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RENSSELAER CITY CLERK

**MINUTES OF THE REGULAR MEETING AND PUBLIC HEARING OF THE CITY OF
RENSSELAER ZONING BOARD OF APPEALS HELD ON MAY 17, 2004 IN THE
COMMON COUNCIL ROOM AT 7:00 PM.**

REGULAR MEETING:

The regular meeting of the City of Rensselaer Zoning Board of Appeals was called to order by Chairman Daniel Dwyer at 7 pm.

Roll Call was taken, and it was determined there was a quorum.

MEMBERS PRESENT:

Daniel Dwyer, Chairman; Doreen Foust; Nancy Johnson; William McLoughlin; and Paul Ryan.

OTHERS PRESENT:

Bob Angelini; Viola Baker; Marion Barton; Eric Breimer; Michael Bridgeford; Robert Byram; Carson Carr; Maryann Cavanaugh; Jack Casey; Luigi Cicero; Leighton Cookson; Marie Cookson; Cassandra Coyle; William Coyle; Antoinette Cristo; Michael Cristo; Tom Cristo; Mike DeJulio; Linda Dorsey; David Engel; Christopher Eastman, Assistant Planner; Taiya Eriole; Albertine Felts; Norman Freeman; Mary Fulsom; Mary Garge; Debby Girgenti; Kimberly Goodfriend; John Gustofson; John Hallock; Kathy Harper; Peter Harper; Andrea Hays; Janet Hempstead; Dolores Hill; Bill Hogan; Marcia Lingleman; Karen Llewellyn; Robert Llewellyn; Donna Lovenan; Brenda Jiguere; Lawrence Julien; Nancy Mastrolotaro; Daniel Merlessner; Kathleen Merlessner; Mark Millspaugh; Daniel Moore, Building Inspector; Michael Moore; Mike O'Brian; Ginny O'Brien; Jo Ann O'Neill; Sean O'Neill; Betsy Osborn; Ann Marie Pepin; Anna Pollack; Jonathan Pollack; Marybeth Pettit, Planning Director; Marian Price; Carol Priest; Rosemarie Quinn; Kathy Sano; Marcia Schultz; Ellie Sherwi; Al Soria; Norma Soria; James Tedesco; Edith Wasula; Peter Wasula; and Margaret Zukowski.

NEW BUSINESS:

1. Cicero Builders, Area Variance Application for 2G Sterling Ridge Drive

Luigi Cicero explained that he was requesting a variance for the west side of 2G Sterling Ridge Drive because the land swap he and the owner of the neighboring property to the west, Linda Dorsey, had agreed to, was moving forward slowly and the prospective purchasers of 2G are unable to take title to their house until the land swap is complete or a variance is granted.

Linda Dorsey confirmed that Mr. Cicero had provided the documents for the land swap, though there remain two documents that must be provided for the transaction to take place: a certification of the survey and the mortgage release and modification statement from Ms. Dorsey's title company.

Ms. Foust asked if the grading and seeding Mr. Cicero had agreed to complete when the variance for the east side of 2G Sterling Ridge Drive was granted at the March meeting of the Zoning Board of Appeals had been done.

Ms. Dorsey replied that it had.

Mr. McLoughlin motioned for the following resolution:

"The City of Rensselaer Zoning Board of Appeals hereby grants the seven-foot west -side variance for 2G Sterling Ridge Drive, conditional on Mr. Cicero's providing the certification of survey and mortgage release necessary for the land swap by June 1."

Ms. Foust seconded. All in favor. Motion carried.

2. Partition Street Corporation, Use Variance Application for Property in the Land Conservation Zone

Chairman Dwyer announced that because a large number of people present wished to speak against Partition Street Corporation's use variance application, each of those people would be limited to three minutes of speaking time.

Chairman Dwyer then invited David Engel, attorney for the Partition Street Corporation, to present his client's case.

Mr. Engel introduced himself and announced that since the use variance application was presented to the City last August, an economic analysis by Sterling Environmental Engineering had been submitted as well. He explained that the only access his clients have to their property in East Greenbush is an access road that runs from Partition Street in Rensselaer that has been in commercial use for generations. The parcel for which Partition Street Corporation requests a use variance is .14 acres in size. The adjacent parcel owned by Michael Cristo, the applicants' cousin, is much larger, and, Mr. Engel argued, Michael Cristo's property, also in the Land Conservation zone, looks like it is being used for commercial purposes. He showed a large photograph and distributed packets of photographs of heavy equipment parked on Michael Cristo's property. His client, he explained, wished to use its driveway as it has for many years, which, given the use of the adjacent parcel, he argued would not be inconsistent for surrounding uses. He then distributed a copy of the sales listing for Michael Cristo's property and suggested that factors other than the current designation of Land Conservation would impact the ultimate use of the property around that for which his client requests a use variance.

Mr. Engel acknowledged the concern by the public about the permit his clients have from the New York State Department of Environmental Conservation to operate a construction and

demolition debris landfill on their property in East Greenbush but underscored that his clients' application before the City of Rensselaer Zoning Board of Appeals is access to that property. Use of the property in East Greenbush is a matter to be resolved by Town of East Greenbush legislative bodies. The operation of the landfill, he told the Board, is worth a great deal of money to his clients, and the prevention of access to the property where the landfill would be located would result in a significant hardship to them.

Mr. Engel asked the Board for a common sense response to the request by Partition Street Corporation for the use variance: the land in question is only slightly larger than one-tenth of an acre, it has been used for commercial purposes for many years, it is bounded by Partition Street, land owned by Michael Cristo, and land in East Greenbush not zoned Land Conservation.

Mr. McLoughlin asked Mr. Engel how many trucks would be using the access road per day and asked how he can claim the variance would not result in an adverse impact with trucks passing through a residential neighborhood.

Mr. Engel responded that under the Department of Environmental Conservation (DEC) permit, Partition Street Corporation is limited to 35 truck trips a day—thirty-five trips in and 35 trips out. Traffic impact studies were conducted during DEC hearing several years ago. He added that Valente Gravel has permits for its operation, which involves trucks passing through the same residential neighborhood, and so an additional 35 truck trips would not be a significant adverse impact.

Daniel Moore, building inspector, clarified that the activity on Michael Cristo's property visible in the photographs Mr. Engel distributed and had on display was not a commercial in nature but a clean-up of the property ordered by the City's building department and the DEC.

Mr. Engel said it seemed that it was more like a clean-out than a clean-up, which suggests Michael Cristo has other plans for the property.

Chairman Dwyer said that regardless of whether Michael Cristo's work on his property has surpassed what was required, the question before the Zoning Board of Appeals concerns the .14 acres owned by the principals of Partition Street Corporation.

Mr. Engel argued that the neighboring parcel is much larger than that owned by his client and changes to that parcel could result in changes to the surrounding neighborhood that would be much more significant than any change that would result from the granting of the variance to his clients.

Mr. Engel added that Michael Moore, special counsel to the Mayor and City Council had distributed a memorandum to the members of the Zoning Board of Appeals and requested five days to respond to Mr. Moore's memorandum in writing.

Chairman Dwyer explained that this issue has been discussed for many months and years and the Board had convened this evening to resolve it.

Mr. Engel asked if he could have the opportunity to read Mr. Moore's memorandum and respond to it verbally at the end of the public hearing, before the Board makes its decision.

Chairman Dwyer agreed to that and asked if there is anyone else present to speak on behalf of Partition Street Corporation.

Mr. Engel responded that Toni Cristo and Mark Millspaugh were available to answer questions.

There being no one else to speak for Partition Street Corporation, Chairman Dwyer opened the public hearing at 7:40 pm.

Robert Byram, president of Plaza View Homeowners' Association spoke in opposition to the variance. The request, he said, was being framed as access, but that access would lead to a profound change to the neighborhood. Though Mr. Engel insisted the family had been using the road for generations, he explained that the area around it had changed and that there are many families living nearby now.

Michael Moore explained that he had been retained by Rensselaer's Mayor and Common Council to express the strenuous opposition of the City's elected officials to this use variance application. Four City of Rensselaer administrations have worked against further commercial use of the property in question. He summarized that the reason the Board was meeting was to address an appeal the Partition Street Corporation had to a determination by the prior building and zoning administrator that commercial use of the access road in the Land Conservation zone is prohibited. He added that conspicuously absent from the applicant's argument tonight was a discussion of the criteria that justify granting of a use variance under New York State statute. Applicants must demonstrate a unique hardship that has not been self-created. This applicant, Mr. Moore stated, fails to meet the test for unique hardship: none of the properties in the Land Conservation zone may be used for commercial purposes. Mr. Moore argued, secondly, that the applicant avoided the question of whether the granting of the variance would result in the altering of the character of nearby neighborhoods by not mentioning the nearby residential neighborhood through which the trucks would be running. Thirdly, Mr. Moore explained that Partition Street Corporation acquired the property in 1987, eight years after Rensselaer's zoning ordinance had passed and the Land Conservation zone was created: the hardship is, he emphasized, self-created. Mr. Moore urged the Zoning Board of Appeals, on behalf of the Mayor and Common Council, not to undo eight years of determined efforts by successive administrations to protect the Partition Street neighborhood from heavy truck traffic.

Mary Fulsom said she would have had more to say in opposition to the granting of the variance, but Michael Moore's testimony was so comprehensive that she had nothing to add.

Betsy Osborn spoke in opposition to the granting of the variance and said she's appalled that it's even being considered in an area that is primarily residential. She said she doesn't believe, as the applicant's attorney seems to, that two wrongs make a right.

Carson Carr said that many people live near the property proposed for the landfill and that the use would be inappropriate in an area in which the primary use is residential.

Janet Hempstead said she is a resident of Plaza View and that she, her husband, and her daughter and her family, who live nearby, are opposed to the granting of the variance, arguing that the negative impacts of the truck traffic and the landfill would be widespread.

Maryann Cavanaugh said that many people who live near the former landfill now did not live there when it was in operation and might not realize how seriously the truck traffic will be felt in the surrounding neighborhood.

John Hallock said he just bought a \$200,000 house not far from the land for which the applicants have DEC permits for their landfill. He said Mr. Engel's testimony struck him as a family squabble and that if the variances are granted for the landfill to operate he's moving.

Michael Bridgeford, President of the City of Rensselaer Common Council, stressed that the City has expended a great deal of time, energy, and capital to stop the commercial use of the properties in the Land Conservation zone. He urged the members of the Zoning Board of Appeals to vote a resounding no to this variance request. Mr. Bridgeford said of course an additional 35 truck trips a day would have an impact on the neighborhood—he told the applicant, the members of the Zoning Board, and the audience that he had served for eleven years on the Zoning Board of Appeals and that even the smallest of project impact their surroundings.

Chairman Dwyer asked if anyone in the public wished to speak for the project.

Pedro Diaz spoke against the project. He said the property is contaminated and that the family should work to clean and improve the property rather than continue to use it as a dump.

Leighton Cookson said as a resident and member of the Plaza View Homeowners' Association he is opposed the granting of the variance. He spoke about his concerns about the possibility of property values declining as a result of negative impacts stemming from landfill operations. He added allowing a use such as a construction and demolition landfill at the border of Rensselaer and East Greenbush would threaten the great potential the two communities now have.

Albertine Felts, Second Ward Alderperson in the City of Rensselaer, said the City has been working to stop the commercial use of this land for many years and that she was chair of the 4Cs Committee when the issue was considered in court. She said that the DEC is not a friend to the City of Rensselaer, there's enough junk in the city, and a construction and demolition debris dump is the last thing Rensselaer needs.

Margaret Zukowski said she takes offense to Mr. Engel's suggestion that an additional 35 truck trips a day on top of the 300 Valenti trucks would not have a negative impact on the neighborhood. She said the City seems to be working to improve conditions within its borders and suggested the Town of East Greenbush take the lead in turning down the use of the Partition Street Corporation property as a landfill. Ms. Zukowski said the granting of the variance would constitute spot zoning, and she wholeheartedly opposes its approval. She concluded that she has lived on Partition Street for eleven years and nothing good has come of the truck traffic, no matter how minimal the applicant feels it might be.

Roseann Quinn said she sat through nearly every DEC hearing for the landfill permits. Nearly every member of the public at those meetings urged the DEC to ask the applicant to gain local approval prior to the awarding of state permits, but the DEC went ahead and granted the permits to the applicants. She expressed her relief that the municipalities still have the opportunity to deny the use of the land for commercial purposes and said she hopes the Rensselaer Zoning Board of Appeals votes as the state's highest courts have ruled and denies the variance.

Ginny O'Brien expressed her opposition to the granting of the variance as a homeowner in Plaza View, as a former member of the Town Board of East Greenbush for 12 years, and as a current member of the Rensselaer County Legislature. She said the variance for the access road is the first step in the applicant's efforts to operate a construction and demolition landfill within close proximity of many residences. She added that she's also a realtor and that property values in Rensselaer County have risen 13% in the last year. She said selling real estate next to a construction and demolition debris landfill would be a challenge.

Mike O'Brian, a resident of Plaza View, spoke about the reasons for zoning and pointed out that the large number of people at the meeting in expressing opposition to the granting of the variance for use of the access road demonstrates the seriousness of the implications of this request. He asked that the Zoning Board to uphold the spirit of the law, to promote positive development that will increase property values and quality of life rather than negatively impact them, and to deny the request for the variance for commercial use of the access road.

Sean O'Neill spoke of the extent to which Rensselaer is burdened by heavy truck traffic and its associated dirt, noise, smells, damage to local streets, and safety concerns. He said there are many reasons, legal as well as emotional, why this variance should not be granted. He added that he's attended meetings about this and other similar issues for more than ten years and hopes the decision of the Rensselaer Zoning Board of Appeals brings closure to the issue.

Robert Llewellyn expressed his opposition to the granting of the variance and said 35 truck trips per day would likely result in much greater physical impacts than those shown on Michael Cristo's property in the photographs Mr. Engel displayed and distributed.

Mike DeJulio, a resident of East Greenbush in opposition to the granting of the variance, said it would be a shame for one business that stands to make millions of dollars on its landfill operation, to impact the City of Rensselaer to the extent it likely could. He encouraged members of the Zoning Board of Appeals to deny the request.

A resident of Partition Street of 35 years spoke of her concerns about the safety of the residents and children of the neighborhood. She went on to say that those who stand to earn large amounts of money through the industrial use of the property think only of their profits and not of the community at large.

A resident of East Greenbush expressed her opposition to the granting of the variance and suggested the operation of a construction and demolition landfill will probably ultimately hurt the local tax base because, in response to the operation of a landfill nearby, residents will relocate and property values will decline.

Marcia Lingleman spoke of the health risks associated with hauling construction and demolition debris.

Mary Fulsom spoke again to state that she had calculated that 70 trucks per day averages out to be one every six or seven minutes. It would be difficult to argue, she added, that such frequent truck trips would not have a negative impact on a residential neighborhood.

Chairman Dwyer asked again if there was anyone else from the public wishing to speak for or against the requested variance.

There being no one else from the public wishing to speak, Chairman Dwyer invited Mr. Engel to respond to Michael Moore's memorandum to the Zoning Board of Appeals.

Mr. Engel argued that his clients' application demonstrates why the hardship associated with the restriction is unique to them, why the hardship is not self-created, and how the variance would not alter the character of the surrounding neighborhood. His clients inherited the property; they did not acquire it on their own free will.

Mr. Engel then drew the distinction between the City of Rensselaer's landfill and the construction and demolition landfill that operated in East Greenbush between 1988 and 1993. He said that the materials deposited there will remain, regardless of the outcome of tonight's meeting. He said his clients' property is not contaminated, as the former City of Rensselaer landfill is, and his clients do not intend to operate an uncontrolled dump. Working in the demolition business, they would have a direct connection to the responsible operation of the landfill. Of their 62 acres, the DEC allows twelve to operate as a landfill, not of the type receiving the noxious materials over which members of the public expressed concern.

In repeating his earlier statement that the variance would not result in an alteration of the character of the surrounding neighborhood, Mr. Engel explained that he referenced Michael Cristo's property to demonstrate the proposal for the use of the access road to the landfill site would not be inconsistent with surrounding uses. Furthermore, he added Partition Street Corporation is not responsible for the Valente truck traffic, among the contributing factors to existing conditions of the neighborhood that Partition Street Corporation's use of the access road would not change.

Albertine Felts pointed out that Michael Cristo was present and suggested he might have something to say.

Michael Cristo said being in the demolition business he had no opinion about the variance request. He wanted to explain, however, that dumping occurred in the City of Rensselaer landfill, which comprised twelve acres in both the City of Rensselaer and the Town of East Greenbush, between 1960 and 1976, and that parcel was recently removed from the DEC's list of contaminated sites.

Ms. Foust explained that the members of the Zoning Board of Appeals must consider the many concerns expressed at the meeting and that the applicants' attorney had not convinced her that his clients' hardships were unique and not self-created.

Mr. Ryan asked Mr. Engel where the application in East Greenbush stands.

Mr. Engel explained that the variance application before Rensselaer's Zoning Board of Appeals is to resolve the access issue, which his clients have attempted but failed to resolve in East Greenbush. He said it is his and his clients' position that the use in East Greenbush is grandfathered because of the history of the family's operation of a landfill there. The Town takes a different position.

Mr. McLoughlin asked Mr. Engel what his clients would do if the Zoning Board of Appeals were to deny the variance.

Mr. Engel replied that he and his clients would evaluate their options if the Board's decision were adverse to them. One option is access to the property through the Town of East Greenbush. He reminded the public that property owners are guaranteed access and rights to their property.

Ms. Johnson asked for more details about the materials that would be deposited in the landfill.

Mr. Engel said unprocessed construction and demolition debris, and only Cristo demolition trucks would be admitted.

Ms. Johnson asked if asbestos and other hazardous materials would be included.

Mark Millspaugh said that a demolition contractor cannot receive a demolition permit until asbestos abatement has taken place.

In response to a question by Bob Angelini about use of the access road, Dan Moore, building inspector, replied the applicants have been denied commercial access, not all access, to their property.

In response to a question about continued dumping, Toni Cristo emphasized that since her company's trucks were ticketed for using the access road several years ago they have not used the access road.

Mr. McLoughlin motioned for the following resolution:

"The City of Rensselaer Zoning Board of Appeals hereby denies the requested variance for commercial use of the access road in a Land Conservation zone based on the public's expectation that granting the variance would alter the essential character of the neighborhood, which is primarily residential. Further, the alleged hardship is not unique and it is self-created."

Ms. Foust seconded. All in favor. Motion carried.

MINUTES OF THE APRIL 12, 2004 MEETING:

Ms. Foust motioned for and Ms. Johnson seconded approval of the Minutes of the April 12, 2004 meeting of the City of Rensselaer Zoning Board of Appeals as submitted.

All in favor. Motion carried.

ADJOURNMENT:

There being no other business to come before the Zoning Board of Appeals, Mr. McLoughlin motioned for adjournment.

All in favor.

The meeting adjourned at 8:55 pm.

Respectfully submitted,

Marybeth Pettit
Director

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Transcript of the Discussion of the Use Variance Application by Partition Street Corporation at the Regular Meeting and Public Hearing of the City of Rensselaer Zoning Board of Appeals, May 17, 2004: **RENSSELAER CITY CLERK**

Zoning Board Chairman Dan Dwyer: All right, we'll go into right into the use variance by Partition Street Corporation. I'm going to have the Partition Street Corporation speak first. I realize there's a tremendous amount of people here and a lot of people want to speak. And I hope you don't think I'm cutting you off, but because of the amount of people who will probably be against this, I've got to limit you to three minutes. I think you can say what you have to say in that three minutes, and I think that's fair enough. So what we'll do is Chris over here will give me a signal if your three minutes are up. So understand if I have to cut you off. There are so many people here to speak, and also I know that a lot of people are very upset about this, and everything else, so while anyone is speaking, please, please let them have their say, the same way you'd want it said to you, too. So the first to speak would be David Engel. He's the attorney for the Partition Street Corporation.

David Engel: Thank you, Mr. Dwyer. I feel like I'm in an echo chamber. My name is David Engel. I practice law in Albany with Tuczinski, Cavalier, Burstein, and Collura. We represent Partition Street Corporation with respect to this use variance application. We had previously submitted to the ZBA...

Woman in the audience: Excuse me, can you stand over there so you're facing the Board and the audience. I can't hear a word you're saying...

David Engel: Ok, I hear you.

Chairman Dwyer: The acoustics in here are terrible.

David Engel: Can we close the door. Thank you. I'll start over. As I said, my name is David Engel. I'm an attorney. I practice with Tuczinski, Cavalier, Burstein, and Collura. Our offices are at 90 State Street in Albany. We represent Partition Street Corporation. Partition Street Corporation has submitted a full application for a use variance to the ZBA. That application was dated August 15th of last year. Thereafter, recently, we made an addition submission with an economic analysis that was performed by Mark Millspaugh, of Sterling Environmental Engineering. Mr. Millspaugh is with me here this evening. He's the gentleman in the front row with the green shirt on and the tie, and he is prepared to answer any questions members of the ZBA may have with respect to that submission.

Simply stated, our position in this matter is as follows. The only access that Partition Street Corporation has to its property is via an existing roadway that has existed on the property for several decades. Indeed, it goes back before the ownership of the property by Partition Street Corporation, and the ownership of the predecessor members of the Cristo family, the Cristo family being the principals of Partition Street Corporation. The inability of Partition Street Corporation to utilize the roadway will cause an undue hardship on Partition Street Corporation,

and we have addressed that issue in our papers. Furthermore, and significantly, the requested use variance will have no impact on the essential character on the neighborhood at issue here. As we stated, and I stated earlier, that roadway has been in use, was in continuing use for a period of several decades. During that time, among other things, it provided access to the landfill that operated over in the town of East Greenbush, it provided access to operations associated with Cristo Demolition, with the storage of equipment, roll-offs and other equipment that were stored on the East Greenbush property.

The hardship that is at issue here is not created by Partition Street Corporation. It has come about through a process that is described in our papers, but simply put the current generation of Cristos, Toni Cristo and her brother Tom, who are the principals of Partition Street Corporation, and their father, Sebastian, inherited this property from Sebastian's father. Another portion that was owned by Sebastian's father was at the same time left to Sebastian's brother, Michael Patrick Cristo, who owns the neighboring parcel. Now keep in mind here that the parcel in question constitutes .14 acres in the land conservation district. The adjacent parcel, which is owned by Michael Patrick Cristo, comprises a much larger parcel in that district. And to provide some perspective on this, I'll just share with the ZBA and everyone here this photograph that was taken on May sixth of this year, a little less than ten days ago, eleven days ago. The parcel on the left, the one we're here to discuss tonight, this is the Partition Street parcel. And it is separated from the Michael Patrick Cristo parcel by this row of fairly young trees. To the right is the Michael Patrick Cristo parcel in the condition in which exists today, in the Land conservation district. We are not here on behalf of Michael Patrick Cristo, his interests and his pursuits are separate and apart from Partition Street. Interestingly, as you look as you look at this photograph, which, as I say, was taken eleven days ago, the Michael Patrick Cristo parcel has heavy equipment, has a roadway more substantial than the Partition Street parcel, a roadway that was recently cleared and substantially reconstructed, if you will, and parcel itself in the same land conservation district, was substantially cleared for reasons that we are not entirely aware of but we have some ideas about. And I'll just leave this here for now. I'll just hand up to the Board some photographs that pertain to this, and the photographs I'm handing to the members of the Board were taken about fourteen months ago, in the early spring of 2003. And these photographs depict the condition of the property that existed at that time on the neighboring Michael Patrick Cristo parcel. As you can all see from these photographs, at that time the Michael Patrick Cristo parcel was apparently overgrown, although there was a roadway and some equipment there. Now, a year later, we have the situation depicted in the photographs I'm handing out now, the first one of which is the large blow-up that I was holding up a moment ago. These photographs depict the present condition of the land conservation district that has been created by the owner the neighboring parcel, not by Partition Street. And I think the stark contrast between the condition of the land a year ago and what has transpired on that land over the past few months, with the clearing of the land for whatever purpose Michael Patrick Cristo intends to put it, puts in the lie any claim that the limited use that Partition Street seeks here tonight to simply use its driveway as it has been using it for virtually generations is going to, in some sense, change the character of the neighborhood, change the character of the land use in the land conservation district, and in fact, the nature of the claim that there is something about this land conservation district that we, Partition Street, will disrupt, appears to be further belied by the manner in which

the owner of the neighboring parcel, Michael Patrick Cristo, is now marketing the neighboring parcel. And with that in mind, I will hand out copies of the listing from the, I believe it's the multiple listing real estate service, in which that parcel, in which that parcel, owned by Michael Patrick Cristo is described as being for sale for commercial development. And it is being marketed at a price which I think anyone who is familiar with the area can see is indicative that it is not going to be left in land conservation and that the intention of the neighboring landowner is to engage in commercial development. Now, the intentions of the neighboring parcel owner are certainly not dispositive here, but we do have a fairly...

Zoning Board Member Bill McLoughlin: Excuse me, "dispositive.?"

David Engel: It's not dispositive, it doesn't provide the final answer. But what it does provide is that the nature of this neighborhood is not so quickly discerned and resolved by simply saying it's a Land conservation district. The salient facts are as follows: Number one: Partition Street Corporation has used that driveway for generations. The driveway provides the only means of access to that parcel and to the neighboring parcel in the town of East Greenbush. Now I know that people here and members of the Board are concerned, perhaps rightfully so, about the landfill issue. And it is no secret that we have a permit that 4C's, an affiliated corporation of Partition Street, has a permit to construct and operate a construction and demolition debris within the town of East Greenbush. That permit exists. It is also the case that we understand and we are prepared to deal with the issues that we have, that is to say those of us who are involved in this matter on behalf of Partition Street and 4C's deal with the issues that exist with the Town of East Greenbush. Now I can't stand here tonight and tell the members of this Board or the people who are gathered here this evening how matters with the Town of East Greenbush will be eventually be resolved. If I was so clever as to be able to do that, I suspect I wouldn't be standing here tonight, and indeed those issues would have been resolved years ago. But the fact of the matter is that under any standard of when a use variance is justified, we are entitled to one here, we are entitled to access to our property, we are landlocked without this access, we are landlocked in the town. And the fact that the Town might have issues with the landfill is an issue for the Town to take up at the appropriate time when we seek to resolve those issues over there. And frankly it's not appropriate for the Town to hope or to pray to the City deny this use variance because then the Town doesn't have to deal with it.

Now it's pointed out in Mr. Millspaugh's submission there are economic ramifications to the inability of Partition Street to obtain access to the property. It is no secret that our intentions are to operate a C and D landfill, and that issue, candidly, is worth an awful lot of money to my clients. Our inability to obtain that access clearly visits a hardship upon my clients.

We are prepared to answer any questions that the members of the ZBA may have with respect to this matter. In a final analysis, we urge the members of the ZBA to take a common sense approach to this matter. And a common sense approach to this matter is as follows: that driveway exists, it has existed for a long time. We are talking about slightly more than a tenth of an acre, and consider where that tenth of an acre exists within this land conservation district. It is bounded by Partition Street, and it bounded by the adjacent Michael Patrick Cristo parcel, and it

is bounded by a parcel in the town of East Greenbush, which is certainly not, for whatever else we might say about it, it is not classified as land conservation. And now with recent activities on the neighboring parcel owned by Michael Patrick Cristo, what they fairly ask, the final analysis, what is the true land conservation value of this one-tenth plus-acre parcel that is so bound by land that has now been cleared, which the City has evidently allowed to be cleared, and by Partition Street. We're not going to change the nature of the neighborhood, we're not going to change the nature of the character of the land conservation district. If anything, our neighboring parcel holder has already done that. All we seek is the right that any, frankly, American has and must have, which is access to our parcel, access to our property. And that's a fairly fundamental right. And that's what we seek here tonight.

Bill McLoughlin: I have a question. You say you're not going to impact the neighborhood, but Partition Street runs through a residential neighborhood. If you're going to build a landfill, how many trucks a day, and I know this is in the documentation, but I'd like to hear you say how many trucks a day are going to be coming in and why don't you think the traffic's going to have an impact on the residential neighborhood.

David Engel: Under the DEC permit, we are limited to 35 trucks a day....

[Laughter in audience.]

Chairman Dwyer: Please. OK. [To stop laughter.]

David Engel: Now, it is, the permit provides that we have 35 trips in, 35 trips out, and that's.... Now I understand there are people have concerns, but that issue of traffic was fully explored in DEC hearings years ago. I understand there are permit limitations on the Valente mine in terms of how many truck trips the Valente operation may have. The fact is the Valente operation and its associated traffic exists, it exists today. The fact of the matter is that there is traffic on Partition Street, but an additional 35 truck trips per day would not, in our view, and as reflected in the DEC administrative law judge's decision and Commissioner's decision, have an impact on the character of the neighborhood.

Bill McLoughlin: DEC said that 35 trucks a day, back and forth, so 70 trips a day would not have an impact on the neighborhood? DEC said that?

David Engel: The DEC permit limits us to 35 trips in, 35 trips out. And that was a decision that was based on evident record that was developed in that hearing.

Bill McLoughlin: That's not what you said. You said that DEC determined that these trips would not have an impact on the residential neighborhood.

David Engel: Yes. And I believe that's what the record in that proceeding shows. That issue was fully litigated.

Chairman Dwyer: I have a question. You say you have a permit, I have the letter in front of me to Marybeth from Bob Angelini and it says here be advised that you really don't have a valid permit from the Town of East Greenbush for said use. In fact the parcel is located in an R-2 zoning district in the town and said use is not permitted.

David Engel: What I said, sir, was that we have a DEC permit. We do not have a permit from the Town...

Members of Pubic: You did say "Town"...

David Engel: If I said "Town", I apologize. We have a DEC permit. We understand we have issues to resolve with the Town of East Greenbush. We are aware of the zoning there. And those issues are issues that will be addressed with the Town in due course. No, we do not have a permit from the Town of East Greenbush. And if I gave that impression, I apologize.

Chairman Dwyer: Anyone else have a question?

Dan Moore, City of Rensselaer Building Inspector: I'd like to say something about the pictures here. It's a bit deceptive because it looks like commercial operation that's going on on the adjacent site. That's a clean-up that was ordered by the Building Department and DEC. That's what's happening here with the backhoe. There's no commercial operation.

Chairman Dwyer: Is that property that's being cleared in a conservation zone?

Marybeth Pettit, City of Rensselaer Director of Planning: Yes.

Chairman Dwyer: Did they ever get a permit for it?

Dan Moore: The clean-up? It was an ordered clean-up.

David Engel: Mr. Dwyer, what I am aware of anecdotally is that the owner of the neighboring parcel was facing some legal action from the City on account of the conditions on his property, with respect to the presence of old equipment, and I gather some debris of some kind. And that issue is well documented. However, the key point here is that what happened on the property is not simply the removal of debris, the removal of equipment, it is virtually the clear cutting of a portion of that parcel, and if you look at the photographs I think that is abundantly clear. It is not simply a clean-up, it is a clean-out. And it's the sort of thing that one typically would do in preparation for some other use of the land.

Chairman Dwyer: Right. And I can understand, ok, if it's a clean-up, what he's doing may surpass what is really required, but that is really a separate issue from our point right here. I think what we have to do is address Mr. Pat Cristo on our own.

[Applause.]

David Engel: Well, sir, with all due respect, the activities on the neighboring parcel, which comprise a much larger portion at issue than our parcel does, constitutes, essentially, a profound change of that district. That is an important piece of evidence to take into consideration when you look at whether or not what we propose will change the nature of the district or the neighborhood. Now, I know a lot of people want to speak tonight, and frankly I want to sit down, but before I do, I am aware that Mr. Moore has handed up to the Board a memorandum as special counsel to the Mayor and the City Council, and we received a copy of this document about a half-hour ago, as we came in here this evening. Now, Mr. Moore, I believe, has had our application in this matter for a matter of several months, and I would respectfully request that the Board allow us five days to respond to Mr. Moore's memorandum in writing. It's an extensive written submission that makes numerous allegations in fact of law that we believe are at variance with reality, and we just want to have the opportunity to make that submission to the Board before the Board passes on this tonight.

Chairman Dwyer: In other words, what you're saying is have another meeting.

David Engel: No, I don't want to have another meeting. I just want to write you a letter to respond to Mr. Moore's memorandum.

Chairman Dwyer: Before we pass judgement. In essence that is a meeting of the Board.

David Engel: I guess you'd have to have another meeting of the Board to look at my letter.

Chairman Dwyer: I think, personally, ok, and I throw this open to the Board for each individual comment, and I wish they would comment, this thing as been going on for some time. We've had numerous meetings on this and numerous discussions on this. The Planning Commission has heard it from Mr. Gilchrist, and at the last minute whether Mr. Moore sent this or not we're here to make a decision, and I think the decision should be tonight.

David Engel: In that case, what I will request is that while the others are speaking tonight you'll allow me the opportunity to read Mr. Moore's submission and respond to it verbally later in the evening.

Chairman Dwyer: That I'll grant you.

David Engel: Thank you.

Chairman Dwyer: Does anyone else have a comment on the Board? OK, the next gentleman, then, would be Toni Cristo.

David Engel: Ms. Cristo and Mr. Millsbaugh are here this evening to respond to any questions you may have.

Chairman Dwyer: Ok. I see they signed up. Ok, that will take care of your side. Is there anyone else who is with you as far representation who wants to speak. Mr. Engel?

David Engel: Pardon me?

Chairman Dwyer: You will be the only one speaking tonight on your client's behalf?

David Engel: Yes, unless questions come up in the course of the evening that they would like to answer.

Chairman Dwyer: All right. Fine. Then we'll now go into the public hearing portion of the meeting. There's quite a few who want to speak, and like I said, I don't want to have this go on all night, but I still want to hear everyone's comments. If anybody was late, I will limit everyone, please, to three minutes. Please understand that there's quite a few people who want to speak, so if you would. Robert Byram. If I mispronounce your name, please forgive me.

Robert Byram: I'm here representing Plaza View. I'm vice-president of the Plaza View Homeowners' Association, and I am here to oppose any possibility of a dump adjacent to the Plaza View property. It has been presented tonight that it's an issue of just access to property. It's not an issue of access to the property. It's access to the property so they'll be able to have the landfill. And then I hear that over generations have been using this access. Well, things have changed. There's homes all around this area that weren't there ten or fifteen years ago. We don't want a dump. We don't want a landfill adjacent to our homes. And it's not just Plaza View I'm speaking for. If you go down Third Avenue, there's all new homes all developed in there. I talked to a number of those people. They don't even know because this hasn't been publicized. We're worried about our health, about the sulfur smells in the air. It's not just access to the property.

[Applause.]

Chairman Dwyer: Thank you. Next to speak, Michael Moore. Michael is representing the City.

Michael Moore: Thank you Mr. Chairman, members of the audience. I'm Michael Moore. I have been retained by the Mayor and the City Council to defend those elected officials' strenuous opposition to the granting of the use variance this evening. As the Chairman alluded earlier, one point I want to make very clear, there is a history to this thing. Four successive City administrations have now, to this point, been in administrative proceedings before the DEC and judicial proceedings in court, in prior administrative proceedings before this board, and then here again tonight, have opposed a commercial use of this property for the purposes of allowing 70 trucks to go in and out on a daily basis. Those efforts continue tonight and have succeeded because, as I say, four successive City administrations have been opposed to any further commercial use of Partition Street by commercial trucks running through residential neighborhoods. Residential. I think that point is been a little overlooked in presentations that have been made tonight.

This question, the reason we're here tonight, is because the prior Building and Zoning Administrator, in 2000, determined that use of this property for commercial trucks was not allowed in the LC [land conservation] district. That determination was later appealed to this body, which upheld that determination, that no commercial uses were permitted. That's why the applicant is here tonight, because this is a prohibited use of land in the LC district.

The other thing that I think has been conspicuously absent in these discussion is standards in the law by which a use variance is to be granted. Those standards are very clear. They are spelled out in the City zoning ordinance, they are also spelled out in state law, in the New York General City Law. And I will just say briefly that I think perhaps the reason there has been no discussion of it tonight is because it's clear that this applicant doesn't meet those standards. Now there are four standards laid out in the law, it is my view that set forth in the memorandum that I delivered to the Chairman that Mr. Engel referred to earlier that three of those standards are not met, and I'll touch on them briefly.

The applicant is supposed to show that its alleged hardship is unique and does not apply to all of the land in the district in question. They fail to meet that test. The reason they fail to meet that test is because the hardship that is visited upon this applicant is visited upon every property in the land conservation district. None of those properties can be used for commercial uses. There's absolutely nothing unique about his situation that the applicant finds himself in.

Secondly, the applicant, under the law, is required to show that its operation, if granted a use variance, will not alter the essential character of the neighborhood. They cannot meet that test, either, because again, conspicuously absent from the discussion that the applicant presented is the fact that this is not just a land conservation neighborhood. As many assembled here know tonight, it is a residential neighborhood, all along Partition Street and all along the streets that run off Partition Street. It is a residential neighborhood, it is that character which the prior City administrations sought to protect from further abuse by not allowing further truck traffic through those residential neighborhoods. And I am here to assert to represent the Mayor and Council that they do not want an additional 70 trucks running through these residential neighborhoods.

Lastly, and perhaps most important, the applicant is required to demonstrate that his hardship is not self-created. That is exactly what we have here in front of the Board is a self-created hardship. As their own documents show, this property was acquired by the Cristo family in 1987 as part of a voluntary agreement among family members. The City's zoning ordinance was passed in 1979, eight years prior to that acquisition. The standards of regulating uses in the LC district have not changed since 1979. The property was acquired eight years later, voluntarily, with knowledge of those restrictions. That is, under the law, a self-created hardship, which requires that the use variance be denied.

Again, three out of the four required tests they fail to meet. The use variance should be denied, and in conclusion, we urge you, on behalf of the Mayor and City Council, please do not undo eight years of successful and determined effort by several City administrations to protect the

Partition Street residential neighborhood from further abuse by heavy truck traffic. Thank you very much.

[Applause.]

Chairman Dwyer: Mr. Bob Angelini.

Bob Angelini: Mr. Chairman, I'm going to waive my time. I'm the supervisor of the Town of East Greenbush, and I really wanted to come down to see what people had to say about this. I'll waive my time.

Chairman Dwyer: Thank you, sir. Viola Baker.

Viola Baker: I'll waive my time.

Chairman Dwyer: Mary Fulsom.

Mary Fulsom: I think Mr. Moore's presentation was so self-explanatory there's no need to add anything to it. This has no logical place here.

Chairman Dwyer: Thank you very much. Ok. [Called a couple names of people who were present for the previous application.] Betsy Osborn.

Betsy Osborn: As a property owner I'm really appalled that this application is being put forth for an area that's primarily residential. Two wrongs do not make a right.

Chairman Dwyer: Thank you. Ok there's a Carson Can, 5 Capitol Place.

Carson Carr: Yes, my name is Carson Carr, and I'd like to oppose this project as well. The community has many concerns, you're dealing with many people who moved here to try and get away from projects like it. There are many places in this town not near people in large quantities. I think we do need landfills, but this is a point of my concern here. This is the first I've heard of it. It borders on inhumane conditions, and my opposition to the project concerns uses like this having their place.

[Applause.]

Chairman Dwyer: Next will be Janet Hempstead.

Janet Hempstead: I'm also of Plaza View and I'd like to express my feelings as well. My husband and I and my daughter are very much opposed to having a dump next to our residential community. And the environment in this area is certainly a factor. It won't just affect a few people. It will affect many in surrounding areas, not just Plaza View. So you're hopeful that you will continue your firm. Let us keep living with the beauty of our surroundings, please.

Chairman Dwyer: Is there a Maryann Cavanaugh, I believe it is?

Maryann Cavanaugh: I live on Cedar Crest, and I know a lot of people who have moved in were not there when the dump operated ten years ago. Just think of the noise, the trucks, if you're on Cedar Crest and you don't think you're going to hear it you're wrong. And I sympathize with people on Partition Street because I know I used to live there.

[Applause.]

Chairman Dwyer: Thank you. Is it a John Hallock?

John Hallock: I just bought a house, an over \$200,000 house. My wife and I just had a newborn, a four-month old daughter. This is a squabble between brothers. The issue is one wants to have what the other one does. If this thing passes, I'll take my \$200,000 house and go looking for something else.

[Applause.]

Chairman Dwyer: Debby Girgenti. Did you? No? Ok. Mike Bridgeford.

Mike Bridgeford: My name is Michael Brigeford, and for those of you who don't know me I am the deputy mayor of this city. I am also the Council president. The City of Rensselaer has spent a lot of time, energy, and most of all, capital, to stop this project. I urge the Board, all the Boards, to resoundingly vote no. The reason is because as Mr. Engel tries to paint a picture of what it'll all be like, many of you already said what we know to be true, the smell, the noise, the dust, the truck traffic. Now, Mr. Engel said 35 truck trips a day is not going to impact the neighborhood. Well, Mr. Engel, I sat on this Board for eleven years and there wasn't a project that came before me where the traffic studies said that no matter how big the apartment complex was that there would be no impact. Well that's bull. The last thing that this city wants is a c and d dump or any dump. And I don't speak for residents of East Greenbush because I don't represent them but I'm sure they don't want to look out their windows and see construction debris. I must add to your comments where you say Mr. Cristo has been a perfect neighbor. No, that's not quite true. I've been involved with this thing since the inception because you had a stop work order because you were starting to dump there. Is that correct?

David Engel: I'm not sure what you are referring to.

Mike Bridgeford: Well there was a stop work order because Mr. Cristo started to dump. So the rosy picture you try to paint for this project does not equal what reality is. As the Common Council president, I hope the Board votes a resounding no. Thank you.

[Applause.]

Chairman Dwyer: We've heard those people speaking against the project, is there anyone who in the public will speak for it?

Pedro Diaz: Can I say something against? My name is Pedro Diaz. I've been a resident of East Greenbush since 1990. I have a two-year-old daughter. One of the things I find disheartening about this is that it had been a dump already. It's a brownfield, according to DEC. It's contaminated already, and they're going to continue to contaminate it. They say it's going to be construction debris, whatever it's going to be it's going to be garbage. It's going to be continuing contamination of the property. The best thing that family could do or whoever owns the property is do try and do something better with the property rather than to continue to contaminate it, given the fact that there has been tremendous development in this area. Families, children, good homes, and I don't think we want that destroyed. So I also support the fact that we should deny Partition Street access, and let them come to the Town of East Greenbush for it to be settled.

Chairman Dwyer: Please state your name.

Leighton Cookson: My name is Lee Cookson, and as a member of the Plaza View Homeowners' Association on the Board with Mr. Byram I agree with everything Mr. Byram said. If I'm repeating anything he said, I apologize for that. I am vehemently opposed individually and as a Board member representing 110 members of the Plaza View development. I ask you please, please, say no. There's been substantial growth of the area with great potential for the future. I don't believe Partition Street's previous use of the property is a valid argument at this point, considering the growth. I'm concerned about the noise, pollution, odor, potential damage to the water table, cancer causing agents, and when I take walks in the morning I can hear trucks then they're down in that area. I'm concerned about the impact on property values. We've all seen a substantial increase in our property values in the last two to three years, and I don't want to lose that. Typically, this kind of land use results in abuse of regulations and agreements. They say they'll do this and that but pretty much anything goes. It requires constant oversight and enforcement. I also believe Rensselaer and East Greenbush are represent unlimited growth potential. Allowing this variance would destroy that economic benefit in the future. I think that's it.

[Applause.]

Chairman Dwyer: Albertine.

Albertine Felts: My name is Albertine Felts. I'm the second ward alderperson. I've been a council member for some years, and I was chairman of the 4C's Committee when the Cristos went to court and, of course with our good lawyers here, they lost. The DEC is not a friend to Rensselaer, they don't really care about Rensselaer, so whatever permits they got, I don't know, it doesn't matter, but, they're not our friend. What I would like to say here is that I would like the Zoning Board to not grant them the requested use variance. There's enough junk here in the city already, we're trying to clean up here, and putting a c and d dump goes against all that we're working toward, so I would ask that you do not grant the variance. Thank you.

[Applause.]

Margaret Zukowski: My name is Margaret Zukowski, and I live at 69 Partition Street. I take great offense in you stating that 70 going past my house every day in addition to the 300 that go past it now will not affect me or my family. [Applause.] I wish I had a dollar for every time you said Michael Patrick Cristo. You came up here and I find it very offensive and I'm sure everyone else does that this is really about this piece over not this piece over here. This is not about Michael Patrick Cristo. It's got nothing to with that. Like Albertine said, we're trying to clean up this city, and this gentleman said we need enforcement by responsible agencies. We don't have that now with the Valente gravel trucks. We certainly won't have it here with these people. Albertine's right, these people are not friends of ours. They have violation after violation, and Dan Moore's issuing ticket. We're tired of it, tired of my daughter looking out the window and seeking the fires on top of the hill. Not anymore. To re-zone this small portion would really, in effect, be considered spot zoning. And if this did happen, the City would have to consider this for everyone after that and would certainly open up for more truck traffic, which we don't want. Ultimately, the applicant needs approval from the Town of East Greenbush to do what they're seeking to do right now. Perhaps it's only prudent for the Town of East Greenbush to take lead in this matter and to either approve or deny their request for rezoning and have the City of Rensselaer go accordingly from there. I mean, they didn't even go to the Town yet. I see the Town supervisor is here. I oppose this with every fiber. It's just something we absolutely do not need. I live on Partition Street, I've lived there for eleven years, and nothing good has come from this truck traffic, no matter how minimal you might think it is.

[Applause.]

Roseann Quinn: My name is Roseann Quinn. I attended nearly every session of the 1995-96 DEC hearing. During that year, Mr. Moore represented the City of Rensselaer. [Inaudible] represented the Town of East Greenbush. All day DEC asked this applicant to go back to the City of Rensselaer and the Town of East Greenbush to get the necessary zoning permits. Oh no, said the 4-Cs, we will get the State permit first, but thank God the City of Rensselaer has not acted. They have used a sledgehammer to work their way against local zoning restrictions. They talk about hardship. We were dealing with a hardship during the State permit year. Now we're in a situation, where fortunately, court rulings specifically at the state and county levels have backed local zoning restrictions. When Mr. Engel talks about situations that may or may not develop, I would ask the Board to turn a deaf ear to it, as he has and got DEC to turn a deaf ear to our requests as to factor Plaza View and other homes that were outside the immediate property. Oh no, said 4-Cs, we'll only affect the area that is being requested for a variance, nothing that's outside. Finally, when they talk about their rights to property, we citizens have a right. We have fought this fight for many, many years, and if it weren't for the court and the City of Rensselaer I think this facility would be up and running. We have the right to zoning restrictions, and I respectfully ask this Board to back the zoning restrictions that have been upheld by the highest court in the state.

[Applause.]

Ginny O'Brien: My name is Ginny O'Brien, and I'm here wearing several hats. Number one, I am a resident of Plaza View. I am opposed to this as many of my neighbors are. I won't repeat what's already been said. Secondly, I was a member of the Town Board for twelve years, and I opposed this operation at that time and as a member, currently, of the Rensselaer County Legislature representing East Greenbush, I am still in opposition to it. Because while Mr. Engel said that this tonight is a permit to use the road, he then went on to say that they want to use it to operate a c and d landfill. This is just the entrée, so that, in fact, can happen. So I don't want anyone to be misled by what they're really asking. It's just the first volley, and the rest is yet to come, and I am definitely opposed to it. The last hat I wear is that of a realtor for Coldwell-Banker Prime Properties. We're very proud that in the last year, property values in Rensselaer County, primarily in East Greenbush, the City of Rensselaer have gone up 13 percent. Let me tell you, as a real estate agent, trying to sell a property where there's a c and d landfill next to it is very tough sell, because I don't want to be living next to it, nor do I want to sell that.

[Applause.]

Chairman Dwyer: Anyone else that's speaking against?

Mike O'Brian: My name is Mike O'Brian, I'm also a Plaza View resident. I've never been elected to anything. A little different tactic, which is why we have to be here tonight, and why there's a zoning board of appeals, and why there's zoning in general. Zoning is legislated for controls to positively impact the community, to set standards, to make sure that things keep moving in a positive direction, changes and things going on in the community, and to promote a better quality of life. And it's done by legislation, cross the t's, dot the i's, refer often to the letter of letter of the law. Mr. Moore expressed how this lines up to the wording of regulation very well, but tonight, the Zoning Board of Appeals is part of the appeals process to hear from neighbors and members of the community as to how they feel they would be affected and whether they would be willing to tolerate a deviation from what the standard is. I mean this happens all the time, I'm sure you folks don't have crowded rooms when someone wants to put an extension on his house and needs a variance to build a little closer to the property line. So why are there all these neighbors here who don't even live in the City of Rensselaer? Plaza View abuts the property line where the landfill or whatever development would be allowed. So look at the spirit of the law and the interest of the neighbors and try and promote positive growth for development and quality of life and recognize what has changed over the decades from when it used to be a dump, but now there are condominiums and townhouses and houses going in, and to promote that kind of development and not to do something that will cause someone to pack up and go elsewhere. Consider the general spirit of the law to keep the community moving in a positive direction and vote against allowing this deviation.

[Applause.]

Sean O'Neill: My name is Sean O'Neill. I live at 29 Mountain View in Plaza View. I built my home in 1991 and have lived here for 13 and have attended a number of meetings with your town board and zoning board and numerous meetings called by officials in East Greenbush over the 13

years we've lived under the knife of this threat to our community. I drove through the town of Rensselaer every day for 13 years as a teacher on my way to work and followed many large construction trucks, dump trucks that come through your city. I've had windshields replaced because of them, followed them over to 787 on my way to work and know what the impact to the folks who live up on the hill on Partition Street must be facing when these heavy construction trucks, roll-on/roll-off trailers that are filled with construction debris roll through the community, what they must do to the street, what they do to the air, what you must do to clean the front of your homes, and most important to me, the risk they put to children because of the inability of heavy trucks to stop on a dime when kids inadvertently dart out into the street chasing a ball or whatever. I would ask you to reach a conclusion in the law that this is not a permitted use. I think it's been stated earlier in the memoranda that there are adequate reasons within the law, not just emotional appeals by myself and others, but in the law for you to reach a just and fair conclusion for both the petitioner and the residents of the community to deny this permit. And I would also ask you, after I've attended meetings about this issue over at least ten years to bring some finality to this so we can get over this. Thank you.

[Applause.]

Chairman Dwyer: Is there anyone else? Yes, sir.

Robert Llewellyn: My name's Robert Llewellyn. I live on Rosaside Court off Third Avenue Extension. I don't want a landfill near my house. I don't think that anyone else wants that to develop in the area. We spend a lot of money in taxes, and it's a bad idea. But we're not supposed to talk about the landfill today, we're supposed to talk about how to get to the place to do something, and a major part of the argument is comparing it to the Michael Patrick Cristo property. All those pictures that you have, I don't think any of them compare with the damage that you would find on a tenth of an acre with 35 trip of trucks filled with construction debris. I think it's ridiculous. Don't give them access to that little tenth of an acre.

[Applause.]

Chairman Dwyer: Anyone else?

Mike DeJulio: I think everyone in the room spoke very well about why not to do a landfill. What we have to understand is that these folks are businesspeople. They stand to make millions and millions of dollars on this one-tenth of an acre. Millions of dollars. That's their business. For the City of Rensselaer—I live in East Greenbush—for the City of Rensselaer, you've got the new train station, you're trying to bring the city up. I think it's so important not to let a small, regional business choke a little city and let it dry up. These folks stand to make millions of dollars, and, don't get me wrong, that's their livelihood. But the City of Rensselaer what you've got to think of what you have to think of your piece of down here, we can take care of East Greenbush, but a lot of folks in this room right here have homes on that stretch. They work very hard for their homes, and these homes are their life. You let someone from a business community over-run a small, little town, you're making a big mistake. That's it. I'm opposed to it totally.

[Applause.]

Edith Wasula: I want to say something. My name is Edith Wasula, and I live on Seventh Street, right off Partition Street. We've lived there for 35 years. All them people down in the hollow had built their homes up from nothing. Well now you don't have all that junk up there, but not only do we have to worry about the value of the houses, but we have to worry about all the little kids. They can ride their bikes down the side streets to Partition Street to the ball park. Is your corporation going to guarantee that one of those trucks isn't going to let loose and hit one of those kids? Are they going to be responsible if something like that happens? Not only that, but we have kids that can't hear, we've got a couple kids in wheelchairs. So what does the parents got to do, lock their kids up so they can't you know, ride around with other people. You people, all you think about the thousands or whatever you're going to make. You don't care about anybody that lives don't live down in the hollow who has to take care of their kids...

[Applause.]

Chairman Dwyer: Ma'am. Excuse me. Any further comment will be toward the Board, please. All right?

Edith Wasula: That was toward the Board, but I had to look at them to see what happened.

Unidentified woman: I live in East Greenbush, and in regard to what Mike DeJulio said, the Cristo family will make millions doing this, and it will add tax base to the City of Rensselaer, but you also have to consider a number of people who will leave the City of Rensselaer and the Town of East Greenbush and with that the loss of tax base. And I would like to say I, too, am opposed to their plans.

Chairman Dwyer: Anyone else?

Marcia Lingleman: My name is Marcia Lingleman, and I live at 515 Woods Court, Plaza View. This is a little personal, but a very dear friend of mine, for years, drove dump trucks into the dump sites recently died, 59 years old, no proof of it, died of cancer. We had been saying for years for him to get out of that job because day in and day out, he drove in, dumped, sorted, came out, and did the same thing the following day. You do that for 32 years, you're guaranteed high risk. That's a personal incident, but there's a lot to be said about it.

[Applause.]

Chairman Dwyer: Anyone else, please? There's a hand up there.

Mary Fulsom: I just had something to add. I've been doing a little math, and 70 trucks a day averages out to one about six or seven minutes, if I live on Partition Street, for a garbage truck going by my house. How you can stand there and say with a straight face that's not going to

impact my neighborhood I find impossible. I don't live on Partition Street, but I don't want to see it anyway.

[Applause.]

Chairman Dwyer: Is there anyone else? I should have said is there anyone speaking for this? I should have started with that. Is there anyone speaking for this, besides Mr. Engel? If not, the public session is closed. Mr. Engel, you want to reply to that letter?

David Engel: Yes, I do. I learned a long time ago that one has evenings in this business where you go home and you find yourself saying that not all of life is a popularity contest, and you move on from there.

With respect to Mr. Moore's letter and the points made by Mr. Moore this evening, what I will point out is that in our application for a use variance, we have set forth what the test is and why we meet the test. Mr. Moore's statement that I have not addressed that test simply overlooks that fact. I don't want to get into a debate here with Mr. Moore, but the simple fact of the matter is that we have demonstrated why the hardship associated with this restriction is unique to us. We have also demonstrated that granting this use variance will not alter the surrounding neighborhood or the district in general. And furthermore, we did not create this hardship. Bear in mind that my clients inherited this property. They did not go out and buy it from someone else, and when someone says, jeez, they took title to it in 1987, they took title to it as the result of the disposition of the estate of the elder Mr. Cristo and the actions of the surrogates court here in the County of Rensselaer. And our papers address that and demonstrate that to be true. So the idea that somehow we came to this situation through our own free will and our own volition simply flies in the face of the facts of this matter.

Now, there are numerous factual errors as we see it in Mr. Moore's presentation and his memorandum. Let's bear in mind here the property in question in Rensselaer, excuse me, in East Greenbush, the discussion tonight would suggest that this was never a dump site. Some people understand there was a landfill in Rensselaer, but the landfill that we have been seeking in East Greenbush is a c and d landfill that, in fact, was in operation under a DEC permit from 1988 to 1993. It was a c and d landfill. That c and d landfill continues to exist within the town of East Greenbush. The material that's in that landfill isn't going anywhere, it's going to remain there regardless of what happens in this proceeding or any proceeding that may follow this proceeding. The c and d is in that landfill, and it is there safely, and it is the intention of my clients to operate a landfill at some point safely and in compliance with the law. Now there's been a lot of discussion tonight about the old landfill and the landfill here in Rensselaer, and I just want to clarify that. There's the old City of Rensselaer landfill, which my clients have nothing to do with. It was a municipal solid waste landfill that at one time was listed as a hazardous waste site by the State of New York. That landfill site is owned by Michael Patrick Cristo, it was operated by the City of Rensselaer. My clients have nothing to do with that. And the notion that we are going to resurrect and operation like that, that we have any interest in having that kind of facility is simply fiction. It's not going to happen.

Our property is not brownfield, it's not contaminated, it has never been cited as such by any competent state or local authority. It could be developed in any number of ways for that reason. My client's choice is to continue the landfill operation in the town of East Greenbush. Others might choose to do something else. But at least in considering this tonight, we should stay tender to the facts. The hyperbole that would suggest that we have a brownfield or a contaminated site is simply not appropriate and simply not correct. My client's property in the city and the town is 62 acres. The DEC permit would allow us to build 12.5 acres of that in construction and demolition debris, unprocessed construction and demolition debris, not the sort of c and d which has been implicated in odor problems at other sites and other properties. DEC held extensive hearings on this matter with thousands of pages of expert testimony, and they reached the conclusion that in terms of odor problems and all the rest that our plan was one that would work.

I think the emotionalism that goes with this kind of evening, while I appreciate why it exists, people should not be sitting here thinking we're going operating some uncontrolled hazardous waste site, brownfield, or anything of the sort. It's not our intention. It's a family-owned business, it's a business in a family that's been in this community for generations...

[Disruption among the audience.]

Chairman Dwyer: Please. He's talking.

David Engel: We've heard a lot of opposition. You can do us the courtesy of hearing us for a few more minutes. Tom Cristo is sitting here tonight. This is a hard-working, decent man, who works in the demolition business. He has a family. He's not interested in going home at night with hazardous waste or toxic chemicals clinging to his body so he can share that with his family. My clients work in this field, they're not some big multi-national corporation, these are people who are hands-on in the business, and they're no more interested in exposing themselves to danger than they are exposing everyone else. That's simply not the type of people they are.

Going back to, and I apologize if I've gone off of Mr. Moore's memorandum. The fact is points raised by Mr. Moore have been covered in our petition, in our application. We have demonstrated why this hardship is unique, we have demonstrated that we did not come to this circumstance voluntarily. We have tried to demonstrate as best we could that we will not change the nature of this community. The reason we went through the whole demonstration about the neighboring parcel, which my clients had no relationship to whatsoever, other than the accident of birth of their father and Michael Patrick being brothers.

[Disruption among the audience.]

Chairman Dwyer: Wait. [Pounded gavel.]

David Engel: The reason we went through that exercise was to demonstrate that the nature of the community, the nature of the district, will not be changed. Because when you compare our parcel to the other parcel in the district to see how that's treated, they have to be treated equally, they

have to be treated even-handedly. You can't treat one parcel differently than the other parcel. We are as entitled to the fair treatment of the law as the neighboring parcel is. As to the other claim about the character of the neighborhood, look, we understand that Mr. Valente was running 200-300 trucks a day down Partition Street. We understand that's the case, we understand the fights people have. We're not responsible for that circumstance. But the fact is that is the existing ambient condition on Partition Street and in the neighborhood. We didn't create it. We certainly did not create it. We're not looking to make a change in the nature of the community. We're looking to bring in 35 trucks a day, do our business, and operate both this area for which we seek the access and the landfill, if we ever operate, in a responsible fashion. And that's what we're about. Thank you.

Chairman Dwyer: Thank you, Mr. Engel. Is there any comments from the Board, any questions whatsoever?

Bill McLoughlin: I'd like to make a motion.

Chairman Dwyer: Yes, Albertine.

Albertine Felts: Yes, I'm sorry. I know I took two minutes earlier. Mr. Engel seems to have a knack for referring to other people to divert the attention away from the c and d landfill that he is trying to get permission to change the zoning and all here. He keeps taking about Michael Patrick. Well, Michael Patrick is here now, so I'm sorry about the accident of birth thing. I think that was very rude of him to say that. I'm sure Mr. Michael Patrick has something to say, and he's right here, so perhaps he has something to say.

[Laughter.]

Michael Cristo: I didn't come expecting to address anyone tonight. Pardon my appearance. For my part, I don't know what was said before I arrived, and this is a difficult position for me to be in. Anything that happened in my family is a private matter. It doesn't belong at a public hearing. The facts, and Mr. Engel I don't know you from Adam, but I take great offense to what you said. An accident of birth is not what this was, and you've got a lot of balls saying anything like that in a public forum, and you should apologize to your clients for it.

[Applause.]

Michael Cristo: My father, my grandfather, and my uncle, and their relationship, is nobody's business but our own. And whether we speak or don't speak is nobody's business. I don't have an opinion on landfills. I am not publicly for or against this for obvious reasons: a) because of my family; and b) because I'm in the demolition business, and for me to oppose a landfill is hypocritical, at best. I have my own initiative, and I will follow my bent in life as it is their right to follow.

I would encourage Mr. Engel to get his history correct, and I'll give you some facts that you should at least acknowledge. The City of Rensselaer landfill was approximately twelve acres originally. It was not fully in the city of Rensselaer. It was in Rensselaer and East Greenbush. Look at your map. Two: It was a hazardous waste site; it has been cleared by the DEC and has been removed from the list. The owner of the original landfill—read your DEC documents—is listed as Sebastian Cristo, not Michael Patrick. My father operated the City of Rensselaer landfill on the City's behalf from 1960 to 1976. Our mutual grandfather passed away in 1977. Anything that is put in the landfill in East Greenbush after 1976 was wholly separate from the previous operation. It is wholly different, to my understanding, and I'm not privy to all the information, but from what I understand, the c and d debris was put in the landfill, correct me if I'm wrong, in a different area from the previous stuff. I'm not here with any malicious intent, but get your facts straight, and portray them properly. And if you ever say a negative word about me, my cousins, or my family, I'll find you personally. I'll get you.

[Applause.]

Chairman Dwyer: Thank you, Mr. Engel. I'll open a discussion up now for the Board. Does anyone have any comments whatsoever, any whatsoever?

Doreen Foust, Member of the Zoning Board of Appeals: I don't have any questions. We've listened to a lot of people here tonight, and the reasons they feel the way that they do. And we have to take that into consideration. I do not feel personally that they have proven the hardship case at all, and that's my view.

Paul Ryan, Member of the Zoning Board of Appeals: Why wouldn't you go to East Greenbush...how many times have you gone to East Greenbush before getting, you want to get the parcel approved here, but why wouldn't you resolve the issue of getting the dump approved? Are you using this as a window of opportunity to get the dump approved?

David Engel: The first issue we're trying to resolve is the access issue. We went to East Greenbush and attempted to resolve the access issue there, and we were unsuccessful. We may go back there. The issue about the permit with East Greenbush is, without going into all the legal niceties, we believe we are a grandfathered facility in the town of East Greenbush. We operated a landfill there in the past. We understand the Town takes an opposite view in terms of whether we will require a permit, but that is a legal issue and a legal fight that we will deal with another day. We'll try and take this one step at a time. It's as simple as that. The roadway in question here tonight, of course, exists as an advantage of not having to be built again as compared with what we would have to do in East Greenbush. And one last thought on that, the roadway as it exists today was incorporated into the permit that was issued by DEC as well, so we see it as an appropriate starting point.

Bill McLoughlin: Dealing with East Greenbush has a big impact or potential big impact on the city of Rensselaer, and it seems to have fallen us to become the dealmaker and us to be the bad guy, so I think it's appropriate that you came here, and I'm quite surprised to find that you think

that the use is already grandfathered in East Greenbush. So if you don't get the zoning variance, my understanding is that you won't build the landfill.

David Engel: If we don't get the zoning variance from this Board, what we will do, if we don't get the variance of course we will assess what our legal options are from that decision, but it is not the case that we will take a decision by the ZBA this evening, if it were averse to us and simply say that's the end of the line. We are going to pursue our options.

Bill McLoughlin: What do you see those options as?

David Engel: Well, we have options in terms of seeking access through the town of East Greenbush. It is axiomatic basic principle of law, whether people like it or not, that people who own property have a right of access to that property. And the municipalities who deny people the access to and use of their property, whatever use those people may want to put their property to, are taking away value from those owners. We don't want to get into those issues about the loss of value. As I indicated earlier, my clients have been in this community, they're hardworking people. Their intention is to make a living off of this property by working, not by litigating. That is their intention. So if we are denied the use variance, we'll see what our options are, and we'll go forward from there. But, as you know, this is not a new matter. It has been through considerable history to this point.

Nancy Johnson, Member of the Zoning Board of Appeals: Many people have voiced concerns as far as the environmental impact on this dump in the area, and I was questioning what type of construction debris you will be using?

David Engel: The landfill would be used for unprocessed construction and demolition debris. The permit issued by DEC was quite restrictive in that everything put in there essentially had to come through Cristo Demolition or 4-Cs. It would not be open to the general, at large, on a come one, come all, basis. It would be unprocessed c and d. Only Cristo Demolition trucks would be allowed in. We're not going to accept processed c and d, as I indicated earlier. The c and d that has been implicated in so many of the odor problems and at far less sophisticated landfills than this in terms of design, has generally been processed c and d, in which sheetrock is ground up into a fine pulp and then comes into contact with moisture and you get this breakdown on a rapid basis that produces hydrogen sulfide, sort of a rotten egg odor. And that is something that we are designed to not have happen.

Nancy Johnson: But I'd like to understand then that it'll be used for old plaster and shingles, and that sort of things.

David Engel: Essentially what you have when you tear buildings down.

Nancy Johnson: So you'll have exposure to asbestos? What type of guidelines do you have to prevent this to be used for asbestos-contaminated equipment or material or lead-impacted material or benzene or anything else?

David Engel: We're not allowed to nor would we bring in asbestos-contaminated material...

Nancy Johnson: But how would you know if you don't test the material?

David Engel: There are provisions of law that require testing be undertaken when demolition jobs take place to make sure you're not doing that.

Nancy Johnson: Who does this testing?

David Engel: You bring in people who are qualified asbestos experts...

Nancy Johnson: Who brings in these people?

David Engel: The property owner and the demolition contractor have an obligation to test for that. There are serious...

Nancy Johnson: And are these people certified in this area? Or are what type of background do they have, and who certifies them, and how often are they checked, and all this sort of stuff?

David Engel: There's a whole body of law that applies there, and my colleague Mr. Millspaugh addresses the Department of Labor, for example, regularly, very intensely in this particular area.

Nancy Johnson: So they'll be somebody, like, on site to regulate this, or what? I don't understand. How does this come about?

Mark Millspaugh: You can't get a demolition permit to take a structure down until it's certified free of asbestos.

Nancy Johnson: And lead?

Mark Millspaugh: Also on lead paint.

Nancy Johnson: And leaden plaster? Do they check out the lead in the plaster and that sort of thing, too?

David Engel: All of that gets checked out. It's a highly regulated field.

Nancy Johnson: Ok, thank you. That's all I have.

Chairman Dwyer: Mr. Angelini?

Bob Angelini: Yeah, I just have one question. We keep hearing "access, access, access." Is it true that they really do not have access?

Chairman Dwyer: I'm sorry. I couldn't hear.

Bob Angelini: Do they or do they not have access to something that would be permitted in that zone?

Chairman Dwyer: No.

Bob Angelini: No. They can't use a car? They can't drive a car in there?

Dan Moore, Building Inspector: They can't run a commercial operation.

Bob Angelini: What I asked was can they use that driveway for permitted use of that property.

Dan Moore: For permitted use?

Bob Angelini: Yes.

Dan Moore: It can't be a commercial operation.

Bob Angelini: That's all I want to know. So they do not have an access problem. It's just they have an access problem for what they want to use it for.

Chairman Dwyer: Right. Right.

Bob Angelini: And, one other point. I've lived in that area for 37 years. Ok? And if he does come to the Town of East Greenbush, I would respectfully request that he gets some of his tax burden.

Chairman Dwyer: Yes, sir.

Robert Byram: If they do not have access, why is it on a daily basis, practically, I hear trucks dumping off dumpsters. Where are they coming from? They're not flying in. Where are they coming from? If they do not have access, how are they getting in there?

Chairman Dwyer: They're breaking the law.

Robert Byram: I hear the trucks dumping off the dumpsters? [Other voices asking questions.] Then what am I hearing?

Toni Cristo: This is a great, great error in whoever is making these statements. We were sited by Mr. Moore for using the access road. Our trucks were literally, literally, ticketed as they were coming out of the road. Is that correct, Mr. Moore? You did not ticket our trucks in the town of East Greenbush?

Dan Moore: No.

Toni Cristo: They were ticketed as they were coming out of the road with an empty dumpster. We were allowed to store empty dumpsters on our parcel of land in East Greenbush, even though the landfill itself was not operating, we still had a right to store our property, our equipment, our materials. It is our property, it was our right to do that. Our drivers were ticketed coming out of the property, as Mr. Moore agreed.

Since that time, since we went to court, since we were fined, and that whole process was resolved, we then came to this body to apply for a variance to use this road. We have not, absolutely have not, used that road for anything whatsoever. On occasion, when we have to go in there and are grandfathering our existing landfill, as the law requires us to do that. That's another issue; that's an East Greenbush issue. But I assure you, we are not storing our dumpsters in there and coming in and out. Are we doing that Mr. Moore?

Dan Moore: [Response is not audible.]

Toni Cristo: No. Our trucks do not go on Partition Street. I can tell you where all of our dumpsters, right now, are. They are all over the place. We service the Capital District area, we service the many people of the city of Rensselaer. We appreciate that they would want to do business with us. We provide a service, and we appreciate that. Our dumpsters, right now, and I invite you to go down to Second Avenue, that's where our garage is. We have a permitted use at that commercial garage to store dumpsters. The Planning Board gave us permission when we bought that property, how many years ago? Eight, ten, fifteen, I can't remember. Our dumpsters are stored there. Because we cannot use that access road, and we have 62 acres on which we could store. I have 63 some-odd dumpsters, we can't use that road anymore because of Mr. Moore's citation and decision by the Board and court. Our dumpsters are stored at our commercial garage in the city of Rensselaer under a fully permitted use. They are not all there now because they're here, there, yonder, doing our business. When they come back, they go into our yard. So you are not hearing any trucks of ours going into that lot. Absolutely.

Albertine Felts: May I ask this woman a question?

Chairman Dwyer: Yes, and then we're going to have the motion, please.

Albertine Felts: My question is do you have specific working hours? And what would they be?

Toni Cristo: The permit allows, I think. I think, and I don't have it right in front of me. Either 7 to 4. Or 8 to 5.

Albertine Felts: So that would be how many trucks going by [in audible] your facility, and you tell them to go by the hours.

[Other voices.]

Man in audience: Can you work that out after the meeting? This has nothing to do with anything.

Chairman Dwyer: This is a sideline, please, all right?

Albertine Felts: ...try to be a good neighbor...

Toni Cristo: I thought you meant the hours that were permitted...

Albertine Felts: Thank you. Thank you. I deviated a little bit.

Chairman Dwyer: All right. This portion of the meeting is closed. We'll have the motion, please.

Bill McLoughlin: I move that the Rensselaer Zoning Board of Appeals deny the variance for the use of the property in discussion, which is zoned Land Conservation, to change to industrial use, based on the public's expectation that the variance would result in a negative impact to the surrounding neighborhood, most of which is residential, and would alter the essential character of the neighborhood. And furthermore, the hardship is not unique and is self-created, as Mr. Engel spoke of an option of access through East Greenbush. So moved.

Chairman Dwyer: Second?

Doreen Foust: I'll second.

Chairman Dwyer: Now this is a denial. All those in favor.

Members of Zoning Board: Aye.

Chairman Dwyer: Opposed?

[No response.]

Chairman Dwyer: So carried.