

1 PLANNING BOARD COUNTY OF ALBANY  
2 TOWN OF COLONIE

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5 THE MAXWELL ROAD SENIOR PDD ALSO KNOWN  
6 AS 605 ALBANY-SHAKER ROAD AND 210 MAXWELL ROAD  
7 REVIEW AND ACTION ON AMENDED CONCEPT PLANS AND  
8 PDD FINDINGS AND RECOMMENDATION TO  
9 THE TOWN BOARD  
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11 THE TAPED AND TRANSCRIBED MINUTES of the above  
12 entitled proceeding BY NANCY STRANG-VANDEBOGART  
13 commencing on December 15, 2009 at 8:18 p.m. at  
14 the Public Operations Center 347 Old Niskayuna  
15 Road, Latham, New York 12110

16 BOARD MEMBERS:

- 17 JEAN DONOVAN, CHAIRPERSON
- 18 CHARLES J. O'ROURKE, JR.
- 19 ELENA VAIDA
- 20 TOM NARDACCI
- 21 TIMOTHY LANE
- 22 PETER STUTO, Jr. Esq., Attorney for the Planning  
23 Board

24 Also present:

- 25 James Finning, Finning Properties, LLC
- 26 Jamie Easton, PE, WSP Sells
- 27 Joe LaCivita, Director, Planning and Economic  
28 Development
- 29 Mike Lyons, Planning and Economic Development
- 30 Ted Kolankowski, PE, Barton and Loguidice

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1                   CHAIRPERSON DONOVAN: The next project  
2                   that we are considering this evening is the  
3                   Maxwell Road Senior PDD; review and action  
4                   on amended concept plan and PDD findings  
5                   and recommendation to the Town Board.

6                   This is another project whose group  
7                   has held neighborhood meetings and I think  
8                   that it has served to your benefit.

9                   MR. EASTON: Hello everyone, my name  
10                  is Jaime Easton. I'm with WSP Sells. I'm  
11                  here tonight with Jim Finning, the property  
12                  owner.

13                  Just to bring everyone up to speed,  
14                  this shows the newly realigned Maxwell Road  
15                  with a roundabout on Albany Shaker Road.  
16                  It's been in the news and all over the  
17                  place.

18                  The people that live right next to the  
19                  project are very familiar with the  
20                  construction activity going on. As this  
21                  project was going along back in 2007, the  
22                  developer decided to do a project and to do  
23                  senior housing on this; some condos and  
24                  some attached duplexes. They were triplexes  
25                  at the time. Basically the density of it

1 was 51 units. As part of the process, the  
2 economic conditions have changed. Our  
3 client decided to change the use and get  
4 rid of the three-story condo units and  
5 basically just go straight to duplex and  
6 triplex units.

7 Based on that, we presented to the  
8 Planning Board a new concept back in June  
9 of this year with some negativity. After  
10 that negativity, we came up with a new plan  
11 and presented it to everybody at the public  
12 hearing at the Crossings in August. We got  
13 your input back and then revised the plan  
14 and presented it to the board. They came  
15 back with a few more comments and here is  
16 where we are now.

17 So, let's just go over the basics,  
18 such as what it has changed from what you  
19 folks saw in August to where it is today.

20 Originally back here (Indicating),  
21 there are seven units over there. We then  
22 revised it to three units. Everyone kind of  
23 liked that. Some residents wanted it  
24 shifted more toward the wetland and  
25 providing a natural ten-foot no cut buffer.

1           The grading plan that has been  
2 submitted to the town and this plan shows  
3 the no-cut buffer and the grading work  
4 without actually cutting into it.

5           Also residents of Brizzell's Farm were  
6 worried about how much we were clearing and  
7 to keep some natural buffer in their back  
8 yard. We're not clearing a lot back there.

9           Again, you can look at the plans.  
10 We're planning on clearing about 40 feet,  
11 or to the center of the second house as you  
12 go into the Brizzell Farm. That's about as  
13 far back as we're going to clear.

14           Also, as we looked at this whole  
15 roadway we added these units here  
16 (Indicating). The common open spaces we  
17 talked about before were offered to the  
18 town and the town didn't really want it.  
19 They wanted it deed restricted. From here  
20 the residents wanted it well maintained.  
21 So, we're going to increase the landscaping  
22 on it to make it look natural so these  
23 homeowners on Margaret Street will have  
24 some nice landscaping and basically a  
25 maintained looking lawn. It will look

1           pristine out there, but you will have some  
2           visual buffer from the back of your houses.

3                   Of course for the June meeting we came  
4           out and they said that everybody wanted a  
5           natural looking buffer on the back of  
6           Margaret and Karen Court to the backs of  
7           all of these homes. This is also in the  
8           plan. It's basically a hedgerow all the way  
9           around the whole project site; arborvitaes  
10          all along the hedgerow.

11                   I think that those were the main  
12          things that came out which was really a  
13          natural buffer. There were people that were  
14          worried about drainage. This is the  
15          elevation views of these in relation to  
16          their house from Margaret Court down to the  
17          proposed houses here (Indicating). The  
18          typical crosssection - basically how that  
19          is going to look. That's where we currently  
20          are now.

21                   I will now leave it up to Jim if he  
22          has any additional things that he would  
23          like to add.

24                   MR. FINNING: No, I'm sure that the  
25          board is aware of the fact that when we

1           were here last time we suggested that we go  
2           back to the town. We did have a meeting  
3           with the Supervisor, counsel and Joe.  
4           That's when we determined that as Jaime  
5           said, they didn't want to take that land  
6           on. So from that meeting, we came up with a  
7           new deed restriction to expand the lots  
8           that Jaime is talking about.

9                       CHAIRPERSON DONOVAN: Can I just  
10           clarify something with Joe and Mike  
11           tonight?

12                      The action that the board is going to  
13           take tonight is to send a recommendation to  
14           the Town Board, is that correct? Is there  
15           any other action needed by this board  
16           tonight?

17                      MR. LYONS: Well, the recommendation  
18           that the Planning Board makes this evening  
19           goes to the Town Board. If the Town Board  
20           accepts that recommendation, at that point  
21           the recommendation turns into a concept  
22           acceptance.

23                      CHAIRPERSON DONOVAN: Thank you,  
24           Michael.

25                      MR. KOLANKOWSKI: As it was just

1           stated, this is a recommendation to the  
2           Town Board for an amendment to an existing  
3           Zoning Law that was passed in 2007 from the  
4           original concept plan. They reviewed this  
5           and the changes in the concept and it ended  
6           up in a similar fashion to the original  
7           recommendation.

8                       Basically, they're proposing to add  
9           additional acreage to the PDD; the original  
10          included an estate lot. They're also  
11          changing it from sort of a mixed use with  
12          higher density residential and town homes  
13          and the essential density is staying the  
14          same. The original proposal was 51 units  
15          and the new proposal is 51 units. So,  
16          that's staying the same. The ownership will  
17          be restricted to senior citizens.

18                      Actually there is a new PDD. Since  
19          2007 the law has changed so we had to  
20          compare it to the newest PDD law and  
21          compared it to the town's objectives of  
22          that law.

23                      There was the 35% open space. We  
24          didn't think that it was appropriate to  
25          change that. The recommendation includes a

1 waiver of the open space requirements.

2 MR. NARDACCI: Can I just ask you a  
3 quick question?

4 Just step back one more bullet to the  
5 senior citizen. What is the age and how do  
6 we make sure that's the age? The reason  
7 that I ask is that my in-laws just moved  
8 into a property in Jersey and it began as  
9 an active senior community and the age  
10 restriction now is 49 and over.

11 MR. KOLANKOWSKI: This one is 55 and  
12 over.

13 MR. NARDACCI: How is that enforced?

14 MR. LANE: How do you check and move  
15 forward?

16 MR. NARDACCI: That's the question  
17 that I had.

18 MR. KOLANKOWSKI: I guess it's going  
19 to have to be enforced by the Building  
20 Department. It's written into the Local  
21 Laws. The units are intended for seniors 55  
22 and over.

23 MR. LANE: Is that a deed restriction?  
24 Is that part of a deed restriction?

25 MR. KOLANKOWSKI: That would be part

1 of the adopted PDD.

2 MR. LANE: But as far as when somebody  
3 buys the property, what prevents somebody  
4 going five, 15 or 20 years down the road  
5 from being under 55?

6 MR. KOLANKOWSKI: I'm not familiar  
7 with how you can make additional  
8 restrictions on it. This is addressed as  
9 part of the revised Local Law, but it's  
10 also a condition of approval. I supposed if  
11 you caught someone at age 40 purchasing a  
12 place, you could rescind it.

13 MR. NARDACCI: Part of my concern is  
14 that as we're looking at this -- you know,  
15 I've made positive comments about this type  
16 of product being available to seniors in  
17 the town. I think that there is a need.  
18 It's clearly outlined in the Comprehensive  
19 Plan. It's something that we talk about a  
20 great deal here. I'm just wondering, come  
21 build-out and selling - if someone in their  
22 40's says, yeah, I like that town home. I'd  
23 like to get in there -

24 CHAIRPERSON DONOVAN: Point number  
25 nine here - if we send this recommendation

1 to the Town Board tonight, it says:

2 Occupancy shall be limited to senior  
3 citizens, handicapped persons and senior  
4 citizen families or handicapped families as  
5 outlined in the Town of Colonie Land Use  
6 Law.

7 So, Mike, that's already outlined in  
8 the Land Use Law. How would you implement  
9 that?

10 MR. LYONS: Actually it would be the  
11 Building Department. It's the same thing  
12 that they have in Albany where they only  
13 have so many family members under the same  
14 roof. It becomes zoning enforcement.

15 CHAIRPERSON DONOVAN: What happens if  
16 I sell my house to someone? The Building  
17 Department really doesn't do anything in  
18 that aspect. Who would it be? The  
19 Assessor's office?

20 MR. LACIVITA: Jean, I was just going  
21 to mention that. I'm certainly not an  
22 attorney.

23 Peter, wouldn't that be something  
24 that's in the deed as far as resale of the  
25 property?

1           MR. LANE: That's what I said; deed  
2 restriction.

3           MR. STUTO: I don't know if I heard  
4 you say deed restriction or just as a  
5 condition of the PDD. Did you say both?

6           MR. LYONS: There isn't any mention of  
7 it as a deed restriction but it is part of  
8 the Local Law. It would be the Local Law  
9 that the Town Board passed - the amended  
10 Local Law for this PDD will state that  
11 allowable use of these units is seniors 55  
12 or older, as defined in the Local Law.

13          MR. LANE: If it's violated, what is  
14 the remedy to that?

15          MR. LYONS: I guess it would be  
16 similar to any land use violation. The  
17 Building Department would enforce that.

18          MS. VAIDA: Have you done any projects  
19 like this before with the seniors, limiting  
20 it to senior citizens? I just find it  
21 amazing that you can do that.

22          MR. FINNING: My personal belief is  
23 that it's almost self-policing. Yes, I  
24 think that you could put it into the Town  
25 Code and the Town Law, but my experience

1 with seniors has not been with sale units.

2 I do own three senior rental  
3 units - over 200 units and I can tell you  
4 that if there is any suspicion in the  
5 building that someone -- we go for 50 and  
6 older because AARP says that you're a  
7 senior when you turn 50. We never want to  
8 argue with them. Our demographics for the  
9 apartments are 50 and over, but if we get  
10 someone who is 53 and they look like  
11 they're 43, we've got 10 people in the  
12 office wondering who they are and can you  
13 prove how old they are?

14 In the apartment business, it really  
15 becomes self-policing. I think that you may  
16 get some of that if the project evolves and  
17 the people are living there and they truly  
18 are seniors. It's certainly much easier to  
19 enforce as the first sales go forward. It  
20 would become a problem on the resale.  
21 That's where I think that you would see the  
22 problem start to arise.

23 MS. VAIDA: The enforcement issue is  
24 an issue but -

25 MR. STUTO: You're talking about the

1 constitutional of it.

2 MS. VAIDA: I don't believe that you  
3 can restrict -

4 MR. FINNING: As far as I'm familiar  
5 with the law - and I'm not an attorney  
6 either - is the fact that it's one of the  
7 few or rather the only rule that you can  
8 discriminate legally. You're discriminating  
9 for them.

10 MS. VAIDA: Hypothetically speaking,  
11 they want to sell their home 20 years down  
12 the road and the economy is still doing  
13 poorly, and the only person that they can  
14 sell it to is someone who is 40 years old.  
15 So, we're saying that you're stuck with  
16 your property?

17 MR. FINNING: I would think that they  
18 would be restricted, yes. How you enforce  
19 that - I'm not going to stand here and tell  
20 you that it's not more difficult out into  
21 the future on the resales. I think that it  
22 is.

23 MS. VAIDA: I just want to be sure  
24 that it's constitutional to do that. That's  
25 my concern.

1 MS. STUTO: I think that it is.

2 MR. FINNING: There are rules and laws  
3 that make it happen. Like I said, I think  
4 that it's easy to enforce on the initial  
5 sale. I can see a problem into the future.  
6 There has got to be guidelines that protect  
7 the town and the neighborhood.

8 CHAIRPERSON DONOVAN: Mike and Joe,  
9 maybe the Planning Department can look into  
10 something like that as an amendment to the  
11 Land Use Law or a clarification in the Land  
12 Use Law as to future sales of such  
13 properties. I don't know if that's feasible  
14 but I think that can be looked into.

15 MR. LYONS: Normally there are deed  
16 restrictions in there. Then again, as it  
17 was mentioned some of the deed restrictions  
18 are self enforcing or neighbor enforced.

19 CHAIRPERSON DONOVAN: I'm to the point  
20 where I don't think that we can micromanage  
21 a neighborhood that much, but I think that  
22 we do know that it's restricted to just  
23 seniors. That's the object of the request  
24 and that would be the object of any  
25 recommendation that we make to the Town

1 Board. It will be up to the property owners  
2 really to enforce it themselves.

3 MR. LYONS: Really, a PDD is a  
4 rezoning of the property. This is for  
5 specific future residents of the town,  
6 being seniors or handicapped persons and  
7 their families. So, with that being said,  
8 this could be additionally enforced through  
9 direction from the Town Board by actually  
10 rezoning

11 CHAIRPERSON DONOVAN: When the Town  
12 Board rezones it, there should be legal  
13 qualifications on it.

14 MR. NARDACCI: My point was just that.  
15 What is the legal process here? I would be  
16 less excited about a PDD that's not senior.  
17 This is clearly the reason for it. How do  
18 we ensure this? It's like any law. Like  
19 Jean said, you can't really micromanage it,  
20 but it does exist in the law and it will  
21 say -- what age does it say?

22 MR. STUTO: Seniors 55 and older. They  
23 are defined in the Land Use Law.

24 MR. NARDACCI: Okay, thank you.

25 MS. VAIDA: But it's not just limited

1 to seniors.

2 MR. FINNING: Handicapped also.

3 MS. VAIDA: So you could get 25 year  
4 olds and their children.

5 MR. FINNING: If they're handicapped,  
6 yes.

7 MS. VAIDA: If the primary owner is  
8 the right age, can that person then adopt  
9 children and have children living there  
10 also?

11 MR. FINNING: You could be 55 and have  
12 children living there.

13 MS. VAIDA: Right, so there could be  
14 other members of the house -

15 MR. LYONS: There is a series of  
16 definitions in the Land Use Law. There are  
17 definitions that define senior citizens,  
18 handicapped persons, senior citizen  
19 families and handicapped families. It's  
20 already defined in the existing Land Use  
21 Law.

22 MS. VAIDA: Because of the limitation  
23 on the kind of district it is, you don't  
24 have to worry about services for children  
25 like schools or getting them to school

1 busses. That's not really an issue here.

2 MR. LYONS: Whenever you do  
3 residences, you need to accommodate all  
4 sorts of individuals.

5 CHAIRPERSON DONOVAN: We can't control  
6 what type of handicapped person moves in  
7 there. That would be discriminatory or the  
8 age of a handicapped person would also be.  
9 As long as they are covered under our  
10 definition or under our Land Use Law.

11 MR. KOLANKOWSKI: I think that we've  
12 talked a lot about consistency with the  
13 Comprehensive Plan and how it meets the  
14 goals and objectives of the PDD and  
15 principal.

16 There were a number of conditions that  
17 were proposed to be included in the Local  
18 Law and then recommended to the Town Board.

19 Among these conditions are: notice of  
20 intent filed in accordance with the  
21 stormwater pollution prevention plan. The  
22 project should be reviewed by the Army Corp  
23 of Engineers.

24 The applicant should review the design  
25 access once Maxwell Road alignment is

1 completed and there is a specific request,  
2 I believe, from the Highway Committee  
3 analyzing the intersection based on the  
4 85<sup>th</sup> percentile.

5 The applicant should coordinate with  
6 the Town Police regarding the proper 911  
7 addressing.

8 Another issue is test pits for  
9 feasibility of onsite stormwater treatment.  
10 A review by the Albany County Health  
11 Department the water supply and discharge  
12 will require permits. There's also  
13 coordination with Latham Water.

14 Also the total number of units shall  
15 not exceed 5 units. And again, we sort of  
16 reiterated the uses restricting it to  
17 senior citizens, handicapped persons,  
18 senior citizen families or handicapped  
19 families, as defined in the Town of Colonie  
20 Land Use Law.

21 There is also some of the original  
22 wording from the original document such as:

23 Location of buildings shall be  
24 constructed as depicted on this plan in  
25 general. Architectural character of

1 building should be in conformance with the  
2 plans submitted to the Town Board  
3 previously.

4 Prior setbacks for the town home units  
5 as indicated on the plan, 25 feet. The rear  
6 yard is 25 feet and the side yard is  
7 10 feet. Maximum height 32 feet.

8 So, we're sort of getting all these  
9 design standards into the code.

10 Accessory uses that are not  
11 expressively authorized are prohibited.

12 The next comment is: decks attached to  
13 the town houses will be permitted.

14 We're allowing decks but some of the  
15 others are not expressively authorized  
16 accessory uses. It does say however, that  
17 the kiosks or similar structures for the  
18 postal service will be allowed upon the  
19 approval of the Planning Board.

20 Then we addressed the issue of the  
21 preserved open space stating that the  
22 applicant would work with the town to  
23 determine the acceptable methods for the  
24 preservation. The town prefers a  
25 conservation easement over taking ownership

1 over it.

2 Another condition states that  
3 construction should incorporate universal  
4 design principals. The design of products  
5 and environments should be used by all  
6 people without need for adaptation or  
7 specialized design. This is obviously  
8 related to the use of the senior  
9 handicapped development.

10 There are some questions about  
11 verifying the ownership of this stub street  
12 to Margaret Drive. That should be  
13 addressed.

14 There was a comment from departments  
15 about the T-shaped driveway configuration  
16 and perhaps evaluating and implementing  
17 some other type of configuration.

18 Parking standards for the residential  
19 use require two off-street per unit plus a  
20 half per unit and common parking areas. The  
21 plan doesn't provide for the common parking  
22 areas. That's probably more consistent and  
23 in character with the neighborhood. I think  
24 that's another carryover waiver from the  
25 previous document.



1 roadway -

2 MS. CUTLER: To my property -- I'm  
3 only concerned because I had been to the  
4 public meetings and I have a small child. A  
5 hedgerow is going to keep him from going  
6 into that road.

7 MR. EASTON: The distance from your  
8 real property to the roadway is  
9 approximately 60 feet.

10 MS. CUTLER: Okay.

11 MR. EASTON: Also beside the hedgerow  
12 right there we are proposing a detention  
13 basin back there which would have a chain  
14 link fence behind the hedgerow. So, someone  
15 would have to go through the hedgerow and  
16 over a six foot fence to get around that.

17 MS. VAIDA: Can you refresh my  
18 recollection on what we had decided on the  
19 sidewalks when we talked about this last  
20 time?

21 MR. EASTON: There are sidewalks  
22 running a little past Coyote Avenue and  
23 they do not go up to Brizzell's Farm here  
24 (Indicating). They just kind of stop here  
25 at no man's land. It comes down to

1 Albany-Shaker Road and it connects to the  
2 Albany-Shaker Road sidewalk that they  
3 currently have right there. We are not  
4 proposing a sidewalk for this development  
5 per the Highway Department's comments. We  
6 originally had one on there. The Highway  
7 Department did not want it. Again, we had  
8 the standard road section - the 32 feet  
9 wide. You're really designed to use that  
10 32 feet as a walking area or as a  
11 bicyclist's area, or as some people use it  
12 as a parking area. So, that's what the main  
13 reason was that the town road segment is so  
14 wide. The consensus of the board - there  
15 was never a yes or no answer to that  
16 question of a sidewalk. We presented our  
17 case numerous times about the sidewalk and  
18 how the Highway Department does not like  
19 them or does not want them. That's where we  
20 currently stand.

21 MS. VAIDA: There's supposed to be a  
22 bus stop someplace along here (Indicating)?

23 MR. EASTON: On the new Maxwell, from  
24 looking at the highway plans, there is no  
25 bus stop. There could be one along

1 Albany-Shaker. There probably will be one  
2 along Albany-Shaker Road. The design plans  
3 probably include a bus drop-off area. I  
4 didn't study the Albany-Shaker Road plans  
5 much. While looking at the natural road,  
6 there is no bus drop-off area.

7 CHAIRPERSON DONOVAN: And the county  
8 maintains the sidewalks on Maxwell, is that  
9 correct?

10 MR. EASTON: No, that would be the  
11 Town of Colonie. That's a town road so the  
12 town will maintain them. Albany-Shaker,  
13 although it's a county road, the sidewalks  
14 are maintained by the Town of Colonie.

15 CHAIRPERSON DONOVAN: And the Town of  
16 Colonie has agreed to the sidewalks on  
17 Maxwell.

18 MR. EASTON: Yes, probably part of the  
19 resolution passed -- that would have been  
20 about 10 years ago when the plans were  
21 developed.

22 MS. VAIDA: So the comment in here  
23 about sidewalks being provided along the  
24 entire street within the new  
25 development -- the project proposes a

1 pedestrian/bike connection to be provided  
2 to Margaret Drive in the adjacent single  
3 family residential neighborhood and  
4 sidewalks will be provided along the entire  
5 street within the new development.

6 MR. LACIVITA: I think that's in the  
7 findings statement.

8 MR. FINNING: We'll have to take that  
9 out.

10 MS. VAIDA: It's dated today. I know  
11 that we talked about it last time and then  
12 I saw that it was in there.

13 CHAIRPERSON DONOVAN: Okay, so that  
14 will have to be amended to say that the  
15 project proposes a pedestrian/bike  
16 connection to Margaret Drive and adjacent  
17 single family residential neighborhood,  
18 period, right?

19 MR. FINNING: Yes.

20 CHAIRPERSON DONOVAN: Thank you,  
21 Elena.

22 MS. VAIDA: I like sidewalks, but I  
23 thought that we should really clarify it.

24 MR. FINNING: We had the sidewalks in  
25 and the Town Highway recommended that we

1 take them out.

2 Are there any sidewalks in the  
3 adjacent neighborhood?

4 MR. NARDACCI: The most important part  
5 was that Maxwell is going to have sidewalks  
6 as part of this project. That's how we left  
7 it last time. The roadway is certainly wide  
8 enough to accommodate the neighborhood to  
9 Maxwell and then they're going to walk on  
10 sidewalks down Maxwell onto Albany-Shaker  
11 if they want to get to the Crossings.

12 MS. CUTLER: Did you say that there  
13 was going to be a cut through Margaret to  
14 the development?

15 MR. EASTON: Yes.

16 MS. CUTLER: So someone could get from  
17 Margaret through the development to the  
18 library without going around?

19 MR. EASTON: Yes.

20 CHAIRPERSON DONOVAN: It's a  
21 pedestrian bike connection. It's not a  
22 roadway.

23 MS. CUTLER: But if a child wanted to  
24 walk to the library and to bypass the  
25 circle -

1                   CHAIRPERSON DONOVAN: Oh yes,  
2                   absolutely.

3                   FROM THE FLOOR: Do you refer to the  
4                   area next to you -- if you're looking at  
5                   the property, off to the east side there is  
6                   the Brizzell lot.

7                   MR. FINNING: The Brizzell Farm.

8                   FROM THE FLOOR: I don't know if  
9                   you've been there recently but that was  
10                  actually sold to the Marini's and they've  
11                  actually marketed it as Maxwell Farm  
12                  subdivision. It's not the Brizzell Farm  
13                  anymore. It's actually Maxwell Farm  
14                  subdivision and they were sold as  
15                  individual lots. I happen to be one of  
16                  those.

17                  My main question is on the east side,  
18                  facing those that you have on the end - you  
19                  mentioned before and we spoke many times  
20                  about a buffer zone there. I think that you  
21                  mentioned just now about the 10 foot buffer  
22                  of trees. Is that going to be something  
23                  that is going to be actually written into  
24                  the deed of that particular lot owner that  
25                  he cannot cut? My main concern is say you

1 sell those building lots and those trees  
2 are there and then the owner says, I think  
3 that I want that extra ten feet. All the  
4 sudden, I was looking at trees that you  
5 just now mentioned that could be 32 feet,  
6 which is a very big concern for me.

7 MR. EASTON: With regard to the  
8 ten-feet and someone cutting it down - this  
9 plan currently shows a 10 foot no cut  
10 buffer. This plan becomes part of the law.  
11 So, if they come down and cut down those  
12 trees, you call the town and that person is  
13 now in violation of the Zoning Law.

14 Being a resident for 35 years, I just  
15 grew up here and I've always referred to it  
16 as the Brizzell Farm and it's just one of  
17 those things.

18 We started this project when it was  
19 still Brizzell's Farm. Excuse me for that.

20 CHAIRPERSON DONOVAN: Elena has a  
21 question.

22 MS. VAIDA: This came up on another  
23 project. That buffer area is owned by who?

24 MR. FINNING: It will be owned by the  
25 property owner.

1 MS. VAIDA: What I had suggested is an  
2 idea to protect the buffer area by making  
3 that part of the open space.

4 MR. LACIVITA: What came out of that  
5 meeting was that the town did not want to  
6 take that on.

7 MR. O'ROURKE: But the town wouldn't  
8 have to with a conservation easement.

9 MS. VAIDA: It would maybe require a  
10 waiver probably on setback requirements. I  
11 don't know.

12 MR. LACIVITA: The town pushed it into  
13 the individual lots with ownership. They  
14 didn't want to get into conservation, open  
15 space or any of that. They pushed it into a  
16 no-cut buffer. That was through the  
17 Supervisor.

18 MR. STUTO: So it's a deed  
19 restriction.

20 MR. LACIVITA: Yes. It's a no-cut deed  
21 restriction.

22 MR. EASTON: The proposed original  
23 open space is now deed restricted. The deed  
24 restriction is for structures only. That  
25 includes pools, sheds, carports or whatever

1           you want; any man made structure.

2                       FROM THE FLOOR: I live on Margaret. I  
3 brought this question up before it came up  
4 a month or so ago. I have no idea what the  
5 original grading plan was. There was going  
6 to be some swales around here (Indicating).  
7 At the same meeting, you had a problem with  
8 other people with the water problems and  
9 filling in the swales. The people own it.  
10 They can't cut down the trees but there are  
11 areas in Colonie where they have filled in  
12 areas. In my area, they filled in some  
13 areas and bogged up the water. Are there  
14 still any swales around there so that isn't  
15 a problem?

16                       MR. EASTON: Currently there are  
17 swales in the back. Taking surface drainage  
18 from the rear of Margaret Drive homes to  
19 the stormwater management areas - we have  
20 not proposed any easements over those said  
21 swales. If that is a concern, that maybe a  
22 concern of Barton and Loguidice during the  
23 final design of that process in which they  
24 may request an easement which we may then  
25 put up. We will then put that on the final

1 plans. That would be a detail that is more  
2 appropriate for the final design. What  
3 we're really trying to do right now is this  
4 concept and be able to have this layout  
5 approvable in the Planning Board and the  
6 public's eyes so that we go to the Town  
7 Board. This right here is basically what  
8 we're looking at and what we're trying to  
9 build. We do the nuts and bolts later on.  
10 Such as easements and grading - how is that  
11 grading really going to work? The  
12 stormwater management end of it and making  
13 sure that functions properly. All of those  
14 things will be looked at by the TDE and the  
15 town in the following months.

16 CHAIRPERSON DONOVAN: This is only a  
17 recommendation to the Town Board to set the  
18 PDD and then we would go on after that,  
19 like he said, to do all the nuts and bolts  
20 of the project.

21 FROM THE FLOOR: One other question  
22 then. Who is going to maintain the paper  
23 road sidewalk?

24 CHAIRPERSON DONOVAN: The paper road?

25 FROM THE FLOOR: Well, it's commonly

1 called a paper road. Who is going to  
2 maintain that sidewalk?

3 CHAIRPERSON DONOVAN: I don't think  
4 that it's sidewalk. It's a bike path.

5 MR. EASTON: It's a multiuse path.  
6 Currently right now there is a crossing  
7 across this parcel. As any multiuse path,  
8 no one is going to snowplow it or anything  
9 else during the wintertime. If you go on  
10 the Mohawk Bike Trail or whatever, it's  
11 just asphalt surface that in the summer  
12 time you can use. In the wintertime you can  
13 shovel it if you want. It's just a bike  
14 path that is maintained by the Town of  
15 Colonie but there is no snowplowing or any  
16 maintenance of it during the winter.

17 FROM THE FLOOR: Because right now  
18 they don't maintain that property. They  
19 haven't maintained it since it's been  
20 there. I would like to make sure that the  
21 town will start maintaining that.

22 When we get an ice storm, I thought  
23 that the town would move the trees. They  
24 left half of them there. I've moved them  
25 for ten years. No one else has maintained

1           it. I called the town about the trees. They  
2           took all the small stuff but they left all  
3           the large stuff there. I ended up taking it  
4           all to the dump and paying my own money  
5           because it was larger than the town would  
6           take.

7                     The town does not maintain this area  
8           and I would just like to make sure that  
9           they do start maintaining it. The original  
10          plan was that there was going to be a town  
11          area and it was going to be a community  
12          area. That's not going to happen.

13                    CHAIRPERSON DONOVAN: Okay. Thank you.

14                    Yes, Gloria.

15                    MS. KNORR: To me, I'm 68 years old.  
16          The whole thing - Maxwell Road was [SIC]  
17          Lucialli. That farm was the [SIC] Magzda  
18          Farm, my mother's childhood friends. They  
19          worked very hard on that farm. We bought  
20          honey from him. Amy [SIC] Magzda went to a  
21          home because she had terrible arthritis,  
22          but she was a wonderful painter of  
23          Christmas cards.

24                    I'm very interested in this project  
25          because 68 years ago it was the [SIC]

1 Lucialli and the [SIC] Magzda Farm.

2 MS. CUTLER: All along the back of my  
3 property there are some really, really  
4 large trees. I'm not sure if you own them  
5 or I own them. Are those trees in the  
6 development of everything from my property  
7 line back be removed and your hedgerows are  
8 going up, or are you keeping larger trees  
9 that are on the property?

10 MR. EASTON: I understand you concern  
11 about the trees.

12 MS. CUTLER: It's not my backyard now.  
13 It's still a mess and I've called the town  
14 three or four times and you have had  
15 backhoes in there taking some stuff away  
16 but the red barn is still there. I look out  
17 every single day on my back yard.

18 MR. EASTON: Realistically there is  
19 going to be nothing left. It's going to be  
20 completely graded out and the trees are  
21 going to be all gone and everything else.

22 Looking at your other corner right  
23 over here (Indicating) that looks to be  
24 about 30 feet or so, even though we're  
25 planting a hedgerow in there, this is

1 wetland in here. That natural vegetation  
2 has to stay there. I can't clear that.  
3 Basically, it's all going to be removed and  
4 cleared, due to the grading of this  
5 detention pond and the roadway and  
6 everything else. That's my honest answer.

7 MS. CUTLER: I mean, I'm all for the  
8 project.

9 CHAIRPERSON DONOVAN: As we move  
10 forward, we'll get into the nuts and bolts  
11 of the landscaping and the buffering.

12 MR. NARDACCI: One more question.  
13 Given the wet nature of some of these  
14 areas, in July stormwater had asked for  
15 test pits prior to concept. Now we have a  
16 memo in here today that also had asked for  
17 test pits. In their memo it says:

18 The stormwater management officer has  
19 reviewed and completed this review and  
20 finds this concept submission unacceptable.

21 So, we have a memo from stormwater  
22 saying that they find this concept  
23 unacceptable. I'm just curious. This is a  
24 question for Joe or Mike. From our point,  
25 do we normally require applicants to do

1 test pits prior to concept? Is that a  
2 normal request?

3 MR. LYONS: Test pits in regards to a  
4 feasibility study to determine what  
5 stormwater system will work on the site. A  
6 test pit could find where the groundwater  
7 elevation is.

8 There is a certain clearance for the  
9 stormwater basin to be above the seasonal  
10 high groundwater table so that you don't  
11 have standing water and the water will  
12 percolate into the ground. That's mainly  
13 the first function at the concept level.

14 MR. NARDACCI: Do applicants normally  
15 perform this prior to a concept feasibility  
16 study?

17 MR. LYONS: Yes.

18 CHAIRPERSON DONOVAN: Concept was  
19 already granted on this project before. So,  
20 obviously back in 2006 -- something had to  
21 be done. I don't know what happened between  
22 2006 and 2009.

23 MR. NARDACCI: For me, I'm just  
24 looking at a memo from John Dzialo and I'm  
25 just making sure that we're being

1 consistent.

2 MR. LYONS: there has been a lot of  
3 changes with regard to the new SWPPP  
4 process. We are just starting to come on  
5 board with SWPPP and through the New York  
6 State Bluebook Guidelines and the last few  
7 years they have pretty much defined how  
8 we're supposed to deal with stormwater  
9 management.

10 MR. NARDACCI: I understand what  
11 you're saying and that there are  
12 guidelines. My question is: Are we being  
13 consistent? This is for us, procedurally,  
14 process wise. Why in December of 2009, two  
15 weeks ago -- why the change?

16 MR. LACIVITA: I think the biggest  
17 concern is why are we getting it at the  
18 last minute, like we do with all of our  
19 things?

20 MR. NARDACCI: That's what I'm talking  
21 about.

22 MR. LACIVITA: This, to me, isn't  
23 worth the paper that it's printed on, to be  
24 quite honest with you.

25 MR. NARDACCI: That's not good,

1           actually. This is a department head that  
2           has a lot of sway in the town.

3           MR. LACIVITA: Unfortunately Tom, this  
4           is something that we're getting at the last  
5           minute. We've put this project through the  
6           wringer. We've seen this thing inside and  
7           out. He's met every condition that we've  
8           asked for in the project. I think that if  
9           there is an issue with test pits or  
10          anything else that comes, that's going to  
11          come in the final design.

12          What we're asking to do tonight is to  
13          really look at the -- we have a TDE who has  
14          taken charge here of the project. If there  
15          is going to be any concern, I think that  
16          they're going to find out from the TDE on  
17          it. I think what we're asking to do today  
18          is to look at the design, look at the  
19          concept and is it, in fact, acceptable and  
20          all the other stuff will come in final.

21          MR. O'ROURKE: If that department head  
22          had to work anywhere in a private company  
23          14 days before, they'd fire him.

24          MR. EASTON: I just want to say  
25          something about the feasibility test.

1           Certainly I've done it before on other  
2           projects. It really tells you what the  
3           ground water depth is. It tells you what  
4           type of system can be used in this given  
5           area.

6           MR. NARDACCI: We're better off not  
7           even getting into this. It has nothing to  
8           do with you really. It's something where  
9           it's not the first time that we've seen it.  
10          It's an internal thing that I just want to  
11          draw attention to it because as we're  
12          looking at other projects, I'm going to  
13          keep a collection of things too to make  
14          sure that we're being consistent. This is  
15          not consistent. I don't appreciate it.

16          CHAIRPERSON DONOVAN: Concept was  
17          given in 2002 and we have to tell them that  
18          concept was granted but you know, rules  
19          change in the middle of the game.

20          We understand that the TDE is working  
21          on this and that's what we appreciate.

22          MR. KOLANKOWSKI: I just wanted to  
23          point out that this is really about  
24          amending a Local Law that's already adopted  
25          for this new usage. There is condition

1 number six that we included. It's the test  
2 pits and that will have to be done.

3 MR. FINNING: That will be done in the  
4 next seven days. It's a matter of how much  
5 money that you spend and how many tests you  
6 are required to do. Before we know that,  
7 this board is going to grant us permission  
8 to get to the Town Board, so they can put  
9 all the requirements on you that they want.  
10 They can ask you to spend all the money  
11 that they want, but until you tell me that  
12 I can go to the Town Board and this project  
13 is going to move forward, why would I spend  
14 dollar one? I've already spent hundreds of  
15 thousands of dollars over the last five  
16 years to get here.

17 CHAIRPERSON DONOVAN: And what we want  
18 to do in condition number two on page  
19 three, bullet number four - we want to make  
20 sure that you take the sidewalk statement  
21 out. That's just before the final goes to  
22 the Town Board.

23 Again this is just concept. We will  
24 get into final and as we do and go through  
25 the process we will talk more about

1 buffering, landscaping and the issues with  
2 the trees on the lots. That will all be  
3 addressed then. This is just a concept.

4 So in front of us this evening we have  
5 a proposed amendment to the Maxwell Road  
6 senior PDD, Local Law 19 of 2007,  
7 605 Albany-Shaker Road and 210 Maxwell  
8 Road. Based on the information that we have  
9 in front of us, do I have a motion to  
10 accept the proposed amendment?

11 MR. O'ROURKE: I'll make that motion.

12 CHAIRPERSON DONOVAN: With the  
13 proposed stipulation of course as we said -

14 MR. O'ROURKE: As stipulated.

15 MS. VAIDA: I'll second that.

16 CHAIRPERSON DONOVAN: All those in  
17 favor?

18 ***(Ayes were recited.)***

19 CHAIRPERSON DONOVAN: Opposed?

20 ***(There were none opposed.)***

21 CHAIRPERSON DONOVAN: Okay, Joe will  
22 send this to the Town Board.

23 MR. LACIVITA: Once we get the final  
24 document, we'll have you sign that.

25 CHAIRPERSON DONOVAN: I'll sign it and

1 we'll send it to the Town Board and then  
2 we'll go through and see you again. The  
3 process will continue.

4

5

*(Whereas the proceeding concerning the*

6

*above entitled matter was adjourned*

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*at 9:06 p.m.)*

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