

1 PLANNING BOARD COUNTY OF ALBANY

2 TOWN OF COLONIE

3 *****

4 VILLAGE OF NEW LOUDON

5 610-622 LOUDON ROAD

6 APPLICATION FOR SITE PLAN AMENDMENTS

7 TO APPROVED PLAN

8 *****

9 THE STENOGRAPHIC MINUTES of the above entitled
10 matter by NANCY STRANG-VANDEBOGART, a Shorthand
11 Reporter, commencing on October 8, 2013 at 7:59 p.m. at
The Public Operations Center, 347 Old Niskayuna Road,
Latham, New York

12

13 BOARD MEMBERS:
14 PETER STUTO, CHAIRMAN
15 BRIAN AUSTIN
16 SUSAN MILSTEIN
17 LOU MION
18 KAREN GOMEZ
19 TIMOTHY LANE

20 ALSO PRESENT:

21 Joseph LaCivita, Director, Planning and Economic
22 Development
23 Michael Tengeler, Planning & Economic
24 Development
25 Dan Cleary, Cleary Development Services
Tony Fazzino, New Loudon Road Associates
Victor Caponera, Esq.
Max Morehouse
Mary Hanley

1 CHAIRMAN STUTO: We'll call up the next project and
2 we'll say that for the record, Lou Mion is back with us.

3 This is the Village of New Loudon, 610 to 622
4 Loudon Road. This is an application for site plan
5 amendment to approved plan.

6 Joe, can you give an introduction on this?

7 MR. LACIVITA: Yes, all along the Village of New
8 Loudon has been before this Board from sketch plan to
9 concept, and so on. It was always to try to develop a
10 village look and feel.

11 Conversations had been had throughout the process
12 of townhouses and condominiums and I think that there
13 were various time frames that this project had been
14 discussed. I believe that it flip-flopped back and
15 forth. When it came to the Assessor's review of this,
16 I think that there were some issues that were brought
17 up there.

18 Tonight we're trying to get a clarification and at
19 the request of the applicant a change to a townhouse.
20 It changes parcels. There were actually 72 parcels
21 created in this and they were all taxable parcels for
22 the Town of Colonie. That's one of the items that
23 we're going to discussing this evening.

24 The next is discussions on the condition of the
25 NCOR height standard. Again, we have seen elevations

1 to this project that had a building D which was up in
2 front between the Marini project and the Dunkin Donuts
3 that had an arching characteristic to it. It had a
4 dome and a cupola. Those elevations were being
5 reviewed and it was realized that the calculation
6 actually came up higher than 40 feet. It shows 46 feet
7 to the top of the cupola. That's going to be another
8 request for that.

9 Then there are a couple of small items that the
10 applicant will be discussing this evening as far as
11 replacement of retail or residential.

12 I'll turn that over to the applicant to discuss
13 some of the concerns that they are having.

14 CHAIRMAN STUTO: Did you say that was a small arch?

15 MR. LACIVITA: The secondary buildings that are
16 behind the other buildings that we talked about in the
17 planning process as well -- they tend to lose that
18 focus from the retail perspective. The tenants will be
19 along that corridor to expose their signs to get that
20 walk-in traffic and drive-in traffic. What we see as
21 this is starting to develop -- those buildings in the
22 back are going to lose that luster of having visibility.
23 Therefore, based on the overall population and density
24 of the design of this project sticking to the NCOR
25 standards, we're looking to see if that can actually be

1 converted from the retail to residential. It has less
2 of an impact on traffic and actually the applicant would
3 need an easement to reaffirm that, as well. It has some
4 positive aspects to it.

5 CHAIRMAN STUTO: But it's contrary to the ratio
6 that's in the NCOR.

7 MR. LACIVITA: It's contrary to the ratio, but then
8 there have also been those discussions that it's in the
9 open development. The calculations actually are still
10 being met, and I think that Dan could probably
11 articulate that a little better as to how. This loss of
12 19,000 square feet in retail is not going to overall
13 impact the residential calculations and you can speak to
14 that as well.

15 CHAIRMAN STUTO: I'm going to make a preliminary
16 comment before we turn it over to the applicant. That's
17 that I understand that a lot of these deviations from
18 the Land Use Law -- I'm only becoming aware of it as I
19 think about it more and talk to you and so forth -- are
20 being based upon the 280a of the Town Law which is the
21 Open Development Area Law which allows you access
22 through an easement if you don't have frontage on a
23 dedicated road. I'm having a hard time understanding
24 how that justifies all this deviation from the Land Use
25 Law. I just want to say that up front. I have a fairly

1 substantial issue trying to understand that.

2 MR. LACIVITA: And I have to be honest with you, as
3 this went through the planning process initially -- and
4 it's been around for a little bit of time -- the Town
5 was trying to push the developer towards the PDD. Mr.
6 Fazzone can certainly speak to that. The PDD would have
7 been a little bit easier to get through. They wanted to
8 stay to the NCOR standards as to the design of
9 neighborhood/commercial/office/residential and retail.

10 That being said, as we started to go through as
11 parcels were being sold and as things started to change
12 with it as far as subdivisions were coming and changes
13 in lot sizes and trying to pull building permits --
14 that's when we realized how complex the NCOR standard
15 was to design and also zoning. We found ourselves to
16 be in conflict internally between the Building
17 Department and the Planning Department in the approvals
18 that were placed. We tried to work closely with the
19 applicant in the Attorney's Office as to how we could
20 get through these processes and that's why the Open
21 Development Area was given because it allowed a little
22 bit of different structure to get the buildings built.
23 Again, we're here because were finding other issues
24 that are now popping up.

25 CHAIRMAN STUTO: The second to last sentence is

1 what I don't understand. Open Development has to do
2 with access to property that doesn't have frontage. I
3 don't think that it allows you to go to a 50 foot
4 building when the Land Use Law says 40 feet. That's my
5 understanding of it, but we're going to talk about that.

6 Okay, we'll hear from the applicant.

7 MR. CLEARY: Thank you, Mr. Chairman. I'm Dan
8 Cleary representing New Loudon Road Associates. With me
9 tonight is Mr. Fazzone from New Loudon Road Associates
10 and also Mike Tucker from Creighton Manning.

11 There are four things that we're actually asking
12 you for tonight. I'm going to start with the one with
13 the highest priority to us.

14 As Joe described, back in December when we got our
15 original approval from this Board, the decision was
16 written to allow for 71 condominiums. It came to our
17 attention and in going through the process, as Joe
18 explained, from our standpoint, condominium and
19 townhomes were pretty interchangeable. It came to our
20 attention from the builder after the first of the year
21 that it absolutely had to be townhomes. My
22 understanding is that the reason for one of those is
23 financing, and there is another benefit that comes to
24 the Town. The tax situation is more beneficial for the
25 Town than it is for condominiums. That's at least what

1 was discussed back and forth with Joe.

2 As far as the Town is concerned and as far as
3 planning is concerned, it doesn't change anything. The
4 footprints are still the footprints. They were
5 approved back in December. That hasn't changed. You
6 call it a specific definition for a condominium and you
7 call a specific definition for a townhome. In order
8 for us to build these, the Planning Board has to change
9 their decision from the 18th to approve 71 townhomes
10 rather than condominiums.

11 CHAIRMAN STUTO: I'm trying to learn and have the
12 Board learn with us as we go through this. I think that
13 it's worth going deeper on this particular issue.

14 Condos have certain legal meaning and they have
15 require certain approvals from the State Attorney. Can
16 you explain the difference? I don't know if you have
17 counsel here or not to explain it.

18 MR. CLEARY: I'm sure that there is a much more
19 detailed explanation where you could get into the State
20 Attorney General's office and all what you have to go
21 through in order to build the actual units. Basically,
22 if you own a townhome you own the dirt underneath. You
23 own the real estate. If you own a condominium, the
24 homeowners association owns the real estate.

25 CHAIRMAN STUTO: Can you point to what units that

1 affects?

2 MR. CLEARY: It's the 71 units in the rear
3 (Indicating).

4 CHAIRMAN STUTO: So, you're going to deed out
5 individual plots and lots to the purchaser.

6 MR. CLEARY: The homeowner's association will own
7 28.85 acres. Each individual owner will own their own
8 half-acre piece or whatever it is.

9 CHAIRMAN STUTO: And you're not claiming that the
10 Open Development Area Law allows you to do this.

11 MR. CLEARY: No.

12 CHAIRMAN STUTO: It's just a site plan amendment.

13 MR. CLEARY: Right. We use the terms
14 interchangeably. When we talk to this Board for the
15 approval we were not aware at that time what the
16 builder's intension was. We had shown basically
17 building envelopes on the plan. When they came back to
18 us earlier in the year they said that it had to be
19 townhomes for financing reasons and to get through the
20 State Attorney General process with the homeowners
21 association --

22 CHAIRMAN STUTO: You're still going to have a
23 homeowners association; correct?

24 MR. CLEARY: Yes.

25 CHAIRMAN STUTO: Okay, well, that answers it for

1 me.

2 I don't know if anyone else on the Board here has
3 any questions.

4 MR. CLEARY: During construction as we were
5 building the roads and the infrastructure and grading
6 the area, it became evident to us that when we had
7 planned this out we thought that we squeezed in 71
8 units. We actually discovered that we could get a 72nd
9 unit in there.

10 We are asking the Board to consider approving one
11 additional townhome unit, and I'll show you where it
12 is. It's right here (Indicating). This used to be
13 three units here (Indicating). We've added a fourth.
14 To do that, we slid this down a couple of feet and that
15 allowed us to squeeze a unit in here. The reason that
16 we thought that we couldn't do it before was because of
17 grading and this hill back here (Indicating). Some of
18 the topography that we had on our plans was not exactly
19 what was out in the field. So, when we actually
20 physically got to grade the site, it wasn't as steep.
21 We were getting into costs of putting in the
22 infrastructure that we would have needed to put that
23 unit in in the first place. So, it became economically
24 feasible to propose it.

25 We've shown it on the plan that you have before

1 you tonight and we are requesting that you approve that
2 one more townhome.

3 CHAIRMAN STUTO: Again, that's within the Land Use
4 Law. That's not based upon the rationale based on the
5 Open Development Area Law?

6 MR. CLEARY: It's a residential unit under the NCOR
7 against the retail. We'll go to the height issue next.
8 We'll talk a little bit about the ODA.

9 When we originally presented to the Board back in
10 December and got our final approvals, the architectural
11 renderings that you approved for building D which we
12 are under construction with right now are here
13 (Indicating). Building D is this building here.
14 Dunkin Donuts is here and that's under construction.
15 This is Mr. Marini's building which is 624 Loudon Road;
16 that's here (Indicating).

17 CHAIRMAN STUTO: The Marini building is further
18 along in its construction; yes?

19 MR. CLEARY: Yes, it has the skin on it.

20 CHAIRMAN STUTO: What's going on with the others?
21 I drive up and down there almost every day.

22 MR. CLEARY: Dunkin Donuts' foundation is going in
23 and building D should follow right behind that.

24 These are the renderings for the Dunkin Donuts and
25 building D. The issue is that when we show you this

1 plan, this is exactly the elevation that we showed you.
2 I think that the TDE's letter points it out the best.

3 We talked about that there would be certain
4 aspects of the architecture that would extend above the
5 40 feet such as chimneys and cupolas and things like
6 that. To the top of this dome is 39 feet (indicating)
7 which is under the 40 that is allowed in the NCOR zone.
8 This cupola is a design feature extends another 6.5 or
9 7.5 feet. When it went to zoning for a building permit
10 approval they said that's considered part of the
11 structure and it's above 40 feet and you need a
12 variance, or you need to go back to the Planning Board
13 and amend the ODA to allow for a higher height on the
14 entire site. I'll get to that in a second.

15 So, effectively what triggered this discussion is
16 the design feature that the Board had originally
17 approved back in December, which is the cupola on top
18 of the dome. We have a permit to build a building
19 without the cupola. We'd like obviously to add the
20 architectural feature that was originally designed, if
21 we can get to a point where it's allowed under the
22 Building Department.

23 CHAIRMAN STUTO: You have a fourth one as well,
24 right?

25 MR. CLEARY: The fourth one is a number of units

1 which is also a number of residential units, which is
2 also part of the open development area discussion.

3 Before I start on the open development,
4 considering the height issue - we started thinking
5 about what other buildings in the property might run
6 into the same issue. Building B which is in back of
7 where Building D and where Dunkin Donuts is - the pad
8 has been prepared, but it's not under construction yet.
9 It was originally proposed to have two floors of
10 apartments; 24 units at 54,000 square feet of
11 commercial on the first floor.

12 This leads into our next discussion, because we
13 have had a lot of demand and people have been looking
14 at this property for apartments. There is more demand
15 for apartments than we can provide. We've also had
16 difficulty leasing that first floor because of where
17 it's located on the project. We started to look at the
18 options as far as what we could do for light level
19 luxury apartments on that building. When we started to
20 look at it, it was clear to us that if you put three
21 floors at 12 foot clear height and you added mechanical
22 elevators and things like that, you were going to
23 penetrate that 40-foot barrier. There is also a
24 thought that down to road there might be some
25 possibility to park under the building, which would add

1 some height to the building because some of that would
2 be underground and some of it would be above. It was
3 clear to us that no matter what we did, if we were
4 going to go in that direction, we would likely run into
5 the same issue with that building and that 40 feet was
6 not going to be enough to build that building.

7 That leads me back to the ODA.

8 When you approved the ODA back in April,
9 additionally the ODA Law - as Attorney Caponera was
10 just explaining to me in the hallway - and how it
11 evolved was through the subdivision process.

12 CHAIRMAN STUTO: Is he your counsel on this one?

13 MR. CLEARY: No, he's not. He's observing. Mr.
14 Fazzone is our counsel.

15 CHAIRMAN STUTO: I understand that you're an
16 attorney, right Mr. Fazzone?

17 MR. FAZZONE: Yes I am.

18 MR. CLEARY: When we approved the ODA, there were
19 several things in there in addition to the access issue
20 and the frontage issue. There were also dimensional
21 requirements which were setbacks as defined in the ODA
22 that allowed us to have zero setbacks or a shorter
23 setback than are allowed under the NCOR. They're
24 specified in the ODA and essentially become the overall
25 zoning core of the project. They basically supersede

1 what's in the zoning. The Building Inspector goes to
2 look at that as opposed to going back into the
3 dimensional tables for the NCOR.

4 Also they waived the 80/20 requirement and a
5 deletion of the 3,000 square foot calculation for
6 residential. For those of you who are not familiar
7 with it, when the project was originally designed under
8 the NCOR statute, they require you to take the number
9 of residential units that you propose and multiply them
10 by 3,000 square feet. Regardless of how big they were,
11 you multiply them by 3,000 square feet and then you
12 were required to have 20 percent retail/commercial to
13 match that in order to get to the design criteria that
14 is specified in the NCOR. Under the ODA, that 3,000
15 number was deleted. We no longer multiply and we use
16 the actual square footage that we have on the site.

17 Also, the requirements to adhere to the 80/20 are
18 eliminated in the ODA, as well. We have two sets of
19 criteria which rule the site. One is the open
20 development area. The Planning Board is the
21 administrator of and the other is the zoning. Those
22 areas that the ODA doesn't speak to. So, when we talk
23 about the fact that we're in here talking about height
24 and we're looking to modify the ODA to address the
25 height issue, the way that the Building Inspector has

1 determined that -- if we were just looking for one
2 thing, and now we're coming to you to ask to put the
3 cupola on, then we would have to go to the Zoning Board
4 of Appeals and prove hardship. If we are required to
5 go to the Planning Board for additions that effect the
6 entire site such as 50 feet for the entire site, then
7 the Planning Board has the ability to amend the ODA and
8 allow that.

9 That being said, it also means that the Planning
10 Board - and this is something that goes along with the
11 ODA as well - when we talked about the ODA that night,
12 it really only effects two buildings; this building D
13 with the cupola and building B potentially, if it were
14 to be all apartments. You have to approve that
15 building. They have to bring it back here, bring the
16 architecturals, show you what they want to do, what
17 they want you to approve, how tall it is, what the
18 materials look like, what the site plan looks like and
19 if it varies from anything that we have been approved
20 for previously. What we are asking for with regard to
21 height is simply the ability to give the Planning Board
22 the ability to approve this specific design that may
23 have a verification in height above the 40 feet, and to
24 give the Building Department something in the ODA that
25 they can point to when they go to issue a building

1 permit after you have approved it that says, yes, we
2 can issue a building permit because it's in there.
3 That's what we are asking for tonight with regard to
4 height.

5 With regard to the number of units, as I mentioned
6 in the ODA, when you approved it in April there was
7 language in there that eliminated the 80/20
8 requirement. It also deleted that 3,000 number. We
9 have proposed to replace 19,500 square feet of retail
10 commercial with 20 additional apartments. We would
11 make the first floor of building B approximately 12
12 units in that area and then building C which is the
13 small square building next to the little park -- we've
14 added a floor to that. The first floor will remain
15 commercial. It will most likely be offices and the
16 second two floors will be four apartments on each
17 floor. So, there will be a total of eight apartments
18 in that building.

19 Again, we're making that request based on two
20 things. First, is market demand. We have several
21 interested suitors with regard to purchasing those
22 apartments. They are high scale luxury apartments.

23 The second is the inability to really lease that
24 first floor of retail because of its location on the
25 property. Unfortunately, going through the NCOR

1 process with that 80/20 requirement, we have to tuck in
2 as much retail as we possibly could. The most logical
3 place that we could was to put it on the first floor of
4 this building (Indicating). Unfortunately, the
5 retailers have all wanted to be up front and that's
6 complicated by the fact that every one of the buildings
7 up front is either under construction or fully leased.
8 We have had a great demand for apartments. We're
9 having 20 apartments and decreasing 19,500 which does
10 two things. It reduces the traffic on the site which
11 has always been a concern to this Board and the other
12 interested parties in the neighborhood. The other
13 issue is the parking.

14 The last time that we were before you for
15 approvals we requested a parking waiver because we
16 didn't have enough parking per zoning and we justified
17 that that they would be sharing the parking and make
18 the site work. You approved the waiver for that. By
19 going to residential and eliminating the 19,500 retail
20 and commercial space, we actually exceed the zoning
21 requirement by 25 spaces. We actually reduced traffic
22 and we have more parking than the zoning requires.
23 Those of you who know the site know what we've built
24 with regard to trying to provide enough parking
25 particularly for the Rumors piece. We look at this as

1 providing more synergy for the parking because you
2 won't have competing retail demand over by the Rumor's
3 piece.

4 The other important part is taking the actual
5 calculation of the actual square footage of the
6 residential versus the actual square footage of the
7 retail. There is 20.2 percent retail/commercial space
8 and 79.8 residential. So, we're still on the 80/20
9 number. We don't have to use that 3,000 number in the
10 ODA. That doesn't apply to us. But as far as the NCOR
11 goes, we're still there. We're still at 80/20. So,
12 essentially that's what we are looking for.

13 Just to recap, Mr. Chairman, the four things that
14 we're looking for is the change from condos to
15 townhomes. Second is the extra unit on the townhomes.
16 Third is the height to allow us to add the cupola to
17 adjust the language of the ODA to allow for the Board
18 to approve a higher height both there and on building B
19 sometime in the future, and there is the 20 additional
20 apartment units to replace the 19,500.

21 CHAIRMAN STUTO: Thank you. I'm going to follow up
22 on the initial comment that I made preliminarily. A
23 change from condo to townhomes. This is my opinion.
24 There is not much more than form over substance. I
25 think that it's within our prerogative to make an

1 amendment to the site plan approval.

2 The other three items that you mentioned raise
3 legal issues in my mind. I don't know if you want to
4 visit them today, or you might be better off just going
5 for the first one. I can keep going with my thoughts
6 on that. I'm not sure if the ODA is the proper vehicle
7 for making those changes. We can vary from the Land
8 Use Law in some instances with waivers. That's usually
9 the number of parking spaces and front yard parking and
10 things like that. The other things might better be
11 looked at either with a variance from the ZBA -- and
12 I'm not giving a definitive answer on this, but I think
13 that it may need a closer look. Things like going from
14 40 to 50 might require a variance from the ZBA
15 potentially, or the other mechanism is that we could
16 have used a PDD, Planned District Development.

17 Let me finish my whole thing.

18 The other items that you talked about -- the 80/20
19 ratio -- I'm just not sure whether we have that
20 prerogative to keep going with that concept of changing
21 that under the ODA rationale.

22 Let me finish. I know that you're dying to talk.

23 Maybe if the Land Use Law was amended and gave us
24 that prerogative, I might feel more comfortable.
25 That's just my opinion.

1 There is an email here from the Town Attorney
2 saying that the Town has no objection to the proposed
3 amendment of the Planning Board's approval of changing
4 ownership units from condos to townhomes. Also, there
5 is no need to amend the ODA approval since form of
6 ownership was not a requirement of the approval
7 process. That's as far as that email goes. I'm not
8 ready to go any further than that. I don't know if
9 Elena wants to speak or someone else does, but I would
10 like to get a lot more comfortable with the concept
11 before we go forward. It's for your protection, as
12 well.

13 MR. CLEARY: I understand that, Mr. Chairman.
14 Unfortunately, we went through this whole exercise back
15 in April when we talked about the ODA and exactly what
16 the ODA did and it does give you the ability to do that.
17 If you look at the ODA itself, it speaks directly to
18 dimensional requirements, it speaks directly to the
19 80/20 issue. It strikes it completely out and it gives
20 you the ability basically to control the zoning on the
21 site.

22 CHAIRMAN STUTO: It raises a legal question.

23 MR. CLEARY: I understand that you have a legal
24 question and from what I'm hearing, we probably need to
25 take a breath and get Michael Magguilli involved and at

1 least come to an agreement that it is what it is.

2 CHAIRMAN STUTO: I'll listen to other opinions from
3 our counsel, from our TDE and from our other Board
4 Members.

5 MR. FAZZONE: Can I just clarify something that I
6 think is inconsistent and unclear? It wasn't the
7 applicant's intension to apply for the ODA. It wasn't
8 our recommendation. We came with a project that
9 completely complied with the NCOR and Comprehensive
10 Plan. The problem is that the Building Department
11 couldn't justify your approval with their Code. That's
12 how we got the ODA. We didn't want the ODA and we
13 didn't ask for it. We got approval in April and we
14 couldn't get a building permit. The Building
15 Department, did not give us the building permit on a
16 plan that was completely 100 percent without any
17 variances to the Comprehensive Plan. That was where the
18 ODA came from. It didn't come from us. I want to make
19 that very, very clear. It came because all of the new
20 planning which is great, but didn't give someone in the
21 Building Department the chance to catch up to it. The
22 lot lines that we're talking about -- there is no place
23 in the Town Building Code that allows that, where the
24 NCOR requires that. We went with the requirements for
25 the NCOR that the LA Group developed in conjunction with

1 the PEDD and we didn't ask for any waivers. We did
2 exactly what we were asked to do and we went to build it
3 and we couldn't build it because we couldn't get a
4 building permit because the zoning that was in place for
5 the current Building Department does not match up with
6 the NCOR district. That's why we're here. It's a plan
7 that you loved and it's a plan that the Town wanted.

8 There were surveys taken and the LA Group spent a
9 lot of time. They came up with a great plan. It took
10 five or six years to put that plan together.

11 The problem is now we're done and we can't get a
12 building permit. Nothing in the NCOR makes sense to
13 the current Building Department. When we talk about
14 the ODA -- and I think that Joe and the TDE can back us
15 up --

16 CHAIRMAN STUTO: What building can't you get a
17 building permit on?

18 MR. FAZZONE: There are several problems within the
19 NCOR approval that when we went to the Building
20 Department, we couldn't get a building permit.

21 MR. CLEARY: Basically what it was, Mr. Chairman,
22 was that they were treating each lot as it was created
23 as an individual lot and not treating the project as an
24 approved overall project. It came to light with Mr.
25 Marini's building that they couldn't get a building

1 permit because the setbacks weren't met. That's because
2 they weren't looking at the plans that were approved.
3 They're looking at well, now there are these lot lines
4 and we have to look at the lot. That was the Genesis of
5 the Building Department and the legal department
6 suggesting that we form an ODA on this property and
7 write some zoning that overrides the current zoning to
8 fix those problems. That's exactly what we did in April
9 and that's how we explained it. There was just some
10 incongruities. I don't think that Mr. Cordell agreed
11 with that interpretation. I said that there were some
12 incongruities between what the NCOR zoning and the
13 Comprehensive Plan envisioned and what the Building Code
14 could construct. If we were to break this up into
15 pieces like they were telling us, you could build this
16 plan, but you can't subdivide it. So, the ODA fixed
17 that. It also added other elements of zoning relief in
18 there that the Town Board approved and you also approved
19 which included the 80/20 and the disposal of the 3,000
20 square foot requirement.

21 All we are asking in this particular case is that
22 with the residential units, we meet the requirements of
23 the ODA because there is no 80/20 anymore. But we are
24 living up to the spirit of the NCOR, because in truth
25 if you take the actual square footage, it is still

1 80/20. So, we're still trying to do what we set out to
2 do from the beginning in building this project and live
3 up to the spirit of the NCOR. Now we have this other
4 layer that's a tool to help us marry the two parts of
5 the Zoning Code together which is the ODA.

6 As far as the height goes, we put on a number of
7 50 feet because we knew that would cover the cupola and
8 give us enough room on the other building to give us
9 some design. Ultimately, under the Site Plan Law, come
10 back to you and you're going to approve what it looks
11 like anyway. So, if you don't like it at 48 feet, it
12 could be 44, or it could be 40. Ultimately, that's
13 your purview.

14 As far as the ODA is concerned, we went through
15 all of this back in April when you recommended approval
16 to the Town Board for the ODA to help us jump out of
17 those zoning loop holes that existed at that time.

18 CHAIRMAN STUTO: Okay, we've heard your arguments.

19 MS. VAIDA: I have a question on the height. Maybe
20 I'm missing something here. The NCOR maximum height is
21 40 feet for the building. Then, in the footprint it
22 says "the peak of a pitched roof may extend not more
23 than 15 feet above the maximum height." It seems like
24 you're given another 15 feet.

25 MR. CLEARY: We thought so too, but that's not what

1 the Building Department thinks. Bob Cordell says that
2 none of the exceptions apply here. That is part of the
3 structure and it's above 40 feet and we can't build it.

4 MR. FAZZONE: That's what the original plans had;
5 39.9 feet. Everything above that which was
6 non-structural -- each month that passes on a project
7 this size is more of a problem from a legal standpoint
8 and I appreciate your position, Mr. Chairman. The
9 problem is that we were approved in December and we
10 couldn't get a building permit until at least June.
11 We've been trying every month.

12 There is a problem with having a Comprehensive
13 Plan with several different neighborhoods that once
14 they are approved, you can't build them. That's a
15 bigger problem.

16 We met in several meetings and we spent probably
17 tens of thousands if not hundreds of thousands of
18 dollars trying to figure out how to solve this problem.
19 We did solve it, we thought, and now we're back here
20 tonight and we're not sure if we can solve it. That's
21 a bigger legal issue and a bigger problem for us.
22 We're trying to construct to the Comprehensive Plan and
23 we're within the Comprehensive Plan and we've been told
24 by the Town Attorney that we're doing the right thing.
25 If we have to go back and table it for a few more

1 months -- every month that passes several thousands if
2 not tens of thousands of dollars -- I think that's a
3 bigger issue. We're trying to develop within the
4 Town's Comprehensive Plan and it was very clear. I
5 don't mean to say it any other way. We struggled from
6 December to June trying to get a building permit.
7 That's six months on a 10 million dollar property.
8 That wasn't our fault. We were told that. Now we're
9 in winter conditions on some other buildings because we
10 couldn't build them. I'm not saying that it's anyone's
11 fault here. We're trying to build a better Town and we
12 have a plan that makes a lot of sense. The fact that
13 the Building Department has an international Building
14 Code and we go to this Building Code that doesn't make
15 a lot of sense when you look at an NCOR standard,
16 you're going to be having the same conversations again
17 on all the different parcels in Town that are CCOR and
18 NCOR. If you give the Building Department NCOR
19 approval, they cannot permit it. I think that Mr.
20 LaCivita is saying that and the Town Engineer will tell
21 you the same thing.

22 CHAIRMAN STUTO: It sounds like the Land Use Law
23 may need to be amended.

24 MR. LACIVITA: If you remember back in April, Bob
25 Cordel stood before us here and walked us through the

1 ODA and showed some of the relief that it was able to
2 give to him to permit the buildings that are currently
3 being constructed. He went through these entirely
4 different scenarios with the bell towers and everything
5 else.

6 CHAIRMAN STUTO: There are not minutes in here.

7 MR. CLEARY: When we presented the ODA, Bob was
8 here and so was the Town Attorney. We all walked
9 through exactly what the ODA did and what the powers of
10 Planning were. It's basically a backward PDD because it
11 gives the Planning Board the authority versus the Town
12 Board.

13 CHAIRMAN STUTO: Do the Board Members have any
14 questions or want to express any feelings?

15 MR. AUSTIN: My question is all this talk about
16 zoning - why isn't the ZBA involved?

17 CHAIRMAN STUTO: This is coming from a former
18 member.

19 MR. AUSTIN: I was on the ZBA.

20 MR. CLEARY: If it were one instance, we would have
21 to go to the ZBA for relief. Because the ODA is on this
22 property, it gives the Planning Board the ability to
23 make those kinds of decisions. It has created its own
24 zoning basically for this property; just like a PDD.
25 The Planning Board alone can amend that. Rather than go

1 to the Zoning Board or try to show hardship to put a
2 cupola on, we come to you and show you this is what we'd
3 like to do and you say, yes, we like that, okay, we'll
4 make the adjustment and you can build or we don't like
5 it.

6 MR. AUSTIN: What's concerning to me is that we
7 approved all this and now you're struggling to go ahead
8 with it even after we have approved all these things. I
9 feel for you guys because it's a lot of money. Like you
10 say, it's every month now.

11 MR. CLEARY: It really had to do with where the
12 property lines were and the crux of the issue that
13 generated the ODA was our ability to subdivide the
14 property and sell lots. It wasn't the cupola -- you
15 approved it. When we went to build it, they said it's
16 over the height. If we had known that back in April, we
17 would have put it in back then and we wouldn't be
18 talking about it now. We did put the 80/20 in there.
19 It's in there and you do not have to adhere to the 80/20
20 rule anymore with regard to units. You don't have to
21 apply the 3,000 square feet to calculate to 80/20. We
22 meet the 80/20 anyway, so that part to me regardless of
23 talking about what the ODA does and doesn't do - we're
24 still aware of where we need to be in the sphere of the
25 NCOR.

1 MR. AUSTIN: My only other thought or concern is
2 you're going from commercial to residential with those
3 20 apartments. So, rather than having transient people
4 coming in during the day and leaving, now you're having
5 people residing on the property. So, they're affecting
6 other parts of the property as well.

7 You'll also have children. I'm not sure what
8 market you're going for here, but those kinds of things
9 are now going to be needing to be addressed because
10 you're adding more residences.

11 MR. CLEARY: We're going from 71 plus 24 to 96 and
12 116. There were already apartments and there were
13 already townhomes and we were always planning on them
14 being luxury apartments -- high end apartments. That's
15 why we were talking about potentially parking under the
16 building because people that pay that kind of rent don't
17 want to go out and wipe the snow off their car. There
18 is an additional expense that we have to put into the
19 building which will effect the height, we think.

20 MR. AUSTIN: You'll have to come back to us.

21 MR. CLEARY: We'll absolutely have to come back and
22 you'll have to review that building, and you'll tell us
23 if you like it or you don't like it. We're not asking
24 for you to approve anything other than the ability to
25 have more residential and less retail. That also

1 reduces the traffic and makes the parking work.

2 MR. FAZZONE: I'd also like to speak to the 80/20
3 for a bit. I spent a considerable amount of time with
4 Phil Pearson about this topic and talking about the
5 3,000 square foot number.

6 The 3,000 square feet number was just a mistake.
7 The idea was to make sure that the developer didn't
8 come in and jam pack apartments with vending machines
9 and make other issues or put a little bit of retail in
10 there and say it's a mixed-use development and seek
11 higher density. The 3,000 square foot was the square
12 footage that they thought was way too high. If you
13 think about the stretch from Siena to Fresh Market
14 Commons, how many apartments are there likely to be in
15 that whole retail area? We're at maybe two percent
16 residential, so the whole 80/20 on one unit -- we're
17 not looking at the bigger picture of this full plan.
18 There is no worse way to look at a plan than not
19 looking at the parcels that surround it and how they
20 make up the area. We're trying to get some urban and
21 we're trying to get some walk with the pedestrians or
22 people riding bikes. If you want to do that, then you
23 need to have people there. If the only places that are
24 going to get redeveloped are two or three parcels in
25 the whole strip and it's 80/20, you're only going to

1 have 40 people in this Town walking around because
2 everyone else will be living outside of it. There are
3 only two parcels here that we're talking about, really.

4 Mr. Pearson would even come and tell you that the
5 80/20 is one of the things in the Comprehensive Plan
6 that was overlooked. It was the intension to have the
7 Board look at the mix and make sure that the developer
8 didn't jam a bunch of density in and then say that it's
9 mixed-use and be able to say, oh, it's mixed-use and
10 I'm allowed more density. Now, we're holding this
11 thing out like it's the most important law that we have
12 going. There isn't going to be any more residents
13 along Route 9 if we don't look at this with Route 9 in
14 totality. In all reality, we've only got 100 units.
15 Route 9 is a big strip. Even from from the circle out
16 to 87, there not a big possibility of a lot of
17 apartments. It's not a desirable place to have
18 apartments and we're trying to draw the pedestrians and
19 make the mixed-use and urban setting to rethink that,
20 rather than saying 80/20 all the time. That's my
21 estimation in dealing with this for five years.

22 CHAIRMAN STUTO: Elena, do you have anything to
23 say, or no?

24 MS. VAIDA: I'm just not sure why you didn't go
25 with the Planned Development District.

1 MR. FAZZONE: We liked the Comprehensive Plan and
2 we liked what the LA Group did. We thought that if we
3 went with the Comprehensive Plan, the Planning Board
4 would have control over all of it and we wouldn't need
5 any waivers and we wouldn't need to go see the Zoning
6 Board. It seemed like better sense to follow the
7 Comprehensive Plan which kind of laid out everything in
8 detail. That's what was desirable in the NCOR and we
9 thought that it would be a great use for the site.
10 Interestingly, had we gone PDD, there may have been more
11 flexibility. All the stuff that we're asking for is not
12 crazy stuff. In fact, we didn't think that these were
13 structural. We thought that the cupola was a
14 non-structural part. I thought that one of the questions
15 you might say was why would we present you something
16 that would be over 40 feet back then? Part of the
17 problem that we're having in this whole design and
18 development thing is exactly what Mr. Austin said. We
19 bring something that complies with what we were asked to
20 do and then we go to try to build it and we run into
21 different interpretations. I interpret the law as
22 saying what you just did - that it was a non-structural
23 piece. What do we do when the Building Department says
24 that it's structural and you're at 46 feet. Now we have
25 to redesign a 20,000 square foot building and have it

1 all redone? This is a 50 million dollar project and
2 each time that we go to get a building permit we're
3 getting tabled and put off. We are within the
4 Comprehensive Plan. We wouldn't have presented the
5 cupola or anything if we thought that it would be a
6 problem.

7 CHAIRMAN STUTO: Are there members of the public
8 that want to be heard on this?

9 (There was no response.)

10 MS. MILSTEIN: As an attorney, I just want to say
11 that the cupola is a simple thing. It's not a big deal.
12 The townhouse and the condominiums - we have to know a
13 little bit more, but that's not my concern.

14 I think that the minimizing of the changing of the
15 retail -- and not only is it an apartment, but now we
16 want to make it higher. As an attorney, I don't feel
17 comfortable seeing legally how this whole plan fits
18 together. I'm not comfortable with the information
19 that we have right now.

20 CHAIRMAN STUTO: I don't know what the proper
21 procedure is for this for all these deviations.

22 MS. MILSTEIN: How everything fits together -- what
23 can you do and what can't you do, why can't you do
24 certain things? Like I said, a cupola is not a big
25 deal. That's the easy part.

1 MS. VAIDA: I'm just reviewing the Planned
2 Development District requirements and it looks like you
3 would comply with that. It would give you more
4 flexibility.

5 CHAIRMAN STUTO: They bypassed that turn in the
6 road a long time ago.

7 MR. FAZZONE: Essentially, by putting the ODA on
8 it -- we refer to it as a reverse PDD, except the
9 Planning Board is the administrator and not the Town
10 Board. The reason that we didn't go for a PDD in the
11 first place was that we felt that we were building a
12 project that would fit under the guidelines of the NCOR
13 district as outlined in the zoning until we went to
14 build it.

15 The other reason is that every time you want to
16 change something simple - color or shutters, you end up
17 having to go for an amendment for that. It can be very
18 onerous if you want to make any changes going forward.
19 That's why we didn't do that.

20 CHAIRMAN STUTO: I'll make one final statement. My
21 comfort level has not changed. We would get you back on
22 items 2, 3 and 4 in terms of the process and what the
23 appropriate vehicle is. I doubt that it's going to
24 change tonight. I would like to come back and we'll
25 promise to get you back just as soon as we can. We'll

1 have Elena in on a meeting and --

2 MR. FAZZONE: I think that it would make sense to
3 get Mr. Magguilli's office in on it, too.

4 CHAIRMAN STUTO: And that's fine. Whatever brains
5 we need from the Town. I don't speak for the rest of
6 the Board. I didn't realize the depth of all of this
7 until leading up to this meeting and going through the
8 packet and talking to Joe and Ted and so forth. I never
9 talked to Mike Magguilli. I see that he has one email
10 here that says he has no problems converting from condo
11 to townhouse, which I agree with. I agree that doesn't
12 depend on the ODA. It's a site plan amendment and
13 that's how I see it.

14 MS. MILSTEIN: I don't know if you're trying to get
15 us to fix something that's really not within our
16 jurisdiction. I know that you're struggling and I
17 understand that.

18 MR. FAZZONE: I completely understand that you
19 don't feel comfortable and I'm very confident that once
20 you get some legal advice and get everybody together, I
21 think that Ted summarized it in his letter pretty well
22 that you have the ability to do that. This is why we
23 came to you in April and explained it to you in April,
24 and why you recommend it to the Town Board and they
25 approved it. I'm sure that we can get back to that

1 point. Then, we can move forward. What I would like to
2 request tonight is for you to approve so that we can
3 start building the townhomes because that's holding us
4 up. Change the decision from condo to townhome.

5 CHAIRMAN STUTO: Is the rest of the Board okay with
6 proceeding on that basis from this point forward?

7 MS. MILSTEIN: I'm not.

8 CHAIRMAN STUTO: Condos to townhomes.

9 MS. MILSTEIN: I just don't know enough about it.

10 CHAIRMAN STUTO: You could vote no.

11 MS. MILSTEIN: And I will.

12 CHAIRMAN STUTO: We may go through it and maybe
13 you'll be comfortable with it and maybe not.

14 Any more comments from the Board?

15 MR. AUSTIN: We're not really well versed in all of
16 this. What you first said when you talked about putting
17 the apartments on the first floor - maybe we could use
18 more detail on that. I know that it's been two years
19 that you're trying to get this thing going, but I think
20 that's where we're getting hung up a little bit. I
21 don't know.

22 MR. CLEARY: We're certainly willing to discuss
23 that further, but it's fairly obvious that the entire
24 front is leased out and under construction. This
25 building is just sitting there. We have a line of

1 people that would really like to have luxury apartments
2 there. That's the market.

3 MR. FAZZONE: There really is an out-pouring of
4 requests for either older or disabled first floor
5 apartments. When you have build-out of 80 percent
6 across Route 9, you can't see any retail back there. We
7 have people saying a first floor garden apartment - this
8 is exactly what we're looking for. When you look at the
9 Comprehensive Plan talking about the senior apartments
10 for seniors - if this was built-out and open and we were
11 running for five years and you saw that first floor
12 converting that from retail to apartments - it wouldn't
13 seem like that much of a big deal. Here in this present
14 build-out it seems like more than that. I understand
15 that from the Baord. We have people coming to us saying
16 that they want apartments. When you have buildings and
17 people driving in behind them, we're still not sure how
18 it's all going to work out. It's kind of weird. You
19 can't really see those back buildings and it's very,
20 very difficult to survive that way. Here, we're
21 requiring fencing and the 80 percent build-out so we're
22 blocking the whole back on purpose and then we're
23 setting it up for retail back there.

24 Over on Wolf Road where you have that same thing
25 where they can't rent them. They'd be better off

1 apartments. Over by the Price Chopper on Wolf Road,
2 you can see around the corner, they don't have any
3 visibility. Those people keep coming back saying that
4 you can't really rent these. It's the same thing.
5 We'd rather do it now than two years from now.

6 MR. CLEARY: But we're still at 80/20.

7 MR. AUSTIN: I don't understand a lot of the
8 logistics. At some point maybe you can or the TDE can
9 educate us more about that.

10 MS. MILSTEIN: If there is a vote whether it's
11 condos or townhouses, how does that effect the overall
12 plan?

13 CHAIRMAN STUTO: If we agree to go forward and
14 require the request of one, we'll go through that and
15 probably all your questions will be answered. So, if
16 we're in agreement that we're going to defer two, three
17 and four until the next meeting right now we're only
18 going to review one, which is a conversion --

19 MS. MILSTEIN: I have that concern too.

20 CHAIRMAN STUTO: I'll let the TDE address that.

21 Are we agreeing to that, procedurally? If we
22 knock out two, three and four we're only talking about
23 one.

24 MS. MILSTEIN: I guess procedurally. If I agree or
25 not is another story.

1 CHAIRMAN STUTO: I'm not sure what you're saying.
2 Do you want to look at all four things?

3 MS. MILSTEIN: I'd rather, yes. Not tonight.

4 CHAIRMAN STUTO: So, you want to defer all of them?

5 MS. MILSTEIN: I'd rather make sure that this one
6 decision -- like a thread, the whole sweater doesn't
7 unravel.

8 MS. GOMEZ: I have a question. If we defer the
9 townhomes and the condominiums, does that mean that they
10 can't start building?

11 MR. CLEARY: That's correct.

12 MS. GOMEZ: So, if we do that -- my understanding
13 is that --

14 CHAIRMAN STUTO: It affects their financing.

15 MS. GOMEZ: And I'm not a lawyer, but the
16 explanation that I hear was that a townhome means that
17 they own the dirt and a condo just means that the
18 homeowners own the dirt. So, that's the real
19 definition. Again, I'm not a lawyer. I don't see what
20 the difference is, and then we could allow them to start
21 building.

22 CHAIRMAN STUTO: Let's explore that further and try
23 to get a better explanation of that and then we'll see
24 what we're comfortable going further with.

25 MR. AUSTIN: The HOA would still cover maintenance

1 and landscaping?

2 MR. CLEARY: Yes, it doesn't change anything other
3 than the fact that we refer to them as townhomes.
4 Nothing changes except that you call them townhomes
5 instead of condominiums. We're not changing the plan at
6 all. As a matter of fact, I have a stamped approved
7 plan that shows 71 townhomes on it.

8 CHAIRMAN STUTO: If you own one of those townhomes,
9 you would own the building but the HOA would own all the
10 dirt underneath it.

11 MR. CAPONERA: No, you get a deed to the parcel.
12 You own the parcel from the exterior in. With a condo
13 all you own is from the sheetrock in. From the
14 sheetrock out, it's owned by the HOA. With a townhome,
15 you own the outside in. So, you have to pay to maintain
16 the exterior of the property - the exterior of the
17 building. Everything else is owned by the HOA.

18 CHAIRMAN STUTO: So, the HOA is not going to take
19 care of the exterior anymore.

20 MR. CAPONERA: Correct.

21 CHAIRMAN STUTO: Let's leave this to the applicant
22 right now.

23 MR. FAZZONE: The larger problem is the financing.
24 When the banks all went out three years ago -

25 CHAIRMAN STUTO: No, we're asking a specific

1 question. Who takes care of the exterior?

2 MR. FAZZONE: Condos are very hard to finance now.

3 CHAIRMAN STUTO: That's a different issue. That's
4 not the question that we're trying to answer. If you
5 convert from condos to townhomes, who takes care of the
6 exterior? I live in a townhome up north and the HOA
7 takes care of the exterior and it's not a condo.

8 MR. CLEARY: I did forward the HOA documents to the
9 Town. My understanding that the difference is that the
10 owners own the actual real estate underneath as opposed
11 to a condominium where you just own the inside of the
12 building.

13 MR. AUSTIN: But who takes care of the outside.

14 MR. CLEARY: The HOA is my understanding.

15 MR. AUSTIN: So, they can't repaint the outside of
16 the building.

17 MR. CLEARY: No, there are very strict regulations
18 within -

19 CHAIRMAN STUTO: HOAs have a lot of flexibility.
20 The HOA is a homeowner's association. They pool their
21 resources together and they have a board.

22 MS. MILSTEIN: But we're relying on their
23 representation. That's all I'm saying.

24 MS. VAIDA: Your HOA provides that the exterior of
25 the building is maintained by the HOA?

1 MR. CLEARY: Yes. I'm not the builder, but that's
2 my understanding.

3 MR. LACIVITA: Dan, can you take it a little deeper
4 into the townhome/condo to help Susan a little bit? I
5 mean only in the sense that we're talking about
6 ownership and the fact that the technical compliance
7 with this project is still the same. You've got the
8 same water hookups, the same laterals - none of that
9 stuff is changing right now.

10 MR. CLEARY: The decision referenced condominiums
11 and our intent was to build townhomes. We're not
12 changing one thing from what this plan that was approved
13 for in December. All we're saying is that we should
14 have said townhomes and not condominiums. That's it.
15 The difference is that they'll own the real estate and
16 everything else is the same. Everything else is the
17 same.

18 CHAIRMAN STUTO: I don't have an issue with it.

19 Ted, can you address your comments just with
20 respect to item one?

21 MR. KOLANKOWSKI: The project was before the
22 Planning Board and they acted as lead agency for the
23 purposes of SEQRA and made a SEQRA negative declaration
24 of the final site plan approval on December 18, 2012.
25 Their decision was that the project would have no

1 significant impacts. Upon consideration of the final
2 site plans, the Board also granted some previously
3 requested waivers and granted conditional site plan
4 approval in April 2013. In May of 2013 the Planning
5 Board and the Town Board respectively approved the Open
6 Development Area that we've been talking about.
7 Designated for the project were established special
8 conditions related to this project.

9 Under item one, there would be a modification of
10 the approved site plan which could be approved by the
11 Board simply to change the reference to condominium to
12 townhomes. Some of the other requirements might
13 require modification of the SEQRA determination. In
14 that sense I don't think that there would be any
15 modification of the SEQRA determination from December
16 2012.

17 CHAIRMAN STUTO: Are condos and townhomes defined
18 in our Land Use Law?

19 MR. LACIVITA: Yes. Condominium is 190-6 "A
20 building or group of buildings in which the units are
21 owned individually, common areas and facilities are
22 owned by all the owners on a proportional undivided
23 basis and a sole owner or all owners of which the
24 submitted subject property to provisions of the New York
25 State Condominium Act."

1 The difference between dwelling and townhouse.

2 "One family dwelling unit which is one of the
3 series of units having a common party wall between the
4 adjacent unit, each with a private outside entrance,
5 each with its own separate lot of record in which no
6 unit is located over another unit and having a total
7 exposed front and rear walls to be used for access,
8 light and ventilation."

9 CHAIRMAN STUTO: Any questions from the Board?

10 (There was no response.)

11 CHAIRMAN STUTO: We're going to restrict it to the
12 issue before the Board which is changing from condos to
13 townhouses.

14 MR. MOREHOUSE: My name is Max Morehouse and I live
15 at 20 Glennon Road, which is directly behind this
16 development. When it was approved in December a condo
17 was an important thing to me because that meant that the
18 developer and everybody was responsible for the exterior
19 appearance of those units. When it moves to townhouse,
20 what other guarantees that a year or two down the line
21 the person that owns the condo right behind me or the
22 townhouse right behind me doesn't start storing his
23 firewood or his garbage back here? When it was a condo,
24 there was control of that by the entire entity. So,
25 I've heard today that nothing changed but the real

1 estate, but I also heard in December that they're going
2 to have dust control. They were going to have
3 screenings to control that and all these kinds of things
4 that we were supposed to have that was on record that we
5 didn't have. What's the guarantee to us as the folks
6 that have to look at this place that they're going to
7 maintain the exterior as it's presented here? All the
8 same colors are there, that the lightings are all
9 standard and the windows are all standard and that there
10 is uniformity?

11 CHAIRMAN STUTO: I will say this: Nothing is
12 changing with respect to the approved plans in terms of
13 the physical buildings.

14 MR. MOREHOUSE: I don't disagree.

15 CHAIRMAN STUTO: Okay, I'll let the applicant deal
16 with the maintenance and the proposal of the structure.

17 MR. CLEARY: You're correct, Mr. Chairman. The
18 architecture and the way that the buildings look are
19 just the way that there were approved in December.

20 As far as maintenance goes, they land that these
21 people own is directly under the building. The
22 homeowners association owns all the land on the
23 outside. It's exactly as it was going to be proposed
24 previously with the condos expect that they wouldn't
25 have owned the land underneath the building. They

1 don't have a back yard. There is only these units
2 along in here (Indicating). The lots are a little
3 bigger because of some buffer between the parking area
4 and that's an incentive for them because these will be
5 hard to lease or sell because it's right up against the
6 parking. So, we made these lots a little bit deeper
7 and gave them a little extra land in the back between a
8 wall and their building. All the rest of them - the
9 land that the individual owners own is right against
10 the building, so they don't have yards.

11 CHAIRMAN STUTO: So, the common areas, except for
12 the footprint of the building is owned by the HOA.

13 MR. CLEARY: That's correct.

14 CHAIRMAN STUTO: What about exterior maintenance
15 that the gentleman asked?

16 MR. CLEARY: That is the same thing that we just
17 talked about. It's my understanding that the exterior
18 maintenance of the entire thing is controlled by the
19 homeowners association.

20 MR. MOREHOUSE: I guess that's my concern because
21 it's your understanding. What are the guarantees?

22 MS. VAIDA: We can always make a condition.

23 MR. MOREHOUSE: There were supposed to be certain
24 things on the site while it was being developed
25 including dust control and that didn't happen. There

1 were clouds of dust through my house. I vacuumed a
2 quarter inch of sand out of my pool. I think that it
3 was right in the record that the development wasn't
4 going to do the entire site at once, but that was
5 entirely developed at once. Everything was opened up.

6 MR. CLEARY: That's not true.

7 CHAIRMAN STUTO: Let's stay on exterior
8 maintenance.

9 Do you have a copy of your HOA document here?

10 MR. CLEARY: I don't have it with me, but I
11 submitted a draft some time ago.

12 MR. LACIVITA: It's at the Town Attorney's office.
13 They are the ones that are in charge of reviewing that.

14 CHAIRMAN STUTO: Okay, nothing has changed. What
15 you're saying on the record is that nothing is changing
16 with the HOA document.

17 MR. FAZZONE: And it had already been filed.

18 CHAIRMAN STUTO: So, nothing has changed with the
19 exterior maintenance.

20 MR. MOREHOUSE: So, a couple of years from now when
21 things go wrong, we have the minutes.

22 CHAIRMAN STUTO: If you want to request a copy, you
23 can request a copy of the HOA document and we'll provide
24 it for you. It's by the Freedom of Information Law or
25 whatever. We can get it now. Not this second, but this

1 week.

2 He's talking about construction issues. Do you
3 want to talk about any of that?

4 MR. CLEARY: It's done. Construction is over.

5 MS. HANLEY: They came and cut down 50 year old
6 trees that were supposed to be a barrier.

7 CHAIRMAN STUTO: I can't speak to that.

8 Joe, do you know if they cut down trees that they
9 weren't supposed to cut down?

10 MR. LACIVITA: I know that there was some clear
11 cutting through some of the project.

12 MR. MOREHOUSE: Outside of the grading limit lines
13 that were presented in the plans -

14 MR. CLEARY: I believe that we also met with you or
15 our site supervisor did and worked out a landscaping
16 plan.

17 MR. MOREHOUSE: We met with him, but we haven't
18 seen anything.

19 MR. CLEARY: We were requested by the Town - it was
20 part of your decision that we work with him on the
21 screening. When he contacted the Town, our site
22 supervisor met with him and came up with a plan that was
23 satisfactory to him. That's what I was told.

24 MR. MOREHOUSE: We never got a plan.

25 MR. CLEARY: We did add additional landscaping to

1 the plan.

2 MR. LACIVITA: Why don't you contact me tomorrow
3 and I'll find out exactly what the agreement was with
4 the landscape plan and I'll show you that design so
5 we'll both understand that.

6 MR. MOREHOUSE: At the time that we met there were
7 big shovels on the ground and there were trees over by
8 Hoffman's and we can relocate those over to your side.
9 That never happened.

10 MR. CLEARY: We haven't installed any landscaping
11 yet. That's why it hasn't happened.

12 CHAIRMAN STUTO: We'll work on that with you with
13 the Town and the landscaping plan.

14 Anybody else from the public?

15 (There was no response.)

16 CHAIRMAN STUTO: Back to the Board. How does
17 everybody feel about this? I'm comfortable going
18 forward with the proposal, for one.

19 MS. MILSTEIN: I'm not.

20 CHAIRMAN STUTO: Anybody want to make a motion -

21 MS. VAIDA: I think that it's a good idea just to
22 make it clear since it's a big concern that it would be
23 a condition that they improve all of that exterior of
24 the buildings and that it is going to be maintained by
25 the homeowners association.

1 CHAIRMAN STUTO: They've said it on the record and
2 they've already submitted their HOA documents. They're
3 not changing them.

4 MS. VAIDA: That was based on the condominiums, I
5 assume.

6 MR. CLEARY: No, it's always been townhomes. The
7 HOA was always based on townhomes. It's the builder
8 that has been developing the restrictions and
9 declarations as required by the State. He's been
10 working on that process. The Town requested a set of
11 them for their files, which we have provided.

12 CHAIRMAN STUTO: Let me ask the developer: Are you
13 comfortable with us saying on the record that as a
14 condition of this approval which is the conversion, the
15 HOA will maintain the common areas as well as the
16 exteriors of the townhomes?

17 MR. FAZZONE: Would it be easier to say that it
18 will be whatever is on file with the previously approved
19 plan?

20 MS. VAIDA: No.

21 MR. FAZZONE: I don't personally know what is
22 covered on the exterior.

23 CHAIRMAN STUTO: I would think that it would have
24 to be in there.

25 MR. FAZZONE: Those documents are already filed.

1 They can't be changed.

2 CHAIRMAN STUTO: I understand that, but the
3 question has been asked and you guys aren't prepared to
4 answer it. We have an obligation to the public. To
5 that extent, I'm frustrated.

6 MS. HANLEY: I'm concerned about the change from
7 the condo to the townhouse. I'm not confident that
8 they're going to - when you live in a condominium,
9 you're restricted in a lot of different ways about
10 changing the windows on your house and the type of
11 curtains that you hang on the inside. I'm not confident
12 that if they change to a townhome, those people are
13 going to be able to start hanging all sorts of awnings
14 off the back end, decks, or changing the windows and the
15 doors. You can really end up with something really
16 quite sloppy looking along the back if they start doing
17 their own thing. There is a difference between a
18 townhome and a condo.

19 CHAIRMAN STUTO: The documents are the documents
20 and they're not changing. They already said that they
21 weren't and they're already filed. So, whatever was
22 before is going to continue. So, in that sense, there
23 is no difference.

24 MS. HANLEY: So, the homeowners association will
25 dictate what they can do to the exterior of their

1 townhome.

2 CHAIRMAN STUTO: You're raising a new question
3 because what you had asked was whether the exterior
4 maintenance was the responsibility of the HOA.

5 MS. HANLEY: No, I didn't ask that at all.

6 CHAIRMAN STUTO: Or your husband asked that. That
7 was the question that was before us. Now you're talking
8 about curtains.

9 MS. HANLEY: I'm talking about other things other
10 than curtains and that sounds really chauvinistic.

11 CHAIRMAN STUTO: I'm sorry you see it that way.

12 MS. HANLEY: And I'm sorry that you don't. Anyway
13 what I'm concerned about is that everybody is doing
14 their own thing in the buildings.

15 CHAIRMAN STUTO: And the point that I'm making is
16 that nothing is changing with respect to that.

17 MS. HANLEY: And I have not seen the HOA document.
18 You're going to give us that. I'm just not confident.
19 I don't think that you know either.

20 CHAIRMAN STUTO: It was reviewed by the Town
21 Attorney and if it was good enough for condos, in my
22 mind it's good enough for the townhomes.

23 MR. AUSTIN: They're saying that they never filed
24 it as a condo. They filed it as a townhome. So, the
25 Town Attorney has reviewed this HOA as a townhome. Our

1 only concern is that we are looking for the public the
2 definitive answer of whether or not the exterior is
3 going to be maintained by the HOA.

4 MR. MOREHOUSE: I guess I didn't mean it so that
5 the HOA maintains the exterior. I was talking about the
6 HOA maintaining what it looks like. If it was going to
7 a townhouse, the owner would be responsible for roof
8 repairs, siding repairs and door repairs.

9 MR. FAZZONE: I'm pretty sure that the roofs are
10 common.

11 MS. HANLEY: It depends on the townhome.

12 MR. CLEARY: To address his concern: Absolutely the
13 grounds and the way that the building look are all
14 controlled under the HOA documents. There is no
15 question about that. You own a townhome in a
16 development and you know that you have certain
17 standards. Those standards are in the restrictions and
18 declarations of the homeowners association which the
19 builder has been working on and submitted to the State
20 and to the Town. I can say unequivocally to address his
21 concern that covers that. As far as the structures are
22 concerned, I can't answer it because I haven't studied
23 the HOA document. We're not building the buildings.
24 It's another builder and I know unequivocally that
25 they're all going to look the same and they're all going

1 to have the same design standard. These are \$450,000
2 homes. This isn't a trailer park. The reason that
3 they're moving in it and that we have such a high demand
4 is because they are very attractive and I would simply
5 refer to these things interchangeably when we got the
6 original approval. It has to be referred to as
7 townhomes for the builder. That's what we requested.
8 Because we want to change from condo to townhome, it
9 doesn't change a thing on the plan or a thing in the HOA.
10 It's just a simple word change which allows him to get
11 his building permit which he's been waiting for to build
12 his first three units.

13 MR. FAZZONE: To answer your question, I'm just not
14 sure that if we're talking about change of terminology,
15 why we can then raise the threshold - and I'm not saying
16 that we are raising it. I don't know what's agreed
17 upon. If we're looking for just a change in the term,
18 why would we then say we're going to go back to the
19 state Attorney General's office and refile a document?
20 Whatever is there was there when we called them condos.
21 It's the same exact document that's already there.

22 MS. MILSTEIN: I understand that, but there is a
23 difference by definition by law between a townhouse and
24 a condo. I'm not comfortable especially as an attorney
25 with approving the change when there will may be subtle

1 changes that will be important. I'm just not
2 comfortable without having more information and having
3 more knowledge about it.

4 CHAIRMAN STUTO: Where is the HOA document with
5 respect to the State Attorney's for approval?

6 MR. CLEARY: I'm not sure. What I sent Joe was the
7 final draft and I'm not sure if they submitted to the
8 Attorney General yet or not.

9 MS. MILSTEIN: The other part is no one can tell
10 definitively what's in the HOA. You're saying it's my
11 understanding and the next thing that I hear is we've
12 been using condo. We said condo, but we meant
13 townhouses.

14 MR. CLEARY: The difference for us, Ms. Milstein,
15 is that we can't get a building permit to build these
16 three buildings because we mistakenly referred to them
17 as condos and it got into the decision as condominiums.
18 They're building townhouses. They're building
19 townhouses and the plans say townhouses. There is going
20 to be no change to the plan. The only reason that we're
21 hung up is that the Town Code specifies that this is a
22 condo and this is a townhouse (Indicating). My plans
23 are in violation of the Code because your decision says
24 condos so we have to build it in accordance with the
25 Town. It's the same issue that we've been running into.

1 All we are looking for is the change so that we can
2 build first three townhomes.

3 MR. LACIVITA: Can I just go by one other document?
4 I don't want to say that it's just down to vernacular.
5 September 19, 2012 when we started looking at elevations
6 and everything else, right on the bottom of the Village
7 of New Loudon that shows the floor plans, it shows
8 townhomes. We use this interchangeably time and time
9 again; townhomes versus condominiums. We've said it
10 time and time again.

11 MS. MILSTEIN: Understood, but what was approved
12 was a condominium. Again, I'm not comfortable.

13 CHAIRMAN STUTO: Would the developer feel
14 uncomfortable subject to the Town Attorney's approval of
15 the HOA document, which you have already filed?

16 MR. FAZZONE: My only concern was the promise to
17 change -- I don't know what's at the AG's office. We
18 have no problem. If the Planning Board said we want the
19 outside being taken care of, as long as we can change
20 it, we don't have a problem doing that. I think that
21 it's in there and it may be in there --

22 CHAIRMAN STUTO: It's already been reviewed by the
23 Town Attorney. Nothing has changed.

24 MR. FAZZONE: Whatever is there, is there. I
25 wouldn't have an issue subject to Michael's review.

1 CHAIRMAN STUTO: We're going to move forward with
2 this and people can vote how they vote.

3 Any other comments from the public?

4 (There was no response.)

5 CHAIRMAN STUTO: Can you state the motion, Ted,
6 about what we are approving here?

7 MR. KOLANKOWSKI: The motion is for a modification
8 of the approved site plans from December 18, 2012 to
9 change the reference to condominiums -- from
10 condominiums to reference townhomes.

11 CHAIRMAN STUTO: Do we have a motion?

12 MR. MION: I'll make that motion.

13 MR. LANE: Second.

14 CHAIRMAN STUTO: Discussion?

15 Susan, do you want to say anything?

16 MS. MILSTEIN: I think that I've said it. It
17 should be dealt with in a comprehensive manner. I'm not
18 comfortable agreeing to this motion without knowing more
19 in depth the difference between the condominium and the
20 townhouse and as it relates to the Comprehensive Plan.

21 CHAIRMAN STUTO: Any other comments or questions?

22 (There was no response.)

23 CHAIRMAN STUTO: All those in favor?

24 MR. MION: Aye.

25 CHAIRMAN STUTO: Aye.

1 MR. LANE: Aye.

2 MS. GOMEZ: Aye.

3 CHAIRMAN STUTO: All those opposed say nay.

4 MS. MILSTEIN: Nay.

5 CHAIRMAN STUTO: Let the record show that Ms.
6 Milstein is voting in the negative.

7 The ayes have it.

8 Thank you. We'll table the rest until the other
9 items -- the parties get to meet with counsel.

10 MR. FAZZONE: Thank you.

11

12 (Whereas the above proceeding was adjourned at
13 9:22 p.m.)

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CERTIFICATION

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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 October 28, 2013

