours to 2 a.m. to 6 a.m.  
11 to accommodate potential restaurants.

12           We did look at alternative cumulative  
13 impacts, irreversible and irretrievable commitment to  
14 resources, the growth inducing aspects, but none of  
15 those are changing with this project, and that is  
16 discussed fully in the DEIS.

17           I'm going to walk through quickly the  
18 studies, highlight some of them, and then I'll turn it  
19 over to the residents.

20           The first study we did was a visual  
21 analysis. That was a lighting visual analysis  
22 prepared by Saratoga Associates. It was done in  
23 December 2012 during the most impactful condition.  
24 And what I mean by that is, at that time it was done  
25 with leaf off, no leaves on any trees. There was a



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## P U B L I C   H E A R I N G

1  
2 heavy snow covering on the ground, and we studied  
3 between 7 and 8 p.m. with all the lights on in the  
4 center. So now what we're asking now, not a reduced  
5 lighting plan, but with the full lighting plan in  
6 effect in total darkness. So it was pitch black when  
7 it was studied.

8           We did 13 line-of-sight profiles from the  
9 surrounding residential areas. We did five on  
10 Meadowlark Lane and seven on Sachem Trail. This slide  
11 shows the locations of those line of sights.

12           We also analyzed the existing buffers that  
13 were originally approved in 2006 and now are  
14 installed. These slides are out of the study. It  
15 shows the buffers. Meadowlark Lane is a 200-foot  
16 buffer with a stand of 25 foot high to 35 foot high  
17 pines intervening between the residential  
18 neighborhoods and the shopping center.

19           In addition, on Sachem Trail the buffer is  
20 between 150 and 250 feet and with a mix of 20 to  
21 40 foot high deciduous pine trees in that area. That  
22 is shown on these slides.

23           In addition, there is an 8 foot high fence  
24 that sits a top, for the most part, a retaining wall  
25 that buffers the center.



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## 1 P U B L I C H E A R I N G

2 As far as the line of sights go, here's  
3 two pages of them from the DEIS. And what the line of  
4 sight shows is that for Meadowlark Lane, the  
5 residential property sits 15 to 20 feet higher in  
6 elevation than in the center. What it does show is  
7 intervening -- is that the houses through the trees  
8 and the fence do not have a line of sight to the back  
9 of the buildings. These most certainly do not have  
10 any view of what's in front of the buildings, which is  
11 the area that will be changed by changing the hours of  
12 operation. There will be no change to the back of the  
13 buildings.

14 Same for Sachem Trail. Those properties  
15 sit 30 to 40 feet high in elevation to the center, and  
16 it showed that there will be no -- that the houses on  
17 the street are screened by the vegetation and the  
18 fence. As I noted, no residences have a view of the  
19 front of the center, which is where the hours of  
20 operation change will take effect.

21 If approved, we're looking to no changes  
22 to the back.

23 We did study nighttime impacts, and these  
24 pictures are in your studies. The site uses night sky  
25 compliance full cutoff fixtures. The Board is very



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## P U B L I C   H E A R I N G

1  
2 well aware of those. It's required by the Town of  
3 Victor in every shopping center that you approve.  
4 They are cut off and prevent the light from shining  
5 upward.

6           With a very conservative leaf off and snow  
7 on the ground, we're looking at the most impactful  
8 condition.

9           We have three nighttime photos. This is a  
10 night view from Meadowlark Lane looking toward the  
11 center. The photo was taken on Meadowlark over here.  
12 The center is right here, and these are the lights  
13 from the Thruway interchange. So that's what you are  
14 seeing. You are not seeing this photo -- parked on  
15 Meadowlark Lane, you are not seeing lights from the  
16 shopping center.

17           An additional photo taken from Meadowlark  
18 Lane further down. Some of those areas are in your  
19 study. Again, cars parked on Meadowlark Lane, the  
20 shopping center intervenes between the Thruway  
21 interchange, and there are the lights for the Thruway  
22 interchange. That's what you're seeing.

23           In addition, we took photos from Sachem  
24 Trail. This is one of them, again, parked at the  
25 road. This is where the shopping center is located.



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## P U B L I C   H E A R I N G

1  
2 These are the lights from the Hampton Inn and Fridays  
3 across the street. So that's what you are seeing.  
4 The lights are not shining upwards. They are fully  
5 cut off and dark sky compliant work -- lights work  
6 like they're supposed to be working.

7           If the Planning Board approved our  
8 request, the lights behind the building, as I noted,  
9 are to remain off. And, in effect, there would be  
10 less lighting of this sight, as part of these studies,  
11 because we will be maintaining an after-hours lighting  
12 plan. We did study, most conservatively, with all the  
13 lights on. We studied between 7 and 8. There was no  
14 after-lighting -- hours lighting plan on. So there  
15 will be actually less lights on in the center than  
16 when the study was conducted.

17           We also did a noise assessment. That  
18 noise assessment was done on March -- in March 2013 on  
19 multiple days with leaves off the trees. There were  
20 no leaves on the trees. The measurements were taken  
21 at nine different locations. Those are the same nine  
22 locations that were undertaken when the original  
23 studies were done. Those locations included  
24 boundaries of the property. This is where the fence  
25 is. They also included noise refractories in the



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## P U B L I C   H E A R I N G

1  
2 surrounding neighborhoods, as well as the hotel and  
3 areas in this direction. Those noise studies included  
4 placing noise-measuring devices there at 7:30 p.m. and  
5 letting them run 12 straight hours to 7:30 a.m. so it  
6 actually collects all noise at the shopping center  
7 including loading, deliveries, trash, because those  
8 were turned on. They were reported from 7:30 at night  
9 when those activities were allowed, through the next  
10 morning when most of our trash is picked up at 7 a.m.  
11 So those recorders ran 12 straight hours. They  
12 recorded all sorts of items, including car alarms,  
13 doors slamming, people speaking, all that was going on  
14 in the center when the studies were undertaken.

15           After the studies were complete, the  
16 studies modeled noise increased by 1.6 dBA or less  
17 overnight. Just to give you an indication of what  
18 that is, an increase of 3 dBA is barely perceptible to  
19 the human ear. The New York State DEC Noise Policy,  
20 which was reviewed originally as part of this, states  
21 that increases ranging from 0 to 3 dBA have no  
22 appreciable effect, and we're at 1.6. We're below the  
23 range the DEC has determined of having no appreciable  
24 effect.

25           As we noted, the study was taken in



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1  
2 account when the center was fully operating. We're  
3 asking the Board just to lift the hours of operation  
4 with respect to customers coming in, so the noise  
5 levels will actually be less than what we recorded  
6 because there will be no deliveries, garbage trucks or  
7 snowplowing behind the buildings if the hours are  
8 lifted during those time periods.

9           The sound levels can be compared. This is  
10 Figure 15 in your study. This is a typical chart. I  
11 know this Board has seen this before. And if you look  
12 at it, it is -- the increase is barely above the  
13 threshold of hearing, so that is the perceived  
14 increase in noise.

15           We did look at odor impacts for potential  
16 restaurants. The 2006 SEQR findings approved  
17 mitigation by use of filters. With this approval in  
18 effect it will not allow any new uses at the site.  
19 Restaurants are already permitted. If we could get  
20 restaurants to take the existing hours, we could fill  
21 the remaining space with restaurants, and they would  
22 be compliant with the SEQR findings. This approval  
23 only allows restaurants to operate past 11 p.m., and  
24 we analyzed that impact.

25           The site is subject to existing town and



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## P U B L I C   H E A R I N G

1  
2 state regulations. The Town Code, Section 211-22  
3 states that (as read): Food operation facilities must  
4 be designed so as not to produce smoke, dust, odor and  
5 other byproducts from going into adjoining properties.

6           So we would have to comply with that.

7           In addition, the New York State Air  
8 Quality Regs, at 6NYCRR 211-2 also states that we  
9 cannot allow odors to tread onto other people's  
10 properties.

11           With respect to mitigation, there are two  
12 things that weight in favor of this project. One is  
13 distance. The internal available restaurant pads,  
14 there are two sites in the new 15,000 square foot  
15 building on either end that are available for  
16 restaurants, and there's a larger building that has  
17 not yet been built. Those are over 700 feet from the  
18 closest residential property line and further to the  
19 actual houses.

20           In addition, there's a bank-out parcel  
21 that used to be a commercial-out parcel. If that was  
22 ever converted to a restaurant, it would be over  
23 200 feet from the closest residential property line,  
24 and as you know, there's an existing shopping center  
25 on Route 96, with an Goodwill in it, I believe, that



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## P U B L I C   H E A R I N G

1  
2 is actually closer to the residents and has no  
3 restriction for restaurant use if one of those  
4 tenancies went vacant.

5           We do propose to mitigate by using  
6 filters. We're going to use carbon, grease-extracting  
7 filters that remove particles from .5 to 1 micron in  
8 size. That is the technology that will eliminate  
9 odors. Those are built into the hoods for the  
10 restaurants, and they will reduce odors. That was  
11 what was accepted by the Planning Board when they  
12 originally approved the project, and we are going to  
13 continue on with that mitigation as it was previously  
14 approved and accepted.

15           We did do a traffic impact study just to  
16 cover all our basis. It was prepared by TUM  
17 (phonetic) International. It was a very conservative  
18 analysis for two reasons. First, the TIS used impacts  
19 for the Christmas season to assess impacts for the  
20 entire year. So we actually measured Christmas,  
21 between November and December, that's when we did the  
22 traffic study because that's the worst-case scenario.  
23 We applied those numbers to the entire year.

24           We also determined that the overnight  
25 volumes on the 490 ramps were highest from Thursday



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1  
2 overnight to Friday, and we used those higher volumes  
3 in the traffic study as opposed to the lower volumes.

4           The findings is that the anticipated  
5 nighttime volumes are drastically less than the  
6 daytime peaks. The impact of the daytime peaks were  
7 already addressed in approving SEQR for mitigation,  
8 and changing the hours will have no impact on the  
9 surrounding roadway network.

10           The town did have their consultant already  
11 review that study. They issued a memo on December 22,  
12 2014. They confirmed those conclusions, and they  
13 concluded in their letter with a sentence saying there  
14 would be no impact to the abutting roadway systems if  
15 the hours of operation were changed.

16           In conclusion, unlike 2006, we can now  
17 study the center as it exists and the impacts. All  
18 the studies were conducted in the most conservative  
19 manner possible, leaf off, full shopping center  
20 operational, and the study shows that lifting the  
21 restrictions with respect to customer operations would  
22 not cause any impacts.

23           We're not looking to change anything  
24 behind the buildings. Whatever the residents see now,  
25 they're going to continue to see. Those uses are not



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2 going to be increased. All the activity will occur in  
3 front of the buildings and will be screened by the  
4 buildings and other mitigation we already have in  
5 place.

6 So that is our presentation. Happy to  
7 hear from the neighbors.

8 MR. SANTORO: Motion to open the public  
9 hearing?

10 (The motion was so moved.)

11 MR. SANTORO: Anyone wishing to speak from  
12 the public?

13 MR. DIDSBURY: Bruce Didsbury, 1 Berkshire  
14 Lane.

15 I originally talked back when Victor  
16 Crossing was first brought up. We had the meetings  
17 back up at the high school, and I got up and spoke  
18 when the Planning Board had their meetings back then.

19 Berkshire Lane actually faces High Street  
20 and actually overlooks the Victor Crossing. I bought  
21 almost 30 years ago. It's the original Homearama back  
22 in '86, so I've been out here for a while.

23 When you look at Meadowlark and you look  
24 at Sachem, those are all part of Wiley and Rose  
25 properties. Those were all farm fields when I came



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## P U B L I C   H E A R I N G

1 out here, and there was nothing but farm out to 96.  
2 There was no Pizzeria Uno. Yeah, there was a sand pit  
3 there, but it was mostly all farms and things. So  
4 when you say "it was vacant," it wasn't really vacant.  
5 That was all being farmed over in that area. So it  
6 was being used. And there was a lot of -- they could  
7 have put homes there as well as Sachem and Meadowlark.  
8 So I guess that was kind of your decision to make it  
9 go commercial.  
10

11 But you did put a development in there for  
12 commercial, and -- but when you say you look at the  
13 ambient light from Meadowlark and Sachem, my house is  
14 probably is another 100 feet up above that area. So  
15 when I look out my bedroom window, I actually look  
16 down at your parking lot, and I see all those lights,  
17 and I see the snow in the parking lot looking up at me  
18 at night -- all six months of snow we had this year.  
19 And so I see that. But you did do a good job. I  
20 mean, you met most of the requirements that we asked  
21 for, and you kept to the hours that we actually wanted  
22 you to.

23 And you've been pushing to open that door  
24 to get the extra hours, and you've been back at the  
25 Board a number of times to get your foot in the door



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1  
2 trying to get the extra hours over and over. You made  
3 a commitment, and we gave you a commitment to let you  
4 build the mall. But we'd like you to honor that  
5 commitment that we let you be in competition with our  
6 investment that we put into Eastview Mall.

7           Now, I speak about that investment that we  
8 put into Eastview Mall because some of the people here  
9 might not remember that Eastview Mall used to have an  
10 anchor called McCurdy's, and an anchor called  
11 Sibley's, and down at the other end there was Sears --  
12 and it used to have green carpeting. That was about  
13 it.

14           And the town asked us to come up with  
15 seven and a half million dollars worth of tax so we  
16 could have a decent mall. Then Wal-Mart wanted to  
17 come to town and go into competition with our seven  
18 and a half million dollar investment, and Benderson  
19 wanted to go into competition with our investment.  
20 And we said, as long as you met our requirements, and  
21 one of our requirements were those hours.

22           And now you got your foot in the door and  
23 you're pushing on the door, and you come back every  
24 once in awhile and you push on the door again, and you  
25 push on the door again. Well, you got -- you did a



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2 nice job on the mall -- on you're strip mall there.

3 Well, the noise is not a lot. I'm not  
4 sure what capacity you're running over there, but if  
5 you are running at full capacity, what would the noise  
6 be? You're not running at full capacity. And I think  
7 everybody that's run a business, or people that own  
8 their own business, if their hours went from  
9 10 o'clock or 11 o'clock at night and suddenly they  
10 expanded it to 2, 2:30 in the morning, what's that  
11 impact? What are the logistic demands on their  
12 business? What kind of noise would that be?  
13 Emergency requirements, people requirements,  
14 snowplowing requirements during the winter just to get  
15 the people out of there after it snows 6 inches  
16 between 10 o'clock and 2 o'clock like it does, all  
17 that kind of traffic over those extra four hours that  
18 you're asking it to be opened. Those are the kinds of  
19 things that --

20 MR. SANTORO: They are asking for more  
21 than that.

22 MR. DIDSBURY: Well, okay. I'm trying to  
23 bring up some things like that. Okay? So those are  
24 some of the things that have come to my mind over the  
25 time.



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2 But when we, originally people in  
3 Hertfordshire Heights, up on the hill there, tried to  
4 block Wal-Mart coming in, there was a real fight over  
5 the number of years. And I guess we kind of won; we  
6 kind of lost. But Benderson did do a good job meeting  
7 the requirements that the Planning Board put up there  
8 for them. It's a good looking mall, and appreciate  
9 the Planning Board's efforts.

10 But we just don't see this effort of keep  
11 coming back and asking over and over, let's go have it  
12 open all the time. It just is not what you committed  
13 to.

14 You know, sometimes in life you make a  
15 promise, you've got to live up to it. You got to live  
16 up to your commitments.

17 I guess that's what I wanted to tell you.

18 MR. SANTORO: Thank you. Next?

19 MS. DeRYCKE: Theresa DeRycke, 7316 Sachem  
20 Trail.

21 And I probably have one of the biggest  
22 buffers on Sachem Trail behind the plaza, and when I  
23 look at the light impact studies and the pictures --  
24 and I'm almost going to say picture of Sachem Trail --  
25 it's quite frankly laughable.



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2 I cordially invite you to my home at about  
3 9, 10 o'clock on a winter evening. I'll make you  
4 whatever meal you want. We don't have to use any  
5 lights downstairs, because you can see right through  
6 my house, the whole first floor.

7 So I would appreciate it if when they do  
8 more studies, you know, instead of taking a visual  
9 line from -- supposedly at my house -- stop and ask  
10 me, "What do you think?" Come and take a picture  
11 inside my house when there's snow and no lights and no  
12 tree leaves and stuff. That's all.

13 MR. SANTORO: Thank you. Next?

14 MS. PALOMAKI: Pat Palomaki, 7360 Sachem  
15 Trail.

16 I live at 7360 Sachem Trail, and I'm here  
17 to ask you to fulfill your commitment to the neighbors  
18 of Victor Commerce Park. The commitment made by  
19 Benderson and the Planning Board in 2006 allowed the  
20 development to proceed, but only with certain  
21 restrictions that included size of the buildings and  
22 hours of operation. No other large retail  
23 developments back up to residential properties in  
24 Victor. These restrictions were put in place to  
25 protect the neighbors and are appreciated.



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## 1 P U B L I C H E A R I N G

2 This Planning Board has been asked almost  
3 every year since then to reconsider the hours of  
4 operation, usually around holiday time. Now it has  
5 come up where the trees are fully in bloom, leaves are  
6 all lush, and brush covers up the view from my  
7 backyard. But for seven months of the year the  
8 aesthetics are less than favorable. Skylights beam up  
9 into the night through brilliant white roof tops. The  
10 interior of my neighbor's house is lit up at 10 p.m.  
11 in the winter from the lights in the parking lot.  
12 We're concerned of the possibility of more activity  
13 from delivery trucks, middle of the night back up  
14 alarms or car alarms, possible high jinx from patrons  
15 and resulting police sirens not far from our back  
16 yards.

17 So now the businesses want to be open 24/7  
18 assuming they will squeeze more profits, and Benderson  
19 says they can't find tenants because restaurants and  
20 bars think they need to be open past 11 or they can't  
21 compete.

22 Let's look at those two arguments. Some  
23 stores, such as Walgreens, have found that while  
24 income rose, revenue increases weren't enough to  
25 offset the cost of opening 24-hour stores.



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## 1 P U B L I C H E A R I N G

2 An article in the "Indianapolis Star"  
3 reported that at select locations in markets across  
4 the United States, the nation's largest retailer is  
5 ditching its round-the-clock-24-hour schedule and  
6 closing some stores from midnight to 6 a.m. Wal-Mart  
7 stated in this article that this is a business move  
8 specific to each particular store. A spokesman for  
9 Wal-Mart said, this reflects our ability to make sure  
10 our stores reflect the community, make sure the hours  
11 are consistent with what our customers are doing.

12 The "Star" commented that Wal-Mart, being  
13 the mammoth retailer it is, likely won't have to worry  
14 about losing money to competitors. The money it will  
15 save in overhead from closing stores during the night  
16 will far outweigh the loses in overnight sales. And  
17 you better believe Wal-Mart researched all of that  
18 before making the decision to roll back some hours,  
19 they said. Wal-Mart probably figured out the sales  
20 from midnight to 6 a.m. just weren't worth the effort.

21 I note that locally the Gates Wal-Mart has  
22 reduced their hours. They close at 10 o'clock.  
23 Eastview Mall closes at 11 even during the holiday  
24 season. Target does stay open, but they don't have  
25 residential properties behind them.



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## 1 P U B L I C H E A R I N G

2 Regarding the restaurants, a quick online  
3 search of restaurants in the area shows that Fridays,  
4 the Distillery, Chili's, Champs and Thirsty Turtle  
5 close not later than 11 during the week with their  
6 bars open until 12 or 1 a.m. only on Friday or  
7 Saturday nights. Biaggi's closes at 9:30, 10:30 on  
8 Friday and Saturday. P.F. Chang's closes at 10 during  
9 the week and 11 on weekends. Bonfish Grill isn't  
10 open past 11:30, even on weekends.

11 So do we want to be compared to other  
12 communities that are open all night? Do we want to be  
13 Gates or Henrietta, Greece or even Webster? Or do we  
14 want to maintain our family-friendly neighborhoods?

15 People come to Victor -- come to live in  
16 Victor for its schools, for our family-centered town.  
17 It's not a late-night town, and we like it that way.

18 My whole family lives here in Victor. My  
19 three children, nine grandchildren and a great  
20 grandchild. I want to know that we can depend on my  
21 town government to commit to the sustainability of a  
22 community that is in the proposed Comprehensive Plan  
23 which emphasizes our agricultural, cultural and  
24 neighborhood character.

25 And to me this is a matter of trust. Not



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## P U B L I C   H E A R I N G

1  
2 trust in Benderson Development or any of its tenants,  
3 but trust in our local government and the Planning  
4 Board. There have been some real trust issues in the  
5 past. In particular, trust over questionable -- a  
6 questionable land swap that surreptitiously changed  
7 the zoning behind our house from residential to  
8 commercial. This land swap was the idea of the  
9 developer and our very own town attorney at that time,  
10 who thereafter left Victor to work for Benderson.

11 In short, someone we trusted to protect  
12 the interest of our neighborhood and town appears to  
13 have been working for the developer's interest, not  
14 ours. In the past this developer has used what I  
15 consider to be bullying tactics. When Benderson  
16 Development tried to bully and threaten the Victor  
17 Town Board over its appointees to the Planning Board  
18 and County Planning Board, to its credit, the town  
19 board did not back down. And it's my hope that this  
20 Planning Board would also stand up to any kind of  
21 intimidation.

22 Bullies are far too often tolerated, but  
23 the cost is far too much. You give your power away,  
24 compromise your integrity and teach such tactics are  
25 acceptable.



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2 Finally, it's not your job to make a  
3 business profitable. Benderson agreed to these  
4 conditions knowing the risks and benefits, and you  
5 know how much thought and work went into pounding out  
6 the Final Environmental Impact Statement. I'm  
7 trusting you now to continue to honor your commitment  
8 to us. Thank you.

9 MR. SANTORO: Thank you. Next?

10 MS. GRAHAM: Rosemary Graham, 6950  
11 Valentown Rd.

12 I was a member of the Victor Planning  
13 Board for 17 years and sat on this board during the  
14 ten years of this project. The Planning Board members  
15 that were on this board at that time would agree that  
16 it was an arduous process.

17 A very stringent stipulation of approval  
18 were the hours of operation. As a Planning Board we  
19 did not take any aspect of this project lightly,  
20 especially the hours of operation. We spent a  
21 substantial amount of time discussing the matter with  
22 the developer. Benderson Development agreed to the  
23 hours of operation in place and knowingly decided to  
24 go forward with the project.

25 This project borders a residential



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## P U B L I C   H E A R I N G

1  
2 district. The developer had to compromise and so did  
3 the residents. The Planning Board made it very  
4 clear -- very clear -- that the developer was not to  
5 come back at a later date pleading hardship to have  
6 the Planning Board entertain a request for extended  
7 hours. The intent of the Board's decision was for  
8 those hours to never change.

9 I would also like to point out that every  
10 tenant that is in that plaza signed a lease knowing  
11 yesterday and today's hours of operation. No one is  
12 moving out, and if and when a business does go out, it  
13 is not because of the hours of this plaza. It might  
14 just be possible that the business embraced poor  
15 business strategies.

16 The hours that are in place are reasonable  
17 and are standard business hours and were not  
18 arbitrarily contrived by our Planning Board.

19 I am asking you, as a resident of Victor  
20 and as a past Planning Board member who knows the  
21 history of the project's approval, that you deny the  
22 developer's request for extended hours.

23 Thank you for your time and consideration.

24 MR. SANTORO: Anyone else?

25 MR. MALI: Kav Mali, 325 Meadowlark Lane.



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## 1 P U B L I C H E A R I N G

2 Just a pitch wedge shot away from the development here.

3 As I say, we have been there about 20-odd  
4 years now. We've lived there, my family, and we've  
5 enjoyed the wild terrain that was there for a while,  
6 along with the neighbors, up until the point we've  
7 adapted reasonably well to this new site, primarily  
8 thanks to the Board to restrict the hours of  
9 operation. And now here we are back again.

10 And as most of my friends and neighbors  
11 have already conveyed, it certainly, the hours of  
12 operation that you currently have restricted the  
13 developer to, are more than adequate. There's no need  
14 to really extend those hours.

15 One of our main reasons, of course we can  
16 recite the same concerns -- basically, noise has been  
17 a concern that's been raised.

18 Lighting, the depictions, with all due  
19 respect, were not real from what we saw in the  
20 pictures. We live there. As neighbors, we live there  
21 and see that everyday as to what the impacts of  
22 lighting has been, especially during the winter time.  
23 There's a glow of light during the wintertime where it  
24 pretty much lights up our houses inside.

25 Line of sites, from what's shown on the



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## P U B L I C   H E A R I N G

1  
2 presentation here by the developer, that must have  
3 been taken from the lower floor, not the upper floor.  
4 The second floor of our house, we clearly see the  
5 lighting and the buildings from the second floor of  
6 our house.

7           So I'd like to say, noise has certainly  
8 been an issue and still is to some extent. We have  
9 actually heard dumpsters being moved and hauled well  
10 before 7 a.m. And then -- so that's, as I say, the  
11 other thing as far as backup beepers and door slams,  
12 truck deliveries, that would just make things worse.

13           Adding a restaurant/bar later at night, we  
14 all know there could be disorderly patrons there that  
15 could cause all sorts of ruckus in the area, causing  
16 more trouble for us residents that live right by  
17 there. And what that does is, I believe, it affects  
18 values of our properties that we all have enjoyed  
19 there being a resident of Victor. Because that's  
20 certainly something that one would think twice to buy  
21 a house right next to a -- in close proximity to a bar  
22 or restaurant that's open that late.

23           So I just wanted to convey that, and  
24 thanks for listening.

25           MR. SANTORO: Thank you. Next?



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2 MR. STREICHER: Dan Streicher, 326 Franlee  
3 Lane.

4 Good evening. My name is a Dan Streicher.  
5 I live at 326 Friendly Lane in the Somerset  
6 Development. No one has spoken about Somerset  
7 Development yet. That's a new development with about  
8 65 new homes that sits hundreds of feet above this  
9 development. I don't know the exact height, but I  
10 imagine at the top it could be a 1,000 feet. You're  
11 looking down into a bowl, and we're shielded somewhat  
12 from other houses. There are some homes -- before  
13 homes were built in front of us, we could see right  
14 down into this development.

15 So from a lighting standpoint, depending  
16 on the cloud cover, it does light up quite a bit at  
17 night. But we understood that when we moved here.

18 My wife and I moved here four years ago.  
19 We love Victor. We moved from the west side, and our  
20 neighbors have shared with us the one thing they like  
21 about Victor is that it's got a city-type closeness  
22 environment with malls and access to the expressways,  
23 and you can get into the city pretty quick, but you  
24 also have a rural, small community-type environment at  
25 the same time.



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2 You know, and one of the things my wife  
3 and I both noticed when we moved to Victor, you know,  
4 is -- 'cause we're actually kind of night people --  
5 how at 9 o'clock at night everybody seems to have gone  
6 home. While there are restaurants and stores still  
7 open at 9:30, 10 o'clock, 11 o'clock, the general  
8 community doesn't really seem to go out much past 9:30  
9 at night.

10 So I really question the need for a  
11 24-hour facility, and the precedent that it would set  
12 for potentially all the other developments in Victor  
13 who might also then go to a 24-hour facility.

14 Last, just on the noise ordinance, you  
15 know, I saw the dB levels. I'm an electrical  
16 contractor, one of biggest in the state, and I know  
17 about dB levels. I know about light levels. When I  
18 sit on my porch at night at 10 o'clock at night,  
19 Wal-Mart is still open, you know, we can hear car  
20 doors open and close. Not slamming. We can hear road  
21 noise from the Thruway. But we understand that goes  
22 with the territory. But if we start adding additional  
23 traffic at midnight, 1, 2, 3 in the morning when our  
24 windows are open, you know, sounds travel at night  
25 differently than they do during the day.



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2 And so I question the study that was done  
3 on the dB levels. If, you know, they were done at 10  
4 or 11 o'clock at night, I think the results would be  
5 different.

6 So, thank you for the opportunity to speak.

7 MR. SANTORO: Thank you.

8 MS. DEBSKI: Francis Debski, 7263  
9 Hertfordshire Way.

10 Good evening. I live right behind Bruce  
11 Didsbury. I want to second all of the comments made  
12 by residents tonight, but I did want to reinforce one  
13 point.

14 We did look at a lot of graphics here  
15 about the perspectives of the residents as pertains to  
16 the proximity of the development. And in most of  
17 those graphics you just see pretty much a tight focus  
18 looking in at Sachem Trail and Meadowlark Lane. I  
19 propose we need to zoom out a little on that  
20 perspective, because all you need to do is cross High  
21 Street and you will see that there are several other  
22 neighborhoods that are also impacted by this.

23 So even though the studies, the DEIS,  
24 decibel level studies, everything has been done  
25 focusing in on the lower points of Meadowlark and



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2 Sachem. I propose that residents in other adjacent  
3 areas are also being very negatively impacted,  
4 especially with light.

5 I mean, I look out the back of my house I  
6 can see the entire parking lot. The lights that you  
7 are talking about keeping on, I'm going to see them.

8 Noise travels, as people said, very  
9 differently at night versus the day. One of the  
10 noises that we hear up on the hill are the sounds of  
11 the commercial exhaust fans, the constant din of them.  
12 If you put more restaurants in there, I'd like to know  
13 what abatement is going to be done on those exhaust  
14 fan sounds.

15 But like other people have spoken here  
16 tonight, I mean, we've lived here for 25 years. We  
17 went through a lot of these dialogues about whether or  
18 not this should be built. And when it was decided  
19 that it was going to be built, what kind of  
20 compromises we could make working in partnership  
21 jointly. We came up with a solution. It's built.  
22 We're living with it. I think people are adapting.  
23 People are making compromises. And like others have  
24 said here tonight, I look to the Town Board to stand  
25 by the commitments that you made to the residents in



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2 the area and deny this request for the additional  
3 hours. Thank you.

4 MR. SANTORO: Thank you. Anybody else?  
5 Going once. Going twice?

6 Does this stay open as well?

7 MS. EVANS: The public comment period is  
8 open until July 2nd.

9 MR. SANTORO: Everybody hear that the  
10 public comment period is open until July 2nd, so if  
11 you in that period of time -- one more?

12 MR. POLIDORI: Mauro Polidori, 6920  
13 Jillian Rise.

14 I guess I came here tonight just  
15 remembering what happened in the past, the 10-year  
16 fight, and I built the homes on Sachem Trail.

17 I recall I had a meeting. It was behind  
18 closed doors, meeting with some of the town people and  
19 Benderson. They wanted to buy a few of my empty lots  
20 that I was having a hard time selling, because I was  
21 disclosing that there could be a possible Wal-Mart,  
22 this and that. And I came to that meeting, but I knew  
23 I wasn't going to help them because they wanted one or  
24 two of my lots so they could remove that five acres  
25 and, then, you know, it would be total commercial.



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2 But then, you know, ten years into it they  
3 finally got their way. And like everyone is saying,  
4 you know, they're living with it. I lived on Sachem  
5 Trial. I lived there for two years. I just, you  
6 know, I moved -- not really because of that. I just  
7 moved.

8 I feel sad for my past customers, but they  
9 know that I tried. So, I mean, and like everyone is  
10 saying, Wal-Mart, they were told what they could do  
11 and they did it. I don't know why they keep trying,  
12 you know, to change the rules that were set. It's  
13 only going to benefit them.

14 They have already hurt the community, and  
15 now they just want to hurt it more. And I think the  
16 town, we should just say, "no." Simple as that, "no."  
17 Thank you.

18 MR. SANTORO: Anybody else? This is the  
19 last chance.

20 MR. STELLING: Just a few minutes.

21 My name is Bill Stelling. I'm at 930  
22 Raccoon Run.

23 I just wanted to mention that if this gets  
24 approved, Eastview Mall is going to come right in and  
25 do the same thing. So there you have it. Thank you.



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1 P U B L I C H E A R I N G

2 MR. SANTORO: Last chance.

3 MR. SHENKEL: Scott Shenkel, 7189 Brent  
4 Knoll.

5 One thing that nobody has mentioned about  
6 that goes along with the family orientation of the  
7 area, is if you have bars or restaurants that are open  
8 to 2 a.m., you're certainly going to have more drunk  
9 drivers. And I think that's not something that goes  
10 with the family environment. So I think that should  
11 be taken into consideration as well. It's not a  
12 college town.

13 MR. SANTORO: Thank you. Okay. Thank you  
14 all.

15 As I said, the public comment period  
16 remains open until July 2nd. Benderson is going to  
17 respond to the issues you've raised in writing and  
18 that will be a part of the record and be available to  
19 everybody to look at.

20 I guess on this one we are going to close  
21 the public hearing, but the comment period stays open  
22 to July 2nd. Motion?

23 (The motion was so moved.)

24 MS. EVANS: So the next step is to await  
25 the public comment period to close. So all comments



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## P U B L I C   H E A R I N G

1  
2 are welcomed and directed to be submitted to the  
3 Planning and Building Department. You can email them  
4 through [planning@town-victor-ny.us](mailto:planning@town-victor-ny.us), or hand deliver  
5 them to our department, or you're certainly welcome to  
6 mail them in.

7           After the public comment period closes,  
8 the applicant is provided a copy of all comments  
9 received, and then we await the applicant's written  
10 response. At that time the Board receives that  
11 response and they review it and decide -- basically  
12 review the material that comes in and work towards  
13 generating the final -- final Supplemental  
14 Environmental Impact Statement.

15           So the next step you'll see from the town,  
16 it could be -- I really can't give you a time frame of  
17 when that Final Environmental Impact Statement will be  
18 prepared -- however, we do have an email distribution  
19 list for this project. So if you'd like to be on  
20 that, we'll notify you if we get additional  
21 information or if this will be on a future agenda.  
22 Please email the Planning Department or give us a call  
23 and we're more than happy to add you on there.

24                           (TIME: 9:00 p.m.)

25                           \*           \*           \*



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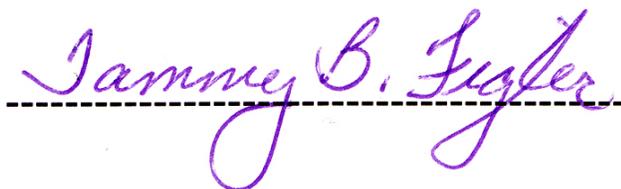
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C E R T I F I C A T I O N  
STATE OF NEW YORK:  
COUNTY OF ONTARIO:

I, TAMMY B. FIGLER, do hereby certify that I reported in machine shorthand the above-styled cause; and that the foregoing pages were produced by computer-aided transcription (CAT) under my personal supervision and constitute a true and accurate record of the testimony in this proceeding;

I further certify that I am not an attorney or counsel of any parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action;

WITNESS my hand in the City of Farmington, County of Ontario, State of New York.



TAMMY B. FIGLER

Freelance Court Reporter and

Notary Public No. 01FI4573724

in and for Ontario County, New York



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