



**Town of Shawangunk  
Zoning Board of Appeals  
April 9, 2025**

**Minutes of a Public Hearing held by the Town of Shawangunk Zoning Board of Appeals on April 9, 2025, at 7:00 PM at the Town Hall, 14 Central Avenue, Wallkill, New York, County of Ulster for the following:**

**Present Were:** Dennis Arluck, Chairperson, Susan Wiand, Robert Wallner, Sandy Damon and Chris Budney as Members, Rich Hoyt, Esq, Town Attorney, Julie Pawson, Zoning Board Secretary, Kathy Ebbrell, Court Clerk, Larry Marshall of M.N.T.M., and members of the public.

The meeting was called to order at 7:00 PM. Mr. Arluck led the Zoning Board in the pledge to the flag.

**Approval of Minutes:** A motion was made by Chris Budney and seconded by Sandy Damon to approve the minutes of March 19, 2025. **Vote:** All Aye's (Present; 5 / Absent; 0)

**Continuation of Appeal of Building Inspectors Interpretation: NY USLE BRUYNSWICK RD I LLC / OWNER: CHRISTOPHER SPARACO/ APPLICANT: MICHAEL FINGAR; SBL: 99.2-6-10, Address: 2319 Brunswick Road, Wallkill, NY 12589, and Wallkill Central School District, R-Ag4. Large Scale Solar Energy System. +/-33.8 Gross Acreage.**

Please see Transcription attached.

**A motion was made by Mr. Arluck and seconded by Mr. Walner to continue this Appeal to the May 21, 2025, meeting. Vote: (3:2) 3 Aye's: Mr. Budney, Mrs. Damon, Mr. Arluck / 2 Nay's Mrs. Wiand, Mr. Wallner.**

**PUBLIC HEARING:**

**HUFCUT/BONIFACE: APPLICANT: ZACHARY HUFCUT OWNER: JASON BONIFACE, ENGINEER: MERCURIO, NORTON, TAROLLI & MARSHALL, SBL: 104.4-3-18 (21.16 acres), Address: 1290 Burlingham Road, Pine Bush.**

Mr. Marshall of Mercurio, Norton, Tarolli and Marshall appeared on behalf of the applicant. He presented the proposed subdivision map and explained that the applicant was looking to subdivide one large parcel of land into two flag lots off Burlingham Road. He then explained that the parcels meet all zoning regulations except the fact that they are looking to create two flag lots and therefore they require a variance to do so. Mr. Marshall also explained that in creating these lots, the applicant was looking to add lot 1 to the easement access that already exists which serves lots 9 & 11, respectively. Mr. Arluck asked if the public had any questions or concerns. Mrs. Anne Gacek Steffens spoke, stating she owns the lot next to proposed lot 1 and is concerned about her property value and what lot 1 will be used for. She also said that she maintains the driveway in question, however it is owned by Mr. Boniface, she has maintained the driveway for years. She was curious about who would be responsible for maintaining it if the subdivision is approved. Mr. Marshall explained that the users of the driveway are responsible for maintenance and must discuss such and come to agreements regarding the maintenance of the common driveway easement. Mr. Marshall also explained that the proposed purpose for lot one would be to build a home on it. Mrs. Steffens then stated that Mr. Hufcut is already using proposed lot 1 and has a tree service called "Zacks Tree Care", and he is operating from proposed lot 1. She said she is concerned about that operation because it is right next to her home and large trucks are parked there. She does not mind the lot being used for a residential purpose but is concerned about a business operation. Mr. Marshall said he had not heard of this prior. Mr. Mark Watkins, who was present in the public, spoke and stated that he has seen the lot and can verify the trucks are

there currently. Mr. Arluck then suggested to Ms. Steffens that she go to the Building Inspector John Calaca and file a formal complaint regarding the illegal business next door to her property. He told her there was not much the Zoning Board could do about it, but it is up to Code Enforcement (Building Inspector) to investigate it and issue violations because just hearing of it is considered hearsay. Ms. Steffens said she would follow up with the Building Inspector on that issue. There was then discussion between Mr. Marshall and Mr. Arluck about the illegal business and whether a variance could be granted. They concluded that creating two flag lots were a separate issue from the possible illegal business happening on proposed site 1. Mr. Arluck then decided to cast a vote for the variance to allow or deny the creation of two flag lots, with his findings being: The lots would not change the character of the neighborhood, and the result would be less impactful due to one residence being built rather than a possible subdivision with multiple homes. There were no objections against this proposal by other surrounding neighbors besides Ms. Steffens. This is a Type II Exempt Action per the SEQRA regulations at 6 NYCRR 617.5 (16). Mr. Arluck called for a motion to create the 2-Flag lot subdivision and close the public hearing.

**A motion was made by Mr. Arluck and seconded by Mr. Walner to GRANT THE VARIANCE TO CREATE TWO FLAG LOTS and close the Public Hearing . Vote: All Aye's (Present; 5 / Absent; 0)**

**PUBLIC HEARING**

**SHEELEY SUBDIVISION: OWNER: WAYNE SHEELEY JR, ENGINEER: MERCURIO, NORTON, TAROLLI & MARSHALL; SBL: 106.4-2-21.1 (15.4 Acres) Address: 425 Plains Road, Wallkill. Variance request for Front Yard Setback**

Mr. Marshall of Mercurio, Norton, Tarolli & Marshall appeared on behalf of the applicant, requesting a variance for an 8.4ft front yard setback for a pre-existing, non-conforming dwelling located at 425 Plains Road. He presented the proposed Subdivision map to the members and the public and explained that the owner, Mr. Wayne Sheeley would like to create a two-family home from the pre-existing dwelling located on the site. He said no outside changes would be made to the home, only interior changes with the intent of creating an apartment upstairs and one downstairs in the home. He explained that due to the setback requirements he was referred to the ZBA from the Planning Board for the front yard variance. There were discussions regarding the structures that exist on the property and their uses as well as how the land would be divided between members of the public and Mr. Marshall. Some of those present came up and looked at the map to better understand the subdivision and Mr. Sheeley's intentions. Mr. Arluck found that this setback would not negatively affect the neighbors or the surrounding area. It would not cause any sort of disturbance. He found that there were no objections from the public. This is a Type II Exempt Action per the SEQRA regulations at 6 NYCRR 617.5 (16). Mr. Arluck called for motion to approve the front yard setback.

**A motion was made by Mr. Arluck and seconded by Mr. Walner to GRANT THE 8.4ft VARIANCE FOR THE FRONT YARD SETBACK of the pre-existing home and close the Public Hearing . Vote: All Aye's (Present; 5 / Absent; 0)**

**Meeting Adjourned at 8:23 PM**

**Respectfully submitted,**

**Julie Pawson  
Zoning Board of Appeals Secretary**

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ZONING BOARD OF APPEALS PUBLIC HEARING

ZONING CODE INTERPRETATION REQUEST

APPEAL BY U.S. LIGHT ENERGY and

NY USLE BRUYNSWICK ROAD 1, LLC

DATE: Wednesday, April 9, 2025

LOCATION: 14 Central Avenue  
Wallkill, New York 12589

TIME: 7 p.m.

BOARD: Richard W. Hoyt, Esq.  
Chris Budney  
Sue Wiand  
Sandy Damon  
Robert Wallner  
Dennis Arluck

BOARD SECRETARY: Julie Pawson  
Kathy Ebbrell

BARCLAY DAMON, LLP: Corey A. Auerbach, Esq.

U.S. LIGHT ENERGY: Michael Fingar  
Alex Burnett

PROPERTY OWNER: Chris Sparaco

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2 MR. ARLUCK: Welcome. Let's all  
3 stand for the pledge.

4 (Pledge of Allegiance)

5 MR. ARLUCK: At this time we are  
6 going to vote -- you can read the agenda  
7 first.

8 MS. EBBRELL: On tonight's agenda  
9 we have a continuation of an  
10 appeal/interpretation for New York US  
11 Light Energy at 2319 Brunswick Road,  
12 Wallkill, New York, 12589.

13 We also have a public hearing for  
14 Hufcut/Boniface at 1290 Burlingham Road in  
15 Pine Bush. And Wayne Sheeley at 425 Plains  
16 Road in Walkill, New York.

17 MR. ARLUCK: Can we get a vote on  
18 the minutes?

19 MR. BUDNEY: Aye.

20 MR. ARLUCK: Second?

21 MS. DAMON: Second.

22 MS. PAWSON: Chris Budney?

23 MR. BUDNEY: Aye.

24 MS. PAWSON: Sue Wiand?

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MS. WIAND: Aye.

MS. PAWSON: Sandy Damon?

MS. DAMON: Aye.

MS. PAWSON: Robert Wallner?

MR. WALLNER: Abstain.

MR. PAWSON: Dennis Arluck?

MR. ARLUCK: Aye.

Okay, gentlemen. I'm going to give the floor to Rich Hoyt.

MR. HOYT: Good evening. Rich Hoyt, attorney for the board.

I would like to point out that Board members have considered the entire record, all the materials. There two transcripts. Thank you applicants. It is very helpful to read the word for word transcripts.

Board members have seen several drafts of a proposed resolution, had the chance to get back to me with the comments. I'm going to stress this is only a draft. It is a guide. Board members can modify it any way you wish.

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You can do that orally and final edits can be made later. If Board members are not quite sure what they want to do, the matter could be held over. You have 62 days beginning March 20th. So we are well within that statutory time period.

First of all, do the Board members have any questions in addition to those that I've already fielded on the draft?

MR. ARLUCK: No.

MR. HOYT: I would like to give the applicant a couple of copies to follow along. This only got done in final form late today. And Cathy, the clerk, only received it about ten minutes ago. So I would like to go through it and then again, circle back for any questions, comments, what have you.

First of all, it is an appeal filed by US Light Energy for property at 2319 Brunswick Road. This is an appeal of the code official's August 8th, 2024 determination. The appeal was filed by US

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1  
2 Light as a presumed contract vendee or  
3 lessee for lands of Christopher Sparaco,  
4 the owner. The site is 33.8 acres,  
5 contains a single family house and  
6 associated outbuildings, and it is in the  
7 RAG-4 Zoning District. The balance of the  
8 site is populated by trees of different  
9 sizes and species, forming a formidable  
10 canopy as per the aerial views in the  
11 record.

12 The Appellant has filed an  
13 application with the Planning Board for  
14 the Special Use Permit and Site Plan  
15 Approval, but that application initially  
16 required several variances. But  
17 subsequent modifications to the plans have  
18 resulted in the resolution of most of the  
19 prior issues, as per the Appellant. It is  
20 noted that the other issues of not more  
21 than 50 percent lack of coverage and the  
22 required buffering are not before the  
23 Board on this appeal. The Applicant now  
24 proposes to clear 18.8 acres of trees to

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**(518) 495-3830**

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2 install over 7900 solar panels.

3 The section of the Zoning Law at  
4 issue here, I'll repeat it, but we have  
5 seen it many times during this proceeding.  
6 Clear cutting of mature trees shall be  
7 limited to the panel array, the equipment  
8 compound, the area of access roadways, and  
9 the area for solar access, and in no case  
10 more than ten acres per parcel. The  
11 Appellant argues that the ten acre  
12 clearing limitation only applies to mature  
13 trees, and mature trees are those that are  
14 economically viable for timber harvest or  
15 are at least 16 inches in diameter. The  
16 Code Official has determined a mature tree  
17 is one that is old enough to produce a  
18 flower or fruit. And that the law  
19 concludes that in no case more than ten  
20 acres per parcel may be cut. And we have  
21 attached the determination right to the  
22 resolution for ease of reference.

23 In its determination, the Code  
24 Official also rendered an interpretation

**LAURA A. COUCH**  
**(518) 495-3830**

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2 regarding a commercial motor vehicle  
3 retail dealer use, which has been resolved  
4 and is not before the Board.

5 A Public Hearing was open on  
6 February 19th, 2025 and continued to  
7 March 19th, 2025, when it was closed. The  
8 Appellant submitted multiple oral comments  
9 and written materials, all of which have  
10 been reviewed by the Board. At the Public  
11 Hearing and in its pre and post-hearing  
12 submittals, the Appellant has set forth  
13 its arguments as to why it believes that  
14 this code official's determination was  
15 incorrect. In summary, the Appellant  
16 argues that this particular section is  
17 ambiguous as to the terms of a mature tree  
18 and clear cutting.

19 Member Robert Wallner was present  
20 at the opening of the hearing on March 19th,  
21 but was unable to attend -- I'm sorry.  
22 February 19th, but was unable to attend  
23 the March 19th Public Hearing. The record  
24 should reflect that Member Wallner has

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**(518) 495-3830**

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2 reviewed the transcript of the proceedings  
3 and all related submittals and is fully  
4 informed as to the record.

5 So the following conclusions are  
6 reached. The Code Official selected a  
7 reasonable definition of a mature tree in  
8 the application of that term, of the term  
9 clear cutting in the context of a large  
10 scale solar facility. As noted by the  
11 Chairman at the March 19th Public Hearing,  
12 the USDA's definition of a mature forest  
13 is the entire stage of vegetative  
14 development from understory to old growth.  
15 As noted by Member Budney also on 3/19/25,  
16 there are a multitude of definitions for a  
17 mature tree. And per the New York State  
18 DEC, it is up to the municipality to  
19 determine which definition to use, and the  
20 Code Officials speaking for the municipality  
21 have so determined.

22 The Appellant points to other  
23 unrelated sections of the Zoning Law where  
24 trees are defined in other contexts, such

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**(518) 495-3830**

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2 as for the desired guidelines and in the  
3 Wallkill Gateway Zoning District. The  
4 Board finds that the solar signing  
5 regulations under the REG in the context  
6 of the continuous tree clearing required  
7 for large scale solar facilities, and are  
8 very different from the typical design  
9 guidelines for commercial or residential  
10 site plan where landscaping is integrated  
11 with the other development. For any large  
12 scale solar array, no trees at all can be  
13 saved within the area of the facility. The  
14 Board does not accept the Appellant's  
15 premise that only economically viable  
16 trees are considered mature or that only  
17 trees of 16-inch diameter or greater at  
18 breast height are mature.

19 The Board finds that the common  
20 everyday meaning of the term clear cutting  
21 cannot be in dispute. Clear cutting means  
22 that all vegetation, be it large, medium  
23 or small, will be removed to prepare an  
24 18.8 acre fully cleared site for the

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**(518) 495-3830**

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2 installation of the array. The Board must  
3 analyze the Zoning Law provision and avoid  
4 rendering any of its language superfluous  
5 in this appeal. The section at issue  
6 concludes with the all important clause,  
7 and in no case more than ten acres per  
8 parcel.

9 The Board disagrees with the  
10 Applicant's position, and it can canvas  
11 the entire site selecting which trees it  
12 considers mature in calculating that it,  
13 therefore, only will remove 9.98 of the  
14 acres of such trees, which is just under  
15 the ten acre maximum.

16 The Board further finds that the  
17 section in question calls for a maximum of  
18 ten acres of clearing for any vegetation  
19 other than scrub growth or immature  
20 saplings. The record reflects that the  
21 process leading up to the 2018 adoption of  
22 this section at issue included the term  
23 wooded area, that was later replaced with  
24 the term mature tree. Under either term,

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2 it is the Board's conclusion that the  
3 drafters of the law intended to prevent  
4 more than ten acres of clear cutting as  
5 set forth in the Code Official's  
6 determination.

7 This is a Type II exempt action,  
8 per the SEQR. GML 239 does not apply.  
9 Based upon the entire record, the Board  
10 affirms the August 8th determination and  
11 denies the appeal. And a copy of this  
12 decision shall be filed with the building  
13 department, the Town Clerk and a copy to  
14 US Light Energy and Christopher Sparaco,  
15 the owner.

16 Now, again, I want to repeat, you  
17 are not bound at all. That was just kind  
18 of a guide, and Board members are free to  
19 ask questions, tweak the resolution,  
20 anything you want to do, including putting  
21 it over.

22 Thank you.

23 MR. ARLUCK: Does anyone here on  
24 the Board have anymore questions or want

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**(518) 495-3830**

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to add anything to this?

(No response.)

MR. HOYT: Call for a vote.

MR. AUERBACH: Mr. Chair, just a point of order, if I may.

MR. ARLUCK: Sure.

MR. AUERBACH: Corey Auerbach from the law firm of Barclay Damon. Good evening. Thank you all for your time tonight.

This is a literal and a figurative coming home for me, as I traveled from Buffalo. I'm originally from Ellenville, New York. So it was very nice to travel partially down Route 52 to be here. I traveled through this lovely town.

I'm new to this file. My colleague, Ari Goldberg, has been here representing US LE throughout the process. But having an opportunity to acquaint myself with the materials and the documents, and just handed this resolution now and hearing of it for the first time as I get here.

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2 But the particular point of order I  
3 wanted to raise relates to one of the last  
4 sentences in the proposed decision.

5 Specifically, paragraph ten, which says  
6 this is a Type II exempt action per the  
7 SEQR, I believe. And in most cases, an  
8 interpretation appeal is clearly a Type II  
9 action on the Type II list under the State  
10 Environmental Quality Review Act.

11 However, the action which is the  
12 development of this renewable energy  
13 facility, is actually a Type I action, and  
14 the Planning Board is the lead agency for  
15 purposes of a coordinated environmental  
16 review. And when you have a Type I  
17 action, no involved agency, which the  
18 Zoning Board is, can take an act to fund  
19 or approve an action unless or until a  
20 determination of significance has been  
21 made by the lead agency. So if we were  
22 merely handling an interpretation appeal,  
23 separate and apart from this Type I action  
24 for this renewable energy facility, it

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2 absolutely would be Type II, and you could  
3 proceed without any further SEQR review.  
4 But this is part and parcel to a larger  
5 action, the development of the solar  
6 array. And the lead agency has already  
7 classified the action as Type I. And as a  
8 result, no action can be taken by any  
9 involved agency, including this Zoning  
10 Board in this interpretation appeal,  
11 unless and until the lead agency makes its  
12 determination of significance. So while  
13 you can hold Public Hearings, and you  
14 have, and while you can close Public  
15 Hearings, which you have, I didn't  
16 appreciate that the Board intended to take  
17 an action tonight, nor did I expect you  
18 to, because the lead agency has yet to  
19 make a determination of significance.

20 You can't have multiple  
21 classifications of the same action. In  
22 other words, we couldn't come here, for  
23 example, for a SEPT Act Variance for this  
24 project because the lead agency has not

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2 yet made its determination of significance.  
3 That is what a coordinated review is. A  
4 lead agency handles the environmental  
5 review for all involved agencies and  
6 renders a determination.

7 MR. ARLUCK: Excuse me. I have  
8 felt that this is the cart before the  
9 horse. All right. That has been my  
10 personal feeling. So the point that you  
11 are about to make is that this is null and  
12 void?

13 MR. AUERBACH: Not that it is null  
14 and void. That you are not yet in a  
15 position to take action on this appeal.  
16 Once the lead agency makes its  
17 determination of significance, then, of  
18 course, you could take any action because  
19 the SEQR will have been completed at that  
20 point.

21 So while it is absolutely true,  
22 again, at the risk of beating a dead  
23 horse, that generally, an interpretation  
24 appeal is Type II, in the context of this

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2 larger Type I action, it is just a little  
3 premature right now for you actually to  
4 adopt this or any resolution.

5 MR. HOYT: While it is an interesting  
6 argument, I frankly, didn't ever think of  
7 it because every appeal I have been  
8 involved in is clearly under the cited  
9 section, 37, I think it is, of 617.5. An  
10 interpretation simply is not subject to  
11 SEQR. It is exempt.

12 And I might point out that while  
13 the cart may be before the horse, I'm sure  
14 the planners would say the same thing,  
15 because how could they reach a SEQR  
16 determination if they don't have a plan in  
17 front of them that complies with Zoning.  
18 And the whole reason for this exercise  
19 here is to decide what are the Zoning  
20 rules for this project. And we have come,  
21 spent quite a bit of time, and the  
22 Planning Board, I don't believe, can act  
23 at all right now, nor could they act until  
24 they know whether or not Mr. Colacca's

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2 ruling is being upheld or reversed. So  
3 that to me would be the counter, both  
4 legal and practical reasons why I would  
5 consider that the Board could put this  
6 matter to a vote, and the Applicant  
7 certainly has its remedies if it feels  
8 strongly about it.

9 MR. ARLUCK: I'll take your advice.

10 MR. AUERBACH: It is absolutely  
11 true that Type II actions do not require  
12 any further SEQR review. We have three  
13 types of actions in SEQR. We have Type I  
14 actions, and how do you know it is a Type I  
15 action, you look at the list, and if it is  
16 on the list, it is Type I. There is a  
17 list of Type II actions. How do you know  
18 it is Type II? You look at the list, and  
19 if it is on there it is Type II. And  
20 then, of course, we have unlisted actions,  
21 which are on neither list. Right. But  
22 they are all actions, right. They are  
23 still all actions.

24 No action can be taken by any

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2 involved agency unless and until a  
3 determination of significance has been  
4 rendered. And you should take the advice  
5 from counsel, from your attorney. I just  
6 asked the question. He is hearing this  
7 argument for the first time, just like I'm  
8 seeing this proposed resolution for the  
9 first time. I don't know if there is a  
10 particular urgency considering this  
11 technical legal issue for you to actually  
12 proceed. Of course, it would be your  
13 prerogative to do that, and it would be  
14 our prerogative to ask a court to review  
15 that. I'm hoping that is not necessary.  
16 Because I think the law is absolutely  
17 clear that this is clearly an action,  
18 right, you had a Public Hearing, you are  
19 taking an action, making a determination,  
20 right. No action to fund or approve a  
21 project can be taken until the lead agency  
22 makes its determination of significance.  
23 As your attorney stated, he didn't consider  
24 my argument because he is usually handling

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**(518) 495-3830**

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interpretation appeals separate and apart  
from a larger action.

MR. HOYT: I --

MR. AUERBACH: Here, the lead  
agency classified the action as Type I.

I'm sorry.

MR. HOYT: Actually, I meant to say  
that I haven't seen the argument in the  
context of any surrounding Planning Board  
application. Usually that is how this  
comes up. And I might point out that SEQR  
prohibits actions that, and you said that  
fund or approve a permit, a subdivision, a  
site plan variances. This is none of the  
above. This is an interpretation. It is  
not a permit. It is not an approval of  
any action. It is not a permit. So I  
would say, again, arguments noted for the  
record, but unless the Board has other  
questions, we can call the question.

MR. AUERBACH: Respectfully,  
Mr. Hoyt, the adoption of a local law, for  
example, is not approving something.

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2 Nevertheless, it is subject to SEQR.

3 Right. Entering into a contract isn't

4 approving something, but it is,

5 nevertheless, subject to SEQR. I

6 understand the Board's desire to move this

7 forward, and we are grateful for your

8 efforts, but what I'm suggesting is you

9 clearly under the -- under the Type I

10 action of this project, there is no SEQR

11 completed. There is no determination of

12 significance. You can't say this part of

13 the action is Type I and this part of the

14 action is Type II. That is not a thing.

15 MR. HOYT: How is the Planning

16 Board supposed to reach any conclusion not

17 knowing what the rules are?

18 MR. AUERBACH: The way that the

19 Planning Board renders its decision is by

20 identifying the potentially significant

21 environmental impacts, making a reasoned

22 elaboration on the facts --

23 MR. HOYT: I got that.

24 MR. AUERBACH: -- and issuing a