

1 PLANNING BOARD COUNTY OF ALBANY

2 TOWN OF COLONIE

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4 NEW COMER CANNON  
5 AMENDMENT TO ODA CONDITIONS  
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7 THE STENOGRAPHIC MINUTES of the above entitled  
8 matter by NANCY STRANG-VANDEBOGART, a Shorthand  
9 Reporter, commencing on June 9, 2015 at 7:03 p.m. at  
10 The Public Operations Center, 347 Old Niskayuna  
11 Road, Latham, New York

12 BOARD MEMBERS:  
13 PETER STUTO, CHAIRMAN  
14 LOU MION  
15 BRIAN AUSTIN  
16 TIMOTHY LANE  
17 KATHY DALTON  
18 CRAIG SHAMLIAN

19 ALSO PRESENT:  
20 Kathleen Marinelli, Esq. Counsel to the Planning Board  
21 Joseph LaCivita, Director, Planning and Economic  
22 Development  
23 Michael Tengeler, Planning and Economic Development  
24 John Allen, Esq., Whiteman Osterman & Hanna

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1           CHAIRMAN STUTO: Welcome to the Town of Colonie  
2 Planning Board.

3           Joe, before we start with the items on the  
4 agenda, do you have any preliminary things to  
5 address?

6           MR. LACIVITA: Yes. I have just handed to you a  
7 letter that we received from Hershberg and Hershberg  
8 regarding the Foegtli Farm. One of the changes made to  
9 this project which is at 499 and 507 Albany Shaker Road  
10 - the 80-unit townhouse proposal is going to be  
11 restricted to 55 years of age and older for the entire  
12 site. You have the traffic counts here. I just gave a  
13 copy, and in fact Chuck was actually cc'ed on this  
14 letter. We are going to go through that study. Then  
15 there is conversation that we may look to hold because  
16 of the number of letters that we are getting -- we may  
17 look to hold a specific meeting just on this project  
18 itself, whether it be here or at the Crossings. That  
19 hasn't been decided as of yet. We'll probably look to  
20 hold that special meeting sometime in July or early  
21 August. I'll have to look at our schedule.

22           CHAIRMAN STUTO: Okay, first item on the agenda is  
23 for our attorney, Kathleen.

24           MS. MARINELLI: The first item on the agenda is to  
25 set a public hearing for 69 Homewood Avenue for June 23,

1 2015.

2 MR. LACIVITA: So, we will set that up in the  
3 paper.

4 CHAIRMAN STUTO: Okay, we look forward to that.

5 Second item on the agenda is New Comer Cannon.  
6 This is an amendment to the open development area -  
7 conditions.

8 Kathleen Marinelli is going to take the lead on  
9 that one.

10 MS. MARINELLI: These are just changes to the  
11 original ODA that the Town Board passed and it's items  
12 three and six and I'll read them to the Board.

13 Item 3 is that the applicant shall indemnify  
14 and hold harmless the Town from liability to the  
15 extent that Applicant's activities within the  
16 existing private drive interfere with access over  
17 the private drive by emergency vehicles.

18 Item six is that the applicant, it assigns and  
19 successors in interest shall be responsible for all  
20 maintenance, upkeep, required improvements, snow  
21 plowing, etcetera of the private drive which abuts  
22 and provides access to the subject property,  
23 together with the owner of the private drive and the  
24 beneficiaries of any other easements over the  
25 private drive.

1           CHAIRMAN STUTO: Can you explain the changes? I  
2 think that I understand.

3           MR. LACIVITA: I think that we actually have the  
4 applicant's attorney here as well.

5           CHAIRMAN STUTO: It may or may not be necessary.

6           MR. LACIVITA: I know that these were presented to  
7 us, Peter, by the Town Attorney's office to make the  
8 changes based on the applicants request.

9           CHAIRMAN STUTO: I know that Kathleen spoke to  
10 Rebekah.

11           MR. ALLEN: I'm John Allen from Whiteman Osterman  
12 and Hanna representing the applicant. Unfortunately,  
13 the applicant who is out of state didn't involve an  
14 attorney until well into the process. Because it's an  
15 easement that serves properties other than the property  
16 which New Comer now owns and is seeking to develop as a  
17 redevelopment as a funeral home, there are other  
18 properties that can benefit by the easement and we  
19 wanted to just clarify that New Comer did not have the  
20 sole responsibility for the maintenance. We'll work  
21 that out with the owner of the property. There have  
22 been discussions about that already. Since other  
23 parties will have the right to use the private drive,  
24 it's owned by somebody else. There may be other  
25 properties that now or in the future may have easements

1 to use it for access to Route 2 -- because the proximity  
2 to Delatour Road and DOT did not want this property to  
3 have a separate entrance directly onto Route 2. We just  
4 want to make sure that we will certainly pay our fair  
5 share of any expenses, but they shouldn't be put solely  
6 on my client because of the other properties that are  
7 benefitted by the easement.

8 CHAIRMAN STUTO: Okay, are there any questions on  
9 that from the Board?

10 (There was no response.)

11 So, it's a shared responsibility for the access  
12 drive.

13 MR. ALLEN: And Mr. Chairman, with respect to point  
14 three, the issue there, again, is that there are other  
15 parties that have a right to use that private drive. If  
16 we do something through our act or omission which  
17 creates a problem for emergency vehicles trying to  
18 access something in that area, we certainly want to be  
19 responsible. It's a perfectly reasonable request. If  
20 some other party, not having anything to do with New  
21 Comer is the one that is causing the access problem for  
22 the emergency vehicles, it really should not be my  
23 client's obligation to indemnify the Town because we  
24 wouldn't have done anything to create the problem.

25 CHAIRMAN STUTO: Kathleen, you and the Town

1 Attorney's office are in agreement with this?

2 MS. MARINELLI: That accurately represents what was  
3 discussed.

4 CHAIRMAN STUTO: I would ask that a copy of the  
5 email language be given to the stenographer to make sure  
6 that she gets it accurate.

7 Any comments or questions from the Board?

8 (There was no response.)

9 Do we have a motion on amending the open  
10 development area resolution?

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

12 MR. LANE: Second.

13 CHAIRMAN STUTO: Any discussion?

14 (There was no response.)

15 All those in favor say aye.

16 (Ayes were recited.)

17 All those opposed say nay.

18 (There were none opposed.)

19 The ayes have it.

20 Thank you.

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22 (Whereas the above referenced proceeding was  
23 concluded at 7:12 p.m.)

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CERTIFICATION

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

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NANCY STRANG-VANDEBOGART

Dated July 26, 2015

