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PLANNING BOARD COUNTY OF ALBANY

TOWN OF COLONIE

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VILLAGE AT NEW LOUDON  
REVIEW AND ADOPTION OF  
OPEN DEVELOPMENT AREA

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THE STENOGRAPHIC MINUTES of the above  
entitled matter by NANCY STRANG-VANDEBOGART, a  
Shorthand Reporter, commencing on April 23, 2013  
at 7:05 p.m. at The Public Operations Center, 347  
Old Niskayuna Road, Latham, New York.

BOARD MEMBERS:  
PETER STUTO, CHAIRMAN  
BRIAN AUSTIN  
SUSAN MILSTEIN  
TIMOTHY LANE  
LOU MION  
KATHY DALTON

ALSO PRESENT:  
Elena Vaida, Esq., Counsel to the Planning Board  
Joe LaCivita, Director, Planning and Economic  
Development  
Dan Cleary, New Loudon Associates  
Bob Cordell, Building Department  
Michael C. Magguilli, Esq., Town Attorney

1                   CHAIRMAN STUTO: Unless you have any business,  
2 Joe, we'll call the first item on the agenda.

3                   MR. LACIVITA: Sure.

4                   CHAIRMAN STUTO: Shaker Plaza, 447 Albany Shaker  
5 Road has been postponed. The applicant wasn't ready.

6                   Is there anybody here in the audience for  
7 that project?

8                   (There was no response.)

9                   MR. LACIVITA: We met with the applicant and a  
10 couple of the neighbors the other day and we realized  
11 that the applicant hadn't done the due diligence and  
12 spoke to the neighbors as we had anticipated. So, we  
13 talked to the applicant and he agreed to postpone at  
14 this time until he has time to work with the  
15 neighborhood association and then come back at a later  
16 date.

17                   CHAIRMAN STUTO: Okay, the next item on the agenda  
18 is the Village of New Loudon, which we have seen.  
19 There is a proposed alteration to the way that this is  
20 going to done. This is a review and adoption of an  
21 open development area.

22                   MR. LACIVITA: Peter, if you'd like to, I can do a  
23 quick introduction on this and you'll have a packet  
24 there with the site plan.

25                   We also have in the room with us today Bob

1 Cordell, who is the Senior Inspector who oversees  
2 all of commercial zoning.

3 The project in the planning process adhered  
4 to the design standards right through addressing  
5 the Comprehensive Plan and the planning process  
6 and the Zoning Law. What we found out is that as  
7 the project started to evolve and it started to be  
8 constructed, the zoning then became in conflict  
9 with Bob's capability to permit.

10 As we started looking through the process and  
11 we were talking with the applicant and we were  
12 talking with the Town Attorney, Bob and I started  
13 looking at really where the conflicts resided and  
14 a lot of that all goes away with the fact that we  
15 would have done an open development because the  
16 main roadway -- the access way to this project is  
17 a private road. As it started to split off, some  
18 the conflict started to evolve and we're here  
19 tonight to look at the ODA that will hopefully  
20 allow for the permitting process. Dan can  
21 certainly walk us through what we have at this  
22 point.

23 MR. CLEARY: Thank you, Joe.

24 Good evening Mr. Chairman and Board Members.  
25 I'm Dan Clearly representing New Loudon

1 Associates. The project here was approved on  
2 December 18th by this Board and I think that most  
3 of you are familiar with it.

4 We're currently in the process of securing  
5 our final permits. We're getting down to the wire  
6 with getting ready for it to go into construction.  
7 In the last few months as we've moved forward with  
8 our final approvals that would allow final  
9 construction of the project, we discovered an  
10 incongruity in the Town Zoning Law that Joe  
11 described, and that's what has put us here this  
12 evening with you. As you remember, the project is  
13 in the NCOR zone and you also remember that with  
14 the exception of some minor setbacks and parking  
15 waivers, the project was designed to conform as  
16 closely as possible with the NCOR standards in the  
17 Zoning Law. The result was an overall plan for a  
18 mixed-use office/commercial/residential  
19 development, but it met the design standards by  
20 the Town's Comprehensive Plan and that we are all  
21 excited about getting started. That would have  
22 been fine under the Town's Zoning Law if we had  
23 planned the whole entire development in one wave,  
24 but that's not what we planned to do.

25 The economics of real estate development

1 requires the flexibility to lease, sell, exchange  
2 and in other ways, transact business between the  
3 original development, the developer, the tenants,  
4 financiers, and buyers not only in the project  
5 initiation, but also in the many years to follow.  
6 Very few developments, if any, are helped by the  
7 original developer and in perpetuity; particularly  
8 mixed development such as ours envisioned by the  
9 Town's Comprehensive Plan in the NCOR/HCOR zones.

10 As an example, the first two entities in our  
11 project, the Berkshire Bank and the Rumors  
12 project - those first two projects were broken off  
13 and sold to the individual owners. Although  
14 they're part of the project, we no longer own  
15 them. We were fortunate in those cases because  
16 they met those buildings and the parking all met  
17 the current Zoning Law.

18 It came to light that when we created a  
19 parcel for Mr. Marini for his restaurant and his  
20 corporate offices, that while the Planning Board  
21 had approved this plan and the proposed lot lines  
22 that were approved on this plan, the building from  
23 our department cannot issue a building permit  
24 because it conflicts with conventional  
25 requirements in the Zoning Code and this is the

1 incongruity that we had discovered when Bob went  
2 to get a building permit. The Zoning Code, as  
3 written, cannot reconcile the creation of lots for  
4 sale on an overall approved plan such as ours.  
5 Once the overall single owner is approved, the  
6 issuance of building permits reverses to a lot by  
7 lot consideration. Basically, when the Building  
8 Department was looking at giving Bob Marini a  
9 building permit on the newly created lot, they  
10 couldn't take into account what the Planning Board  
11 had approved as an overall plan. They had to go  
12 back and look at it as a newly formed lot.

13 There is a solution in the existing code  
14 which was suggested to us by Mr. Cordell, the Town  
15 Attorney, Joe and his staff. That is the creation  
16 of the ODA and that's why we're here to ask for  
17 your approval tonight. Basically, it allows for  
18 the creation of dimensional requirements and other  
19 zoning controls specific to the approved plan that  
20 will allow flexibility to subdivide within those  
21 criteria going forward.

22 In the case of the village of New Loudon, the  
23 setback requirements and shared parking are all  
24 specified in the ODA and will be used to evaluate  
25 the permits as the project moves forward. It

1 provides much better flexibility to subdivide  
2 sub-lots as the case with the Marini lot and other  
3 lots in the future.

4 We ask that you endorse the approval of the  
5 ODA to the Town Board stipulated in the Resolution  
6 that was drafted by the Town staff and will allow  
7 the issuance of the building permit for 624 Loudon  
8 Road. That's Mr. Marini's parcel. That will give  
9 us the flexibility to subdivide in the future.

10 Thanks again to Mike, Joe and Bob. They  
11 worked pretty hard on coming up with this solution  
12 and we appreciate the diligence and the hard work  
13 that got us here tonight. With that, Mr.  
14 Chairman, I'll take any questions you may have.

15 CHAIRMAN STUTO: Before we do that is there  
16 anybody here from the public that wants to be heard on  
17 this project?

18 (There was no response.)

19 CHAIRMAN STUTO: If there are any audience members  
20 that would like to be heard, would you please sign in  
21 on the paper over on that table? Thank you.

22 Do we have any questions on this?

23 MS. DALTON: I think that I'm going to defer to  
24 Tim, if that's okay. We were discussing it earlier and  
25 I have some of the same concerns.

1           MR. LANE: The concern that I had was that first  
2 of all, I don't know how this got missed. Was the  
3 Marini lot the only one that falls into this problem  
4 situation that requires this entire development to be  
5 designated? Is that what it comes down to?

6           MR. LACIVITA: I think that what I'd like to do is  
7 if we could have Bob speak to this. We're starting to  
8 address some of the issues as to how an open  
9 development comes with some of these parcels that don't  
10 have direct access.

11           Bob, if you don't mind, can you share how we  
12 got here tonight on this through the review of the  
13 Marini parcel?

14           MR. CORDELL: My name is Bob Cordell and I'm the  
15 Senior Commercial Building Inspector and I work in the  
16 Building Department. I'm in charge of all the  
17 commercial devolvment in the Town as far as building  
18 code and Zoning Codes are concerned.

19           The project known as the Village of New  
20 Loudon was approved by this body and was approved  
21 in general zoning verification for a project  
22 whereon all the parcels were on one lot. Our  
23 Zoning Code allows multiple buildings on the same  
24 lot, therefore they all share the same frontage on  
25 a public street and access would be by public



1 driveways. When Berkshire Bank was created, it  
2 had frontage on Loudon Road. That's legal. When  
3 Rumors was created, it had frontage on Loudon Road  
4 and that's legal. So, we had no issues. When Mr.  
5 Marini's project got to the Building Department  
6 for zoning verification, it was really the third  
7 lot that was created here. It was counting as the  
8 larger lot that was the fourth lot which requires  
9 a subdivision. We looked at the requirements for  
10 subdivision approval and determined that if the  
11 street, Shaker Creek Boulevard was dedicated to  
12 the Town and became a public street, then our  
13 issue would go away because all the interior lots  
14 would enjoy the frontage of a Town street and  
15 would comply with Section 290A of the New York  
16 State Town Law. That requires 15 feet of public  
17 street for firefighting and emergency purposes.  
18 Because it's not a dedicated street, those parcels  
19 to be created in the interior will not have  
20 frontage and will be in violation of Section 280A  
21 of the Town Law. So, this precludes the Zoning  
22 Board of Appeals from issuing a variance for lots  
23 with zero frontage on a public street. The ZBA  
24 can issue a variance for one parcel with partial  
25 frontage, but not with zero. So, New York State

1           Town Law 280A(4) allows the creation of open area  
2           development when the Town Board and the Planning  
3           Board - if there is one and there is one - agree  
4           that it's a unique situation and the creation of  
5           the interior lots will have adequate frontage  
6           along the interior streets that are maintained to  
7           Town standards even though they're not dedicated  
8           to the Town for firefighting and emergency  
9           services. That's how we got here, absent the open  
10          development area, the parcel as it's in front of  
11          you probably can't exist without the street being  
12          dedicated.

13                 CHAIRMAN STUTO: The substance of the final site  
14                 plan review that we approved has not changed; is that  
15                 correct?

16                 MR. CORDELL: Correct.

17                 CHAIRMAN STUTO: The substance of what is approved  
18                 and what the uses are - the dimensions and everything  
19                 is the same except that if they split off lots and sell  
20                 them with the ODA, the lots will not have a frontage on  
21                 a publicly dedicated road. That's an illegal  
22                 proposition under 280A.

23                 MR. LACIVITA: The Village of New Loudon always  
24                 maintained its intent right since day one and through  
25                 the entire planning process. Just as Dan eluded to

1 during the course of his narrative, parcels became  
2 parceled off by ownership. As Bob just mentioned, it  
3 came into the subdivision because it became Bob  
4 Marini's site, which is going to be his restaurant and  
5 his office space and therefore, creating four lots for  
6 the subdivision.

7 CHAIRMAN STUTO: The overall greenspace would  
8 change?

9 MR. LACIVITA: It doesn't change at all. It all  
10 stays the same.

11 MR. CORDELL: The plan looks exactly the same and  
12 that's what you approved. The difference is that the  
13 lots are being created and when you originally looked  
14 at it, it was on one parcel.

15 CHAIRMAN STUTO: I'm going to ask one more  
16 question and then we'll go back to the rest of the  
17 Board.

18 You said that there is some incongruity in  
19 our Land Use Law. That implies that there is  
20 something that should be corrected in it or is  
21 wrong?

22 MR. CORDELL: Those are Mr. Cleary's words. I  
23 don't believe that there is.

24 I have a quick lesson, if you will.

25 Prior to 2007 there were two different zoning

1 books. There was Chapter 190, which was the  
2 zoning. Chapter 192 covered Planning Board and  
3 site plan approval. In 2007 they were combined  
4 into one book. However, there are still really  
5 two books. If you look closely at the end of each  
6 chapter, a portion is enforced by the Building  
7 Department and a portion is enforced by the  
8 Planning Board. The general design criteria which  
9 Mr. Cleary is referring to encourages this type of  
10 development. It should be encouraged.

11 When we got to the Zoning Law, it says that  
12 when you have subdivisions and when you create  
13 parcels, you need to comply with the Zoning Law.  
14 They're really not contradictory to each other;  
15 one just modifies the other. If this was a  
16 subdivision with a dedicated street like most of  
17 them are, we wouldn't be here.

18 MS. DALTON: That was actually my question. I  
19 don't recall what the reason was for not making this a  
20 dedicated street. Rather than do an ODA, if you just  
21 made this a public street, it would be resolved.

22 MR. CLEARY: I think that our intent from the  
23 beginning was to follow the design guideline and within  
24 the design guidelines of the NCOR, you're allowed to  
25 create a development like this. It was never our

1 intent to make this a public street, or place a burden  
2 onto the Town.

3 MS. DALTON: Here is the thing: We approved it  
4 with the project street as one parcel. It seems to me  
5 that if you're changing that plan and it's not one  
6 parcel and there are separate owners, then it's  
7 incumbent upon all of us to make sure that the  
8 emergency vehicles get there because otherwise it's  
9 simply a violation of public safety standards. While  
10 Mr. Marini might buy this property now and everything  
11 is honky dory, if Mr. Marini were to sell it, the whole  
12 plan falls apart.

13 Furthermore, when we approved this at least  
14 to my memory, we looked at the waivers that you  
15 had asked for as a comprehensive part of this plan  
16 because we saw it as - shared parking was an  
17 option and there was a lot of shared space options  
18 that went along with one owner of the property.  
19 So, I don't think that you're accurately  
20 representing the current situation when you say  
21 that all that changes is the ownership with the  
22 parcel. I think that it really does change.

23 MR. CLEARY: When I talked about the incongruity  
24 in the law, what I meant is that it allowed for the  
25 creation of a mixed-use plan. I'll give you an

1 example.

2 Town homes are allowed in this zone. Without  
3 the ODA, there is no frontage. It's each and  
4 every little town home there. So, while it's  
5 allowed in the zone, we technically can't build  
6 them because you have to have frontage in the  
7 zoning. So, technically a plan like this is  
8 unapprovable.

9 MS. DALTON: Isn't that resolved by making that a  
10 public street?

11 MR. CLEARY: No, it's not. You'd have to make it  
12 all public except for the parking lots. The other  
13 thing that you brought up was the public safety issue  
14 and the roadways. I think that Bob had this in part of  
15 his presentation - everything is done to the same  
16 standard. It's just a matter of ownership. The Town  
17 owns it, or it's privately owned. They're all designed  
18 and approved to the exact same standard as you would if  
19 you owned it. So, there is no difference in the  
20 ability to access the projects for fire and safety.  
21 None of that changes. It's just a matter of who owns  
22 the land underneath. That's the only thing. Again, we  
23 haven't changed one thing from the plan that you  
24 approved, which included Mr. Marini's lot on it.

25 MS. DALTON: Right, but other people have appeared

1 before this Board and there really is a concern that we  
2 have shared in the past which is that ownership matters  
3 because as ownership passes hands, what we do here has  
4 to include the fact that everybody who is involved has  
5 a legal right to everything that's going to happen here  
6 and in the future. If you sell off those parcels, you  
7 can't guarantee me that everyone is going to have  
8 signed-off on everything.

9 Bob is shaking his head, so he gets it.

10 MR. CORDELL: I would like to clarify.

11 MS. DALTON: Sure, that would be helpful.

12 MR. CORDELL: The Town Building Department is in  
13 favor of this proposal; just so we're clear. We're in  
14 favor of it because it gives this Board, this body, the  
15 ability to modify the rules that will be made by this  
16 Board that govern this particular Open Development Area  
17 zoning district, if you will, going forward. Every  
18 building that is constructed, every lot that is created  
19 will come back to this Board the same way as if it were  
20 a subdivision. You will still have control and you  
21 will still have your input as if it were a regular  
22 subdivision. The only difference is that it will not  
23 be a public street and there will not be frontage on a  
24 public street. However, there will be cross easement  
25 access easements and a property owners' association

1 will have to be mandated to take care of the roads,  
2 pavements, snow plow and all of that.

3 CHAIRMAN STUTO: That should almost be in  
4 existence now. That's my question: Who maintains the  
5 roads? Once you get to the Marini lot, then you have a  
6 driveway that has a common interest of multiple  
7 parties.

8 I'll ask the applicant.

9 Who maintains the road? Are you going to  
10 have a homeowners' association?

11 MR. CLEARY: Yes, it will be a mixture of  
12 homeowners' association in the rear with the  
13 condominiums that will be separate and be designated  
14 for that area, and then an association for the  
15 commercial users in front that will have common area  
16 maintenance responsibilities for the entire  
17 development.

18 CHAIRMAN STUTO: Does that include the bank, as  
19 well?

20 MR. CLEARY: Yes.

21 CHAIRMAN STUTO: How are the homeowners assured  
22 that the commercials are going to plow the access road  
23 and maintain it?

24 MR. CLEARY: They're both dependant on each other,  
25 as far as access.



1                   CHAIRMAN STUTO: As far as legally, I mean.

2                   MR. CLEARY: Legally, the homeowners' association  
3 in the back and the association of the business owners  
4 in front will be tied together legally.

5                   CHAIRMAN STUTO: Are those documents drafted  
6 already?

7                   MR. CLEARY: That's being drafted as we speak.  
8 Again, that's no different than the representations  
9 that we have made from the very beginning. All of  
10 those things were going to happen regardless of this  
11 issue.

12                  MR. LACIVITA: I'd like to mention one other  
13 additional thing here where this Planning Board  
14 actually struggled when it came to the parking  
15 calculations when Rumors was coming in. The building  
16 Department was struggling a little bit as to how to  
17 permit it.

18                  We go back to November of this past year when  
19 the Talia application was before us from a  
20 building perspective and the success of Rumors was  
21 going very well. We all knew that access or  
22 accessory parking was off-site of Rumors. That's  
23 where Bob started offering options as to how to  
24 permit it because parking could not be on its own  
25 because it's accessory to the building. There was

1 not going to be a building on the bigger lot at  
2 this time. We were going through six months of  
3 can we do this or that, or we can try to get to  
4 parking. The ODA is also another relief of  
5 allowing Talia and Rumors to build the additional  
6 parking that it currently needs without a  
7 structure actually sitting on the larger parcel.  
8 So, that's why this ODA becomes critical because  
9 we now address some of the issues to promote the  
10 zoning and the building process.

11 MR. CLEARY: If I may, going back to the  
12 Comprehensive Plan and what the NCOR standards are  
13 trying to get to is this plan: It's a private plan  
14 with shared uses that everybody enjoys the benefits.  
15 The problem with the code is that in most jurisdictions  
16 that I've seen with the same kind of plan, the plan  
17 becomes part of the record and if there are any changes  
18 to that plan, they have to come back and see you.  
19 That's the same thing that we are proposing here  
20 tonight with the ODA. In Colonie, you don't have that  
21 vehicle in the Zoning that says that the Planning Board  
22 can approve a special plan like this. You can judge  
23 the plan, and when people come in to make changes in  
24 comparison to the plan versus going back to the zoning  
25 and looking at it on a lot by lot basis, which is where

1 we are now --

2 MS. DALTON: So, I think that what you're saying  
3 is that currently Mr. Marini is planning to perform  
4 what the plan is that you presented to us.

5 MR. CLEARY: Right.

6 MS. DALTON: If conditions change and he decides  
7 that for whatever reason there would be something  
8 better put on that space, he will have to come back --

9 MR. CLEARY: He would have to come back to the  
10 Planning Board. The Planning Board has to approve it;  
11 both the plan that you originally approved and by the  
12 conditions that are being set up by the ODA tonight.  
13 So, you maintain control. We don't want to change the  
14 plan one bit. We just want to make it easier to  
15 recruit buyers or tenants and financing. There are a  
16 lot of things that come into this. It's not just Mr.  
17 Marini. That's what brought the issue up, originally.  
18 But as we go forward with financing and other things,  
19 this is going to becoming an issue and we're trying to  
20 address it now going forward.

21 CHAIRMAN STUTO: Do we have any other questions?

22 MR. LANE: This is for Bob.

23 The way that you see this is: Say that we  
24 did this and we approved one thing and there was  
25 no separate restaurant and no Marini lot. There

1 was just going to be a cafe that was going to be a  
2 part of Rumors. That is my recollection. Going  
3 forward, there is going to be separate lots.  
4 That's just the first of several that would have  
5 caused this to go this way. By doing this, does  
6 it open things up to a situation where we approve  
7 things as one thing and then it has to come back  
8 on several occasions as something else? We  
9 approve a plan as a unified plan and then because  
10 of this type of change, someone wants to split off  
11 this lot and someone else wants to split off that  
12 lot and then all the sudden we're left with a  
13 completely different structure than what we  
14 originally thought we were working with.

15 MR. CORDELL: It's a possibility, but it's not  
16 probable because the plan is what it is. Your  
17 applicant is here tonight and to the best of my  
18 knowledge, it's constructed in accordance with the plan  
19 that you have. If this is different in that regard  
20 than any other commercial subdivision that's built one  
21 building at a time, your Board still sees each  
22 building, after a zoning verification, you see each  
23 major commercial use and make a determination whether  
24 or not it complies with the requirements for greenspace  
25 or use or density or parking. That's not going to

1 change here. They will remain the same.

2 CHAIRMAN STUTO: I'll say this: I originally had  
3 the same types of anxiety and questions that Tim and  
4 Kathy are raising. I talked to Joe and I also talked  
5 to Chuck Voss about that. I read Dan Cleary's memo  
6 that he sent. The questions were answered to my  
7 satisfaction. Basically nothing of substance changes  
8 in terms of the building dimensions, what's actually  
9 being approved and what is actually being built. In a  
10 way it's a question of who owns what on paper. The  
11 same mechanism for taking care of roads and ensuring  
12 that hasn't changed either.

13 Joe, there are some questions about the  
14 restaurant. If you could answer that? How did  
15 that restaurant come to be, if you can refresh our  
16 recollection. Was there a change or wasn't there  
17 a change with respect to that?

18 MR. LACIVITA: No, there wasn't really a change.  
19 If you remember when this was coming through and  
20 certainly Chuck can speak to it because Barton and  
21 Loguidice reviewed this as well -- when Rumors was  
22 being built, there was always discussions of an  
23 interior cafe for that site. It was initially internal  
24 to it and then at some point in time they may go open  
25 to the public. As it came along, Angelo Mazzone got

1 interested in the project. Then it became a restaurant  
2 with it. It went from the original zoning verification  
3 which was 30 seats to increase to a little bit more.  
4 But the underlying allowance -- and Bob, you can  
5 correct me if I'm wrong -- from a mixed-use here, a  
6 restaurant is a permitted use within this zoning  
7 district. Like I said, the only difference was the  
8 initial conversation was "Are we going to have a cafe  
9 in the basement?" We have interior space here that we  
10 are going to allow for a cafe within to service -

11 CHAIRMAN STUTO: So, what administrative approval  
12 did they have?

13 MR. LACIVITA: We went through a building permit  
14 and a site plan review because it was a minor site plan  
15 application and a change in tenancy.

16 MR. MION: Joe, if I remember correctly, when they  
17 first brought that up, the question was asked if it was  
18 for outside people because we had the parking issue.  
19 The answer was no and that it was for the people who go  
20 to Rumors and that would be it. It would be limited to  
21 them. Now, it's expanded to a full-blown restaurant.

22 MR. LANE: There is a separate lot.

23 MR. LACIVITA: Well, I think that Rumors always  
24 came through as a separate lot. If you remember, as we  
25 were going through the review we always made sure,

1           because they were separate lots, that each one was able  
2           to stand alone from a stormwater perspective, a utility  
3           perspective - which they have all met that criteria,  
4           when we were going through the process. Even when this  
5           small addition came through as an administrative  
6           review, the Town Departments looked at it and because  
7           there was that change in a full restaurant, we ended up  
8           having the grease traps and everything that we needed  
9           under the review. I think that speaks to Bob Cordell  
10          and Dan Cleary saying that any changes that go on in  
11          this parcel, this Planning Board gets the opportunity  
12          to see on the larger scale; or our Town Departments get  
13          to see on a larger scale.

14                 MR. MAGGUILLI:    Hi, I'm Mike Magguilli and I'm  
15          the Town Attorney for the Town of Colonie.

16                 When this issue first came up, Bob Cordell,  
17          Joe and I did this all very carefully. Nothing of  
18          substance has changed from the Planning Board's  
19          December of 2012 approval. What I see that we are  
20          doing here is we're doing a technical change.  
21          Instead of just granting the NCOR zone, we're  
22          making the approval under 280A(4) of the New York  
23          State Town Law and calling it an open development  
24          area. What we accomplish by doing that is to  
25          maintain the integrity of this Board's decision

1 that was made in December. There are no changes  
2 whatsoever in plans, layouts and parking. We have  
3 tried to protect the residents with access and  
4 cross easements. We have no concern about this  
5 being a private road. In fact, we encourage the  
6 private road in this case because it's a less  
7 burden and less expensive. The open development  
8 designation actually gives us more control over  
9 this project in the future and it also gives us  
10 more flexibility on what we can do. If we apply  
11 the rationale of this on a future project, that's  
12 going to help us out quite a bit. The road and  
13 the access and who is going to maintain it - I  
14 think that has been adequately covered. The  
15 homeowners' association is going to be responsible  
16 for this. It's not as if each owner is only  
17 responsible for that portion of the private road  
18 in front of his lot. It's going to be a joint  
19 responsibility of the homeowners and businesses.

20 I've got to thank Bob Cordell and Joe.  
21 They've done a Yeoman's job on this and I think  
22 that they've done a great job in protecting the  
23 Town and allowing this project to go forward.  
24 It's a really great project for the Town.

25 CHAIRMAN STUTO: I see that we have a short



1 environmental assessment form in front of us. Can  
2 someone guide us through Part II?

3 MR. LACIVITA: Dan, do you want to go through  
4 that?

5 CHAIRMAN STUTO: Well, Part II is our  
6 responsibility.

7 MR. VOSS: Okay, I'll walk through the questions  
8 for Part II and the Board can address those one at a  
9 time.

10 Part II of the short environmental assessment  
11 form had several questions that are to be  
12 basically covered to show our SEQRA compatibility.

13 "Does the action exceed any Type I threshold  
14 in 6NYCRR Part 617-4?" That's a yes or no answer.  
15 In this case, we believe that's a no answer.

16 "Will action receive coordinated review as  
17 provided for unlisted actions in 6NYCRR part 617?"

18 Under the prior approval the action did  
19 receive a measure of coordinated review, so we do  
20 believe that the answer is no.

21 "Could action result in any adverse effects  
22 associated with the following?"

23 I'll just read through these seven items  
24 quickly.

25 "Existing air quality, surface or ground

1 water quality, the quality of noise levels, the  
2 existing traffic pattern, solid waste production  
3 or disposal, potential for erosion, drainage or  
4 flooding problems?"

5 We did not see any in the course of our  
6 review.

7 CHAIRMAN STUTO: There are no physical or  
8 operational damage, so it shouldn't change anything.

9 MR. VOSS: No, this is really an administrative  
10 action. It's not a physical action or change in the  
11 project. So, most of these won't apply. I'll just go  
12 through them again.

13 "Aesthetic, agricultural, archeological,  
14 historic or other natural cultural resources or  
15 community or neighborhood character?"

16 No.

17 "Vegetative, fauna, fish, shellfish or  
18 wildlife species, significant habitats or  
19 threatened or endangered species?"

20 No impacts.

21 "Community's existing plans or goals as  
22 officially adopted or changed or use or intensity  
23 of land use or otherwise other resources?"

24 In this case, the project has been approved  
25 and proposed originally and is consistent with the

1 Town's Comprehensive Plan and certainly with the  
2 NCOR design standards, as this Board approved.

3 "Growth, subsequent development, or related  
4 activities likely to be induced by the proposed  
5 action?"

6 The Board did look at this and early through  
7 their review process and there were certainly  
8 positive impacts to that.

9 "Long term, short term, cumulative, or other  
10 effects not identified in C1-C5?"

11 We did not see any.

12 "Other impacts, including changes in use of  
13 either quantity or type of energy?"

14 That answer would be no.

15 "Will the project have an impact on the  
16 environmental characteristics that caused the  
17 establishment of a critical environmental area?"

18 No.

19 "Is there, or is there likely to be,  
20 controversy related to potential adverse  
21 environmental impacts?"

22 Again, the answer is no.

23 CHAIRMAN STUTO: So, the conclusion would be what?

24 MR. VOSS: Essentially, if you look through the  
25 final aspects of this form, it basically asks the

1 question: Were there any cumulative negative impacts  
2 of these impacts as proposed? In this case, it's the  
3 administrative action of creating the ODA. We feel  
4 that there were not any.

5 CHAIRMAN STUTO: Do we need to take a vote on the  
6 negative declaration?

7 MR. VOSS: Yes.

8 CHAIRMAN STUTO: Do we have a motion?

9 MS. DALTON: I'll make a motion.

10 MR. AUSTIN: I'll second.

11 CHAIRMAN STUTO: Discussion?

12 (There was no response.)

13 CHAIRMAN STUTO: All those in favor say aye.

14 (Ayes were recited.)

15 CHAIRMAN STUTO: All those opposed?

16 (There were none opposed.)

17 CHAIRMAN STUTO: The ayes have it.

18 On the main question before the Board which  
19 is the ODA resolution?

20 Joe, can you read the title?

21 MR. LACIVITA: "Special rule of Planning Board  
22 setting conditions and limitation in establishing an  
23 open development area for the Village of New Loudon  
24 Town of Colonie, pursuant to Section 208-A, Town Law."

25 CHAIRMAN STUTO: I'd ask the stenographer to

1 include the entire Resolution into the record.

2 This has been reviewed by counsel and the  
3 Town Attorney's office, right Joe?

4 MR. LACIVITA: Yes.

5 CHAIRMAN STUTO: Do we have a motion on this and  
6 then we can take some discussion if there is any?

7 MS. DALTON: I'll make a motion.

8 CHAIRMAN STUTO: Kathy makes a motion. Do we have  
9 a second?

10 MS. MILSTEIN: Second.

11 CHAIRMAN STUTO: Any comments or questions?

12 (There was no response.)

13 CHAIRMAN STUTO: All those in favor of the  
14 Resolution say aye.

15 (Ayes were recited.)

16 CHAIRMAN STUTO: All those opposed say nay.

17 (There were none opposed.)

18 CHAIRMAN STUTO: They ayes have it.

19 Thank you.

20 MR. CLEARY: Thank you, Mr. Chairman.

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23 (Whereas the above entitled proceeding was  
24 concluded at 7:40 p.m.)

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CERTIFICATION

I, NANCY STRANG-VANDEBOGART, Shorthand  
Reporter and Notary Public in and for the State of  
New York, hereby CERTIFY that the record taken by  
me at the time and place noted in the heading  
hereof is a true and accurate transcript of same,  
to the best of my ability and belief.

\_\_\_\_\_  
NANCY STRANG-VANDEBOGART

Dated May 1, 2013

