

1 PLANNING BOARD COUNTY OF ALBANY

2 TOWN OF COLONIE

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4 CUMBERLAND FARMS  
211 TROY SCHENECTADY ROAD  
5 APPLICATION FOR AMENDED FINAL REVIEW

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8 THE STENOGRAPHIC MINUTES of the above entitled  
9 matter by NANCY STRANG-VANDEBOGART, a Shorthand  
10 Reporter, commencing on February 10, 2015 at  
8:01 p.m. at The Public Operations Center, 347 Old  
Niskayuna Road, Latham, New York

11 BOARD MEMBERS:  
12 PETER STUTO, CHAIRMAN  
13 TIMOTHY LANE  
14 CRAIG SHAMLIAN  
15 SUSAN MILSTEIN

16 ALSO PRESENT:

17 Kathleen Marinelli, Esq., Counsel to the Planning Board

18 Mike Tengeler, Planning and Economic Development

19 Joseph LaCivita, Director, Planning and Economic  
20 Development

21 Brad Grant, PE, Barton and Loguidice

22 Stefanie Bitter, Cumberland Farms

23 Jim Gillespie, Bohler Engineering

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1           CHAIRMAN STUTO: The next item on the agenda is  
2 Cumberland Farms, 211 Troy Schenectady Road. This is an  
3 application for amended final review; and revised  
4 driveway access and reduction from eight to six fuel  
5 pumps.

6           Joe LaCivita?

7           MR. LACIVITA: This applicant is before us to amend  
8 their final approval that was given on April 22, 2014.  
9 They're actually going through the process of final site  
10 plan. They have stamped plans which I think that they  
11 have now.

12           They're going towards construction and one  
13 minor glitch in the process was that connector road  
14 - I should say the shared access point to both  
15 parcels. Stephanie, I know, has been working with  
16 the owners of that parcel trying to get the shared  
17 access agreement and running into a little bit of a  
18 problem there.

19           They are here tonight for that amendment to  
20 look at just a single access point on the Cumberland  
21 Farms site.

22           MS. BITTER: I'm Stefanie Bitter and I'm local  
23 counsel here for Cumberland Farms.

24           As Joe had mentioned and many of you may  
25 remember this property is located on the corner of

1 Swatling and Troy Schenectady. It's part of a 2006  
2 subdivision that was approved by the Planning Board.

3 One of the elements of the subdivision was  
4 shared access point on Troy Schenectady and up here  
5 on Swatling. We were optimistic that we could move  
6 this Troy Schenectady shared access point so that it  
7 could straddle the property line bringing it farther  
8 from that intersection. The shared access that is  
9 depicted on this plan is actually the one that is  
10 recorded at the County Clerk's office.

11 CHAIRMAN STUTO: Can you slow down? What is the  
12 required easement?

13 MS. BITTER: It is at this point (Indicating).  
14 This evening, as depicted, is what is recorded at the  
15 County Clerk. It's completely on top of our property -  
16 the 211 Troy Schenectady Road. The 207 will utilize it  
17 when it's developed.

18 CHAIRMAN STUTO: That's already a recorded  
19 easement?

20 MS. BITTER: That is a recorded easement.

21 CHAIRMAN STUTO: Is that in the subdivision plan?

22 MS. BITTER: Yes, it was part of the subdivision  
23 plan and then it was identified as a written easement as  
24 well. This is what we had hoped we could achieve. What  
25 was before you and approved in April -

1 CHAIRMAN STUTO: How many feet difference is that?

2 MR. LACIVITA: About 35 feet.

3 CHAIRMAN STUTO: How many feet to the intersection?

4 MR. GILLESPIE: Over 200. The property frontage is  
5 300. It's 235, or something like that.

6 MS. BITTER: The problem with timing - the adjacent  
7 land owner was marketing the property and is recently  
8 under contract and it's just starting its design  
9 process. Obviously, Cumberland Farms is super anxious  
10 to start this project, having received final approval in  
11 April.

12 In talking to Mike Lyons, it seemed that the  
13 best option at this point is to modify the site plan  
14 and go back to the original and recorded 2007  
15 easement. So, that is the first modification.

16 The second is just to reduce the number of  
17 pumps. We originally had eight and we're just  
18 reducing it down to 6.

19 CHAIRMAN STUTO: If it's okay with the Board, we'll  
20 hear from our Town Designated Engineer.

21 Do we have a letter?

22 MR. GRANT: No, but I have something to be read  
23 into the record by Chuck.

24 CHAIRMAN STUTO: How come we don't have a letter?  
25 We should have a letter, right, Joe?

1 MR. GRANT: It wasn't really going through the TDE  
2 until very, very recently.

3 MR. LACIVITA: Correct. At the very end, it was  
4 coming through as an amendment via the Planning and  
5 Economic Development Department.

6 CHAIRMAN STUTO: This got bumped out for how many  
7 weeks?

8 MR. LACIVITA: Two weeks.

9 CHAIRMAN STUTO: Okay.

10 MR. GRANT: The applicant has been working with  
11 Kevin Novak from DOT and I'll get right into it.

12 This is from Chuck.

13 After reviewing the latest submission provided  
14 by the applicant illustrating the proposed  
15 relocation of the formerly improved eastern most  
16 driveway access, it all concurs with Kevin Novak of  
17 DOT that this proposed minor relocation of the  
18 eastern most driveway will not, in and of itself,  
19 cause any negative impacts to the overall site plan  
20 thereby creating any adverse access issues to and  
21 from New York State Route 2.

22 We also concur with the recommendation of  
23 Senior Planner, Mike Lyons, requiring this applicant  
24 and the adjacent applicant to at least work  
25 together, if and when the adjacent parcel is

1 developed to provide a single driveway access to  
2 both parcels from New York State Route 2 via shared  
3 driveway access easement as per the requirements of  
4 the original approved PDD subdivision for the  
5 entire -

6 CHAIRMAN STUTO: What you're saying is already a  
7 recorded easement.

8 MS. BITTER: Yes, in 2007.

9 CHAIRMAN STUTO: Do you have a copy with you?

10 MS. BITTER: I do.

11 CHAIRMAN STUTO: Can you leave it with our  
12 department?

13 MS. BITTER: Yes, I can, or I can email it to my  
14 clients; whichever.

15 CHAIRMAN STUTO: I'd like to have a copy now, if  
16 you have it. Do you have it?

17 MS. BITTER: Yes.

18 CHAIRMAN STUTO: So, it's not a matter of working  
19 together. You have a recorded easement. We should know  
20 that.

21 MR. LACIVITA: I think that it was brought up  
22 before, Peter, that one of the reasons why that was  
23 shifted to the other side is when DOT really started  
24 looking at the site being functional with a use, they  
25 saw the traffic counts and it was brought a little

1 further. Unfortunately, as they went through the  
2 process, that was approved - the top one - they couldn't  
3 get that applicant or the adjoining property owner to  
4 work with Cumberland Farms, so they went back to what  
5 was recorded and with DOT -- that's their preferred  
6 method up there.

7 CHAIRMAN STUTO: I understand that, but that was a  
8 recorded easement.

9 MR. LACIVITA: Yes, and I think that was in the  
10 site plan that showed that initially.

11 CHAIRMAN STUTO: If it is, it is. Okay, so it's  
12 not a recommendation. It's a recorded easement.

13 MR. LACIVITA: For the record, it shows front  
14 access easement permanent between 207 and 211 Troy  
15 Schenectady Road; 2,906 Page 534. I think that's what  
16 you have right there.

17 CHAIRMAN STUTO: Any questions from the Board?

18 (There was no response.)

19 Members of the public? Anybody want to speak  
20 on this?

21 (There was no response.)

22 Do we have a motion to approve the application  
23 for amended final review?

24 MR. SHAMLIAN: I'll make a motion.

25 MR. LANE: Second.

1           CHAIRMAN STUTO: With respect to SEQRA, does  
2 anybody want to comment on that - on the motions  
3 pending?

4           MS. MILSTEIN: I'm still concerned about the  
5 traffic and moving it over. There is obviously a reason  
6 why you moved farther away. I'm still concerned about  
7 the impact that's going to have where that intersection  
8 is.

9           MS. BITTER: The Designated Engineer made a good  
10 point that they think that the recommendation of the  
11 municipality is that we continue to try to see if we can  
12 make this modification. I still am optimistic that  
13 folks are continuing to develop this site, but obviously  
14 going to come back before you and hopefully once they  
15 fine-tune their plan, there is going to be room for  
16 discussion on that modification.

17           I think that Mike Lyons also mentioned that  
18 this is contained fully on 211 and we have a Town  
19 Law problem that the easement is not accessed on  
20 their frontage, so there might be another element  
21 that they have to achieve, or another layer with the  
22 Town Board. Hopefully that will encourage them to  
23 come back and have those discussions with us. This  
24 is honesty just to hopefully start the building  
25 permit process so that we can start construction

1 with the understanding that we can still have  
2 discussions for this.

3 MR. LACIVITA: Being that the easement is totally  
4 on this site, an ODA is now going to be required on that  
5 other parcel that comes to develop before us. That's  
6 why I said that there is a little bit of leverage on the  
7 center parcel to work -

8 CHAIRMAN STUTO: I don't know if Susan's question  
9 was answered. What did DOT say about it? Is there  
10 anything in writing from DOT? I don't see it in my  
11 package.

12 MR. GILLESPIE: Jim Gillespie from Bohler  
13 Engineering.

14 I would just like to say I was involved at the  
15 initial DCC meeting when it was in the very initial  
16 concept stage of this plan. DOT was at that  
17 meeting. The shared access was discussed and it was  
18 as simple as -- here is the property line, it's a  
19 shared access. This would be the ideal place for  
20 it. It would be half on our property and half on  
21 that property. There wasn't a conversation that if  
22 it were moved over here it would be dangerous in any  
23 way. This far, far exceeds DOT's requirements for a  
24 setback from an intersection. So, DOT would love  
25 every access as far away from this intersection as

1 possible. That's just in an ideal world, but that  
2 certainly doesn't make this intersection in any way  
3 dangerous in their eyes. So, when we changed for  
4 them and said we're having trouble getting this  
5 easement, their response was well, okay go back to  
6 the Town and when they approve it, come back to us  
7 and we'll issue the permit. We don't have a problem  
8 with this thing located 35 feet closer to the  
9 intersection. It far exceeds our requirements.  
10 It's not going to create a problem and we'll work  
11 with you on it. This is how it became here and this  
12 is why it's 35 feet closer. That's where we are at.

13 CHAIRMAN STUTO: I personally think that it's far  
14 enough from what I've seen. I'm not a traffic engineer.  
15 It would be nice to have a note from DOT or somebody  
16 else.

17 MR. LACIVITA: I'm trying to look for the email  
18 from Kevin Novak. I know that we had conversations with  
19 him on it.

20 CHAIRMAN STUTO: We've got to get the Town  
21 Designated Engineer involved in this process throughout  
22 the whole thing, Joe.

23 MS. MILSTEIN: Quite frankly, I don't think that  
24 I'm going to be able to be satisfied. I'm not going to  
25 vote to approve this, so it's going to have to be

1 unanimous.

2 CHAIRMAN STUTO: Okay, we can table it and maybe  
3 they can find the information and we can bring it back  
4 tonight. If they don't satisfy you, you won't be any  
5 worse off. How does that sound?

6 MS. MILSTEIN: That's fine.

7 MS. BITTER: What additional information are we  
8 looking for?

9 CHAIRMAN STUTO: Some kind of engineering proof  
10 that this distance is okay and/or the note from DOT  
11 saying that they have no objection.

12 MS. BITTER: Okay, as per Jim, the only elements  
13 that he was looking for was relative to the Town  
14 sign-off. I don't have that in writing. It's a matter  
15 of getting an email.

16 MR. LACIVITA: I think that the key component to  
17 look at from the Board perspective is the fact that the  
18 recorded easement is fully on this site and the  
19 applicant is designing a site specific to the easement  
20 that is recorded. So, they are going with what has  
21 previously been approved by DOT for this.

22 MS. BITTER: It's part of the subdivision.

23 MR. LACIVITA: That's a key component here. They  
24 are complying with the easement and they are putting the  
25 road access fully within that easement and anything that

1 happens in the future to the east of it, we have another  
2 bite at the apple to move that further down. As it  
3 stands right now, based on the recorded easement, they  
4 are complying with DOT and Town recommendations.

5 MR. GILLESPIE: Any approval can certainly be  
6 conditioned on a DOT -

7 MS. MILSTEIN: That's also based on findings in  
8 2007. There has been other changes there.

9 MR. LACIVITA: Actually, the traffic counts on this  
10 road have gone down significantly with the change in  
11 having Alternate 7. I think the traffic counts were  
12 recorded during the course of this review; about 30,000  
13 cars less per day because of what happened with  
14 Alternate 7. They saw significant traffic counts go  
15 down on this location.

16 MS. BITTER: Since 2007.

17 MR. GRANT: The distance from the intersection is  
18 not what I call critical in that it's extremely short.  
19 There are plenty of examples of less distance from an  
20 signalized intersection. Obviously it was planned with  
21 the property next door in mind and future development to  
22 be a shared access. The further away, obviously the  
23 better.

24 CHAIRMAN STUTO: I'm okay with it, but Susan is a  
25 Board Member and she is entitled to be satisfied. I

1 suggest tabling it and listening to the other - and see  
2 if we could dig out some more concrete information.  
3 That's one route to try.

4 MR. GRANT: Jim, did you have any correspondence or  
5 emails?

6 MR. GILLESPIE: No, it was just a verbal  
7 correspondence. Kevin Novak is ready to issue this  
8 permit once we get our Town approval. His only concern  
9 was that was a valid easement for this and now that the  
10 valid easement is no longer an issue, he's willing to  
11 issue the permit. I just would like to offer again,  
12 this approval would certainly be conditioned on a DOT  
13 permit. If they're not going to give us a permit, we  
14 have no project. Obviously, they're going to approve  
15 this location.

16 CHAIRMAN STUTO: Why don't we table it for a  
17 minute? I'm going to get a drink and we'll either call  
18 you back up or we'll call the next applicant and dig out  
19 some information.

20 (There was a brief break in the proceedings.)

21 Okay, we'll call the meeting back to order.

22 Did we come up with any further convincing  
23 evidence that this driveway distance from the  
24 intersection has been approved or recommended by New  
25 York State DOT?

1 MR. LACIVITA: No, we don't have anything from DOT  
2 at this point in time that I can find in any of my  
3 emails. Just the fact that it is designed compliant  
4 with the easement that we have on file - that's all I  
5 can tell you at this point. So, the best thing that I  
6 think that we can do is table it for two weeks and bring  
7 you back on the 24th so that we can get something from  
8 DOT and then go from there.

9 MS. BITTER: And at that point, Joe, you're just  
10 looking for an email from Kevin Novak that all he is  
11 looking for is site plan approval?

12 MR. LACIVITA: I will make sure that I have a  
13 letter from Kevin by week's end and I'll make sure that  
14 you have a copy of that and that it says that they will  
15 fully be able to commit to that access point that is  
16 sitting currently in a filed easement.

17 CHAIRMAN STUTO: Thank you.

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20 (Whereas the above entitled proceeding was  
21 concluded at 8:17 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 February 23, 2015

