

1 PLANNING BOARD COUNTY OF ALBANY
2 TOWN OF COLONIE
3 *****
4 PROPOSED REZONING
5 617 BOGHT ROAD
6 RECOMMENDATION TO THE TOWN BOARD ON REZONING
7 *****
8 THE STENOGRAPHIC MINUTES of the above entitled
9 matter by NANCY STRANG-VANDEBOGART, a Shorthand
10 Reporter, commencing on August 13, 2013 at 7:49 p.m. at
11 The Public Operations Center, 347 Old Niskayuna Road,
12 Latham, New York
13
14 BOARD MEMBERS:
15 PETER STUTO, CHAIRMAN
16 TIMOTHY LANE
17 SUSAN MILSTEIN
18 KATHY DALTON
19 KAREN GOMEZ
20 LOU MION
21
22 ALSO PRESENT:
23 Elena Vaida, Esq., Counsel to the Planning Board
24 Joe LaCivita, Director, Planning & Economic
25 Development
Michael Tengeler, Planning & Economic Development
Paul Rosano, Town Board
William Jones
Nick Costa, PE, Advanced Engineering and Surveying

1 CHAIRMAN STUTO: We'll call up the proposed
2 rezoning of 617 Boght Road, recommendation to the Town
3 Board on rezoning 4.05 acres from neighborhood
4 commercial office residential to single family zoning
5 district.

6 Joe, did you have something revised that was
7 mailed out?

8 MR. LACIVITA: Yes, I do have the hardcopy here.

9 CHAIRMAN STUTO: Do you want to do your
10 introduction?

11 MR. LACIVITA: Mr. Costa and Mr. Jones are here
12 again. I think that the last time that we were here
13 there was a discussion about adding additional lands to
14 the rezoning which we were going outside the
15 recommendation being asked of us by the Town Board.
16 Also, we were hung up a little bit on the SEQRA
17 component - that we potentially may have had to do
18 SEQRA. If there is a rezoning, that will be done under
19 public hearing by the Town Board once our recommendation
20 is made on 617 Boght Road. With that, I will turn that
21 over to Nick Costa.

22 MR. COSTA: Thank you, Joe.

23 Good evening, again. The parcel is located at 617
24 Boght Road and as Joe mentioned, we were here and made
25 a presentation about two weeks ago with regard to the

1 request of Mr. Jones to rezone this parcel to
2 neighborhood/commercial/office/residential to single
3 family residential.

4 The size of the parcel is 4.05 acres and it has
5 100 feet of frontage along Boght Road. The current
6 zoning would allow to have this site developed with
7 about 14,500 square feet of commercial space and 13
8 residential homes. The 13 residential units are 20
9 percent of the allowable developed area under the NCOR
10 zoning. This potential development under that zone is
11 substantially higher density than what Mr. Jones is
12 requesting of the single family residential allows. It
13 allows two units per acre that would come out for a
14 maximum of eight lots. As we said before, Mr. Jones is
15 probably looking at six lots. He's not really sure,
16 but that's what this request is to rezone this parcel.

17 The parcel is currently vacant. It's fairly open.
18 It's just a meadow - a lawn. It gets mowed on a
19 regular basis. It looks like a lawn and there are very
20 few trees around the perimeter here (Indicating).
21 There is another row of trees in that northwest corner
22 on the far side.

23 Are there any questions?

24 CHAIRMAN STUTO: I wasn't here at the last meeting,
25 but I understand that they had asked some questions and

1 had you consider a couple of things.

2 MR. COSTA: The biggest consideration was Mr. Jones
3 also owns this parcel adjacent to this and it was asked
4 to consider rezoning that parcel, also. After
5 evaluating that, what Mr. Jones is currently looking for
6 is the rezoning of this parcel. He doesn't want to lose
7 any more time in going back to the Town Board and go
8 through that process of rezoning this parcel with it.

9 MS. GOMEZ: So, when we were here a couple of weeks
10 ago - is that what is here right now - the original?

11 MR. COSTA: Yes.

12 MS. GOMEZ: That's what Mr. Jones submitted and I
13 think that Kathy was the one that said why don't you
14 expand it?

15 MS. DALTON: Correct, because it would be spot
16 zoning and there were a feeling that just rezoning one
17 piece of property was really not appropriate. Because
18 otherwise, either you'll wind up having what we've all
19 seen repeatedly where sooner or later somebody is going
20 to want to build something right next door to somebody's
21 house and they're going to have a right because it's
22 zoned NCOR. So, you're going to have a giant office
23 building in the middle of a single family neighborhood,
24 which clearly is inappropriate.

25 MR. LANE: There are examples of that all over the

1 Town.

2 MS. DALTON: And we don't like that.

3 MR. LANE: We can't require him to change that.

4 MS. DALTON: But we can say that we're not going to
5 spot zone this property. He's asking us to change a
6 piece of property and spot zone it differently than the
7 rest of the zone.

8 MR. LANE: He's going to reduce the density.

9 MS. DALTON: I don't care. It's not about the
10 density. That's not the only consideration. It's
11 whether or not you're setting it up for the future and
12 disagreements with regards to what else belongs there.

13 CHAIRMAN STUTO: We're only making a
14 recommendation. You can suggest that they do it only if
15 the do another parcel as well. You could make that
16 recommendation.

17 MS. DALTON: And that was the recommendation that I
18 made the last time and I thought that there was
19 agreement amongst most of the members of the Board here
20 the last time that we were asking the next time that you
21 came before us to make that application.

22 MR. MION: I don't see anything wrong with rezoning
23 that, but I think that we've formed a recommendation
24 before and that's what we're doing here - forming a
25 recommendation to the Town Board. That the Town Board

1 also consider looking into rezoning the other parcel
2 that we're talking about and also take a look at that
3 small piece that Mr. Jones doesn't own. Then you have
4 just an island out there that's in the middle of single
5 family housing. So, have the Board also look at that.

6 As far as the middle one - the original request, I
7 don't think that there is any issue about that. It's
8 okay. I think that the Town Board should take a look
9 at the rest of it.

10 MS. MILSTEIN: I would make it a little bit
11 stronger and make that the recommendation is conditioned
12 on the other one being rezoned.

13 MR. LANE: No, I absolutely disagree with that.

14 CHAIRMAN STUTO: We're only making a recommendation
15 so it doesn't carry anything mandatory, but I'm going to
16 deviate from normal procedure. There is a member of the
17 public that is also a member of the Town Board who has
18 raised his hand; Paul Rosano.

19 MR. ROSANO: I usually don't speak at these.

20 You have to take the word "spot zoning" out of
21 this. It doesn't apply because there is another piece
22 of property behind Mr. Jones that goes into it. So,
23 spot zoning is not an issue here. Let's take that out.

24 MS. DALTON: I don't understand why, Paul.

25 MR. ROSANO: Because he owns the next piece of

1 property.

2 MR. LACIVITA: Which is currently, I think, single
3 family.

4 MR. TENGELER: It's adjacent to a single family
5 use.

6 MS. GOMEZ: The only one that he doesn't own is
7 this one (Indicating), and then there is Freihofer's.
8 Everything up that backs up to Dutch Meadows - he owns.
9 For him to zone this on -- he owns everything behind it.

10 MR. JONES: Two houses to the right and two houses
11 to the left.

12 MR. ROSANO: So, spot zoning is really not an issue
13 here.

14 CHAIRMAN STUTO: Elena did research this and she
15 wrote a short memo.

16 Do you just want to address the spot zoning issue
17 off the cuff?

18 MS. VAIDA: It's not totally consistent, Paul. I'm
19 sorry that it's not what you thought. I don't totally
20 agree with you. Basically, I just put some of the basic
21 principals that you have to consider in spot zoning.

22 "The power to zone is derived from the Legislature
23 and must be exercised in the case of towns and villages
24 in accordance with a Comprehensive Plan."

25 That was one thing that I'm not sure if it's been

1 addressed. I think that I had asked about that last
2 time - what does the Comprehensive Plan say about this
3 area? We have to be consistent with that.

4 "This requirement not only ensures that local
5 authorities act for the benefit of the community as a
6 whole, but protects individuals from arbitrary
7 restrictions on the use of their land. When a
8 municipality fails to follow this requirement, a court
9 can invalidate a rezoning as illegal spot zoning. The
10 court defines spot zoning as the process of singling
11 out a small parcel of land for a use classification
12 totally different from that of the surrounding areas
13 for the benefit of an owner of such property and to the
14 detriment of other owners. Spot zoning is the very
15 antithesis of planned zoning."

16 I think that's why Kathy's idea of including the
17 other parcel so it's all consistent might be -

18 MR. ROSANO: I think that the piece that you're
19 missing is that he already has single family residence
20 in place. It's already in play.

21 MR. TENGELER: What he is looking to rezone is
22 actually adjacent to an existing single family
23 residential zone.

24 MR. LANE: And it's in character, so what's not in
25 character?

1 MS. VAIDA: I thought that there was an adjacent
2 piece -

3 MS. DALTON: There is an adjacent piece that's
4 zoned COR.

5 MR. ROSANO: Let's not talk about this other piece
6 of property.

7 MS. DALTON: I don't think that you can talk about
8 one without talking about the other.

9 MR. ROSANO: That's not what you're here for.
10 You're here to make a recommendation of four acres of
11 land. If he wants to develop later on, he'll have to go
12 to the Planning Board and you'll have purview over that.
13 You need to stick to the four acres. It's not spot
14 zoning. It's a continuation of single family
15 residential. That's how I read it; sorry.

16 MR. JONES: There was an NCOR zoned in the last
17 year for a two-lot subdivision on Boght Road, 500 feet
18 from NCOR zoning - rezoned last year.

19 MS. VAIDA: To residential?

20 MR. JONES: Yes; Boght Road. That was 500 feet
21 away from me.

22 MR. COSTA: On the other side.

23 MR. LACIVITA: Was that the Guptil parcel?

24 MR. JONES: Yes, the same exact thing.

25 MS. VAIDA: Did you want me to read any more of

1 this?

2 CHAIRMAN STUTO: Only if you think that it's
3 relevant.

4 MS. VAIDA: Only if it's helpful to the Board.

5 "Spot zoning refers to the rezoning of a parcel of
6 land to a use category different from the surrounding
7 area, usually to benefit a single owner of a single
8 development interest. The size of the parcel is
9 relevant, but not determinable. Illegal spot zoning
10 occurs whenever the change is other than part of a well
11 considered in the Comprehensive Plan calculated to
12 serve the general welfare of the community."

13 I actually think that you can make that argument
14 here because by making it residential, there are less
15 density issues. So, it seems to serve the community.

16 "A review of the relevant cases reveals that spot
17 zoning is the antithesis of zoning undertaken in
18 accordance with the law."

19 Then I just cited a case which I'm not going to go
20 through.

21 CHAIRMAN STUTO: Elena, do you disagree that there
22 are perhaps arguments on both sides?

23 MS. VAIDA: Yes.

24 CHAIRMAN STUTO: There may be enough on the record
25 to support it. Let me just ask you this question: If

1 we add to the recommendation that we include the
2 property to the left on that drawing which would be
3 towards the Mohawk River - to the west - that there
4 would be less of an argument for spot zoning -- do you
5 agree with that statement?

6 MR. JONES: Excuse me, but before you made that
7 recommendation - all of that paperwork has been
8 submitted to the Town Attorney with that. I have the
9 paperwork right in my truck right now; SY Kim did the
10 surveying -- for the whole thing to be rezoned to single
11 family residential. According to the Town Attorney,
12 that wasn't necessary to be done. It just cost me
13 another \$315 today. I can go out in the truck and get
14 it. I've got the map and a description of the property.

15 CHAIRMAN STUTO: That's to add your homestead onto
16 it?

17 MR. JONES: Yes. All I want is to rezone the 4.5
18 acres to single family residential. I don't want any
19 more. I don't want a barber shop or a bar next to my
20 house. My kids are going to build on it - single family
21 residential. I don't see a problem.

22 CHAIRMAN STUTO: We understand your argument.

23 Let me suggest this: Joe just handed out a
24 Resolution before us. I'll have somebody read points
25 one, two and three and then we'll discuss whether that

1 is satisfactory to the Board or if somebody wants to
2 change that.

3 Joe, do you want to read that?

4 MR. LACIVITA: Sure, I can do that.

5 To Elena's point, it does talk about - and that's
6 why when I read three about the no-cut buffer zone --
7 3.49 of the Comprehensive Plan encourages buffer zones
8 between commercial development and existing residential
9 development.

10 Whereas just talks about Resolution 329 for 2013
11 and identifies Mr. Jones as the property owner seeking
12 rezoning.

13 "Now therefore, be it resolved that:

14 The Planning Board recommends that the rezoning
15 request under Resolution 309 for 2013 be approved based
16 upon the following findings of fact:

17 1. The rezoning of this parcel from NCOR to SFR
18 would keep with the characteristics of the community
19 and the surrounding neighbors.

20 2. Under the proposed rezoning request to SFR the
21 applicant has identified an allowable density for a
22 residential subdivision no more than eight homes which
23 is less than the allowed density under the existing
24 zoning.

25 3. The Planning Board recommends that an

1 establishment of a 50-foot no cut buffer be included in
2 the rezoning and within their subdivision application
3 to the Planning and Economic Development Department
4 along the Route 9 side of the property to buffer from
5 the commercial/office/residential which is a COR zoning
6 district. If no trees exist such vegetation must be
7 planted at the time building permits are granted."

8 That identifies that area right along where the
9 commercial activity is there.

10 So, those are the three Resolutions.

11 CHAIRMAN STUTO: Anybody want to discuss that or
12 change that, or propose a change?

13 MR. MION: I would like to propose that we make one
14 more; number four. When you are considering changing
15 the parcel in question, also take a look at --

16 CHAIRMAN STUTO: Take a look at it or recommend
17 that they change?

18 MR. MION: Also recommend the other parcel.

19 MR. LACIVITA: Do you know the address of that
20 little strip in there?

21 MR. JONES: On the residence side --

22 CHAIRMAN STUTO: Excuse me, we're talking now.

23 MR. LACIVITA: What is the resident up there; the
24 Wilson property?

25 MR. JONES: It's 639 Boght Road. The 639 Boght

1 Road has access to the rest of that little piece of
2 property that I sold him - it has no value to it.
3 That's 639 Boght.

4 MR. COSTA: This little piece that Mr. Jones sold
5 to Mr. Wilson was part of this lot.

6 CHAIRMAN STUTO: Okay, Elena, can you re-read the
7 proposal?

8 MS. VAIDA: It's parcel 621.

9 CHAIRMAN STUTO: Actually, we get the idea. Why
10 don't you work on the he draft.

11 Do people have opinions on that?

12 MS. VAIDA: You want to include parcel 621. You
13 already have a description, you said.

14 MR. JONES: Yes.

15 MS. VAIDA: Maybe they could bring that in.

16 CHAIRMAN STUTO: Everybody understands it and you
17 can worry about the drafting, but I want to debate that
18 amongst our Board - if they want to include that or not.
19 I personally think that it's a good idea. I think that
20 it helps us with the argument that it's not spot zoning
21 and that you're doing it comprehensively. It continues
22 the single family residential from that to the northwest
23 up there. I think that it's good from an overall
24 planning perspective. That's my opinion. All we are
25 doing is a recommendation. The Town Board can disagree

1 with us. The other Board Members may not agree. I
2 don't know.

3 MS. DALTON: I agree with Lou. I think that there
4 should be a number for it and that the Planning Board
5 recommends the current action. The Board also consider
6 rezoning parcel 621 with that other parcel so that the
7 entire area is consistently zoned.

8 MR. LACIVITA: We can kick this around as we draft
9 this.

10 "The Planning Board would consider that parcel 621
11 Boght Road and the Wilson property identified as 639
12 Boght Road be included in the rezoning application to a
13 use that continues the characteristics of the community
14 and the surrounding neighborhood."

15 CHAIRMAN STUTO: Can we talk about that other
16 parcel again? I don't fully understand it. Who owns it
17 and what is it used for?

18 MR. COSTA: You're talking about 621?

19 CHAIRMAN STUTO: I think of that as Mr. Jones'
20 homestead and any other parcel.

21 MR. COSTA: The parcel back here is a parcel that
22 Mr. Jones sold to the Wilsons.

23 MR. LANE: What's he doing with it?

24 MR. COSTA: Nothing. It just became part of their

25 -

1 CHAIRMAN STUTO: Does he have a house there?

2 MR. COSTA: The house is out here (Indicating).

3 CHAIRMAN STUTO: So, it extends his rear yard.

4 MS. DALTON: And is the rest of his yard zoned

5 single family residential?

6 MR. COSTA: Yes --

7 MS. DALTON: Then I don't see a problem.

8 MS. VAIDA: I don't see why we are including

9 someone else's property.

10 MS. DALTON: Otherwise you create this little piece

11 of landlocked box of NCOR.

12 MS. VAIDA: I thought that it was a part of the

13 other property.

14 MS. DALTON: Apparently, it's not part of that

15 other property.

16 MS. MILSTEIN: I would say that if it's NCOR then

17 we need to change it. If it's not NCOR then we don't

18 have to change it.

19 MR. JONES: I don't know why his piece of property

20 is even involved.

21 MS. DALTON: You know you keep saying that, but

22 it's something that we're concerned about.

23 MR. JONES: This is a piece of property that is

24 over a hill. It's a frog pond and a swamp. It will

25 never ever be changed.

1 MS. VAIDA: It was transferred to your neighbor,
2 right?

3 MR. JONES: Yes, it was. He was my neighbor. I
4 actually bought the rest of that parcel - I bought the
5 18 acres off of him. I bought that property in the back
6 and he wanted that little piece to abut his property so
7 that he could run his frogs and his dogs and cats out
8 there. It's a swampy area. There is a 100-foot cliff.
9 You'll never build nothing there. You can't put a house
10 in there or ride a bicycle in there or walk out there.

11 CHAIRMAN STUTO: What's his lot? What is it zoned?

12 MR. JONES: It's single family.

13 CHAIRMAN STUTO: So, you're leaving a stranded NCOR
14 piece out there that's surrounded by single family
15 residential.

16 MS. VAIDA: Right.

17 MS. DALTON: Sir, I really wish that you would
18 stop. I feel badgered by you, frankly. It's our job to
19 worry about if the entire Town is developed properly.

20 MR. JONES: But you don't understand -

21 MS. DALTON: Excuse me sir, I'm not finished. It's
22 our job to look at this comprehensively and I understand
23 that it's not your job to do that. So, you need to let
24 us deliberate the way that we typically do when we're
25 talking about what we believe is in the best interest of

1 the Town. I'm finding your attitude about how we're
2 doing that problematic. So, if we could just finish
3 talking, it would be really good.

4 Yes, I think that it's inappropriate to strand a
5 little piece of NCOR. You can fix it in two ways. You
6 can just take that little parcel and put it back into
7 that bigger parcel and then it will be single family or
8 you can just make it single family residential. But
9 otherwise, when you look at the building now, there is
10 going to be a little section that is landlocked and you
11 can't do very much with that for some reason. I think
12 that we have the opportunity to fix it and we should.

13 CHAIRMAN STUTO: That's a separate lot, right?

14 MR. COSTA: Right.

15 CHAIRMAN STUTO: We're making a recommendation,
16 first of all. We're not converting it. I'm not sure
17 what the ramifications are of us saying that, but we are
18 entitled to our opinion. Each Board Member is entitled
19 to their opinion of you shouldn't do this unless you do
20 it also to Lots B and C.

21 MR. MION: And we're asking the Town Board to take
22 a look at it.

23 MS. DALTON: Essentially, there are ways that you
24 can get new zoning. One is that the Town can just take
25 a look at an area and rezones it like we had in the west

1 end. We had hearings on that and all that kind of
2 stuff. The other is to look at something and say we
3 want to make it consistent and we want to make sure that
4 there is not question in the future about what can be
5 here.

6 MR. LANE: Even with the west end there was a
7 request for change.

8 MS. DALTON: Actually, Tim, the original zoning
9 was not a request for change.

10 MR. LANE: But when they did the master plan -- and
11 then we had people in that area request for the change.

12 CHAIRMAN STUTO: First of all, you're dealing with
13 tens of parcels in that application. That was an
14 organic rezone in the sense that it changed as we went
15 through the meetings and went through the deliberations
16 and we ultimately make a specific recommendation for a
17 specific number of lots. I believe that the Town acted
18 on that in that fashion. It's true that there is no
19 application for a particular lot. It may be the Town's
20 prerogative to change it anyway. I don't know. Maybe
21 they don't want to consider that. It's not outside the
22 realm of possibility for us to say that's our
23 recommendation. That's the point.

24 Mr. Jones?

25 MR. JONES: Suppose Mr. Wilson at 639 Boght Road

1 says I'm not changing nothing? It has nothing to do
2 with that piece of property. This is my piece of
3 property and I'm not changing anything and I'm not going
4 through the expense. I'm not filling out any
5 applications. This is a done deal.

6 CHAIRMAN STUTO: Okay, well, my understanding is
7 that the Town Board has to have a hearing on the rezone.
8 He can show up at the hearing and say -- and he'll
9 probably get notice.

10 Did you say that you talked to him or you didn't
11 talk to him?

12 MR. JONES: Yes; he is my neighbor.

13 CHAIRMAN STUTO: Does he care if he is rezoned?

14 MR. JONES: He doesn't care.

15 CHAIRMAN STUTO: Well then he's not going to say
16 that. If they have a hearing for a rezone and he shows
17 up or doesn't show up -- you're saying that he doesn't
18 care if it gets changed.

19 MR. JONES: Well, we're here now.

20 CHAIRMAN STUTO: We're talking about your
21 neighbor's parcel.

22 MR. JONES: He isn't going to rezone it.

23 CHAIRMAN STUTO: It may not be up to him; that's
24 what I'm saying. It's the Town's prerogative to rezone.
25 They went through a whole rezoning in '07 and '08 and

1 rezoned every parcel in the whole Town. It wasn't
2 because they had a request from every land owner.

3 MS. MILSTEIN: We wouldn't be asking him to make an
4 application to do it -- whether it could be done as a
5 Comprehensive Plan.

6 MS. VAIDA: It's not going to cost him money, if
7 that's what you're concerned with.

8 CHAIRMAN STUTO: So we have this resolution in
9 front of us and there is a proposal to add four; which
10 is to add the Jones homestead. I personally am a little
11 less concerned with the other parcel. I don't mind
12 having them add that in for them to take a look at it.

13 MR. MION: And that's all I'm asking them to do.
14 That's all I'm recommending.

15 CHAIRMAN STUTO: But you're recommending that the
16 Jones' homestead be rezoned, correct?

17 MR. MION: I'm asking them to take a look at that
18 whole thing.

19 MS. VAIDA: So, you're conditioning the approval?

20 CHAIRMAN STUTO: I don't think that we can
21 condition it. We're just making a recommendation. He's
22 saying four, we recommend that the Jones parcel also
23 rezoned single family residential. Five, in terms of
24 that straight piece, we recommend that you consider
25 whether it needs to be rezoned with the package.

1 MR. MION: Yes, and I don't want the approval of
2 what the original request was contingent upon this. I'm
3 recommending that they consider it to be consistent.

4 MS. GOMEZ: So, on Mr. Jones' property - no not now
5 until the Town Board decides?

6 MR. MION: Well, the Town Board has to decide.
7 We're just making a recommendation to the Board.

8 MS. GOMEZ: So, we're here just to make a
9 recommendation.

10 MR. MION: Right.

11 CHAIRMAN STUTO: We can say that we don't recommend
12 it and they can still do it.

13 MS. DALTON: Something will go to the Town Board
14 and it will either say that we recommend it, or we
15 recommend this change, and in addition we recommend
16 certain reviews take place.

17 MS. GOMEZ: Okay, I understand.

18 MR. LACIVITA: Peter, I think that the language
19 that I read earlier -- I'm going to take out the Wilson
20 property identified as 639 and consider five to be the
21 rezoning application of the Wilson property identified
22 as 639 the portion that is currently zoned NCOR also be
23 included in the single family residential zone. So, now
24 you're only talking about that sliver. Because if you
25 say 639, that actually goes single family and then NCOR.

1 You only want the NCOR component. So, I think that you
2 have to somehow call that out.

3 CHAIRMAN STUTO: Yes, we're talking about the
4 straight piece.

5 If I understand what Lou is saying -- and I'm not
6 sure if Kathy is saying the same thing --

7 MS. DALTON: We are.

8 CHAIRMAN STUTO: They're proposing paragraph 4. We
9 recommend that the Town Board also rezone the Jones
10 homestead. It's less strong of a recommendation.
11 Five -- we also recommend that the Town Board look at
12 that landlocked piece and consider whether it should be
13 in the rezone. I think that's what you guys are saying.

14 MS. DALTON: Yes.

15 CHAIRMAN STUTO: I'm relatively indifferent to
16 that. We're going to need a clear sentence for four and
17 five.

18 MS. VAIDA: But whether they consider and include
19 it or not, you're still recommending that your in favor
20 of the rezoning?

21 MS. DALTON: Right.

22 CHAIRMAN STUTO: I think that the motion before us
23 is that we also recommend that they rezone the Jones
24 homestead.

25 Let's see how it reads.

1 MS. GOMEZ: Contingent upon or in?

2 CHAIRMAN STUTO: We can't make it contingent
3 because we don't have that authority over the town
4 Board. We're saying that we recommend the establishment
5 of the 50-foot buffer -- we'll read it all together.

6 I'll read one, two and three.

7 "1. The rezoning of the parcel from NCOR to SFR
8 would keep with the characteristics of the community
9 and surrounding neighborhood.

10 2. Under the proposed rezoning request to SFR, the
11 applicant has identified the allowable density for
12 residential subdivision of no more than eight homes
13 which is less than the allowed density under the
14 existing zoning.

15 3. The Planning Board recommends the establishment
16 of a 50-foot no-cut buffer be included in the rezone
17 within the subdivision application to Planning and
18 Economic Development along the Route 9 side of the
19 property to buffer from commercial/office/residential/
20 COR zoning district. If no trees exist, such
21 vegetation must be planted at the time that a building
22 permit is granted."

23 That was all preceded by:

24 "The Planning Board recommends that the rezoning
25 request under Resolution 309-213 be approved based upon

1 the following findings of fact:"

2 MR. LACIVITA: I think that if I heard four
3 correctly - because we've changed it a little bit - "The
4 Planning Board would favorably recommend that parcel 621
5 Boght Road, the Jones property, considered within the
6 rezoning application to a use that continues with the
7 characteristics of the community and the surrounding
8 neighborhood."

9 MS. VAIDA: I would say "Recommends that the Jones
10 parcels (621 Boght Road) also be rezoned to single
11 family residential."

12 And then five would be - whatever that other
13 parcel is -- how are you going to describe that?

14 MR. LACIVITA: The way that I got some of the
15 language is.

16 "We ask that the Town Board consider the Wilson
17 property that is currently split zoned at 639 Boght
18 Road - that the portion having an NCOR designation also
19 be included in the single family residential -"

20 MS. DALTON: Contiguous single family residential.

21 MS. VAIDA: What is the approximate size of that;
22 just roughly?

23 MR. JONES: The size of the property is 75 foot
24 wide by 220.

25 MR. LACIVITA: I don't want to put those numbers

1 in because we're not going to be spot-on.

2 MS. DALTON: The small parcel beginning with NCOR
3 zoning.

4 CHAIRMAN STUTO: Nick, how would you suggest that
5 we describe that parcel?

6 MR. COSTA: I think "the landlocked parcel that's
7 at the rear of the Jones parcel of 621."

8 MS. VAIDA: So, the landlocked parcel at the rear
9 of the Jones parcel owned by Wilson also be rezoned.

10 MR. LACIVITA: So, we'll just identify that in a
11 little bit more specifically by saying the landlocked
12 NCOR parcel.

13 MR. JONES: Joe, why do you say that it's
14 landlocked?

15 MR. LACIVITA: Well, it's landlocked in the sense
16 that there is no frontage on the road. You have to come
17 through his single family. What they're trying to do is
18 identify specifically the NCOR parcel and change that
19 back to single family. So, once it becomes rezoned,
20 there is no access points to it from you.

21 MR. JONES: There is no access to the piece of
22 property?

23 MR. LACIVITA: From his property, yes, there is.
24 There is no other one because you have frontage
25 elsewhere and you're also blocked by your home and

1 everything else to get to the roadway system. So, it
2 truly has no frontage; correct, Nick?

3 MR. COSTA: Yes, right; he doesn't have any access
4 to Boght Road.

5 MR. LACIVITA: Especially when all that gets
6 developed.

7 CHAIRMAN STUTO: I also recommend that the
8 introductory sentence be reworded to add as follows:

9 "The Planning Board recommends that the rezoning
10 request under Resolution 309 for 2013 be approved based
11 upon the following findings of fact -"

12 I'd like to add the words "and recommendations".
13 They are not just findings of fact; they are
14 recommendations, also.

15 Does everybody understand what's being discussed
16 right now?

17 (All the Board Members agreed.)

18 CHAIRMAN STUTO: Any further discussion on it?

19 MR. LACIVITA: Can I just get clarification on the
20 verbiage for five?

21 CHAIRMAN STUTO: Elena, can you read it?

22 MS. VAIDA: "The landlocked NCOR parcel at the rear
23 of the Jones parcel owned by Wilson also be rezoned to
24 single family residential."

25 CHAIRMAN STUTO: I'll hear from the applicant again

1 before we take a vote on that.

2 Do we have a motion?

3 MR. MION: I'll make a motion.

4 CHAIRMAN STUTO: Second?

5 MS. DALTON: Second.

6 CHAIRMAN STUTO: Before we consider the vote or
7 have our own discussion, does the applicant have any
8 comments on that?

9 MR. COSTA: No.

10 CHAIRMAN STUTO: Do you want to pow wow privately?

11 MR. JONES: Yes.

12 CHAIRMAN STUTO: Okay, we'll adjourn for a minute.

13 (There was a brief recess in the proceedings.)

14 CHAIRMAN STUTO: Okay, we'll reconvene.

15 The applicant having conferred with their
16 consultant - do you have anything to say about the
17 motion that's being considered?

18 MR. COSTA: No, the only thing that we would like
19 to add is that we do have the description and the
20 mapping for 617 and 621 as one description - one map
21 that we would like to give you.

22 CHAIRMAN STUTO: And we'll forward that to the Town
23 Board with the verbiage.

24 MR. LANE: So, that being said, you're basically
25 okay with the recommendation?

1 MR. COSTA: Yes.

2 CHAIRMAN STUTO: Any further discussion by the
3 Board?

4 (There was no response.)

5 CHAIRMAN STUTO: We'll call for a vote. All those
6 in favor say aye.

7 (Ayes were recited.)

8 CHAIRMAN STUTO: All those opposed say nay.

9 (There were none opposed.)

10 CHAIRMAN STUTO: The ayes have it.

11

12

13

14

15 (Whereas the above proceeding was concluded at
16 7:49 p.m.)

17

18

19

20

21

22

23

24

25

CERTIFICATION

Legal Transcription
(518) 542-7699
legaltranscription@nycap.rr.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 August 19, 2013

