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PLANNING BOARD COUNTY OF ALBANY  
TOWN OF COLONIE

\*\*\*\*\*  
THE DEVELOPMENT AT 3 AUTOPARK DRIVE  
AS IT RELATES TO TOWN LAW 280-A  
\*\*\*\*\*

THE TAPED AND TRANSCRIBED MINUTES of the above  
entitled proceeding  
BY NANCY STRANG-VANDEBOGART commencing on  
February 23, 2010 at 8:12 p.m. at  
the Public Operations Center  
347 Old Niskayuna Road, Latham, New York 12110

BOARD MEMBERS:

CHARLES J. O'ROURKE, CHAIRMAN  
THOMAS NARDACCI  
MICHAEL SULLIVAN  
TIMOTHY LANE  
ELENA VAIDA  
PAUL ROSANO  
PETER STUTO, Jr. Esq., Attorney for the Planning  
Board

Also present:

Joe LaCivita, Director, Planning and Economic  
Development  
Joe Grasso, Clough Harbour & Associates  
Peter Lynch, Esq.  
Chris Bette, First Columbia, LLC

1                   CHAIRMAN O'ROURKE: First Columbia, do  
2                   you want to jump up on the agenda and go  
3                   before the Boght update? That discussion is  
4                   probably going to take a half hour or so.

5                   MR. BETTE: Sure.

6                   MR. LYNCH: Chairman, members of the  
7                   board, I'm Peter Lynch and I'm here with Chris  
8                   Bette.

9                   We're here basically tonight because we  
10                  asked to be put on the agenda for a very  
11                  simple but important reason.

12                 Since this board has granted site plan  
13                 approval back on January 27<sup>th</sup>, our clients have  
14                 completed the construction of a 55,000 square  
15                 foot office building which is going to be the  
16                 new corporate headquarters for Anjio Dynamics.  
17                 This is an important aspect of not only their  
18                 development but it brings an entire new  
19                 business into the Town of Colonie and into the  
20                 County of Albany.

21                 This is Autopark Drive which leads out to  
22                 Route 9 and here is the site as it's laid out  
23                 (Indicating).

24                 Back on January 27<sup>th</sup>, the very basic  
25                 condition was imposed that before you get a

1 certificate of occupancy, you should have  
2 frontage on a town road. Autopark Drive has  
3 not been dedicated to the Town of Colonie or  
4 accepted by the Town of Colonie. We're in the  
5 interim phase where we have a building built,  
6 we have the furniture moved in and we've got  
7 the tenant ready to occupy. We've got a memo  
8 from the Department of Public Works,  
9 Mr. Cunningham, that Autopark Drive does in  
10 fact exist and we have standards or a very  
11 minimal punch list.

12 What we're asking this board to do is to  
13 just change the terminology of the condition  
14 but to achieve the same result.

15 Under Town Law Section 280-a, there are  
16 two alternative means which one can comply  
17 with the access requirements for a building  
18 permit. First, is that your property actually  
19 has frontage on a town road. We do not.

20 The second aspect of 280-a is that if  
21 your site, which we have here (Indicating), is  
22 actually a lot on a previously approved  
23 subdivision -- either this was a prior  
24 commercial subdivision that was approved by  
25 the Town of Colonie Planning Board and

1 recorded in the Albany County Clerks office,  
2 then that access via this street depicted on  
3 the subdivision comports with the alternative  
4 means of access for the building under  
5 paragraph 1 of 280-a of the Town Law.

6 I know that when the condition was  
7 imposed back in January, there probably wasn't  
8 any discussion about the fact that the statute  
9 that has this access mandate provides  
10 alternatives. Either you can have access on a  
11 town road or if you happen to be a lot on a  
12 subdivision that has been previously approved,  
13 that is sufficient access.

14 Part 2 of 280-a talks about the  
15 sufficiency of the access and for emergency  
16 services and the like. As we know, Autopark  
17 Drive has been built to town specifications.

18 Part 5 of 280-a says that when you're  
19 looking at whether or not there is sufficient  
20 access for emergency vehicles and the like, if  
21 you have 15 feet it is presumed to be  
22 sufficient.

23 Autopark Drive is a 36 foot wide road. I  
24 took the liberty of a week or so ago,  
25 e-mailing to Pete a proposed resolution which

1 is very simple and basic but it achieves the  
2 same result.

3 I propose that this board consider  
4 removing the condition that this site have  
5 frontage on a town road and simply substitute  
6 that condition with a condition that the  
7 access for this site be in compliance with  
8 Town Law Section 280-a. So, we're not asking  
9 this board to remove an access condition. We  
10 are asking this board to consider changing the  
11 language of the condition so that you  
12 reference the Town Law Section 280-a that  
13 actually provides alternative means of access.  
14 In so doing, we will not be in violation of a  
15 condition. We don't want to have a building  
16 that we're about to get a certificate of  
17 occupancy for and look back in the minutes and  
18 say, look, back in January the Planning Board  
19 said that you had to have frontage. The idea  
20 was that they wanted to make sure that the  
21 property had suitable access.

22 We're asking this board to exercise its  
23 discretion to modify the condition via the  
24 access by eliminating the condition that it  
25 have frontage and substituting that the access

1 be in compliance with 280-a of the Town Law.  
2 That's what we're here for tonight.

3 MR. NARDACCI: Sorry to jump in, but I  
4 wasn't able to read section 280-a of the Town  
5 Law. Can you explain what that law says?

6 MR. LYNCH: I have it right here and I'll  
7 read the paragraph that is applicable.

8 The first paragraph says:

9 No permit for the erection of any  
10 building shall be issued unless its street or  
11 highway giving access to such proposed  
12 structure has been duly placed upon the  
13 official map or plan or if there shall be no  
14 official map or plan, such street or highway  
15 is an existing state, county or town highway.

16 Autopark Drive does not comply with that.  
17 It is not a state, county or town highway.  
18 It's a private road.

19 The next says:

20 Or a street shown upon a plat approved by  
21 the Planning Board as provided in Sections 276  
22 and 277 of this article.

23 So that first paragraph 280-a of the Town  
24 Law, which I will be happy to provide you a  
25 copy that you can see, provides the

1 alternative mechanism for access to the lot.

2 MR. NARDACCI: So Plaza Drive adheres to  
3 this section of law. Is that what we're saying  
4 here?

5 MR. LYNCH: Plaza Drive is also a street  
6 on a site plan. Alternately, the balance of  
7 this area here will be part of a subdivision  
8 application. Autopark Drive right now is the  
9 principal access directly to Route 9 and  
10 Autopark Drive provides access to the lot.  
11 That's the access which is on the approved  
12 subdivision.

13 With regard to the Autopark Drive access,  
14 there was another issue that came up in our  
15 discussions with the town. The fact when you,  
16 as a developer, get subdivision approval and  
17 you show your streets on the plat, you record  
18 that plat in the County Clerk's office. Then  
19 you sell a lot to our client as a lot within  
20 that commercial subdivision and as a matter of  
21 law, you have ingress and egress over that  
22 street. Also in addition to that  
23 ingress/egress right, there is a reported  
24 easement that my client is a necessary  
25 benefactor of - relative to access over that

1 road.

2 Importantly under the easement, Autopark  
3 Drive was paid for 50% by the party that sold  
4 this property to my client. So, the person who  
5 paid for half of the road which is to benefit  
6 this lot has sold the lot to our client. The  
7 way that the easement reads is not only of the  
8 grantee of the easement, but to its successors  
9 and assignors.

10 So, Autopark Drive at this moment is the  
11 key access point. The tenant is ready to move  
12 in, as I indicated. Plaza Drive is not yet  
13 completed. So consequently the immediacy of  
14 the moment is that Autopark Drive would  
15 provide the main access.

16 MR. NARDACCI: So, you're saying that  
17 Autopark Drive, in its current standing,  
18 physically and legally qualifies under this  
19 280-a.

20 MR. LYNCH: Absolutely.

21 CHAIRMAN O'ROURKE: I'm glad that our  
22 Fire Chief has reviewed license agreements.

23 Can you explain the license agreement?

24 MR. LYNCH: Well, the license agreement  
25 was almost like a belt and suspenders

1 approach. There was a concern that what if the  
2 owner of the property that Autopark Drive is  
3 on somehow blocks off that road and doesn't  
4 allow emergency vehicles down it. That would  
5 be a problem. The license agreement is  
6 proffered that the party is consenting to the  
7 access to emergency vehicles and the like.

8 The fact of the matter remains that 280-a  
9 Subdivision 1 -

10 CHAIRMAN O'ROURKE: I agree with you.

11 MR. LYNCH: But it doesn't require a  
12 license.

13 CHAIRMAN O'ROURKE: I agree with you and  
14 that's where I'm going. What I don't want out  
15 there, Peter, are people viewing the license  
16 agreement and anything of what you just  
17 stated -

18 MR. LYNCH: As a belt and suspenders.

19 CHAIRMAN O'ROURKE: Exactly. I don't want  
20 bulldozers across Autopark.

21 Elena, do you have anything?

22 MS. VAIDA: I looked over the section of  
23 law that Peter is referring to and it does  
24 seem very clear that it meets the definition  
25 of access and that it would be legal access.

1 I also had looked a little further and  
2 found the section that talks about the affect  
3 of filing a plat that's been approved. That's  
4 what happened here. This has been recorded,  
5 right?

6 MR. LYNCH: Right.

7 MS. VAIDA: It says the effect of filing  
8 and it says:

9 After such plat is approved and filed,  
10 the streets, highways and parks shown on such  
11 plat shall be and become a part of the  
12 official map or plan of the town.

13 The comments by Jack Cunningham basically  
14 confirm that the road does meet all town  
15 standards. As you pointed out there was a  
16 couple of conditions that they wanted cleared  
17 up.

18 I'm assuming that the client is not going  
19 to have any problems with complying with  
20 those. I guess some of them can't be done at  
21 this point, but they would like to see the  
22 removal of the cold patch.

23 I really didn't have any other questions.

24 CHAIRMAN O'ROURKE: In regard to that, I  
25 am not going to ask for escrow on those little

1 items. Jack Cunningham said we might want to  
2 get escrow, but with the equipment that's down  
3 there it just seems ludicrous to me to ask for  
4 anything to be set aside for \$1,000 worth of  
5 work. I'm not going to do that.

6 Tim, did you have anything?

7 MR. LANE: No. I believe that they have  
8 done their due diligence. I'm satisfied.

9 CHAIRMAN O'ROURKE: Mike?

10 MR. SULLIVAN: I did have one question.  
11 The connection from the parking lot for Anjio  
12 to Autopark Drive - is that considered a  
13 temporary construction entrance, is that  
14 considered Plaza Drive, or is that a temporary  
15 driveway?

16 MR. BETTE: We have completed the first  
17 200 feet to access this site. We are now  
18 working on the balance to make a connection to  
19 our driveway towards Century Hill Drive.

20 MR. SULLIVAN: To what standard will that  
21 roadway be constructed?

22 MR. BETTE: When we asked two weeks ago,  
23 we were in front of this board for the balance  
24 of our development on our 18 acres. We're  
25 still looking for a little direction on

1           whether or not Plaza Drive would be a town  
2           road in the future or remain a private road.  
3           At this point in time we're going to develop  
4           the rest of the road; at least up until the  
5           binder to town standards.

6           MR. SULLIVAN: I would like to see it  
7           built to town standards so that there is no  
8           confusion or problems in the future;  
9           regardless of whether it's conveyed to the  
10          town or not. I was wondering if it is built to  
11          the town standards and you connect to Century  
12          Hill wouldn't you then meet your frontage  
13          requirements on Plaza Drive?

14          MR. BETTE: No, because that road that  
15          they connect to which ultimately leads to  
16          Century Hill is also a private road.

17          MR. SULLIVAN: I had thought that would  
18          be turned into a town road and if it were, you  
19          would then have your frontage on a town road.

20          MR. BETTE: Century Hill Drive is on this  
21          side of the map (indicating). The existing  
22          development that we have been working on since  
23          1998 - these four buildings out of the five  
24          (Indicating) are accessed from a private  
25          drive. We're looking for future direction on

1           whether it will be a town road or a private  
2           road. A town road would involve another  
3           process of subdivision and we'd have to go  
4           through that.

5           MR. SULLIVAN: I'm not opposed to this  
6           resolution in front of us. I would just like  
7           to see the roadway as it's constructed  
8           already -- that 200 feet is done and the  
9           remainder that you plan to do be constructed  
10          to town standards.

11          MR. BETTE: That's okay.

12          CHAIRMAN O'ROURKE: Engineering plans?  
13          Nobody seems to have them for Plaza Drive.

14          MR. BETTE: They're part of our site plan  
15          approval for -

16          CHAIRMAN O'ROURKE: Nobody seems to have  
17          them.

18          MR. BETTE: The road connection was  
19          always part of those site plans.

20          CHAIRMAN O'ROURKE: But nobody seems to  
21          have them.

22          Right, Joe? Nobody has them.

23          MR. LACIVITA: I think what you're  
24          talking about C.J., is the connection. As Mike  
25          was just talking about, that component right

1           there (Indicating).

2           MR. BETTE: We do have some preliminary  
3 plans that suggest that we're close to town  
4 standards.

5           CHAIRMAN O'ROURKE: And the completion  
6 date for the road?

7           MR. BETTE: Right now we're just held up  
8 by weather and the asphalt plants. Our goal is  
9 to have the road in shape when asphalt plants  
10 open and we'll pave the road. We should have  
11 that connection by the end of April.

12          MR. ROSANO: Who is responsible for the  
13 maintenance of that area right now - of the  
14 roads and up to Plaza Drive? It looks like you  
15 have two entrances or an entrance and an exit.  
16 That whole area right there (Indicating), who  
17 is responsible for the maintenance of that?

18          MR. LYNCH: My client.

19          MR. BETTE: It's a long driveway. We'll  
20 be plowing it.

21          MR. NARDACCI: I have one other question  
22 on the 280.

23                 Joe, in an e-mail that you sent us  
24 yesterday it said that First Columbia is  
25 looking to have this site reconsidered as an

1 open development area, which would grant them  
2 the use under 280-a of the Town Law.

3 MR. LACIVITA: I believe that the Town  
4 Board is actually going to be taking this  
5 under consideration and referring this to the  
6 Planning Board with a resolution being set for  
7 Thursday night to have the Planning Department  
8 and the Planning Board make recommendations  
9 back to the Town Board for open development.  
10 I think that's what First Columbia asked for  
11 with the remainder of their development.

12 CHAIRMAN O'ROURKE: Which we talked about  
13 at the last meeting.

14 MR. NARDACCI: The question that I have  
15 is to have the site be considered as an open  
16 development area which would grant them the  
17 use under Section 280-a -

18 MR. LACIVITA: That's the remaining  
19 component and I think I probably already spoke  
20 on that one.

21 MR. NARDACCI: I just want to be clear  
22 that 280 does not have anything to do with the  
23 Town Board's action. Our action is stand alone  
24 on that.

25 MR. LACIVITA: Correct.

1           MR. LYNCH: Just to clarify, we're asking  
2 for relief tonight under the first paragraph  
3 of 280-a, which says if you're on an approved  
4 plat, that's sufficient.

5           The open development area concept is  
6 under subdivision 4 of 280-a, and if the Town  
7 Board creates an open development area then  
8 any property within that area is deemed to  
9 have sufficient access if it indeed has an  
10 easement. Consequently it's a different  
11 methodology, but the open development area is  
12 in 280-a. It's just paragraph 4 of it and it's  
13 a different approach to access.

14           Here (Indicating), where we already have  
15 our drive on an approved plat, paragraph 1 of  
16 280-a basically says that in and of itself is  
17 sufficient access.

18           MR. NARDACCI: Thank you, very much.

19           MR. LACIVITA: C.J., before we make a  
20 motion on this, First Columbia has been in  
21 making payments on mitigation. They did  
22 \$164,150 today. They also did a \$35,000 escrow  
23 to Planning and Economic Development for some  
24 additional work that needs to be done. I  
25 believe that there was also a \$1,500 check for

1 grading.

2 I'm a little concerned about the fact  
3 that you don't want to see additional escrows  
4 done and I know that stormwater was talking  
5 about escrows based on a prior meeting. I just  
6 want to make sure that these guys are walking  
7 away clear. If you're asking for no additional  
8 escrows -

9 CHAIRMAN O'ROURKE: I'm asking for no  
10 additional escrow in regard to the three items  
11 that Jack Cunningham has put in. What's  
12 already been asked for, I'm not waiving.

13 MR. LACIVITA: That's just so I don't  
14 have any issues with stormwater.

15 CHAIRMAN O'ROURKE: I'm not going to  
16 escrow these things, though.

17 MR. LANE: Do we need a motion?

18 MR. STUTO: I'm going to read this.

19 CHAIRMAN O'ROURKE: He's going to read  
20 the proposed resolution.

21 MR. STUTO: Based upon the information  
22 provided to the board tonight, would the board  
23 want to consider that the condition imposed on  
24 the site plan approval rendered on  
25 January 27, 2009 that the premises - being the

1 premises in question here, have frontage on a  
2 town road prior to the issuance of a  
3 certificate of occupancy and hereby is removed  
4 and also that the site plan approval is  
5 conditioned upon the applicant providing  
6 access to the site in accordance with Town Law  
7 Section 280-a prior to the issuance of a  
8 certificate of occupancy.

9 CHAIRMAN O'ROURKE: I will make that  
10 motion.

11 MR. NARDACCI: I will second.

12 CHAIRMAN O'ROURKE: All those in favor?

13 ***(Ayes were recited.)***

14 CHAIRMAN O'ROURKE: Opposed?

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

16 MR. BETTE: Thank you, very much.

17 CHAIRMAN O'ROURKE: You're welcome.

18

19

20 ***(Whereas the proceeding concerning the above***

21 ***entitled matter was adjourned at***

22 ***8:35 p.m.)***

23

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