

1 PLANNING BOARD COUNTY OF ALBANY
2 TOWN OF COLONIE

3 *****
4 MAXWELL ROAD PDD
5 210 MAXWELL ROAD AND 605 ALBANY SHAKER ROAD
6 APPLICATION TO AMEND PDD APPROVAL
7 *****

8 THE STENOGRAPHIC MINUTES of the above entitled
9 public hearing BY NANCY STRANG-VANDEBOGART, a
10 Shorthand Reporter, commencing on
11 April 17, 2012 at 7:46 p.m. at the Public
12 Operations Center 347 Old Niskayuna Road,
13 Latham, New York 12110

14 BOARD MEMBERS:

- 15 PETER STUTO, CHAIRMAN
- 16 TIM LANE
- 17 LOUIS MION
- 18 KATHLEEN DALTON
- 19 BRIAN AUSTIN
- 20 PAUL ROSANO
- 21 ELENA VAIDA, Esq., Attorney for the Planning Board

22 Also present:

- 23 Joseph LaCivita, Director, Planning and Economic
24 Development
- 25 Brad Grant, PE, Barton and Loguidice
- Jaime Easton, PE, WSP Sells
- Jim Finning
- Peter Lynch, Esq.
- Robert Johnson
- Virgil Montavon
- Fred Pettingill
- Leo Rivers
- Kathy Moreno
- Robert Johnson
- Tom Novak

1 CHAIRMAN STUTO: Joe, would you like to
2 give an intro on this on?

3 MR. LACIVITA: Peter, we can just go
4 right to the applicant.

5 MR. LYNCH: Mr. Chairman, Members of the
6 Board, my name is Peter Lynch and I'm here
7 with Jaime Easton and we represent Jim
8 Finning.

9 I know that you are all familiar with
10 this project. We were last here on October 25th
11 and you may recall that this project comes to
12 you in the form of a referral by the Town
13 Board because we are seeking an amendment of
14 the previously approved planned development
15 district first approved in 2007 and amended in
16 2010.

17 Frankly, at the end of the last meeting,
18 counsel, Elena Vaida, had raised a very
19 significant issue. That was that when you have
20 a planned development district, under Section
21 190-67 D, there is a requirement that there be
22 a 35 percent open space provision. Counsel had
23 raised that at the last meeting, bringing to a
24 focal point the issue that had not really been
25 squarely addressed.

1 In 2007 and in 2010, the Town Board had
2 voted to accept the PDD without strict
3 compliance with that 35 percent requirement.
4 What we did was we went back to the drawing
5 board. What we ended up doing was what would
6 be the westerly part of the site - what I'm
7 pointing at right here - this is Albany-Shaker
8 Road (Indicating). We had previously proposed
9 a building lot off of Albany-Shaker Road at
10 that point - a little bit over an acre in
11 size. We have eliminated that lot all
12 together. What we are proposing -- and you can
13 see on the plans - this area hatched in a
14 light green color, right along side of Shaker
15 and the southerly side of Maxwell Road - all
16 the way up to the point that we have the
17 cul-de-sac is an area which is proposed for
18 dedication to the Town as open space. That
19 particular area would really constitute an
20 area of open space which already exists along
21 the south side of Maxwell and on the north
22 side of Maxwell, running in a northerly
23 direction to the library. What we would be
24 creating here by accepting that open space,
25 which is dedicated Town land, would not only

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1 be a corridor around the new roundabout, but
2 it would also be compatible and supplement the
3 open space area that already services the
4 library.

5 We also have here stormwater detention
6 basins that are on that part of the site to be
7 dedicated to the Town. We also have a
8 pedestrian walking trail leading for the west
9 end of the cul-de-sac going in a westerly
10 direction to Shaker Road. That would provide a
11 pedestrian linkage, if you will, to
12 Albany-Shaker Road.

13 On the easterly portion of the site, we
14 also have another area where there is a
15 stormwater detention basin which we are
16 proposing to be dedicated to the Town.

17 In the purple are that we have
18 delineated. We're proposing conservation
19 easements that are approximately .87 acres of
20 the site. Those conservation easements with
21 the site together and with the 4.63 acres of
22 proposed dedicated space to the Town rises to
23 the level of 5.5 acres which is 35 percent of
24 the site. So, what we did was eliminate
25 entirely approximately the 1 acre lot for

1 future development along Shaker Road. By doing
2 that, we were able to accomplish the 35
3 percent open space that counsel had inquired
4 about at the last meeting.

5 I know that you've had a lot of projects
6 since October of 2011, but let me just remind
7 you, if I may, of why we are here seeking the
8 amendment.

9 When we had the approvals in 2007 and in
10 2010, we had two access drives. Actually, we
11 had an access drive off of Maxwell Road at
12 this point (Indicating), and we had an access
13 drive off of Maxwell Road at this point. The
14 project, as a PDD, was approved with those two
15 access points. Unfortunately, in this red
16 hatched along the south side of Maxwell Road
17 (Indicating), the Town had entered into an
18 agreement with the Army Corp of Engineers for
19 the recording of a conservation easement which
20 prohibits any kind of access or improvements
21 or roadways across that easement. Frankly, we
22 had an approval that had two access points
23 that we couldn't use. That's why we went back
24 to the drawing board. That's why we came up
25 with the new plan here where we are completely

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1 staying out of the Army Corp conservation
2 easement area. We not only reduced the project
3 to 50 lots, but we eliminated the project use
4 to have three three-unit buildings. These now
5 consist of all twin buildings for a total of
6 50 units. I know that we had been through this
7 project quite extensively at that last
8 meeting, but we had proposed and compared a
9 proposed resolution for counsel which we
10 provided back on March 8th. We laid out in
11 great detail the reasons why we believe that
12 this amendment is an appropriate amendment to
13 the previously approved PDD. In fact, now it's
14 even more appropriate given the fact that we
15 have strict compliance with the 35 percent
16 requirement.

17 We do have some amenities proposed along
18 the walking trail. There are a series of
19 benches here that will be installed. I know
20 that there were some comments about the
21 construction of a gazebo. I know that Barton
22 and Loguidice had a comment in their letter
23 about a masonry gazebo. I think that frankly,
24 before you consider whether or not to require
25 that as a consideration, you may want to

1 consider the fact that gazebo may constitute
2 an attractive nuisance. So, frankly while my
3 client has advised me that if this Board does
4 seek to impose as a condition of its
5 recommendation that the gazebo be constructed,
6 he would comply. We would submit that it is
7 really an unnecessary improvement and perhaps
8 may not be a positive for the project.

9 With that said, what we're asking you to
10 do is to recommend to the Town Board that the
11 proposed amendment to the PDD be approved. In
12 the event that the Town Board adopts that
13 amendment, we would be back to this Board for
14 site plan review and approval.

15 We'd be happy to entertain any questions.

16 CHAIRMAN STUTO: Counsel, if I understood
17 the applicant saying that they had the 35
18 percent open space requirement -- do I
19 understand that correctly?

20 MS. VAIDA: Yes, I would say that and the
21 papers indicate that it would defer to the
22 TDE.

23 CHAIRMAN STUTO: Okay, Brad, why don't
24 you go over it, then?

25 MR. GRANT: I guess the last I recall,

1 you were around 32 or 32.5 percent. Correct me
2 if I'm wrong, but I think that on the east
3 side is what got you there.

4 MR. EASTON: We originally proposed in
5 the 2010 that there was going to be a 10-foot
6 no cut buffer. We increased that no-cut buffer
7 across the back here (Indicating) and we
8 actually reduced a little bit of this lot size
9 to get it up to 35 percent.

10 MR. GRANT: You were close.

11 MR. EASTON: This area in purple in the
12 general area right here - that was always
13 going to be deed restriction even in the old
14 PDD legislation.

15 MR. LYNCH: We also eliminated the
16 proposed future lot for development of Shaker
17 Road.

18 MR. GRANT: The newest one was the one to
19 the east. So, 35.0?

20 MR. EASTON: Yes.

21 MR. GRANT: I have not seen that
22 particular drawing. I know that I was aware of
23 the lot. I was aware of - right near Margaret
24 Drive. Peter, you didn't mention it, but as an
25 as an amenity, there is the stub out to

1 Margaret Drive.

2 MR. EASTON: Yes, right there. There is
3 the walking trail here and the other multiuse
4 path connecting across and the path connecting
5 Margaret Drive to our project site.

6 MR. LACIVITA: Were those the lands that
7 were actually part of the new open law that
8 was adopted? What that part of the pupil that
9 you were showing on that other drawing?

10 MR. EASTON: Here (Indicating)?

11 MR. LACIVITA: Yes, those were part of
12 the deed restriction open space?

13 MR. EASTON: Yes.

14 MR. LACIVITA: That was in response to
15 the new law adopted?

16 MR. LYNCH: That's correct, Joe.

17 CHAIRMAN STUTO: Is that it?

18 MR. GRANT: I think that the open space
19 was what was at issue.

20 CHAIRMAN STUTO: Are you at the point
21 where you go through your comments?

22 MR. GRANT: I can.

23 CHAIRMAN STUTO: Are you done with your
24 presentation?

25 MR. LYNCH: I am.

1 MR. GRANT: There were two comment
2 letters in recent past. One was dated the 4th
3 of March and one dated April 10th. They are
4 similar. They talk about pedestrian
5 accommodations. Peter and Jaime have
6 eloquently discussed what is on the site. The
7 pedestrian accommodations beyond that are what
8 we took a look at off-site. In other words,
9 someone from this project wanting to get to
10 the community church across the road, or
11 likely the library -- what existing pedestrian
12 accommodations are there? Creighton Manning
13 has been involved. I don't know if they worked
14 for Jim, but it doesn't really matter to me.
15 They've looked at this. We were, in our March
16 30th, letter looking for some more solid
17 recommendations as to what they were proposing
18 and dependence on an existing crosswalk.

19 Jaime, if you could just point that out?

20 MR. EASTON: For the Board - we were
21 originally talking about a crosswalk in here
22 (Indicating). That was an old comment going
23 back to the 2009 PDD legislation and Local Law
24 adopted in 2010. That was one of the
25 conditions that was discussed way back then.

1 MR. GRANT: One difference between now
2 and then - there was a crossroad right at
3 Fields Lane that was proposed at that time. If
4 you were to have that, obviously the crosswalk
5 there would make more sense. As of now, when
6 they constructed Maxwell Road, they did put in
7 a pedestrian crosswalk there. There is a
8 median there that you can get half-way across
9 the road, gather up your willpower and then
10 cross the other side of the road. There is
11 only sidewalks on the project site of Maxwell
12 Road.

13 CHAIRMAN STUTO: We have some side
14 discussions - what area are we talking about
15 now?

16 MR. GRANT: We're looking basically at
17 Fields Lane. There is existing crosswalk at
18 the roundabout that people utilize.

19 CHAIRMAN STUTO: You think that's
20 difficult to cross; is that what you said?

21 MR. GRANT: It can be at peak hours and
22 it's not so much a flaw of the design. It has
23 to do with people driving like maniacs at 5:00
24 at night. They exceed the speed limits through
25 this corridor significantly.

1 As part of the previous recommendation to
2 investigate a crosswalk at Fields Lane back in
3 2009 - that's where there was a cross
4 connector road. Basically, it was going to be
5 a four-way intersection. We've gotten new
6 information from Creighton Manning which
7 basically recommends dependence on the
8 existing crosswalk at Albany-Shaker Road. Tom
9 Johnson of our firm had a meeting with the
10 applicant, Jamie and company and essentially
11 what we're looking at and they have agreed to
12 do a photometric analysis of the existing
13 lighting at Fields Lane. There is an existing
14 light fixture there. It's more or less a drop
15 type of fixture for lighting the sidewalk at
16 the intersection, as opposed to lighting the
17 intersection. The reason that we would be
18 interested in a better lit section there is
19 that some people may choose to cross there
20 anyway, whether there is a painted crosswalk
21 or not. There will be some consideration of
22 lighting improvements at that area.

23 Serviceberry Lane and Coyote Avenue were
24 also looked at. Basically, the recommendation
25 was to retain and use the crosswalk down to

1 Albany-Shaker Road, which we have reviewed and
2 concurred with.

3 The first comment under the PDD
4 amenities -- that section talks about that
5 conservation easement on both sides of Maxwell
6 Road that are very tight to the road corridor.
7 There is no flexibility and the Corp of
8 Engineers putting anything in that area is
9 probably an understatement. Although there
10 will be some - there is the ability to the
11 east of this project, there is some existing
12 signage that may need to be updated that was
13 discussed at that last meeting. Essentially,
14 the crosswalk at the existing roundabout will
15 be the main and preferred crossing.

16 The PDD amenities that we talked about
17 are in my letter. As Peter as indicated there
18 are park benches and a multiuse trail on what
19 was to be an estate lot. That's how I recall
20 the terminology. If one were to put a gazebo
21 or pavilion -- I'll put pavilion in that same
22 category; rectangle versus round - that would
23 probably be the place to put it.

24 CHAIRMAN STUTO: Where is that suggested
25 to go?

1 MR. GRANT: Right in that area

2 (Indicating).

3 MR. EASTON: Right near the butterfly
4 garden.

5 MR. GRANT: In discussions with that - if
6 you were to have one of those, you would want
7 to have it in good sight lines for Police
8 protection going by on Albany-Shaker Road. You
9 wouldn't put it in a remote location and I
10 think that it would be an attractive nuisance.
11 I think it would be a nice amenity and it
12 doesn't have to be big. It doesn't have to be
13 expensive, particularly with this type of
14 development. It could be your local book club,
15 or garden club, or just having a card game for
16 older folks that want to get out of the heat
17 of the day or on their way over to the library
18 or a nice walk. It's something that should be
19 considered.

20 I would avoid wood structures. I've seen
21 very simple pavilions constructed of concrete
22 slabs, masonry piers and trusses and a
23 shingled roof - with a 40-year shingled roof
24 system on it.

25 An HOA is something that is not being

1 proposed as part of the project. In looking at
2 that acreage of land down there, adjacent to
3 Albany-Shaker Road - that doesn't have to be a
4 high maintenance thing for the Town. I think
5 that you could put in some native grasses and
6 maybe maintain a little mode strip on either
7 side of the trail and let the rest of the area
8 be made -- which is similar to what the
9 conservation easements are. I think that it's
10 a valid point that is kind of contiguous and
11 part of a very natural corridor in a very busy
12 section of Town.

13 As a third comment, I did put another
14 butterfly garden up by the easterly park
15 benches. There are a couple of park benches.
16 That road is basically a stormwater pond
17 maintenance road/trail - or whatever you want
18 to call it, and perhaps another butterfly
19 garden or a garden of another type might be
20 considered there. That's all of my comments.

21 CHAIRMAN STUTO: Okay, the Board wants to
22 hear from the public before we consider this
23 further.

24 I have a list here and I'm going to go
25 through it.

1 Virgil Montavon.

2 MR. MONTAVON: I have a couple of
3 questions. The portion that's down here - is
4 this considered part of the open space?

5 MR. EASTON: No, it's not.

6 MR. MONTAVON: I kind of take exception
7 to basically all the open spaces at the far
8 end. If I'm not mistaken, that's really a
9 swamp down there - isn't it? The wetlands over
10 by Shaker Road? It says wetlands, but it's
11 really kind of a swamp, isn't it?

12 MR. EASTON: There is an existing wetland
13 highlighted in orange. We will be doing the
14 classification of this wetland, but basically
15 it's an evasive species.

16 MR. MONTAVON: Basically what you have
17 done is you've taken most of the open space
18 and put it out of the way and made this more
19 dense than the 35 percent. If this were cut in
20 two, one percent each of open space would be
21 on one versus the other. Basically, all of
22 your open spaces on Shaker Road - I believe
23 that's the address. It's a totally different
24 address, if I'm not mistaken.

25 MR. EASTON: The open space - the object

1 was to have the majority of it in one area.
2 That was our goal was to put it done here in
3 the corner.

4 MR. MONTAVON: It's really separated from
5 the development.

6 MR. EASTON: No, it's not separated from
7 the development. In my opinion, it's connected
8 to the development due to the fact that we
9 have a multiuse path, benches -- if you're
10 walking all the way through -

11 CHAIRMAN STUTO: Just for the sake of
12 clarity, and I'm not disagreeing with you, can
13 you point to all the open spaces? Can you just
14 touch on those?

15 MR. EASTON: All the open space is in
16 green on the second sheet that has been
17 provided. Basically, all up here is on the
18 front side of Maxwell Road, in between the
19 houses and really from the end of the
20 cul-de-sac all the way out to Albany-Shaker
21 Road.

22 MR. LYNCH: The dedicated open space to
23 the Town is in green. The conservation
24 easement .87 acres is in the hatched purple.

25 CHAIRMAN STUTO: That's part of the open

1 space, correct?

2 MR. LYNCH: That's part of the common
3 open space for the purposes of 35 percent. The
4 green is a portion of the site that we're
5 offering for dedication to the Town.

6 CHAIRMAN STUTO: There is a little bit of
7 the purple that's a conservation easement. I
8 just want to point that out for the record.

9 MR. MONTAVON: Who is going to maintain
10 the open spaces?

11 CHAIRMAN STUTO: As it's proposed on this
12 drawing, it looks like they're giving it to
13 the Town. It's on the Town. That's something
14 that we're going to discuss.

15 MR. MONTAVON: Maybe I want to back up a
16 little bit.

17 CHAIRMAN STUTO: The green stuff.

18 MR. MONTAVON: One of my main concerns is
19 that there is no homeowners association. I
20 brought that up before. My understanding of
21 the PDD is for 55 and older to have an area
22 where you are not bound by taking care of
23 everything yourself.

24 I just came back from three months of
25 Florida and looking around. Every place down

1 there is taken care of. Here, well, the Town
2 is going to take care of it - to me, a PDD for
3 55 and older - you don't have to worry about
4 the main things going on. At the previous
5 meeting I mentioned this particular area right
6 in here (Indicating). Who is going to maintain
7 it? I believe that it was an exact quote - one
8 of the homeowners will take care of it. I've
9 been to all the meetings and I think that's an
10 exact quote. I take offence that they're
11 trying to build an area and put the onus on
12 the owners to take care of the free space.
13 This is what a PDD is. The homeowner's
14 association should be responsible for this;
15 not lot 15, not 21, lot 45 or the Town. I
16 think that this must have a homeowner's
17 association I don't know the rules, but I
18 believe that's one of the main points when you
19 allow high density housing. Without a
20 homeowner's association, all this is one very
21 dense housing area with a swamp area that the
22 Town is to maintain. This is not the general
23 look of Loudonville. I do not believe that
24 this is in the spirit or the letter of the
25 PDD. I don't think that this really meets any

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1 of the specifications of the PDD. If it
2 doesn't have a homeowner's association, if it
3 doesn't meet the requirements of the PDD, I
4 would request that it go back to being single
5 residential zoning like the neighbors. I
6 believe and assume that this is single home
7 residential, now. If it can't meet all of the
8 requirements, it should go back to the
9 previous zoning.

10 CHAIRMAN STUTO: Virgil raises a question
11 that the purplish area on the left - who has
12 title to that and what are the conditions?

13 MR. LYNCH: This purplish area is going
14 to be on the rear of a number of the lots.

15 CHAIRMAN STUTO: The one on the left.

16 MR. LYNCH: That's going to be on this
17 lot right here (Indicating). That's all part
18 of a single lot and it will be deed restricted
19 to preserve its integrity.

20 CHAIRMAN STUTO: Do you have any language
21 in the deed restrictions?

22 MR. LYNCH: Yes, in our resolution that
23 we drafted and submitted to the Board.

24 MS. DALTON: But that means that whoever
25 buys lot 10 will be responsible for

1 maintaining that area?

2 MR. LYNCH: That's correct. There is no
3 HOA proposed.

4 CHAIRMAN STUTO: Can you read some of the
5 key language from that because I don't see
6 that in my package.

7 MR. LACIVITA: I think that you have
8 something on your plan set on page 2, right at
9 the top.

10 MR. LYNCH: It's on the plan, too. It
11 says that:

12 "Each will provide that the lot contains
13 a constricted area as depicted on the approved
14 and final subdivision plat. Such deed
15 restriction shall run with the land and the
16 deed restricted area. there shall be no
17 structures constructed thereon except fencing
18 along the perimeter of the lot. To the fullest
19 extent practicable, there shall be no general
20 leveling and clearing of the deed restricted
21 area and trees and natural features shall be
22 preserved and maintained within the deed
23 restricted areas."

24 That would be on the file plat and would
25 run with the land and with the lot.

1 CHAIRMAN STUTO: Thank you.

2 Anyone else from the public like to
3 speak?

4 MR. NOVAK: My name is Tom Novak and I
5 live on Margaret Drive. The multiuse path
6 that's shown here - who maintains that portion
7 that goes outside of the development area?

8 MR. EASTON: The multipurpose trail -
9 that will be constructed here (Indicating).
10 That will be constructed by the applicant and
11 it will be turned over to the Town as part of
12 the Town right of way.

13 CHAIRMAN STUTO: That's a paper street?

14 MR. LYNCH: That's correct.

15 MR. NOVAK: So, the Town is going to
16 accept that and maintain that?

17 CHAIRMAN STUTO: We're going to discuss
18 that when we get up to the Board. We're
19 unclear on exactly what the Town is going to
20 accept. We don't speak for the Town in that
21 sense.

22 Anybody else?

23 MR. RIVERS: My name is Leo Rivers. I was
24 on the list, but I crossed myself out.

25 I just wanted to say that I think that

1 the park benches are going to be a great
2 asset. If this is like a senior's citizen set
3 up with over 55 people and they're walking to
4 the Crossings, they're going to need some
5 place to take a breather or a rest, so I think
6 that the addition of the park benches would be
7 a great thing to put in.

8 CHAIRMAN STUTO: You live on
9 Albany-Shaker?

10 MR. RIVERS: Right on the corner, right
11 by the roundabout.

12 CHAIRMAN STUTO: Do you walk on the
13 sidewalks?

14 MR. RIVERS: No, the roundabout. I'll
15 drive it.

16 CHAIRMAN STUTO: Have you ever walked to
17 the Crossings?

18 MR. RIVERS: Yes, and then I have to take
19 a bike across the street. People do walk
20 through there.

21 MR. AUSTIN: Do you walk to the library?

22 MR. RIVERS: Not anymore. I have a niece
23 who stays at my house or my nephew -

24 MR. AUSTIN: For the record, why would
25 that be?

1 MR. RIVERS: When you come from up
2 Albany-Shaker, taking a right, no one yields.
3 They're hitting 45 or 50 going by. Where the
4 two lanes come into one, the inside lane has
5 arrows pointing to yield, but nobody yields.
6 Since August when they developed it, I've seen
7 at least 23 accidents right there where we
8 meet. The State Police are always there. This
9 Saturday night at 3:15 - I don't know what
10 happened. Somebody didn't make the turn and
11 took all the signs out and right over the
12 roundabout. I heard it at like 3:15 in the
13 morning. I heard the big crash. They had to be
14 hitting 55 or 60 coming down and didn't make
15 the turn and went right through the
16 roundabout.

17 MR. AUSTIN: So, can I ask your opinion
18 on something sir? If you were walking on that
19 path coming out of the wetlands - the existing
20 path that they have going through the wetlands
21 and they wanted to cross over to go to the
22 Crossings and you were a senior citizen -

23 MR. RIVERS: I would go down to the
24 Crossings where the light is and cut over.

25 MR. AUSTIN: Thank you.

1 CHAIRMAN STUTO: Yes, ma'am.

2 MS. MORANO: My name is Kathy Moreno. I
3 live at 34 Margaret Drive.

4 I was wondering what a no-cut buffer is.

5 MR. EASTON: A no-cut buffer means
6 existing vegetation will not be disturbed. So,
7 for 10 feet, the existing vegetation will not
8 be disturbed. Based upon this area in general
9 from here going down from the pervious
10 meetings that we've had with the general
11 public and due to the grading, we'll be
12 planting trees along the rears of these
13 properties as previously proposed.

14 MS. MORANO: Here is my thing. We have 50
15 foot poplar trees -

16 MS. DALTON: Ma'am, can you go up and
17 show us?

18 MS. MORANO: I am here (Indicating). I
19 guess I was confused. It looked like on the
20 map that it went up to there (Indicating). So,
21 I guess I'm not in the no-cut buffer. Will
22 those trees get taken down?

23 MR. EASTON: Yes.

24 MS. MORANO: Will it change the water
25 table? I've been there for 21 years and I've

1 never had any problem with water in my
2 basement and I know that some neighbors have.
3 I will hate you forever if I have water in my
4 basement.

5 MR. EASTON: In regards to the water
6 table - this has been mentioned before and a
7 few other things. The TDE has looked into it
8 with ourselves. Based upon the proposed
9 elevations of all these buildings, our
10 roadway - we're much lower in elevation than
11 everybody's elevations are along Margaret
12 Street. We're much lower in elevation. So, we
13 do not expect any adverse effects on the
14 groundwater table. Plus, we are putting slabs
15 for these building over in our locations.
16 Again, so we're not going to be moving the
17 water table. If anything, we're going to be
18 de-watering the water table, due to the
19 proposed utilities that are being installed.

20 CHAIRMAN STUTO: Do you agree with that,
21 Brad? He said that there will be no impact on
22 the water table. They're lower than the
23 existing neighborhood and in fact they will be
24 de-watering that?

25 MR. GRANT: That's the game plan. We have

1 to bring sanitary sewer - essentially a lot of
2 these utilities go out towards Albany-Shaker
3 Road. That would be part of the goal that we
4 talked about under drains at our first meeting
5 here. That maybe an additional bypass sanitary
6 sewer and key location. The stormwater
7 management facilities are not designed to
8 be -- we haven't gotten to that design yet,
9 but we have concern for properties on Karen
10 Court to Margaret Drive -- these facilities
11 don't want stormwater from their site and be
12 infiltration in the basements on existing
13 properties.

14 CHAIRMAN STUTO: My understanding is that
15 the houses will be built on slabs.

16 MR. EASTON: These were roughly four to
17 five feet lower in elevation than the existing
18 homes. So, when you dig a trench through an
19 existing ground -- we're going to be burying a
20 sewer even deeper than that - the water kinds
21 of finds that path and goes down even lower.
22 This is a common question through the 2009
23 process where we kind of looked at that. We
24 feel comfortable in the sense that we will be
25 solving that problem. We're going to lower the

1 water table.

2 MS. MORENO: You're going to take those
3 trees down. What's going there instead? Will
4 you be putting any greenery in there?

5 MR. EASTON: Along the back here, I
6 believe that there are plantings all along
7 here (Indicating). We're not putting a
8 hedgerow up along this property line right
9 here.

10 MR. GRANT: Likely evergreens?

11 MR. EASTON: Originally, proposed from
12 the last go around, roughly from the edge of
13 the deed restricted area we're putting in a
14 row of Arborvitaes. I remember back in 2008 or
15 2009 when we had a meeting over at the
16 Crossings, people kind of wanted that natural
17 look in the back.

18 Over in here and in this general area
19 (Indicating), we'll be having tree plantings
20 and not a hedgerow. The trees that we're
21 planting in that area will break up the rears
22 of these individual homes. We didn't want a
23 hedgerow. That was kind of what was discussed
24 last time. They want this area mowed and
25 maintained, but they didn't want a hedgerow.

1 That's why we're kind of sticking with the
2 plan that everybody told me what they wanted.

3 MR. JOHNSON: Robert Johnson. I live on
4 Margaret Drive.

5 Not to beat a dead horse, but I just
6 heard a little discussion earlier this evening
7 about stormwater. My concern is 18 Margaret
8 Drive. Once again, I'm wondering about
9 original ground elevations in the back. I was
10 assured in previous meetings that these would
11 not be raised. The original ground level would
12 not be raised in the final construction of a
13 sort of a swale area here (Indicating) to rock
14 stormwater off in that area which would make
15 me very happy. I presume that it will make
16 others very happy to keep ground water at the
17 existing leveled or lower.

18 MR. GRANT: There are two sources of
19 water. There is ground water, which can be
20 intercepted with under drains; and then there
21 is surface water - which in addition to the
22 ponds that you see are the end of the game.
23 That's where the stormwater is going to go.
24 Cut off swales and surface diversions - so we
25 aren't shunting that drainage off to existing

1 properties.

2 MR. JOHNSON: Stormwater will raise
3 groundwater. If it infiltrates in the ground,
4 it's going to raise the water table.

5 MR. GRANT: You want to keep it moving
6 into the stormwater drains.

7 MR. EASTON: We've discussed this
8 numerous times but to assure you again, we are
9 proposing a swale in the back. Your house is
10 at elevation 317. It's a little tough to see
11 on this map. This contour right here is
12 elevation 312. So, we're looking at five feet
13 lower grading-wise than the finished floor of
14 your house.

15 MR. JOHNSON: Do you know what that level
16 is right now, Jaime?

17 MR. EASTON: This is 313 here.

18 MR. JOHNSON: I also heard that you were
19 talking about a no-cut buffer. Does that run
20 all the way down along the back of the
21 properties over here? There is some really
22 nasty stuff right here.

23 MR. EASTON: Only the areas in purple are
24 the no-cut buffers, just as previously
25 proposed. We will basically go right up the

1 rear of your property line, remove the
2 vegetation and then put in a row of
3 Arborvitaes.

4 MR. JOHNSON: How many feet to the
5 centerline of the Arborvitaes from the
6 property proposed?

7 MR. EASTON: I want to say that it's
8 close to 7 feet from the centerline of the
9 Arborvitae to the property line. These can get
10 pretty large,

11 MR. GRANT: It also would be owned by
12 those lot owners.

13 MR. JOHNSON: Thank you.

14 MR. PETTINGILL: Briefly before the Board
15 was a recommendation to Fire Services that
16 some of the houses be residential sprinklered.
17 Through some discussions, I think that they
18 were going to use them through the whole
19 project.

20 MR. FINNING: I think that we agreed to
21 put them where Mr. Lattanzio said they needed
22 to go. We haven't committed to the whole
23 project.

24 CHAIRMAN STUTO: So, toward the end of
25 the cul-de-sac; wherever he recommended.

1 MR. MONTAVON: It was mentioned that
2 these new houses are going to be four to five
3 feet lower. That's still above our basement
4 levels. When it comes to water and so forth,
5 even though they are lower, that's still above
6 the basement and we don't want our basements
7 flooded.

8 MR. GRANT: We don't blame you. I think
9 that it's a careful stormwater management
10 design on this site.

11 MR. MONTAVON: That was one of my
12 comments first. Why aren't they putting
13 basements in them? They said that they
14 couldn't put them in because the water table
15 was too high. I think that there is a very
16 fine line. I think they're still higher than
17 our basements. I think that we will flood
18 before they will.

19 CHAIRMAN STUTO: I'd like Brad to answer.

20 What degree of comfort that you could
21 give him that in final design, the stormwater
22 management plan - that his worst fears are not
23 going to come to a reality.

24 MR. GRANT: I think that it's with
25 careful design and accurate execution by the

1 contractor. A lot of it has to do with under
2 drains and controlling the groundwater. What
3 we don't want to see is that this project has
4 a mounding effect. In other words, it
5 increases the groundwater. Will it lower it? I
6 think that in short parts of the season, you
7 would have some effect of lowering it. In
8 general, it's going to be similar to what it
9 is now. I don't think that this was the case
10 this year, but if you were to get flooded once
11 a year -

12 MR. MONTAVON: Like last year when we had
13 severe flooding. Is that going to happen or
14 happen two years from now?

15 MR. GRANT: I'm not going to guarantee
16 you the dryness of your basement, but that was
17 during Irene and Lee.

18 MR. MONTAVON: Yes. It does happen.

19 MR. GRANT: Absolutely.

20 MR. MONTAVON: That was the first time my
21 basement showed me any water. The potential is
22 there already.

23 MR. GRANT: In some areas there is
24 shallow ground water table and it does need to
25 be controlled. It can't have a negative

1 impact. It has to be a goal and followed
2 through from A to Z.

3 CHAIRMAN STUTO: But you're going to be
4 overseeing that design and reviewing that
5 design process.

6 MR. GRANT: Yes.

7 MR. EASTON: We're not proposing
8 basements due to the type of structures that
9 we're proposing and type of usage. From the
10 test pits that we've done here, we actually
11 could put basements in here and it could be
12 fine with it. We're not hitting the water
13 table. It would certainly be within the
14 seasonal high water table where your standard
15 sump pump on your house would apply for. In
16 this case, we could actually put foundations
17 in, but we're not choosing to due to the 55
18 year old establishment and slab on grade
19 designed for these buildings.

20 MR. GRANT: Which is common with the twin
21 homes.

22 CHAIRMAN STUTO: Does that have some
23 difference on the way of the groundwater - the
24 slabs instead of the basements?

25 MR. GRANT: Not much, quite honestly. You

1 have roof area. You would have a roof whether
2 you have a basement or not. If they were all
3 basements and they all had sump pumps, he may
4 have some additional control. I tend to agree
5 with Jaime's comment. Basements are for
6 younger people going down and getting all the
7 junk for the garage sale. That type of design
8 typically does not have your typical slab
9 upgrades.

10 MR. MONTAVON: One thing that could
11 impact the water in that area - if property
12 owners alter the grade at a later date. If
13 that drainage path is obstructed or raised in
14 grade in any way, it doesn't matter. That
15 would very definitely dam the water up and
16 cause many water issues.

17 MR. GRANT: Like those backyard swales
18 that we were just talking bout in the rear of
19 those lots towards Margaret. Often times they
20 are contained in an easement.

21 MR. EASTON: Just like we mentioned in
22 2009 when we were going through this in the
23 final plan, there would be a 30 foot wide
24 easement to be maintained in that area. As it
25 is, we have to put an easement in here for

1 another entrance here anyhow. That was even
2 before this plan had an easement going around
3 for the drainage ditch.

4 MR. GRANT: You aren't supposed to build
5 structures in that easement. That's not the
6 place to park the shed right across the swale.
7 This Town comes and picks up yard waste and
8 there is no excuse for dumping the clippings
9 to in the back.

10 MR. MONTAVON: The age of 55 was
11 mentioned. Since there is no proposal, it
12 seems very set in stone that there is going to
13 be no homeowner's association by the proposal
14 here. Who is going to maintain or verify that
15 owners are 55 years old and what prevents a
16 person who is a 75 deeding it to their son who
17 is 45? I don't know what the conditions are.
18 Is there a standard operation that the PEDD
19 has? Do the homeowners police it? Does the
20 Town police it? Do the neighbors police it?
21 What is the process to guarantee that?

22 CHAIRMAN STUTO: Good question. I'll let
23 the applicant answer that one.

24 MR. LYNCH: The initial plan is, of
25 course, to show it to 55 year olds. While we

1 could place a deed restriction in it, if the
2 Board requires it, the enforcement of a deed
3 restriction would be on anyone who seeks to
4 challenge a violation of that deed
5 restriction.

6 MR. MONTAVON: For the first person it's
7 going to be 55 and there is no guarantee after
8 that. That's what I got out of that.

9 MR. LYNCH: The housing style itself is
10 marketed toward that age group. The design of
11 the house on a slab grade -- the entire style
12 of the house is driven to that market. So,
13 that is the plan. That's what we are proposing
14 to do. It does provide a different style of
15 housing that would provide an opportunity for
16 seniors to have a nice residential area to
17 live in.

18 MR. MONTAVON: My questions wasn't on the
19 style of the house. My question was: What was
20 the guarantee? I have a house in Florida and
21 there are certain restrictions set up. What
22 has been discovered is if you had the house
23 out -- it's affordable and people want a place
24 to rent but now the renters come in and they
25 don't really care about the neighbors. This is

1 happening at my place in Florida. They don't
2 care about the neighbors. There is really
3 nothing that we can do. The same thing - the
4 style of the house dictates. We thought that
5 the style of our house in Florida dictated it,
6 too. When the person has a house that they
7 can't sell, if the market is down then they
8 rent it, they rent it just enough to make ends
9 meet and if you have problems - I won't go
10 into it but there have been problems that come
11 up because people are renting because our
12 development doesn't have a guarantee against
13 this. The first owner is going to be 55 and
14 the style of house dictates that it's not
15 sufficient for me.

16 MR. LYNCH: We also have deed
17 restrictions. We're proposing a deed
18 restriction, if that is a condition that is
19 recommended by the Board. The only reason that
20 I mention the style of house is that is the
21 market that we are attracting. Frankly, if
22 it's a condition that the Board proposes,
23 that's fine.

24 MR. AUSTIN: Mr. Lynch, I think that what
25 Mr. Montavon is stating is that if this is 55

1 or above and they come in and don't see an
2 HOA, they're not going to buy.

3 MR. LYNCH: The purpose of the HOA for
4 the most part, is if you have common lands
5 that are not owned by the Town; but rather
6 have to be owned by a private entity and
7 create that entity. Most people would think
8 that it would be more attractive to buy a unit
9 where they don't have that additional HOA fee.
10 Because with the HOA, comes an HOA fee.

11 Of course, with respect to the Town,
12 while we are proposing to dedication of the
13 open space to be compatible with the corridor
14 along the roundabout, as I indicated earlier,
15 the corresponding benefit to the Town is that
16 there is going to be a significant increase in
17 the tax base with respect to this property
18 without a corresponding demand on the school
19 system. From an economic point of view, this
20 project is in the black, for the purposes of
21 the Town.

22 I don't know if I answered your question,
23 but I hope so.

24 CHAIRMAN STUTO: Other members of the
25 public?

1 MR. MONTAVON: I'd like to say the same
2 thing that I said before. This really is not a
3 PDD. This is high density housing in our back
4 yard. It's a change in zoning and I believe
5 that it's incorrect. It's the wrong way to go
6 and it should be the way that it's presently
7 zoned.

8 MR. LYNCH: Actually, it's a PDD. It's
9 presently zoned PDD. It was approved as a PDD
10 in 2007 and amended in 2010. Frankly, the only
11 reason why we're back here is because the Town
12 granted the conservation easement to the Army
13 Corp of Engineers and took away our access
14 points. So, this site is actually zoned PDD.

15 CHAIRMAN STUTO: We understand that.

16 MS. DALTON: That's not accurate. At the
17 end of the day, the plan that came to us
18 before had shared space, a homeowner's
19 association, and you were not deeding that to
20 the Town.

21 MR. LYNCH: That's not accurate, ma'am.

22 MS. DALTON: That's my understanding.

23 MR. LYNCH: We did not have an HOA
24 proposed.

25 MS. DALTON: There was never an HOA

1 proposed? Was there ever an HOA proposed?

2 MR. FINNING: It was mentioned in 2007,
3 but it was never put in place.

4 MR. EASTON: In 2007, which is this
5 approved PDD, there was mention of an HOA for
6 the three-story condo units down here in the
7 corner. Everything else was going to be a
8 single family home lot and Town roads.

9 MR. LYNCH: If I may, in considering the
10 overall impact, when you look at what was
11 approved in 2007, you've got these large
12 condominium style buildings right on the
13 streetscape where we now have the roundabout.
14 What we are proposing now, of course, is to
15 have that open space area dedicated to the
16 Town, which would simply mitigate impact on
17 that area. So, frankly, occasioned by the
18 amendment in 2010 and the proposed amendment
19 that we have now, we are certainly downsizing
20 the project and creating more open space to be
21 offered to the Town. Remember that if this
22 particular part of the project were in an area
23 surrounded by other residential properties, it
24 really wouldn't make much sense to dedicate
25 this part of the project to the Town. The

1 entire area between this project here and
2 Maxwell Road, leading up to the library is
3 effectively open space. This really is
4 compatible with that. It creates more of a
5 corridor effect, if you will. This is a very
6 significant intersection within the Town and
7 we're proposing to say since we were here
8 last, we took out the reservation right that
9 we were receiving to have an acre building lot
10 off of the roundabout. We took that out to
11 further mitigate impact and to get away from
12 that earlier development right on Shaker Road.
13 So, the open space makes sense and we're
14 proposing to be dedicated to be accepted by
15 the Town in lieu of an HOA.

16 MR. EASTON: In that plan there was talk
17 of that and in 2010 legislation which is this
18 concept which is approved right now.
19 Basically, there was about 10 percent
20 dedicated as open space - truly dedicated deed
21 restricted land for open space. The remaining
22 part of it was going to be kept within the
23 lots. Now, you're going to a true 35 percent
24 greenspace. We've lost a lot. We've gotten rid
25 of the three unit homes. We're down to the two

1 unit homes. We still maintained the wishes of
2 the public in terms of what we have heard over
3 the years and the tree screening, making sure
4 that we have the swale and making sure about
5 the water table. The TDE is very aware of
6 this -- increasing the multiuse paths and the
7 connectivity of this whole project. We feel
8 that what the applicant has asked for and what
9 the Town has asked for and what the reviewing
10 engineer has asked for. We certainly thought
11 that we were at the point where everybody was
12 pretty happy with the design based on the
13 information that we received.

14 MS. VAIDA: I wanted to ask a question on
15 the occupancy language. It says occupancy is
16 limited to 55 and older.

17 MR. LYNCH: Owners.

18 MS. VAIDA: That's my question, I guess.
19 I'm looking at the 1989 -

20 CHAIRMAN STUTO: The PDD legislation?

21 MS. VAIDA: It's not really the
22 legislation. It was the language in the
23 recommendation. I don't know what ended up. I
24 don't have that right in front of me. What I'm
25 concerned about is the 55 and over occupancy.

1 Who can live there, versus who can own it? Can
2 you have someone 22 buy it as long as the
3 parents live there that are 55 and over? Does
4 the owner and the occupant have to be 55 and
5 older?

6 MR. LYNCH: You're referring to the
7 memorandum dated December 19, 2009?

8 MS. VAIDA: That's right. I don't have
9 the legislation.

10 MR. LYNCH: I do have the legislation
11 that was adopted. It's Local Law 2 of 2010. It
12 doesn't have a specific reference to that. It
13 does refer to the 51 twin homes, at that time.
14 The actual legislation doesn't have that
15 characteristic.

16 MS. VAIDA: It doesn't limit it to
17 seniors?

18 MR. LYNCH: No, but the memorandum did.
19 What I was suggesting is because this project
20 has always been proposed for senior housing 55
21 and above, if this Board makes a
22 recommendation to approve the PDD back to the
23 Town Board, if you have some recommended
24 language back to the Town Board as to how you
25 would like to restrict the occupancy to 55,

1 that's the whole idea of the project, anyway.
2 That would not be objectionable.

3 CHAIRMAN STUTO: Elena, I don't know if
4 you've researched this. I did at one point
5 when I was Counsel to this Board. As a general
6 constitutional proposition, age discrimination
7 is unconstitutional. However, I think that
8 there is an exception to housing where a
9 target housing market could be 55 or older.
10 Even if that's the case, I'm not sure, for
11 example, if the owner had a grandchild if you
12 could prohibit the grandchild from living
13 there. I don't know if anybody knows the law
14 in that area.

15 MS. VAIDA: I think that the language
16 says 55 or older and their family.

17 CHAIRMAN STUTO: Are you familiar with
18 that area of constitutional law?

19 MR. LYNCH: Not on that, Peter, but I am
20 familiar with the fact that you can propose
21 housing for seniors and that's what this
22 entire concept is.

23 CHAIRMAN STUTO: I'm going to ask one
24 question and then we're going to turn it over
25 to the Board.

1 That's on the ownership by the Town of
2 most of the green area of the open space. I
3 understand that you were going to have a
4 meeting either with the Town Attorney, or the
5 Supervisor's office which I declined to attend
6 because residents had asked us to attend
7 meetings and we declined to attend those as
8 well. In the spirit of fair play in that
9 regard, we generally don't - I can't recall
10 any instance where we were meeting with the
11 applicant as Town Board Members. I'm not sure
12 if Elena was there or not.

13 Joe, is there anything on the record
14 about what the Town's position is in writing
15 and where they stand with the open space?

16 MR. LACIVITA: There is nothing presently
17 in writing, Peter. I did have the conversation
18 with the Town Attorney, Elena and myself. We
19 had met with the applicant and Peter to
20 discuss the project, the open space, the
21 design and the butterfly gardens and
22 everything that was coming in from the last
23 time that we met. That also included a bridge,
24 a crosswalk walk - that's why we engaged Tom
25 Johnson and Brad Grant to really look at that.

1 We subsequently had another meeting that
2 engaged Jaime looking at the traffic. We come
3 to find out now that part of the project is no
4 longer - I don't want to say warranted, but
5 implemented into the project. The Town
6 Attorney had also suggested, based on the
7 connectivity to the project that the open
8 space would actually be taken over by the Town
9 of Colonie. That's what I remember.

10 MS. VAIDA: That's what I remember. Peter
11 explained to the Town Attorney the importance
12 of continuing the open space from one side of
13 the street to the there, and how that would be
14 a benefit to the Town and it is my
15 recommendation that the Town Attorney agreed
16 to that.

17 MR. LACIVITA: Subsequently, there has
18 been a Local Law that was put into place that
19 actually considers the open space to be
20 considered part of the greenspace calculations
21 within the Town. That's why those specific
22 houses actually have deeded restrictions to it
23 because it's part of the open space through
24 the adoption of the Local Law.

25 CHAIRMAN STUTO: So, you've had some

1 discussions with the Town Attorney and not
2 with the Town, per se, in terms of the
3 Supervisor or the Board.

4 MR. LACIVITA: Correct.

5 CHAIRMAN STUTO: It was a different plan
6 that was in front of him or not? Was it the
7 current plan?

8 MR. LACIVITA: It's the current one that
9 we're referring to.

10 CHAIRMAN STUTO: No one submitted a memo
11 to us, right?

12 MR. LACIVITA: Correct.

13 MS. DALTON: I'm working off of Article
14 13 planned development districts for the Town
15 of Colonie and it walks through the intent of
16 the PDD, the objective, and the general
17 standards before we get to what you have to do
18 to apply.

19 Under intent, letter C, one of the
20 intents is to ensure adequate provision of
21 community services. So, can you explain to me
22 how this project as a PDD, ensures the
23 adequate provision of community services above
24 and beyond what ordinary citizens would get
25 within a regular planned development?

1 MR. LYNCH: For starters we're proposing
2 the dedication of 4.63 acres of land which
3 would include a pedestrian walkway linkage
4 from the project to Albany-Shaker Road with
5 the provision of park benches. As I indicated
6 earlier, if the Board wants to impose a
7 condition for a gazebo or a pavilion, my
8 client would comply with that. Of that same
9 dedicated area, it will house the stormwater
10 detention basins which would be maintained by
11 the Town as well as the east end. So, when you
12 look at a zoning ordinance, you're looking at
13 the intent. Look at that overall intent. One
14 of the provisions in the PDD is to provide for
15 some diversity in the housing style. That is
16 what this project does. It proposed for the
17 community.

18 As far as community services go, the site
19 is serviced by water, sewer, and utilities for
20 power. So, this is not existing in a vacuum.

21 MR. DALTON: I understand that, Mr.
22 Lynch. But I'll remind you that at this point,
23 you're also talking to the Commissioner of
24 Albany County Department of Social Services.
25 Sometimes it's hard for me to move my hats.

1 For me, adequate community services for a
2 senior development district means that there
3 is somebody watching out making sure that
4 somebody doesn't die, fall, gets their mail
5 delivered or a home health aide shows up.
6 There is a community available to people who
7 purchase there to ensure the wellbeing of the
8 neighbors. From my perspective, walkways and
9 benches and gazebos don't do that.

10 MR. LYNCH: Certainly, you're entitled,
11 as a Board Member, to your interpretation. But
12 the Town Board has previously approved this
13 project twice.

14 MS. DALTON: And it's back before us.

15 MR. LYNCH: That's correct. It's for your
16 recommendation back to the Town Board.

17 MS. DALTON: So, with regard to
18 objectives on letter A, it says that the
19 objective is to tie the PDD together
20 internally and also link it to the larger
21 community. So, I understand that the walkways
22 link it to the larger community. What does
23 this to tie the PDD together internally?

24 MR. LYNCH: I think that when you're
25 reading that, you dissecting. You're.

1 dissecting the provision of the ordinance.
2 Under zoning law, liberal construction is to
3 be granted. When you're looking at the
4 terminology.

5 You don't look at the project itself in
6 isolated sections. The housing component is
7 part of the overall plan which allows for the
8 linkage - walking linkage to Margaret, walking
9 linkage to Shaker Road. Frankly, when you're
10 looking at the PDD legislation, you're looking
11 at the overall intent and you don't take
12 sentences and say well, we don't think that it
13 meets this sentence.

14 MS. DALTON: I agree and disagree,
15 respectfully.

16 I agree with you that you have to look at
17 the entire intent. I do believe that overall,
18 in A it says that it's matched to the
19 characteristics of the site and that it allows
20 for innovated development ideas. I do believe
21 that this is a site that has some specific
22 challenges to it, and that you guys have done
23 a really nice job in addressing those
24 challenges. My reservation lies in the fact
25 that you're not only being asked to meet the

1 challenges of the site, but to create what I
2 would refer to and what the language refers to
3 as a community. What I see here are a lot of
4 nice houses. I don't see a community.

5 MR. LYNCH: You're not looking at some of
6 the other components. As we pointed out in the
7 proposed legislation, we're proposing a trail
8 connection, as we have discussed, significant
9 natural features on the site including the
10 wetlands are being preserved.

11 MS. DALTON: Right. That links it to the
12 greater community, but you have nothing that
13 links it internally; one house to another, one
14 neighbor to another. That's what I'm looking
15 to see here in addition to the linkages to the
16 broader community.

17 MR. LYNCH: I think that you're reading
18 the provisions of the ordinance -

19 MS. DALTON: I disagree.

20 MR. LYNCH: That's fine. I just don't
21 agree with your interpretation.

22 MS. DALTON: So, let me go back -

23 CHAIRMAN STUTO: I think that reasonable
24 people can disagree. Not just disagree as a
25 legal matter, but say this is important to me

1 as a Board Member, as I understand my
2 community. I want this to be tied together
3 amongst the subdivision. I think that's what
4 Kathy is trying to say.

5 MS. DALTON: I'm just pointing out that
6 when you have appeared - and I was on this
7 Board before. I wasn't here when you appeared
8 all of the times but I have been here when
9 you've appeared before, and I continuously
10 pointed out the components of this project
11 that don't tie to the internal components of
12 the project together. I think that you do a
13 good job with the site. I think that you do a
14 good job in regard to trying to create an
15 ability for the site and the people who live
16 in the site to tie it to the broader
17 community. I'm uncomfortable with the thought
18 that it is it a planned development community
19 when there is no linkage from the community to
20 people who live in it.

21 MR. LYNCH: We certainly respect your
22 comments but this is the project that we're
23 asking you to consider.

24 MR. DALTON: I understand that so I'm
25 going to tell you why I'm not going to vote

1 for it then.

2 Last but not least under general
3 standards, you have that it is controlled
4 either by a single person or legal entity or
5 by a group of individuals or entity. You are
6 proposing turning all of the greenspace over
7 to the Town. I supposed that we could call
8 that a legal entity but again, then it's no
9 longer part of the PDD. That belongs to us and
10 the entire community and is no longer a joint
11 community deciding what to do with that
12 greenspace. Let me just go further before you
13 address that and say, it also says that a
14 property owner's association or similar
15 mechanism for the long-term ownership and
16 maintenance of this common open space shall be
17 provided, subject to the approval of the Town
18 Planning Board and the establishment of a
19 conservation easement.

20 You've done the conservation easement,
21 but you haven't met the first component of
22 that which is a property owner's association
23 or similar mechanism for the long-term
24 ownership and maintenance. That goes back to
25 who buys it the second time? Who gets to use

1 it the second time? Who recognizes that there
2 is no internal continuity to that community?
3 There is no legal entity, no responsible
4 entity, and no governing structure for
5 creating that community.

6 MR. LYNCH: You have to break up that
7 it's the homeowner's association - the two
8 pieces that I gather in your comment.

9 The other similar mechanism which is to
10 maintain the integrity of the open space area
11 is simply the dedication to the Town. The
12 whole idea of the HOA, these would be the open
13 space components of the project - and that's
14 what we're talking about here, is to make sure
15 that the integrity is preserved. The Town
16 Board can either accept or reject that
17 dedication of proffer, but the project that we
18 are proposing is to make that dedication
19 proffer.

20 We did meet with the Town Attorney and
21 counsel and staff. We did portion the amenities
22 to the Town that would arise out of creating
23 this corridor along the roundabout that would
24 be basically persevered intact without
25 development.

1 As far as the restriction on the age is
2 concerned, as I've already indicated, we would
3 consent to a deed restriction if that is one
4 of the conditions proposed by the Board. With
5 respect to your vote, you've already told us
6 that you're going to vote against it and of
7 course, that is your discretion. We are asking
8 this Board to take a look at the project. You
9 all know the project. We would ask that you
10 vote on the project with your recommendation
11 and whatever your recommendation is, we'll be
12 going back to the Town Board. We would hope to
13 get at least a majority vote on favorable
14 recommendation given the fact that in the
15 past, this Board has recommended this project
16 be approved for a PDD twice. As it's presently
17 designed, we have reduced the scale of the
18 project and created a larger open space.

19 MS. DALTON: In closing I would say - I
20 will reiterate that you've done a very good
21 job developing something in a difficult space
22 and under difficult circumstances when the
23 Army Corp of Engineers decided that they were
24 going to change their rules in regard to how
25 you can construct this.

1 MR. LYNCH: Certainly, the Town in 2005
2 with the former Supervisor had agreed in the
3 memo with the Army Corp to create that
4 conservation district area. My client did not
5 know about that and frankly then went ahead
6 and approved it in 2007 and in 2010. So, it
7 just wasn't the Army Corp. With all that said,
8 that's ancient history. Our project now is
9 infinitely superior to the projects that were
10 previously approved in 2007 and 2010.
11 Infinitely better insofar as mitigating
12 environmental impact and provide some
13 diversity and housing styles for seniors; that
14 is one of the components or intents of the
15 PDD. In a PDD, you do not need to meet every
16 single intent. You need to meet an intent and
17 we believe that we do.

18 MS. DALTON: In the event that you're
19 given the opportunity to reconsider some of
20 this, I would encourage you to look at -- I
21 don't think that it's asking a lot to not deed
22 everything to the Town because that reduces
23 the ability of that community to govern
24 themselves and I think that opportunity. And
25 that opportunity to govern themselves will

1 create a community that might not otherwise
2 exist. I think that you should look at Lot 10
3 because there is a lot of area there that
4 should be used in a joint sort of way that
5 would help to create that community.

6 Last but not least I think that you
7 really need to think about designing a
8 community for seniors takes more than crating
9 housing that they can navigate. It requires
10 creating a situation that is livable for them
11 from the age of 55 to the age of 105 if they
12 live that long; God bless them. Thinking about
13 what they need under those circumstances, I
14 think is the last component of approving this
15 PDD that heretofore has not been addressed.

16 CHAIRMAN STUTO: Thank you.

17 MR. MION: I think that you did a great
18 job of designing it. I do have some concerns
19 about the fact that there isn't an HOA. I
20 believe that the HOA should be responsible to
21 maintain those areas. Let the community
22 maintain it. Let the HOA have that say. I
23 think that it's a great project, but I think
24 that you need an HOA.

25 MR. AUSTIN: I must echo many of Kathy

1 and Lou's comments. You were presented with a
2 very difficult site plan to work with.
3 Actually, to be honest with you, I did like
4 the plan that was presented in 2007. It looked
5 better. Some of the housing is spread out in
6 the main housing area. You have the
7 condominium aspect, which is a little crowded
8 there. The housing is a little more spread
9 out. It looks cluttered in a way, even though
10 that you've taken out one area. I think that
11 looking at the proposed open space, as we call
12 it, for recreation purposes or whatever for
13 the seniors to go - as the TDE mentioned to
14 play some cards or to have a snack on their
15 way to the Crossings in the gazebo -- I think
16 that's a great idea in concept, but in reality
17 I think that you're setting yourself up for a
18 lot of conceptual problems with local kids
19 going in at whatever time and using that
20 gazebo for whatever they might want to use it
21 for.

22 In the previous minutes, which I was
23 looking at, Mr. Montavon - we do have the
24 previous minutes that you were here and you
25 did speak on that - who is going to maintain

1 this. It was mentioned by Jamie that the
2 pathways were going to be blocked off by
3 bollards. Is that correct?

4 MR. EASTON: Yes, in regards to Margaret
5 Street, that was a previous condition in the
6 sense that people didn't want cars driving
7 across there. There would be bollards placed
8 on either side of this location and the same
9 thing would occur for all the multiuse paths,
10 including the very long one -

11 MR. EASTON: Absolutely.

12 CHAIRMAN STUTO: So, vehicles can't get
13 through is that what you're saying?

14 MR. EASTON: Vehicles can't get through.
15 Actually, there is one that is removable with
16 a lock that the Town of Colonie will have
17 because they will use it for maintenance
18 purposes. This multiuse path has actually
19 served - the last time we talked about it, it
20 served three purposes. One is pedestrian
21 accommodation. One is a utility corridor.
22 Three, it's a maintenance access way for the
23 stormwater management areas, per Town Code to
24 maintain the stormwater management areas. So,
25 it serves three purposes on basically one and

1 two proposed multiuse paths.

2 MR. AUSTIN: I see two of those purposes.
3 I'm not used to seeing how many seniors, as we
4 have been using the term, are going to be
5 utilizing that path. Maybe some of the younger
6 seniors.

7 MR. LYNCH: Fifty-five is pretty young.

8 MR. AUSTIN: Nonetheless, if there were
9 some older eloquent people living in those
10 homes and wanted to use that path, if you're
11 living down on Lot 2 and you wanted to make
12 your way down that path, that is not according
13 to the objective, integral, or internally
14 linking the PDD together. It's a long way. If
15 you had a powered wheelchair or something like
16 that, you could zip right down the road and
17 you'd be right there. It's a difficult site
18 plan. I agree with what my fellow Board
19 Members have said that you've done a great job
20 in designing that site plan, but I'm still not
21 seeing it. I'm not seeing the PDD aspect of
22 the senior housing. I can see it would be
23 great for young families living there and
24 single family housing. I don't know about
25 senior housing.

1 As Virgil was saying, in Florida they
2 have maintained areas with the option of
3 having that. Here there was really none of
4 that. There is no community center, so there
5 is no building in the middle where they can go
6 and play some badminton or whatever they might
7 do.

8 MR. LYNCH: In so far as your concept of
9 standards, not being able to walk from the lot
10 down to the park -

11 MR. AUSTIN: That's no offence to
12 seniors.

13 MR. LYNCH: I really think that if you
14 live in this development, you can clearly
15 utilize the walking trail if you want to walk
16 down to Shaker Road and then along Shaker and
17 down to the Crossings. To think that the
18 people that are going to be living here are
19 somehow disabled from being able to be mobile,
20 doesn't really grasp -- I think that you're
21 thinking more of assisted living and that's
22 not what this is. I do think that you're
23 really looking at the age thing too hard. A 55
24 year old - that's not a big walk. I think
25 that you're looking at it too strictly. Fifty

1 five is not a debilitating age. A lot of
2 people are downsizing. The kids have moved out
3 and they want to have a smaller home. This is
4 a housing style that provides an amenity to
5 the Town. I think that this whole idea that
6 people at the north end of the project won't
7 be able to use the walking trail -

8 MR. AUSTIN: You can strike that comment;
9 whatever you want to do with that. I just
10 think that the open space feels removed to me.
11 That's my own personal opinion. The open space
12 feels like it's completely a separate track of
13 land which is accessed by the long path with
14 the right angle turn and then you have the
15 butterfly garden. I like the butterfly garden.
16 That's a nice touch. Two butterfly gardens is
17 a great touch. The design of the site plan,
18 which you have done a very good job at working
19 with - especially with the 35 percent issue
20 that you had.

21 MR. SULLIVAN: I would echo the comments
22 that have been said already. My main concern
23 is with Lot 10. The responsibility for
24 maintaining that is put on one owner. I
25 believe that an HOA would help distribute that

1 responsibly amongst everyone. That's my main
2 sticking point to this project. I applaud you
3 with what you have done with the constraints
4 that you have. It's a great burden to put on
5 one homeowner. Again, yes, age is a factor. It
6 may not be much of a factor at 55, but moving
7 forward, I think that it could become
8 troublesome. That's my main concern.

9 CHAIRMAN STUTO: I'll make a couple of
10 comments and apart of it is on the history of
11 this. This got approved in 2007 originally.
12 That's a double sided thing, from my
13 perspective. It was a prior administration. It
14 was a prior Planning Board and from that
15 perspective, I don't think that I would have
16 voted for this if I were to have been on the
17 initial application. I don't think that it
18 gives enough back to the community. I think
19 that it stretches the intent of the PDD
20 language in favor of the developer. It doesn't
21 give a whole lot back to the community. I'm
22 sympathetic, but the other side of that coin
23 is that I'm sympathetic to the developer
24 because he's had to live with this and I know
25 that it's not an inexpensive thing.

1 If you're going to get this kind of
2 density, in my opinion, you're got to really
3 give something significant back. The water
4 retainage basins - that's part of any project
5 anyway. The other areas up near Albany-Shaker
6 Road. A good portion is wetlands and a good
7 portion is wetland mitigation. That's not
8 developable land anyway. So, it's really very
9 little that you're giving back except for a
10 couple of walkway paths.

11 I hear what Kathy and the other Board
12 Members are saying about a sense of community.
13 There has to be something special, in my
14 opinion, to get this kind of density. In the
15 community aspect of some kind of central
16 location where the neighbors can enjoy some
17 kind of community thing. It might satisfy
18 that. I pushed for the bridge.

19 I'm still not sure that I understand the
20 history of the Town accepting the Army Corp
21 easement. It is what it is. I don't think that
22 it's necessary to go over it again. I was
23 pushing for a pedestrian bridge over by the
24 cul-de-sac to allow people to go over to
25 Fields Drive and over to the library. It's an

1 impossibility with the Army Corp, as our TDE
2 tracked down. I know that was the applicant's
3 opinion from the beginning. However, we didn't
4 meet with the applicants and we didn't meet
5 with the neighbors. This is the place that we
6 talk about it. We did meet with staff and I
7 met with Kathy because I know that she had
8 particular concerns and she was trying to get
9 that community feel. Brad had suggested more
10 of a congregation area near the area that you
11 have. We wanted to do a community garden where
12 people in this neighborhood could plant.

13 MR. GRANT: The line of site for Police
14 cruisers going by - the potential visitation
15 by people in that area or someone who would
16 like to vandalize that - typically Margaret
17 Drive isn't probably where that drive by is
18 occurring, but Albany-Shaker Road has
19 routinely patrolled and they can look up the
20 multiuse path -

21 CHAIRMAN STUTO: Who gave that opinion?
22 The Police? Or is it because it's on the
23 wetland mitigation area?

24 MS. VAIDA: I remember somebody saying
25 that too, but I don't remember who.

1 CHAIRMAN STUTO: I mean community
2 gardens; you can see over or through them.
3 Can't that be designed in a way that the
4 Police could see through? We had talked about
5 it. The plan that you and I looked at,
6 roughly, where the wetland mitigation area is
7 - I don't know if that's the reason that we
8 can't do it -- have a community garden. We
9 weren't using the word gazebo.

10 We were using the word pavilion, so that
11 you do have some sense of community and a
12 reason for people to go there.

13 That's my history and that's the feeling
14 that I have on that. I don't know if that can
15 be improved, but if I were going to vote on
16 it, the things that I would be looking for --
17 the deed restriction that you have there. If
18 you read it off the map on the top of that one
19 map that you read - it's quite big language I
20 think that you'll agree with me, as an
21 attorney. To the fullest extent
22 practicable -- I don't know how enforceable a
23 clause that would be.

24 There shall be no general leveling in
25 clearing of the deed restricted area. Again,

1 general leveling.

2 "There should be no general leveling or
3 clearing of the deed restricted area and the
4 trees and natural features shall be preserved
5 and maintained within the deed restricted
6 area."

7 That would be a hard clause to fit and
8 enforce in my opinion. You'd have to enforce
9 it in a private lawsuit. If I were to make a
10 recommendation, I would say that would be
11 tightened up. I would say that we have a 55
12 and over age restriction to the fullest extent
13 permitted by federal and state law, which
14 would include constitutional. I would say
15 Town ownership if they want it, but leave it
16 on them. If they don't, then an HOA should be
17 formed. I'd like for there to be a more
18 enhancement to really draw the community
19 together in some fashion. Those are my
20 comments.

21 I'm not sure precisely the procedure of
22 what we are voting on today. If you want to
23 say it and I'll let our counsel comment on
24 that.

25 MR. LYNCH: Here is what I'd like to say:

1 I've been listening to all of you tonight and
2 taking in your comments and what I really
3 think that we would like to do is the
4 applicant is go back and give some thought to
5 the comments that were made and ask that you
6 not take action tonight so that we can go back
7 and address some of these issues. Maybe we can
8 make some changes and maybe not. I don't know.
9 I think that Jim just expressed to me that he
10 does have an open mind to some of the comments
11 that have been made. He has an open mind to
12 all the comments, but he wants to consider to
13 what extent, if any, he could make some
14 revisions to the project and then maybe be
15 able to incorporate some of the comments that
16 were made.

17 I don't think that it takes much to
18 understand that the Board has raised some
19 concerns and of course your recommendation by
20 going back to the Town Board, but we really
21 don't want a negative recommendation back to
22 the Town Board. We want to present a project
23 that this Board is comfortable with. When we
24 go back to the Town Board, we'd like to have
25 your support. With that said, that's my

1 response to what you just said.

2 MS. DALTON: Can I make a motion that we
3 table this and give them the opportunity to
4 work on it?

5 MR. MION: I would second that.

6 CHAIRMAN STUTO: Any discussion?

7 MR. AUSTIN: I would just say that I
8 appreciate the applicant to do that. It means
9 a lot to us that you're taking our comments
10 into consideration. Thank you for doing that.

11 CHAIRMAN STUTO: We'll try to get them
12 back quick if they can get some revised plans,
13 Joe?

14 MR. LACIVITA: As quickly as the calendar
15 permits.

16 CHAIRMAN STUTO: All those in favor?

17 **(Ayes were recited.)**

18 CHAIRMAN STUTO: All those opposed?

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

20 CHAIRMAN STUTO: The ayes have it.

21 This project will be tabled for now.

22

23 **(Whereas the proceeding concerning the above**

24 **entitled matter was concluded at**

25 **8:15 p.m.)**

CERTIFICATION

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3
4 ***I, NANCY STRANG-VANDEBOGART, Shorthand***
5 ***Reporter, New York State Approved Transcriber***
6 ***and Notary Public in and for the State of New***
7 ***York, hereby CERTIFY that the record taken by***
8 ***me at the time and place noted in the heading***
9 ***hereof is a true and accurate transcript of***
10 ***same, to the best of my ability and belief.***
11
12
13

14 -----
15 ***NANCY STRANG-VANDEBOGART***
16
17

18 ***Dated April 30, 2012***
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