

1 STATE OF NEW YORK COUNTY OF RENSSELAER

2 TOWN OF SCHODACK

3 *****

4 ZONING BOARD OF APPEALS

5 *****

6 THE STENOGRAPHIC MINUTES by NANCY L. STRANG, a

7 Shorthand Reporter of the above entitled matter

8 which was broadcast via the Town's Website

9 commencing on July 12, 2021, 265 Schuurman Road

10 Castleton, New York at 7:13 P.M.

11

12 BOARD MEMBERS:

13 DAVID CALARCO, CHAIRMAN

14 EDWARD BREWER

15 ANTHONY MAIER

16 LOU SPADA

17

18

19 ALSO PRESENT:

20 CRAIG CRIST, ESQ., COUNSEL TO THE BOARD

21 NADINE FUDA, DIRECTOR, PLANNING & ZONING

22 MELISSA KNIGHTS, PLANNING & ZONING SECRETARY

23 JAMES MUSCATO, ESQ. YOUNG SOMMER, LLC

24 CHARLES PETER

25

1 CHAIRPERSON CALARCO: I like to call this
2 meeting of the Schodack Zoning Board of Appeals
3 to order please.

4 First thing is approval of minutes.

5 Gentlemen, you have a copy of some
6 minutes with corrections on them that I hope
7 you have looked over. If you don't have any
8 objections, I would suggest that we adopt
9 those minutes. There are a lot of little
10 clerical and grammatical errors and things
11 that are corrected.

12 MR. SPADA: (Raises hand.)

13 CHAIRPERSON CALARCO: Mr. Spada.

14 MR. BREWER: (Raises hand.)

15 CHAIRPERSON CALARCO: Seconded by Mr.
16 Brewer.

17 All in favor?

18 (Ayes were recited.)

19 Opposed.

20 (There were none opposed.)

21 All right, thank you.

22 Gentlemen, this is Greendale Solar
23 again from the last meeting. As you
24 remember, we adjourned this to tonight's
25 meeting to take care of some inquiry and

1 legal stuff, as to the timely manner in
2 which the application was filed.

3 So, Mr. Clark, we are in receipt of
4 your letter -

5 MR. CRIST: It's actually James Muscato.
6 He is from a law firm.

7 CHAIRPERSON CALARCO: Yes, I'm sorry. Mr.
8 Muscato we are in receipt of the letter that
9 was sent on July 2nd to the Board. Would you
10 like an opportunity to just address that issue?

11 MR. MUSCATO: I don't think I need to.

12 MS. FUDA: Well, you have to have it on
13 record.

14 MR. MUSCATO: Good evening everybody.
15 Again, my name is Jim Muscato and I from the
16 law firm of Young Sommer. Actually, this
17 initially was my application and Mr. Clark is
18 in my office and appeared at the last meeting.
19 I was not able to join. At this month's meeting
20 Mr. Clark wasn't able to join. I live actually
21 right here in Schodack along with the
22 principles for Eden Renewables. I have been in
23 front of the Planning Board and the Town Board
24 many times. Fortunately, or unfortunately I
25 haven't had the occasion to be in front of the

1 ZBA, but I appreciate meeting and taking the
2 time tonight. I don't have anything further
3 with respect to the time frames. I would
4 respectfully request the opportunity to make a
5 presentation on the application, very briefly.
6 At this point chairperson, I would ask if you
7 have any questions about the timeframe or if we
8 are beyond that issue, I would like to move on.
9 We can stop here first.

10 CHAIRPERSON CALARCO: This is exactly what
11 we were concurring with at the adjournment of
12 the application at the last meeting because we
13 needed to find some sort of definitive proof as
14 to the fact of whether that provision of
15 general construction law did apply. Nobody had
16 any answers and Mr. Clark didn't have an answer
17 for us. He thought it did but he had nothing to
18 back that up. We appreciate you actually
19 putting it down for us and actually giving us a
20 reference point for that.

21 MR. MUSCATO: So, has that issue been
22 resolved at this point? Does the ZBA consider
23 this application to be timely?

24 CHAIRPERSON CALARCO: I believe that your
25 application did come in a timely manner. It was

1 on the very last possible day, but it made it.
2 It is legal. So, we are in concurrence I
3 believe gentlemen that we are going to hear
4 this appeal.

5 Mr. Spada, did you have something to
6 apply to that?

7 MR. SPADA: No, I just have a question.

8 CHAIRPERSON CALARCO: Okay, well let me
9 start this off and then you can get into your
10 question.

11 So, Mr. Muscato, just for the sake of
12 understanding - I guess I want to go to the
13 demeanor of some of us on the Board here.
14 So, this application came in on May 17th -

15 MS. KNIGHTS: You have to read the notice.

16 MS. FUDA: When you were ready to open the
17 public hearing, I did not read it last time.
18 Melissa said on the minutes.

19 CHAIRPERSON CALARCO: Actually, right, we
20 never actually got to the public hearing and I
21 will make you do that in a second.

22 MS. FUDA: And I just have to find it.

23 CHAIRPERSON CALARCO: I want to get to
24 this point first.

25 The May 17th the application came into

1 the ZBA. On May 17th that night the
2 applicant went before the Planning Board for
3 what I believe was further site plan
4 refinement. The applicant then went before
5 the Town Board on May 27th to get a final PD
6 creation of a PD zone using a site plan that
7 was on file with the Planning Board. It has
8 a number. That site plan contained the
9 200-foot setbacks as required in the utility
10 solar law.

11 The first thing is - as you know, in
12 267(a)(6) of New York State Town Law --
13 that's the part that says stay upon appeal.

14 An appeal shall stay - that's to this
15 Board - an appeal shall stay all proceedings
16 in furtherance of the action appealed from.

17 I guess my first question is: Why did
18 the applicant not honor the stay that is
19 required by law when you make an appeal
20 before a ZBA?

21 MR. MUSCATO: Chairperson, with all due
22 respect, I don't know what you're talking
23 about. The Planning Board and the Town Board
24 are fully authorized either pursuant to a stay
25 or otherwise to proceed on an application that

1 is in front of them. That's not in front of
2 this body. I am not certain why you are asking
3 the applicant. Ask the Planning Board. Ask the
4 Town Board. I am sure they would be able to
5 answer the question.

6 CHAIRPERSON CALARCO: You and I have a
7 very different interpretation of that law. The
8 case law that -

9 MR. MUSCATO: We are back to
10 interpretation of laws again and we just had a
11 whole discussion about the construction law and
12 the timeliness of this application. So, I'm
13 really hoping we are not going to talk about
14 the interpretation of a stay provision. That's
15 not even applicable to this body.

16 CHAIRPERSON CALARCO: You're trying to
17 tell me that when you make an application for
18 an appeal which is what this is - an appeal to
19 a Zoning Board of Appeals in the State of New
20 York, that it doesn't automatically stay -- do
21 you want me to read it to you again?

22 MR. MUSCATO: What's the difference?

23 CHAIRPERSON CALARCO: All proceedings in
24 furtherance of the action appealed from.

25 The action would be your application

1 before the Town Board for a PD to -- I'm
2 just saying that is the same action. You
3 would agree that even if a lawsuit was
4 involved here, that the lawsuit would be put
5 on hold until the appeal before a Zoning
6 Board of Appeals is heard and a decision is
7 made.

8 MR. MUSCATO: No, I don't agree with that.

9 CHAIRPERSON CALARCO: Okay.

10 MR. MUSCATO: But regardless of whether I
11 agree with that or not, how does it affect this
12 Board?

13 CHAIRPERSON CALARCO: Okay, that would be
14 my question. How would it affect this Board?
15 Our feeling among some of the Members and
16 myself is that what we are doing here tonight
17 in making an interpretation of the Code
18 Enforcement Officers determination is possibly
19 a moot point and that you have received final
20 approval by the Town Board for a PD and during
21 that approval process before the Town Board you
22 never once mentioned anything about the Code
23 Enforcement Officer's decision, the 200-foot
24 setback being contested -- there is no mention
25 of that -- in other words, in full acceptance

1 on your part of the creation of a PD 2 zone
2 with the boundaries and with the site plan that
3 is on file with the Planning Board. I guess
4 we're just concerned. We are wondering how this
5 is not a moot issue at this point.

6 MR. MUSCATO: That's a very good question,
7 Mr. Chairman. I apologize. If I misunderstood
8 that's where you were going with the stay
9 question, I would have answered it on the
10 onset.

11 CHAIRPERSON CALARCO: That's okay.

12 MR. MUSCATO: I appeared in front of the
13 Town Board. So, I'm very familiar with what was
14 said at that meeting. We recognized at that
15 meeting that even with the introduction of the
16 PD law that we were not at the end of the
17 review process for this project. In fact, there
18 were three things at that point that still had
19 to be done. The Town of Kinderhook had to issue
20 site plan approval which it has subsequently
21 done. The Town Blanning Board of Schodack had
22 to issue site plan approval, which it is
23 waiting for this Board to act before the
24 Planning Board is going to act on the site plan
25 approval. So, the two months of delay - now,

1 the three months of delay at this Board have
2 resulted in additional delays at the Planning
3 Board.

4 The fourth thing is: You had asked
5 about whether or not -

6 MR. CRIST: The first was the Town of
7 Kinderhook site plan, the second was the Town
8 of Schodack Planning Board site plan?

9 MR. MUSCATO: So, I am identifying the
10 actions that I mentioned to the Town Board.

11 MR. CRIST: What was the third thing?

12 MR. MUSCATO: The town of Kinderhook site
13 plan approval, the Town of Schodack site plan
14 approval and the Town Board's PD and ZBA
15 interpretation of the Building Code. I'm sorry,
16 not on the Building Code - the interpretation.

17 CHAIRPERSON CALARCO: Of the Town Code
18 enforcement.

19 MR. MUSCATO: Right, the Zoning Code.

20 MR. CRIST: The third one was Town Board,
21 Town of Kinderhook -

22 MR. MUSCATO: The PD, correct. So, at that
23 time when I appeared in front of the Town Board
24 - and you ultimately were going to the stay,
25 but keep that aside for now. To answer your

1 question about the site plan - ultimately, if
2 the Zoning Board agrees with the
3 interpretation, the 100-foot limitation imposes
4 a significant constraint on the project.

5 CHAIRPERSON CALARCO: 200 foot.

6 MR. MUSCATO: The 100-foot difference
7 between the applicable and what we would argue
8 is a not applicable setback. That constraint -
9 the difference between those two eliminates a
10 significant portion of the acreage that would
11 be available to the project. It would provide
12 for further flexibility in the layout and the
13 other portions of the project site. It also
14 eliminates some of the features with green
15 space and some other things that the applicant
16 has proposed included in this project proposal.
17 So, it's a long way of saying that if the Board
18 issues an interpretation that is favorable to
19 the applicant's interpretation, at that point
20 we still have to go back to the Planning Board.
21 As you noted, the Planning Board has indicated
22 that they are staying their proceedings until
23 the interpretation and at that point we would
24 have the option of amending our site plan and
25 revising it to show it consistent with your

1 interpretation of the 100-foot setback as
2 compared to the 200-foot setback.

3 CHAIRPERSON CALARCO: Would you not also
4 agree, though, that you would have to vacate
5 the PD approval by the Town Board and go
6 through that whole process all over again? It
7 would require another public hearing because
8 what they adopted clearly says in the
9 resolution - adopts the amendment of the zoning
10 map related to a portion of the tax map parcel
11 number from a PD 1 to a PD 2, plan development,
12 in accordance with the Planning Board's site
13 plan file to Greendale Solar which again that
14 has 200-foot setbacks. For the proceeding to be
15 legal, would they not have to hold another
16 public hearing? The public hearing they had was
17 for that. If you are now going to amend it to a
18 100 foot or something else, or you would at
19 least like to pursue that? That process would
20 have to be done all over, correct.

21 MR. MUSCATO: No, and this is actually
22 probably some of the confusion with respect to
23 the interpretation. A PD is a district.

24 CHAIRPERSON CALARCO: We know the law
25 about PD's. You don't have to go through those,

1 Mr. Muscato. Let's not waste a lot of time
2 doing that. We're very aware of the PD -

3 MR. MUSCATO: I am not convinced that the
4 Board is fully aware of this because if you
5 were, you would not have asked the question.
6 The district doesn't change. The parcel - the
7 outstanding boundary of the parcel for the PD
8 district that is shown on the map that was
9 included as part of the Town Board submission
10 to the County Planning Board and ultimately
11 will be filed with DOS and ultimately included
12 in the Town's official zoning map - it has a
13 boundary that goes beyond the 100 feet, the 200
14 feet and the setback. So, when you created a
15 district, you are creating it as the parcel
16 boundaries and not a layout. It's not specific
17 to the layout of the project.

18 CHAIRPERSON CALARCO: I'm not even arguing
19 that. What I am arguing is that when you start
20 changing parameters in a proposed development
21 that got an approval - when you start doing
22 that, it's changed from what the public hearing
23 was held on. I'm going to tell you that I
24 believe the Town Board would be required to
25 re-hold that public hearing and go through that

1 PD process for the new site plan that would
2 then be proposed.

3 MR. MUSCATO: We will take that under
4 advisement.

5 CHAIRPERSON CALARCO: So, I guess my
6 question would be: Suppose for just a second
7 this Board tonight were to disagree with the
8 Code Enforcement Officer and agree with you and
9 your assumption here, how would that affect
10 this project?

11 MR. MUSCATO: So, at that point we have a
12 Planning Board meeting that is coming up in a
13 few weeks. I am not certain we would have the
14 time before that Planning Board meeting to
15 address a favorable interpretation, but we
16 would try to submit - to make a decision with
17 respect to whether we're going to amend the
18 site plan and seek approval consistent with the
19 interpretation granted by the Board, or whether
20 or not we would need to proceed in some other
21 manner just because of the time.

22 Time is of the essence with respect to
23 these projects. There is a block grant and
24 NYSERDA incentives that is dwindling as time
25 goes on and in fact I believe now that the

1 NYSERDA block grant has expired. The
2 opportunity for this project may have
3 expired.

4 In any event, an order to proceed in
5 front of the Planning Board at that point we
6 would need to decide the difference - the
7 flexibility affords the project an
8 opportunity or whether or not we need to
9 proceed as stated already at the Planning
10 Board.

11 CHAIRPERSON CALARCO: So, what you're
12 really telling me though is that there really
13 is a possibility that this would have zero
14 effect on this application. It may not change a
15 thing, correct?

16 MR. MUSCATO: Zoning interpretations are
17 often times academic. It's one of the things
18 that you will often see consistency or just
19 applicable interpretations to projects that
20 don't fit within the ordinary zoning
21 considerations. We've asked for these types of
22 interpretations from Code Enforcement Officers
23 all the time. There's nothing unusual about
24 that.

25 CHAIRPERSON CALARCO: And I would agree

1 with that except for the fact that we have here
2 a project that went forward and got an approval
3 of a PD district and again, you and I disagree
4 on the stay part. I don't think we're going to
5 agree on that tonight. I believe that this
6 application is -- like all applicants that come
7 before the ZBA, they are required to stay the
8 process. That meant you don't do anything.
9 That's why you didn't go before the Planning
10 Board in the month of June because we presented
11 the fact that a stay is a stay.

12 MR. MUSCATO: But that's my point, Mr.
13 Chairman. Just so we are clear, again, the
14 Planning Board's application - we have a site
15 plan pending.

16 CHAIRPERSON CALARCO: Pending final
17 approval but that won't change, you said.

18 MR. MUSCATO: Well, it may change but it
19 won't be final. The Planning Board is not going
20 to act until the ZBA acts.

21 With respect to the Town Board, this
22 was the creation of a district and that is
23 not specific site plan approval. That's not
24 the arrangement, the layout. The approval
25 that you get from the Town Board doesn't

1 identify the specific location of project
2 components. That's not the point of doing an
3 established PD law for a project. That's why
4 we would not have to go back to the Town
5 Board. Just so you know -- again, I don't
6 think it makes any difference as to the
7 interpretation tonight.

8 CHAIRPERSON CALARCO: I think you're
9 right. I think it is academic between us.

10 Alright gentlemen, I'm going to say
11 that we should probably just continue on,
12 here with the appeal and take it from there.
13 I just wanted to put on the record that
14 there are some of us here that don't believe
15 that the requirement under the law of
16 staying the process was honored. I did want
17 to put on the record because we think it's
18 something that should have been honored. At
19 least, I feel that way. I have talked to a
20 couple of other Members in the past couple
21 of weeks and I think there is a consensus
22 here that rather than going for a final
23 approval for a PD, everything about this
24 project should have stayed until we made our
25 determination. That said, why don't you make

1 your presentation for the actual Code
2 Enforcement Officer's interpretation
3 determination, I should say, and we will go
4 on from there.

5 Let her read the notice.

6 MS. FUDA: Please take notice the Zoning
7 Board of Appeals will conduct a public hearing
8 on Monday, June 14th - which was postponed to
9 July 12th - on the following Greendale Solar
10 proposed appeal of the Building Inspector's
11 determination for solar setback location,
12 County Route 32 zoned PD 1. The file is
13 available for review by emailing - back then it
14 was emailing nadine.fuda@schodack.org, or mail
15 your comments to Town of Schodack's zoning
16 office at 265 Sherman Road, Castleton, New
17 York. Please check the meeting agenda posted on
18 the Town website at www.schodack.org for
19 information on the virtual meeting.

20 CHAIRPERSON CALARCO: And I will have you
21 read that phone number again when we get to the
22 actual -

23 MS. FUDA: I don't have a phone number -

24 CHAIRPERSON CALARCO: Well, when we get to
25 the actual time for public commenting, in case

1 someone would like to call in.

2 It's all yours.

3 MR. MUSCATO: It's obvious that the Board
4 is very familiar with this application based on
5 the questions and the discussions that we have
6 had. So, I'm going to be very brief and in fact
7 to the extent that the Board has questions, for
8 the most part our written submission speaks for
9 itself. I'm not going to add to the written
10 submission, but what I would like to do is just
11 highlight a couple of points to clarify what
12 the primary purpose of this interpretation is.

13 Eden Renewables has developed - I think
14 this will be their fifth solar project in
15 the Town of Schodack. They are developing
16 other projects around the capital region.
17 Because solar projects need to be located in
18 close proximity to their interconnect
19 locations, it's very common for the solar
20 projects to about or adjoin the transmission
21 line either easement or right-of-way that is
22 typically owned by the utility. In fact, I
23 think for the Oakdale or Oak Hill - the
24 project further south on Brookview or -

25 MS. FUDA: Cedar Hill.

1 MR. MUSCATO: Cedar Hill - that's what I
2 was thinking of. As well as the project on the
3 principal's home residential property, all
4 three of those locations have transmission
5 lines that directly abut the solar projects. In
6 the past, we have proceeded with a 100-foot
7 setback at those locations and partly because
8 through the PD process under the Zoning Code
9 the Town Board has the authority when a use is
10 required to obtain a PD district - a planned
11 development district - the Town Board can
12 establish standards and conditions that it sees
13 fit and appropriate for that type of use.

14 There is a recognition in the Zoning
15 Code that for PDs there should be
16 flexibility around the use. So, in that
17 regard, if this instance came up, you can
18 see the site plan makes this very obvious.

19 The issue with this project is very
20 simple. The yellow highlight is the
21 transmission line so the setback difference
22 would be the difference of 200 feet or 100
23 feet from this location and the back portion
24 of the solar project. This is County Route
25 32 and 9 is over here (Indicating). The

1 project at this point has proceeded
2 favorably at both the Town of Schodack to
3 the point it has proceeded as well as the
4 Town of Kinderhook. The Town of Kinderhook
5 didn't have any special conditions
6 associated with their approval. We are not
7 anticipating anything unusual with the Town
8 Planning Board. So, at this point the
9 limitation with respect to the project was
10 this again that corridor that was going to
11 be established from National Grid's
12 right-of-way. In this instance, the Zoning
13 Code establishes setbacks in order to keep
14 panel arrays away from adjoining landowners
15 and residential properties. That's the
16 reason that set acts are in the Zoning
17 Codes.

18 In this instance, it is unique because
19 there are no residences adjoining that
20 location. What is adjoining the location is
21 a transmission corridor. A transmission
22 corridor that is ultimately going to serve
23 as the interconnect for the project to the
24 grid. So, it's very unusual to apply a
25 residential setback to a transmission

1 easement when National Grid doesn't care. It
2 doesn't affect their rights - whether it's
3 100 feet away or 200 feet away. So, in this
4 instance we requested clarification and
5 interpretation from the Code Enforcement
6 Officer. The Code Enforcement Officer who
7 was a different Code Enforcement Officer
8 from the first projects reviewed - reached
9 out and the interpretation was different
10 than what we expected. He interpreted that
11 the Zoning Code - the solar provisions in
12 the Solar Code trumped anything that the
13 Town could do under the PD regulations.

14 CHAIRPERSON CALARCO: Did he say why he
15 thought that.

16 MR. MUSCATO: Because there was a
17 provision in the Solar Code that talks about
18 inconsistencies with other provisions in the
19 Zoning Code. What we think was misunderstood is
20 the PD law - the law itself and the Zoning Code
21 has a provision. In fact, you know what? I will
22 read it. I think it's very important for the
23 Board to understand. This procedure, meeting
24 the procedure for obtaining a PD from the Town
25 Board -

1 CHAIRPERSON CALARCO: Where are you
2 reading from?

3 MR. MUSCATO: I'm sorry. 219-90a. This is
4 under the Zoning Code plans development
5 section. It is 219-90a. This is the purpose of
6 the PD district.

7 This procedure - again, the PD
8 procedure - recognizes that while the
9 standard zoning function use and bulk
10 meaning an area setback like the one we are
11 talking about here, and the subdivision
12 function which is irrelevant here are
13 appropriate for the regulations of land use
14 and areas substantially developed. These
15 controls represent a type of regulatory
16 rigidity and uniformity which may be
17 inimical to the techniques of land
18 development contained in the PD concept.

19 That language that I just read to
20 reflecting on the PD - the uniqueness of the
21 uses that are required to obtain PD approval
22 and the authority of the Town Board to
23 deviate standards bulk and use on what would
24 otherwise be allowable under the Zoning
25 Code. That's the summary - the crux of the

1 argument interpretation that is in front of
2 the ZBA.

3 I just want to mention one last thing.
4 Pragmatically, if the Board were to take an
5 interpretation consistent with what the
6 Zoning Officer has already determined,
7 essentially what the ZBA would be saying was
8 that the Town Board cannot deviate setbacks
9 that are established on anything. Forget
10 solar; on Amazon or whatever it might be
11 with respect to planned development
12 Districts - if there's a setback in the
13 Zoning Code that's different than what the
14 Town Board determines is appropriate in the
15 PD, the setback in the Zoning Law will
16 control. That's just inconsistent with the
17 way that provision of the PD law has been
18 applied to date in the Town.

19 CHAIRPERSON CALARCO: I would agree with
20 you on that case except for the fact that I
21 don't think you can find anywhere else in the
22 entire Schodack Zoning Code a paragraph
23 qualifier like is in the Utility Solar Law.
24 Purpose and intent - paragraphs 1 and 2 of the
25 Utility Solar Law which were put in there by

1 the Zoning Committee that drafted - created
2 this law, presented to the Town Board which
3 adopted it. You will not find anywhere else in
4 the Code of the Town of Schodack a qualifier
5 paragraph that basically says if there's
6 anything else in this Code that conflicts or is
7 not in agreement with this section, this
8 section takes charge. The reason I say that Mr.
9 Muscato, is myself and Mrs. Fuda and past
10 Member Paul Puccio, who is deceased, were the
11 three representatives on the Zoning Committee.
12 We drafted that law; I, myself, Mrs. Fuda and
13 Mr. Puccio - with the help of our engineer
14 facilitator and an attorney that helped us. So,
15 when we drafted this law, we purposely put that
16 in there because we understood that the PD
17 process was open-ended for the Town Board. We
18 saw inherent problems with that. Not
19 necessarily with the current Town Board that
20 adopted this law, but 10 or 20 years down the
21 line we saw unbelievable problems that could
22 result from the Town Board being lobbied by
23 applicants to erode the protections we had put
24 in the Utility Solar Law - not just setbacks,
25 height requirements of the solar panels,

1 requirements for the height of the fence or the
2 requirements for a lesser bond amount. They
3 could ask for anything under the PD process
4 according to you, which would normally take
5 place, but again, I challenge you to find
6 anywhere else in the Schodack Zoning Code where
7 there is a qualifier that says this section
8 shall take precedence, which is basically what
9 that says in paragraph 2 under purpose and
10 intent, unless you read it differently than I
11 do.

12 MR. MUSCATO: I do, Mr. Chairman.
13 Admittedly, I will take your word for the
14 statement that you made that you will find no
15 other provision anywhere in the Zoning Code
16 with regard to the precedents that you are
17 reading from. I don't have every provision of
18 the Code memorized. To the extent that the
19 Board wants to consider and looking at other
20 commercial development that's taking place in
21 this Town and look at whether or not those
22 approvals apply standards that were consistent
23 with commercial development standards for that
24 district, or whether to apply the PD standard
25 that was established by the Town - in my view

1 that would take precedence over what you're
2 saying - the interpretation that you're taking.
3 Regardless, the reason I don't agree with you
4 is because 2 also specifically says:

5 In all instances not specifically
6 addressed in this section or in the PD of
7 this chapter, this chapter shall apply.
8 This is something that specifically is
9 addressed as part of the PD bulk standards.

10 Again, to read this section - that one
11 sentence as saying the only thing that is
12 intended to require - you said it yourself,
13 of all the uses allowed in the Town of
14 Schodack, solar was so special that it was
15 going to be treated to an interpretation of
16 this Code in such a way that only the
17 standards in the solar section apply and not
18 any PD or not anything else - despite the
19 language at the end of that section that
20 says this section and chapter 12, which is
21 the PD section applied, then you are
22 correct. There is no other interpretation.
23 But the problem is that's not the case. It
24 believes reality that this was the one use
25 that they singled out or that you folks

1 serving on that committee singled out,
2 particularly where it says we contemplate
3 the standards in this section as well as
4 what could be done in 12.

5 CHAIRPERSON CALARCO: But that doesn't
6 make any sense, Mr. Muscato. If we wanted this
7 to be an open-ended PD zone where the Town
8 Board set the standards, why would we have gone
9 through the trouble of putting in any standards
10 in the law? Why would we have set 200-foot
11 setbacks? Let's let the Town Board decide that
12 in the PD process. Why would we have given
13 height standards for the solar panels? Why
14 would we have gone so far as to say you need an
15 8-foot fence and not a 6-foot fence?

16 MR. MUSCATO: The very question that
17 you're asking is a great question. The problem
18 is it's not the question in front of the Board
19 right now. The question in front of the Board
20 is a specific interpretation that is not
21 inconsistent with the text of the Code. The
22 question you are asking that should be posed to
23 the Town Board is about why this Town Board has
24 such unfettered jurisdiction and discretion to
25 be able to make whatever decisions it wants to

1 make in PD zones. That's a very good question
2 but the only answer - and again of course I'm
3 not speaking on behalf of the Town Board - the
4 answer I can provide would be because the Town
5 Board as a legislative body has functions that
6 are beyond the Zoning Board of Appeals or the
7 Planning Board that the legislative body at the
8 Town Board can dictate specific standards in
9 situations like this. We are not talking about
10 a variance. We're not talking about a
11 commercial or residential property where the
12 standard is always X and we want to apply Y.
13 We're talking about a unique use that is
14 consistent with the purposes of the planned
15 development where we have a strip of land which
16 admittedly would be an orphan strip that serves
17 no environmental or other purpose other than
18 the interest that your stating which is we
19 believe the section was meant to be interpreted
20 this way. As compared to looking at actual
21 situations there, applying the facts in the law
22 and agreeing that, it is a reasonable
23 interpretation of the purpose of the planned
24 development to allow this Town Board in these
25 circumstances where you have some unique

1 situation like an easement to a right-of-way to
2 apply a different standard, but an appropriate
3 standard for the circumstances.

4 CHAIRPERSON CALARCO: And I don't disagree
5 with you except for the fact that when we wrote
6 this law those two paragraphs were put in
7 specifically to prevent that. I understand as a
8 Member of the Board, for me to say this - I can
9 see where there might even be a little doubt on
10 your part about the intent and I will address
11 that in a second. Specifically, our Member who
12 is deceased, Mr. Puccio, being a Planning Board
13 Member, he was extremely concerned that the
14 future Town Boards were going to be lobbied and
15 they were going to start to whittle away at the
16 safeguards of this law such as setbacks and not
17 even in this particular case, but in the case
18 of like where it was near a neighbor's property
19 where it was residential or farmer that used
20 his agricultural fields or whatever. He was
21 afraid it was going to be lobbied to whittle
22 away those safeguards for public health, safety
23 and welfare as well as things like the fence
24 and the heights and even the bonding that we
25 talked about quite a bit in formulating this

1 law because we were worried about these things
2 being abandoned and not having enough of a bond
3 available in the future to tear them down and
4 reclaim the land etcetera, etcetera. So, that's
5 why we came up with this particular thing that
6 we put in there. I just want to read Section 1,
7 which I think is also important. It talks about
8 the purpose of the regulation and balancing the
9 unique characteristics of each site.

10 In addition to the following
11 regulations of this section which implies
12 that those regulations apply - it implies
13 that they apply to this. The following
14 regulations of this section all utilities,
15 solar, collector systems shall comply with
16 the regulations for planned developments and
17 the resulting PD 2 regulations found in
18 Article 12 which is what you quoted and
19 referred to. However, I don't know if you
20 had a chance to look at Section 219-37 of
21 the Town Code - plan development districts.

22 In paragraph C where it says except for
23 otherwise indicated and I would say to you
24 this Solar Law is otherwise indicated,
25 minimum lot size or frontage maximum height,

1 yard requirements, maximum percent of lot
2 coverage are not specified herein. In
3 reviewing any site plan for PD 1 districts
4 the Planning Board shall be guided by
5 standards set elsewhere in this chapter for
6 the comparable uses and by good planning
7 practice in the end that the resulting
8 development shall be compatible with the
9 surrounding -- so, elsewhere in the chapter
10 meaning Chapter 219 - elsewhere utility
11 solar. It says specifically here and we can
12 argue about the semantics, but it simply
13 says that this shall take precedence.

14 MR. MUSCATO: Well, it doesn't. In fact
15 what it says is that the standards in the PD -
16 the provisions - the process set forth in the
17 PD shall apply, which leads me to the obvious
18 question that if the Planning Commission that
19 enacted or drafted this law was concerned about
20 the Town Board's use of the PD, then why didn't
21 that Commission recommend that this use - solar
22 - not be subject to the PD?

23 CHAIRPERSON CALARCO: Well, then how would
24 we cite utility solar's -

25 MR. MUSCATO: You could have a provision

1 of the law like you have for other -- leave it
2 or not, most Towns do not do zoning this way.
3 PDs are a unique standpoint that the Town of
4 Schodack allows for pretty much any use. What
5 you would have is with your bulk restrictions
6 table - you would have your zoning districts. I
7 live in the AR 1. This property - I apologize,
8 but I don't know what zoning district it is.

9 CHAIRPERSON CALARCO: It's RA.

10 MS. FUDA: It's not RA 1, it is RA or A40
11 or R20.

12 MR. MUSCATO: In the RA zone you have
13 permitted uses, or in the commercial zone you
14 have permitted uses. You can even allow
15 permitted uses - exceptions.

16 CHAIRPERSON CALARCO: You're absolutely
17 right -

18 MR. MUSCATO: I'm just answering your
19 question. That Commission was so concerned, as
20 you stated, that the biggest concern of the
21 commission was the Town Board deviating from
22 the standards and eroding those standards over
23 time - if that were the case, then the law
24 would not read that it takes into account the
25 standards in the PD in 12 as part of the

1 allowed regulations - it would not have had the
2 PD involved at all. Don't involve the Town
3 Board in the decision.

4 CHAIRPERSON CALARCO: Let me just tell you
5 why we did it this way. I live in the RA zone.
6 My property - if we did it the way you
7 suggested and we just put it as an allowable
8 use in a zoning district, my property is no
9 more compatible for a utility solar farm than
10 the property right here in Byer's Estates. So,
11 how could you allow - as an allowable use
12 anywhere in the RA zone - - there are
13 multitudes of properties that would never be
14 compatible for allowing this type of use. You
15 can't do it by zoning. It can't be done by
16 districts, period.

17 MR. MUSCATO: Mr. Chairman, that's by
18 definition what zoning does.

19 CHAIRPERSON CALARCO: But in this case
20 this is the conflict that most municipalities
21 run into. We can do it by zoning. If we said it
22 is allowed everywhere in the RA zone, there are
23 places right down the road in the RA zone that
24 you could never put - it's the density of homes
25 etcetera and it would make it impractical. So,

1 we could go through the Town and pick out
2 property, by property, by property to try and
3 say well, that looks like a good place to put
4 solar without knowing every bit of the
5 background of that parcel. That would be
6 challenged for spot zoning, I'm sure, anyway.
7 We can't do it by parcels. We can't do it by
8 zoning districts because that's not
9 appropriate. The only way to do it is to allow
10 the Town Board to approve the site in the PD
11 process. This is routinely done by multitudes
12 of municipalities for mining and now for solar
13 because these things are truly controversial
14 and the legislators of the Town -

15 MR. MUSCATO: With all due respect, not a
16 single person has showed up at any of the Town
17 Board or Planning Board or Zoning Board
18 meetings I have attended.

19 CHAIRPERSON CALARCO: It may be due to the
20 size of the solar project. Let me give you an
21 example. There are two solar projects in
22 Montgomery County. One is 1,000 acres and the
23 other is 800 acres. You don't think people
24 didn't object to those projects? They most
25 certainly did. It is a matter of record. So. my

1 point is: Something like this should be left to
2 the Legislators to decide as to where is a good
3 place for this to go?

4 MR. MUSCATO: And they did. The
5 legislators decided it.

6 CHAIRPERSON CALARCO: Listen to me. We
7 didn't want them to be burdened with the
8 possibility of being lobbied for things that
9 are really outside their purview. They don't
10 know about the requirements of the Code like
11 the Planning Board or even like this Board does
12 and they would be lobbied for things like
13 setbacks, heights and all those things I
14 mentioned, when we didn't want them to be
15 burdened with that and have to be concerned. We
16 wanted them to understand - you have to look at
17 where this is going and if you think this is a
18 good place to have a solar farm, so be it.
19 Then, that's your decision. You are the elected
20 people and if people don't agree with you, then
21 they have the right to take action at the polls
22 or whatever. The fact is there is no way a Town
23 can sit there and strictly regulate these
24 things strictly by zoning restricts. Zoning
25 districts are far too diverse, even though they

1 have the same classification. You just can't
2 say it's allowed everywhere in the RA zone and
3 go yes, okay that means if I have a 7-acre
4 property next to houses right alongside - that
5 I made a good choice for a utility solar farm.
6 That's why we use the PD process as a way to
7 site these things and where they go. You have
8 heard from a lot and what I would like to do at
9 this point - just so that we hear from
10 everyone's perspective - I would like you to
11 hear from Mrs. Fuda on her interpretation of
12 what we did when we adopted and why we did it
13 and I would like to have Mr. Crist ask some
14 questions pertaining to that, if you don't
15 mind.

16 MR. MUSCATO: I don't object to that at
17 this point, as long as we have an opportunity
18 to respond.

19 MR. CRIST: You can ask her questions, as
20 well.

21 MR. MUSCATO: At this point - I wasn't
22 prepared to ask Ms. Fuda questions tonight. I
23 didn't know that she was taking the stand.
24 There was no identification of witnesses that
25 were to be called by the ZBA prior to this, so

1 I would just respectfully request the
2 opportunity to ask questions and continue the
3 session. I don't anticipate that the ZBA is
4 going to be making a decision on this tonight,
5 correct?

6 CHAIRPERSON CALARCO: You don't have a
7 problem if he asked her questions, as well?

8 MR. SPADA: No, I have no problem with
9 that.

10 MR. MUSCATO: I presume that the ZBA was
11 not intending to make a decision on this
12 tonight.

13 CHAIRPERSON CALARCO: Gentlemen, this is
14 your decision as well. I think tonight - I
15 think let's wait and hear what's presented. It
16 is our job to discuss this, I understand, but I
17 don't know that tonight is necessarily -

18 MR. BREWER: I wonder how we get to
19 discussing the actual project as opposed to -

20 MR. MUSCATO: That's an excellent
21 question.

22 CHAIRPERSON CALARCO: Hold on a second.

23 MR. BREWER: I think as Board Members I
24 don't feel qualified to discuss what you guys
25 are discussing back-and-forth here too much. I

1 am concerned about the project going forward as
2 being something that's viable for that site.

3 CHAIRPERSON CALARCO: Well, we're not here
4 to discuss that.

5 MR. BREWER: That's what I'm saying. When
6 do we get to that point?

7 CHAIRPERSON CALARCO: We are not here to
8 discuss that, Mr. Brewer.

9 MR. CRIST: We are here to determine
10 whether or not the solar uses a good decision.

11 MR. MUSCATO: But that is a valid
12 question. That gets to something that the
13 Chairperson was repeatedly referring to about
14 the concerns for other people or adjacent
15 landowners or whatever it is. The setback is
16 being applied in this case very specifically to
17 this transmission easement. To answer your
18 question, the Planning Board. That's the
19 opportunity where there will be a broader
20 presentation or has been a broader presentation
21 of the project, its benefits, its environmental
22 impacts - all of that has been presented to the
23 Planning Board. Fortunately, or unfortunately,
24 the review here is limited just to this
25 interpretation of the Code.

1 CHAIRPERSON CALARCO: Now, Mr. Brewer
2 let's say we didn't decide in favor of the
3 applicant, here. He has the opportunity under
4 the law to actually go back and reapply for a
5 variance. At that point, he could come back to
6 this Board with a new application for a
7 variance of the 200-foot setback which we then
8 would consider those things you were talking
9 about for the project, itself. You do have that
10 right.

11 MR. MUSCATO: In a variance situation.

12 CHAIRPERSON CALARCO: Yes, you would. At
13 which point we would then take into
14 consideration the things that you were talking
15 about.

16 MR. MUSCATO: It is broader than just this
17 interpretation.

18 CHAIRPERSON CALARCO: Mr. Muscato, you
19 keep referring to this as an easement
20 right-of-way.

21 MR. MUSCATO: I'm sorry. National Grid
22 owns the land.

23 CHAIRPERSON CALARCO: It is a property
24 boundary.

25 MR. MUSCATO: Yes, the utility.

1 CHAIRPERSON CALARCO: And that's why we
2 think of it as a different situation.

3 MR. MUSCATO: That's a 115 KV line. That
4 width of that right-of-way is owned in fee -
5 they own the land for that line.

6 CHAIRPERSON CALARCO: A separate tax map.

7 MR. MUSCATO: Right, a separate tax map.

8 CHAIRPERSON CALARCO: It's a property
9 boundary.

10 MR. MUSCATO: It is but -

11 CHAIRPERSON CALARCO: It is next to a
12 utility - your property next to them is one
13 utility next to another utility.

14 MR. CRIST: Mr. Muscato, when you're
15 briefing to this Board, are you still asserting
16 that should be included as part of a setback,
17 or are you arguing exclusively that what we
18 have been discussing before - your assertion
19 that the Planning Board is not trumped by this
20 language that Mr. Calarco was reading?

21 MR. MUSCATO: If I understand what you
22 asked and if I misstated, please correct me.
23 You are saying are we essentially at this point
24 applying the 100-foot setback from the edge of
25 the National Grid land to 100 feet and the

1 panels would start -

2 CHAIRPERSON CALARCO: It's 200. The 100 -
3 just tell me where that comes from.

4 MR. MUSCATO: My understanding was that
5 the application had 100 feet.

6 CHAIRPERSON CALARCO: Originally.

7 MR. MUSCATO: Originally.

8 CHAIRPERSON CALARCO: In other words
9 instead of 200, they wanted to go as close as
10 100.

11 MR. MUSCATO: Correct.

12 CHAIRPERSON CALARCO: Okay I was wondering
13 where the 100 was coming from.

14 MR. MUSCATO: I apologize.

15 CHAIRPERSON CALARCO: I don't have any of
16 that information - just so you know.

17 MR. MUSCATO: The distance - I believe it
18 was in the application - not the application to
19 this Board, but the distance would be 200 feet
20 under the solar provisions of the Code and
21 under the PD, it would be 100. So, I think to
22 answer your question, it's not inclusive of the
23 National Grid land. It's 100 feet from the edge
24 of their land - or 200 feet. Because the 200
25 feet would also be measured from -

1 MS. FUDA: The property line.

2 CHAIRPERSON CALARCO: The 100 would be
3 measured the same way.

4 MR. MUSCATO: Correct.

5 MR. CRIST: Jim, I want to see what points
6 we have agreement on and what points we don't
7 have agreement on.

8 So, just putting aside the PD
9 legislation and so forth, is that your
10 client's position that the Building
11 Inspector's determination that the property
12 on the north side of the National Grid
13 easement should not be included as part of
14 the setback?

15 MR. MUSCATO: Yes, that's correct.

16 MR. CRIST: Okay.

17 MR. MAIER: Mr. Muscato, would you clarify
18 one thing? You're talking about the electric
19 easement being close - you refer to hooking up.
20 Correct me if I am wrong but I don't think you
21 can actually hook into that line. You would
22 have to hook into somewhere else.

23 MR. MUSCATO: Correct, and if I misstated
24 that earlier - the point of interconnection for
25 the facility is proposed at a location at 32

1 (Indicating). My point in referencing that was
2 simply that for the purposes of setbacks in the
3 application of the uses, oftentimes solar
4 projects are near utility corridors because
5 they are compatible for the uses.

6 MR. MAIER: Thank you for clarifying that.

7 CHAIRPERSON CALARCO: Lou, gentlemen, do
8 you have any other questions for Mr. Moscato?

9 (There was no response.)

10 I'm going to open it up to the hearing
11 portion.

12 MS. FUDA: Yes, if anyone out there would
13 like to make public comment, you can call in at
14 518-376-7875.

15 CHAIRPERSON CALARCO: While we are waiting
16 for that, I did want to read into the record
17 that this application was submitted to the
18 Rensselaer County Bureau of Economic
19 Development and planning and after carefully
20 reviewing information they determined that the
21 proposal does not have a major impact on county
22 plans and local consideration shall prevail.

23 There was a couple of comments
24 submitted with that when they returned that
25 to the Town. One was that although the

1 solar power plant electrical transmission
2 lines both have electricity in common,
3 electrical transmission right-of-ways can be
4 used for additional purposes as seen in the
5 Albany Hudson Electric Trail. That's the one
6 over on Miller Road. The Board should
7 examine whether the power corridor should
8 have other possible uses of similar nature
9 in the future. I think that is a good point.
10 I know I didn't think about that.

11 MR. MUSCATO: With respect to that
12 comment, none of the facilities components are
13 located in that corridor. This is all land that
14 is privately owned that the facility will be
15 located solely within.

16 CHAIRPERSON CALARCO: I think that comment
17 was made -

18 MS. FUDA: With regard to the setback.

19 MR. MUSCATO: Again, even in that
20 situation, they would have to have an agreement
21 from a private landowner. The difference with
22 the rail trails - you guys all know this, but
23 the rail trails were able to be used the way
24 they are because they didn't have to obtain
25 permission from each underlying landowner all

1 along the length of those lines. At some points
2 they have to make connections, but for the most
3 part they had existing easements with either
4 the trolley company or the telephone company or
5 whatever utility it was that maintained those
6 easements. That's what enabled that to happen.
7 The assumption in that comment - it's a little
8 different when you're talking about private
9 land ownership.

10 CHAIRPERSON CALARCO: Right, other than
11 National Grid.

12 So gentlemen, we will wait just a
13 couple more minutes to see if someone has
14 any public comment that they would like to
15 make.

16 Gentlemen, are there any other
17 questions from Mr. Muscato you would like to
18 ask concerning this?

19 So, Mr. Moscato, since it appears that
20 we are probably not going to render a
21 decision tonight, I think this Board wants
22 time to think about this as well. We will
23 keep this open - not the public hearing
24 portion, but we will adjourn this again
25 until the next meeting and what I will do

1 for your benefit is we will hold off on
2 having Ms. Fuda under oath.

3 MR. MUSCATO: With respect to that, I
4 would just as soon get that on the record
5 tonight. I don't want to delay this proceeding.
6 I would go so far as to say the Board can act.
7 I don't think there's any additional
8 information that's going to be provided by the
9 applicant. If you going to present information
10 from Ms. Fuda or otherwise, that's up to the
11 Board.

12 With respect to the interpretation and
13 just the interpretation issue, I think the
14 Board has all the information that it needs.
15 There is a detriment to the applicant with
16 continued delays at the ZBA.

17 MR. CRIST: We have 62 days to decide this
18 with a public hearing -

19 MR. MUSCATO: Understood, but in terms of
20 what I was going to say though is I'm not
21 saying the ZBA is delaying this. What I'm
22 saying is that because of the stay position
23 that you stressed earlier, it's my
24 understanding that the Planning Board is
25 interpreting that as not proceeding with the

1 review of this application pending this Board's
2 decision. So, again we would very much
3 encourage the Board to make a decision as soon
4 as possible and not delay this proceeding.

5 CHAIRPERSON CALARCO: Well gentlemen, I
6 don't know about you but I personally would
7 like to take more time just to think about
8 this. I know what my feelings are and I know
9 what my position is, but I'm just trying to be
10 fair to the applicant to maybe give myself a
11 little more time to think it over and dwell on
12 it. The problem we have though guys is that I
13 don't know that we're going to have a quorum
14 for next August's regular meeting.

15 I'm sorry, I thought you were in the
16 back observing, sir. Go ahead.

17 MR. PETER: My name is Charles Peter and I
18 own a family farm over on Brook Road - Peter's
19 Dairy Hillview Farms. I just wanted to speak
20 kind of in favor of what they're looking to do
21 here.

22 As you mentioned, farmers are in
23 consideration in the zoning plans of solar.
24 I think it was a good thing the Town did to
25 get ahead of it. A lot of towns have gotten

1 caught up on the wrong foot with the
2 understanding of mind that you're going to
3 have situations where the 200-foot setback
4 eats up a lot of land and if you are
5 concerned about farming operations, that
6 should be part of your consideration. This
7 plan maybe not so much, but what they are
8 asking to do - I don't think it's out of the
9 realm of possibility for consideration,
10 given the nature of the property and given
11 the nature of the surrounding areas. I
12 totally agree with you if somebody came in
13 and wanted to propose this up at Byer's
14 Estates, you would want that setback to
15 protect those residents.

16 By the way, this is also very stringent
17 and it would make that sort of project
18 totally impossible to pull off. This law is
19 written in a tight manner to limit the areas
20 that these projects can even be considered
21 in. That's the first thing that I want you
22 to consider.

23 When you talk about land, you talk
24 about land use and you mentioned farmers.
25 Two hundred feet eats up a lot of acreage

1 quick and that land is not usable to anybody
2 at that point. It's a different situation
3 with this property, but overall please take
4 that into consideration when these things
5 move forward.

6 I would really hope that the Board
7 considers moving on something tonight after
8 the last meeting where felt like this
9 applicant wrongly got delayed in getting
10 some resolution. The Town was wrong in their
11 interpretation. They were right. I would
12 hope that the Board works to get something
13 done tonight. Thank you.

14 CHAIRPERSON CALARCO: Thank you.

15 Gentlemen, if we don't have a quorum
16 for that August 9th meeting, then we're
17 delayed even further. I don't want to do
18 that. If we can help it. If I could poll
19 everybody -- could we have a special meeting
20 to discuss this on the following Monday
21 which is - what is that, August 16th? Yes,
22 August 16th. We could do an early 5 o'clock
23 meeting before the Planning Board meeting.

24 MS. FUDA: Well, you can have a meeting at
25 any point. You could have it on the 19th or the

1 26th.

2 MR. CRIST: I could do the 16th. August
3 19th is good for me, as well.

4 CHAIRPERSON CALARCO: It looks like we're
5 not going to have that quorum for August. Can
6 we right now commit to the 16th?

7 MR. BREWER: The applicant wants to have a
8 decision tonight. Are we going to vote on that
9 or are we not going to discuss -

10 MR. MUSCATO: From the procedural
11 standpoint -

12 MR. CRIST: No, procedurally we would have
13 to do a motion not to vote on it.

14 MR. MUSCATO: I understand, but you
15 procedurally did not have to proceed with a
16 public hearing on an interpretation. So, the
17 62-day timeframe that you mentioned - that's
18 voluntary. It doesn't have to be applied in
19 this case. The public hearing is voluntary in
20 this case. So, in terms of the decision, the
21 Board can act tonight.

22 CHAIRPERSON CALARCO: Of course we could
23 act tonight.

24 MR. CRIST: But we can agree that we don't
25 have to.

1 CHAIRPERSON CALARCO: That's correct.

2 MR. MUSCATO: I don't want to wait till
3 August 16th. The reality is that not only do I
4 have to wait, but I have to wait to whatever
5 the next regular scheduled meeting would be.

6 CHAIRPERSON CALARCO: Yes, but if I don't
7 have a quorum and I don't - it doesn't look
8 like we're going to have a quorum on the August
9 meeting. If I don't have that quorum, then it
10 would push it off to September. We are legally
11 within our right to do that - 62 days. I am
12 trying to accommodate you by getting -

13 MR. MUSCATO: Is it possible that the
14 Board can meet before August 9?

15 MS. FUDA: August 2nd is the next Planning
16 Board meeting after the 19th.

17 MR. MUSCATO: I know you're not going to
18 do this because I'm asking, but I would ask
19 that you keep in mind if we could have this
20 meeting with the ZBA before the Planning Board
21 meeting, it would allow us to have -

22 MR. CRIST: August 2nd, I can't. I have
23 another meeting then.

24 MR. MUSCATO: I'm not asking for August
25 2nd. I'm saying a date at the end of July so

1 that we can go to the Planning Board meeting
2 with our next steps and a decision - whatever
3 way is going to go with the ZBA.

4 CHAIRPERSON CALARCO: What about the 26th?

5 MR. MAIER: Is that okay with Nadine as
6 far as her getting her time and things ready?

7 MS. FUDA: It's not one of my normal
8 nights, so I can't determine that. There could
9 be court that night. If it's not one of my
10 normal Planning or ZBA Mondays, I can't tell
11 you if that day is open or not until I check
12 with the court. The court would be the one that
13 would possibly be in session. I don't know what
14 their court nights are. I know there are some
15 Mondays and some Wednesdays. So, it would have
16 to be a Planning Board night or ZBA night, just
17 like I had a Planning Board meeting tonight on
18 a ZBA night.

19 MR. CRIST: I will just tell you that the
20 next Planning Board night is -

21 MS. FUDA: The 19th.

22 CHAIRPERSON CALARCO: That's a week from
23 tonight.

24 MS. FUDA: And then there's August 2nd.

25 CHAIRPERSON CALARCO: I'm trying to think

1 of when people are available here.

2 MS. FUDA: Summers are tough because you
3 have vacations that are in there.

4 CHAIRPERSON CALARCO: Are those nights bad
5 for you?

6 MR. CRIST: What are the nights?

7 MS. FUDA: The 19th or the second.

8 MR. CRIST: The 19th or the second. The
9 19th is a week from today. I can't do a 5 PM
10 that night. I can do it at seven, but we have a
11 Planning Board.

12 MS. FUDA: Then, August 2nd. Again, it
13 would have to be at 5 o'clock. I don't know if
14 I have would have the room that night.

15 MR. CRIST: The court has the room on
16 those nights.

17 MS. FUDA: Yes, but it is constantly
18 changing, so I would have to check to see they
19 are not booked.

20 MR. MAIER: Nadine, how about the meeting
21 room up by your office upstairs?

22 MS. FUDA: It's got to be on the website.
23 It's got to be virtual. You are in this room.

24 MR. MAIER: Okay.

25 CHAIRPERSON CALARCO: That's what creates

1 the problem is the necessity of this room. At
2 this point we are down to the 26th, if it is
3 available.

4 MS. FUDA: If it is available, but I can't
5 commit to that tonight.

6 CHAIRPERSON CALARCO: I understand. If
7 it's available on 26th of July or it pushes us
8 to the 16th. Because I know the 9th is going to
9 be difficult in not having a quorum.

10 MR. CRIST: Can we say we can schedule
11 maybe tentatively the 26th if it's available if
12 we know tomorrow? If it's not, then the 19th of
13 August.

14 CHAIRPERSON CALARCO: Yes, if we can get
15 in on the 26th, we can try to do that. If the
16 room is not available.

17 MR. CRIST: We need a motion Dave, on
18 that.

19 CHAIRPERSON CALARCO: Okay, I make a
20 motion that we - before I do that, let me close
21 a public hearing.

22 So, no one is called in and Mr. Peter
23 has made his comments so at this point,
24 there is nothing further. I will close the
25 public hearing.

1 MS. FUDA: Who's got the motion.

2 CHAIRPERSON CALARCO: I'll make the
3 motion.

4 MR. SPADA: (Raises hand.)

5 CHAIRPERSON CALARCO: Mr. Spada, second.

6 All in favor?

7 (Ayes were recited.)

8 Opposed.

9 (There were none opposed.)

10 Okay, so with that action I will make
11 the motion that we try to have the special
12 meeting on Monday, July 26th, if the room is
13 available. That will be a 5 o'clock.

14 MR. CRIST: Do we have to do it at 5
15 o'clock? Can we just do it at the normal time -
16 at 7 o'clock?

17 MS. FUDA: That's up to you guys.

18 CHAIRPERSON CALARCO: Well, it would
19 depend on the room too, right?

20 MS. FUDA: It will depend on the room.

21 CHAIRPERSON CALARCO: Okay, let's say
22 seven o'clock. Then, at which point if that's
23 not available, then we will adjourn to August
24 16th which it will be at 5 o'clock on the 16th
25 it would be a 5 o'clock. That's Planning Board

1 night.

2 MR. MUSCATO: Sorry, what was the
3 alternative night?

4 CHAIRPERSON CALARCO: The 16th is the
5 alternative. So, we will try for the 26th and
6 if not, then we'll move it to the 16th. So,
7 that's a motion by me.

8 MS. FUDA: August 16th would be 5 o'clock.

9 CHAIRPERSON CALARCO: One is at 7 o'clock
10 and one is at 5 o'clock.

11 MS. FUDA: Right.

12 CHAIRPERSON CALARCO: Second on that
13 motion by anyone?

14 MR. MAIER: (Raises hand.)

15 CHAIRPERSON CALARCO: Mr. Maier.

16 All in favor?

17 (Ayes were recited.)

18 Opposed.

19 (There were none opposed.)

20 MR. CRIST: Mr. Muscato, just so you are
21 prepared, Planning Director Fuda will likely be
22 testifying on that next meeting about what we
23 discussed before - her position on that
24 committee and so forth.

25 MR. MUSCATO: It was my understanding that

1 testimony was ready to proceed tonight.

2 MR. CRIST: Are you ready to proceed
3 tonight?

4 MR. MUSCATO: Sure, yes.

5 MR. CRIST: Well, we are having another
6 meeting so we will do that at the next meeting.

7 MR. MUSCATO: The problem becomes that the
8 public hearing has been closed and we're
9 talking about the difficulty of the decision
10 date, so I'm presuming that you're going to
11 open the meeting, we're going to take testimony
12 from the witness, close that and make a
13 decision.

14 MR. CRIST: Yes.

15 MR. MUSCATO: That cannot happen in one
16 night.

17 MR. CRIST: Yes. That's the only thing
18 we're doing that night.

19 MR. MUSCATO: Do you want objections to
20 that submitted in writing?

21 MR. CRIST: Sure. You can make your
22 objections now, if you like.

23 MR. MUSCATO: With respect to the
24 objections on that, we don't have any knowledge
25 of Ms. Fuda's capacity on the committee and

1 whether or not she was the clerk of the
2 committee, or whether she was an active
3 participant. How long ago was this committee
4 even established? In other words, I don't
5 understand why -

6 CHAIRPERSON CALARCO: Probably five years
7 ago.

8 MS. FUDA: In 2015 the law was adopted.

9 MR. MUSCATO: I've never seen a proceeding
10 -- I mean, I don't know if you have case law on
11 this where you talk about the people who
12 drafted -- not it's not even the Town Board
13 Members who enacted the legislation. We are
14 talking about the people who were involved on
15 the committee that made recommendations to the
16 Town Board.

17 MR. CRIST: That's exactly what it is.

18 MR. MUSCATO: But that's what I'm saying.
19 I think that it is wholly inconsistent as
20 compared with the legislative intent which is
21 the plain language but the Board is charged
22 with -

23 MR. CRIST: That the Town Board later
24 adopted. This is the law that was examined by
25 this committee that the Town Board adopted.

1 We're not saying that it was adopted by the
2 committee. Of course the legislation was
3 adopted by the Town Board.

4 MR. MUSCATO: My objection is irrelevance.
5 It's irrelevant what the commission - or what
6 any individual committee members were thinking,
7 or feelings, or whatever opinions about the
8 law. The law is the law. With the Town Board
9 evidenced with respect to the law in its intent
10 is in the black letter law which is what the
11 Board is here to interpret and not a
12 third-party perspective on what the law was
13 intended to do.

14 MR. CRIST: Your objection is noted, thank
15 you.

16 MR. MUSCATO: Thank you.

17 CHAIRPERSON CALARCO: Do we have anything
18 further on this?

19 (There was no response.)

20 Okay, gentlemen, if there's nothing
21 further on this we are adjourned. This
22 application to hopefully the 26th if we
23 could squeeze it in.

24 MR. MUSCATO: I'm sorry, one further
25 clarification. Ms. Fuda is going to be available

1 for cross-examination in that session.

2 MR. CRIST: Most certainly.

3 MR. MUSCATO: Okay, thank you.

4 CHAIRPERSON CALARCO: Okay so we are
5 adjourned. We will notify you as soon as we
6 know the dates. Nadine will get to us and let
7 us know what's available. Remember it's 5
8 o'clock on the 26th or 7 PM on August date. I'm
9 sorry, it's the other way around. 7 PM on the
10 26th or 5 o'clock on the August date. Okay,
11 thank you.

12 Can I have a motion to adjourn?

13 MR. SPADA: (Raises hand.)

14 CHAIRPERSON CALARCO: Mr. Spada. Second?

15 MR. MAIER: (Raises hand.)

16 CHAIRPERSON CALARCO: Seconded by Mr.
17 Maier.

18 All in favor?

19 (Ayes were recited.)

20 Opposed?

21 (There were none opposed.)

22 Thank you gentlemen.

23 (Whereas the above entitled proceeding
24 was concluded at 8:23 PM)

25

1 CERTIFICATION

2

3 I, NANCY L. STRANG, Shorthand Reporter
4 and Notary Public in and for the State of
5 New York, hereby CERTIFIES that the record
6 taken by me at the time and place noted in
7 the heading hereof is a true and accurate
8 transcript of same, to the best of my
9 ability and belief.

10

11 Date: August 13, 2021

12

13 ***Nancy L. Strang***

14 Nancy L. Strang

15 Legal Transcription

16 2420 Troy Schenectady Road

17 Niskayuna, NY 12309

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