

1 PLANNING BOARD COUNTY OF ALBANY

2 TOWN OF COLONIE

3 *****
4 WATERWALK CORPORATE LIVING FACILITY
5 7 METRO PARK ROAD
6 APPLICATION FOR SEQOR
7 *****

8 THE STENOGRAPHIC MINUTES of the above entitled
9 Public Hearing by NANCY L. STRANG, a Shorthand
10 Reporter, commencing on May 10, 2016 at 10:24 p.m. at
11 The Public Operations Center, 347 Old Niskayuna Road,
12 Latham, New York.

13 BOARD MEMBERS:
14 PETER STUTO, CHAIRMAN
15 LOU MION
16 KATHLEEN DALTON
17 TIMOTHY LANE
18 SUSAN MILSTEIN
19 CRAIG SHAMLIAN

20 ALSO PRESENT:
21 Michael C. Magguilli, Esq. Town Attorney and Counsel to
22 the Planning Board
23 Joseph LaCivita, Planning and Economic Development
24 Department
25 Daniel Hershberg, PE, Hershberg & Hershberg
Joseph Grasso, PE, CHA

1 CHAIRMAN STUTO: Next on the agenda is
2 Waterwalk Corporate Living Facility, 7 Metro Park
3 Road. This is an application for SEQR, environmental
4 determination, 2 four-story extended stay hotel
5 buildings totally 138 units.

6 Joe Grasso will give us an introductory on
7 this.

8 MR. GRASSO: The project was last before the
9 Planning Board for just a SEQR determination on
10 January 12 of this year and before that it had gone
11 for sketch plan review by the Planning Board back in
12 December of 2015.

13 The project also has a pending variance
14 application under consideration by the ZBA due to the
15 project's proposed density. The Planning Board has
16 accepted lead agency status to conduct the required
17 coordinated review of the project. It is a Type I
18 action.

19 Before the ZBA can render a decision on the
20 variance, SEQR needs to be completed. If the project
21 receives approval of the variance application, it will
22 come back before the Planning Board for a detailed
23 site plan review.

24 At the last Planning Board meeting the Board
25 requested additional information on three items,

1 including the proposed project density, tree survey
2 with the proposed landscaping plan and impacts to the
3 Wolf Road pump station.

4 With that, I'd like to turn it over to Dan
5 Hershberg.

6 CHAIRMAN STUTO: There has been some
7 intervening action on density.

8 MR. GRASSO: There has. Since the project was
9 last before the Planning Board, and as a result of the
10 review of this project working with the Planning
11 Department staff and the Town Attorney's office, we
12 did a detailed review of the Town's zoning provisions
13 regarding allowable increases in density above the
14 base density limitation and the Code of 18,000 per
15 acre. There was language in there that indicated that
16 the Planning Board had authority to grant density
17 increases up to 24,000 square feet per acre through
18 incentive zoning provisions. It was together with the
19 language regarding the greenspace incentive zoning
20 provisions and there was some confusion whether or not
21 there was a distinction between the two but through
22 our research we found that there was. What was
23 lacking, though, was an incentive zoning fee schedule
24 that would go along with the increases in density on a
25 project. In working with the Town Board, the Town

1 Board has recently adopted an incentive zoning fee
2 schedule that the Planning Board can then apply to
3 projects that seek a decrease in density above 18,000
4 square feet per acre. So, it's important to
5 understand that the limitations of the Planning Board
6 under a normal site plan review is to allow an
7 increase in density up to 24,000 square feet per acre.
8 This project is proposing slightly more than 29,000
9 per acre. This is why it still needs a variance from
10 the ZBA. There are incentive zoning fee provisions
11 though that are clear that we can apply to this
12 project and you'll see in our letter we apply it for
13 both the increase in density up to 24,000 square feet
14 per acre as well as the requested increase up to
15 29,000 square feet per acre. I'll get into more
16 detail after Dan's presentation.

17 MR. HERSHBERG: Thank you, Mr. Chairman. My
18 name is Daniel Hershberg from the firm of Hershberg
19 and Hershberg. With me today representing Water Walk
20 is Leslie Weaver Steinheart and Teresa Bakner and
21 Howard Carr, part of the team working on this project.

22 Let me first talk about the incentive zoning.
23 We agreed with the computation that Joe Grasso
24 presented in his letter to you that the incentive fee
25 to go from 18,000 and 24,000 is \$291,126.00. Beyond

1 that, if we are granted the variance that we request
2 from the ZBA, it will add another \$272,976.00 for a
3 total of \$564,102.00. That should be considered a
4 density mitigation. The balance of that is the
5 density mitigation payment offer. I think that
6 essentially that we concur with the computation that
7 was presented.

8 Let me go to another issue first as the Wolf
9 Road Pump Station. It appears by our schedule and what
10 we know for the scheduling for the Wolf Road Pump
11 Station rehabilitation, there is a very good chance
12 that this project will not come online until after the
13 Wolf Road Pump Station is complete. The target is
14 someplace in 2017 and our schedule will not occupying
15 until late 2017. Our goal there would be not to have
16 a certificate of occupancy until such time as the Wolf
17 Road Pump Station is complete. If that should get
18 delayed, we do have some alternatives. One is to
19 examine what happens if the impeller change is made to
20 the pump station as one of the mitigation proposed by
21 the other Aviation Road apartment complex. If that
22 gets done, we can then monitor the pump station and
23 see whether or not this has the capacity to take care
24 of this and if not, our third alternative would be to
25 do some sort of bypass pumping in front of that to

1 take care of any excess flow.

2 The pump station currently is at 85% to 90% of
3 the capacity but there are times when the peak
4 capacity is very close to the capacity of those pumps.
5 In order to avoid that happening, we would have to
6 provide some methodology. We think those are all
7 available to us, but hopefully, the pump station will
8 go on schedule and will be able to apply for a
9 certificate of occupancy after that's completed.

10 Now let me talk about the tree issue. This is
11 a photo of the site the way that it exists today.
12 Actually, the storage area has become bigger. This is
13 the storage area that was cleared for the use of the
14 Crisafulli apartments.

15 These are the trees in question. This is a
16 National Grid right of way. They physically own this
17 right of way around us. We are bordered by two roads.
18 This parcel is 4.01 acres. It's been the same size
19 all along. We are not reducing the size of the
20 parcel. That's all land that is available on-site.
21 The question was raised from a density standpoint --
22 we couldn't increase the size of the parcel. It's
23 just not feasible to the parcels that border us.

24 These trees here - we were asked to do a tree
25 survey and we had a tree survey done by Mazur. If you

1 folks don't have that in your file, we do have a copy
2 of it. This survey was completed and plotted 47 trees
3 that met the definition under the Code. Those 47
4 trees consisted of 24 various which are not desirable
5 trees. There were mixtures of Red Oaks and Black
6 Cherry. The Black Cherry is a desirable tree but it
7 does have some concerns regarding longevity. We tried
8 our best.

9 What we have done here is we have prepared
10 another document which is the site plan with those 47
11 trees shown on it. The red ones being the Poplars and
12 Box Elders. The blue ones being the Red Oak or Black
13 Cherry. This is a 14-inch double Red Oak that we are
14 going to save. It's a 12-inch double Red Oak that we
15 are going to save. This is a 16-inch double Red Oak
16 that we intend to save. This is a six-inch Black
17 Cherry that we intend to save. This is a 10-inch Red
18 Oak that we intend to save. So, we have attempted to
19 save some of the larger Red Oaks that we could.

20 We did not think that we could change the
21 parking layout much more to save these additional
22 trees. First of all, their location is right in the
23 middle of our driving lanes and I might point out that
24 the applicant proposed a significant landscaped plan.

25 By the way, there is one existing tree that

1 does have to come down. It's right in the middle of
2 that driveway. That one will be removed. But the
3 applicant proposes to plan 44 four-inch caliper street
4 trees on the site and those are shown on here and that
5 will more than make up for the trees that we taking
6 down. The one tree that is eliminated is right here,
7 where the driveway comes. All the other existing
8 trees on the. Street lines will be retained.

9 I might point out that a key element of the
10 Water Walk design is the courtyard. This is a very
11 extensive courtyard plan. It has recreational pools.
12 It has hot tubs. It has firepit areas. It has walks
13 and grass areas and they have a very heavily
14 landscaped plan. This is a key element of the Water
15 Walk design. The thought that we might be able to
16 pitch these two areas together to save some more trees
17 is defeated by the need to keep the space in between
18 and have it be usable space.

19 Since the application started, we originally
20 talked about 138 units that consisted of 27
21 one-bedrooms, 95 two-bedroom and 60 three-bedrooms for
22 a total of 265 beds. They have determined that based
23 on the models that they have already, the demand is
24 much higher for the one-bedrooms than for the two or
25 three-bedrooms. So, they have changed a number of

1 units to 153 units. They now have 100 one-bedrooms,
2 38 two-bedrooms and 53 one-bedrooms which actually has
3 a total of 221 bedrooms. So, it's less bedrooms and
4 more units. The outside footprint to the building
5 doesn't change at all. I pointed out that the FEF
6 that we filed - we originally said 138 units and now
7 it says 153 units but the building size is the same
8 and actually the intensity of the use is measured by
9 bedrooms is actually less. I point that out so that
10 we're clear that there has been a change since our
11 original application.

12 CHAIRMAN STUTO: And the parking is adequate.

13 MR. HERSHBERG: The parking is adequate. They
14 kind of studied and the maximum that they need would
15 be nine-tenths of the parking space for occupied
16 units. So, that would be 135 and we're plotting 149
17 parking spots. I don't think that there is enough to
18 try to bank a portion of it. I think that we'd just
19 want to build those 149 parking spaces.

20 I'll be happy to answer any questions the Board
21 may have.

22 CHAIRMAN STUTO: You ready to go through your
23 letter, Joe?

24 MR. GRASSO: Yes. I think that Dan did a great
25 job describing in detail the three issues. I'm not

1 going to comment further on the trees or the Wolf Road
2 Pump Station unless there are additional questions
3 that come up from the Planning Board. Because this is
4 the full time that I think that the Planning Board has
5 had to get into the detailed review of the incentive
6 zoning provisions as it relates to density, I think
7 that it's important that I go through the facts as
8 laid out in our letter because I think that there is a
9 lot of salient information that is important for the
10 Board to understand. Some of this is a repeat of my
11 introductory remarks.

12 The COR zoning district has a maximum allowable
13 base density of 18,000 square feet per acre with an
14 increase of up to 24,000 square feet per acre under
15 incentive zoning provisions.

16 On March 24th of this year the Town Board
17 adopted an incentive unit schedule for density which
18 establishes a fee of \$5.00 per square foot or
19 \$217,800.00 per acre of land that would be required to
20 meet the density of 18,000 square feet per acre. The
21 incentive zoning fee for this project to support a
22 density up to 24,000 square feet per acre is
23 \$291,126.00. The applicant has proposed this
24 incentive zoning fee payment for this project.

25 In addition, as mitigation for the proposed

1 density from 24,000 square feet per acre up to 29,626
2 square feet per acre as proposed and to which the
3 variance is required, the applicant has proposed an
4 additional compensatory density mitigation payment of
5 \$272,976.00. This is based on application of the same
6 incentive zoning fee to the additional 22,500 square
7 feet of density proposed.

8 We strongly support this proposed method of
9 density mitigation and believe the amount to be fair
10 and reasonable. It should also be noted that the
11 project proposes 49% greenspace whereas a minimum of
12 35% is required and there is no off-set credit for
13 project density for the additional greenspace
14 provided.

15 To summarize, the applicant has proposed a
16 total payment to the Town of \$564,102.00 in support of
17 the proposed project density of which \$291,126.00 is
18 an incentive zoning fee to allow an increase from
19 18,000 square feet per acre up to 24,000 square feet
20 per acre and an additional \$272,976.00 as compensatory
21 mitigation for the additional proposed density from
22 24,000 square feet per acre up to 29,626 square feet
23 per acre.

24 As described within the purposes and objectives
25 within the incentive zoning section of the Town Code,

1 the incentives shall advance the Town's Comprehensive
2 Planning policies and provide opportunities to
3 preserve open spaces in the Town with an approximate
4 equivalence between the open space that may be lost or
5 gained.

6 Under the list of available amenities that may
7 be accepted, the regulations state cash in accordance
8 with the incentive unit schedule adopted by the Town
9 Board paid into the Town of Colonie dedicated amenity
10 zoning fund account for use by the Town exclusively
11 for the permanent protection of open space and/or
12 environmental remediation in Colonie. The proposed
13 cash must be place in an escrow account to be held by
14 the Town prior to issuance of any building permit in
15 connection with the incentive zoning provision.

16 We included a copy of the March 24, 2016 Town
17 Board Resolution adopting the updated amenity zoning
18 provisions and the incentive unit scheduled for
19 density attached with our letter.

20 With that, I'll be happy to open it up to
21 questions from the Board.

22 CHAIRMAN STUTO: The incentive zoning - where
23 that money is to be applied to the escrow account and
24 what it's to be used for -- in the SEQR review
25 mitigation, the additional money that you're

1 recommending be assessed and collected - what use do
2 you recommend going with that money? I think that as
3 part of the SEQR we have -

4 MR. GRASSO: You're right and that's why we
5 have the distinction between the two parts, although
6 the uses for the monies could be similar because they
7 are both related to the density increase of the site.

8 With regard to the possible uses of the
9 incentive zoning fee of the \$291,000.00 - we encourage
10 the Town to use those funds to advance the objectives
11 and stability within the Town Zoning Code which
12 include developing a network of open lands that
13 provide wildlife habitat and potential recreational
14 trail corridors, connection and pathways. Secondly:
15 to the protection of viewsheds, scenic roads and
16 environmentally sensitive lands third, the enhancement
17 of recreational resources; Forth: providing public
18 access to protected open spaces.

19 The Code also lists the following as allowable
20 amenities which includes the permanent conservation
21 easements including agricultural open space, scenic,
22 ecological, historic and other types of easements;
23 secondly, the permanent protection of land and fee
24 simple for conservation or other community benefit
25 purposes.

1 With regard to the uses of the additional
2 compensatory mitigation fee that I spoke of which is
3 approximately \$273,000.00 - we recommend those above
4 items also be considered but maybe with more emphasis
5 on lands proximate to this project site such as the
6 Wolf Road corridor. We also recommend consideration
7 that the monies be used for projects that would appeal
8 to the neighborhood surrounding the project site.

9 Just by way of example you may remember the
10 Staybridge Suites Hotel done on the Colonie Center
11 site had donated 112 acres of open space along Sand
12 Creek Road as an incentive zoning provision for that
13 project. Nothing has been done with that property or
14 no designation of it has occurred since that project
15 went in a few years back. Lands such as these could
16 be improved with trails and signage to make it more
17 publicly accessible or obviously additional open space
18 lands in the area could be permanently protected
19 through either fee simple dedication, purchase or
20 easements.

21 CHAIRMAN STUTO: I think that this is a good
22 approach. We have been hearing a lot from the tree
23 folks and preservation of trees and so forth. With
24 respect to this one particular site, we are doing our
25 best to save the trees that are on the site but we're

1 also getting money which will actually allow us to
2 acquire or enhance faster acreages in the same sort of
3 vicinity. I think that it's a great balance. I think
4 that it's appropriate. I think that this is an
5 appropriate development for that location and I think
6 that the use of the monies for woodlands, forests,
7 open spaces and so forth -- it's more than just
8 appropriate. It's a fantastic use of the money.

9 MR. GRASSO: I think that it's important to
10 understand that the fee schedule was derived by
11 looking at what we believe are comparable land values
12 in this corridor. I think that it's a fair
13 application for this specific project.

14 CHAIRMAN STUTO: So, it's either get three more
15 acres or pay the money because you don't have the
16 acreage.

17 MR. GRASSO: And there is an incentive so that
18 the market forces work for the incentive zoning fee to
19 be paid in that amount in this area, but not all areas
20 of the Town. The intent is that the fee could be
21 generated for a project where the Town wants
22 development which is in an area like this which has a
23 strong access to infrastructure and highway systems
24 and is a good mixed use development. Those monies
25 could be applied elsewhere and achieve equitable

1 mitigation in terms of open space resources.

2 CHAIRMAN STUTO: Any questions from the Board?

3 (There was no response.)

4 You understand that there are two chunks of
5 money. One is in the incentive schedule and the rest
6 is in mitigation of the environmental impact.

7 MR. GRASSO: The Code even specifies that the
8 incentive zoning fees collected can be applied any
9 place in the Town so that it doesn't make reference
10 that it has to be right proximate to the project.
11 You'll hear us talk about a nexus between a project
12 and it's mitigation or impacts, but that's what the
13 incentive zoning section states. I think that when
14 you look at the compensatory mitigation fee payment,
15 the Planning Board has an opportunity to say well, it
16 really should be geared towards an area that is more
17 proximate to the project site for this corridor.

18 CHAIRMAN STUTO: How does everybody feel about
19 that, given that there is 112 acres?

20 MR. MION: Yes.

21 MR. LANE: Yes.

22 CHAIRMAN STUTO: So, when we do our SEQR
23 review, we can talk about it again, then.

24 MR. GRASSO: Tonight is the SEQR review.

25 CHAIRMAN STUTO: Understood. We're actually

1 processing that.

2 MR. GRASSO: The other thing that I just wanted
3 to say is I do commend the applicant for being patient
4 as the Town Board and our office, the Planning staff
5 and the Town Attorney's office work through the issues
6 regarding the incentive zoning provisions and we
7 appreciate that they waited for the Town Board to take
8 action and make sure that this was the direction that
9 the Town wanted to go in. We also commend them for
10 going out and doing a very detailed tree survey and
11 that was the result of an inspection of the site that
12 we did in response to some concerns that were raised
13 very early on in the project but after they had done
14 their original survey work. They went back and had a
15 consultant do a very detailed survey. I hope that the
16 results of that effort shows in the project plans that
17 they presented tonight. Although it's not a
18 significant number of trees that are protected, I
19 think that it's still worth while of the exercise that
20 they went through on behalf of the planning process.

21 CHAIRMAN STUTO: If there is no further
22 discussion, we'll start walking through the
23 environmental review.

24 MR. GRASSO: I'm just going to summarize things
25 on the SEQR. We have reviewed the amended full

1 environmental assessment form completed for their
2 project and it appears that the information adequately
3 describes the environmental setting and the project
4 and its environmental impacts.

5 It is a Type I action so a full EAF was
6 provided. We have drafted Parts II of the EAF which
7 addresses the identification of potential project
8 impacts and we also drafted a Part III which includes
9 an evaluation of the magnitude and the importance of
10 the project impacts, as well as the determination of
11 significance. We have drafted those in support of a
12 negative declaration for consideration by the Planning
13 Board.

14 Just to go through the Part III issues that we
15 expanded on - because we thought that they were
16 salient points of the project -- the first being the
17 impacts on the land; second, impacts on surface water;
18 third, impacts on ground water; fourth, the impacts on
19 plants and animals; fifth, the impact on historic and
20 archeological resources; sixth, the impact on
21 transportation; seventh, is the impact on energy;
22 eight is impact on noise odor and light; nine, the
23 consistency with community plans; ten was the
24 consistency with community character.

25 The last page in your packet is the negative

1 declaration, reasons supporting the determination.

2 CHAIRMAN STUTO: How do we work in the payment?

3 MR. GRASSO: Under number nine, the consistency
4 with community plans, under the mitigation section -
5 it's on page 8 -- when we go through a detailed
6 description of the project's density and how they are
7 addressing the additional increase in density as it
8 equates to the incentive zoning fees applicable to the
9 project. That is built into the SEQOR. We did not
10 include anything specific regarding the intended uses
11 of the monies other than what we put in our letter.
12 Obviously we wanted that to be just for the Planning
13 Board's consideration and let it come directly from
14 the Planning Board - anything more specific that you
15 would like to see.

16 CHAIRMAN STUTO: Did everyone understand Joe's
17 recommendation or suggestion with respect to the extra
18 \$272,000.00?

19 (All Board Members agreed.)

20 Do we agree with the recommendation?

21 (All Board Members agreed.)

22 Do you want to recite that, Joe, and we'll
23 somehow work it into the document.

24 MR. GRASSO: With regard to the possible uses
25 of the additional compensatory mitigation fee of

1 \$272,976.00 we recommend the items listed in the
2 Town's Zoning Code section 190-27(b) of the Code be
3 considered, but with more emphasis on lands proximate
4 to the project site such as the Wolf Road corridor.
5 We also recommend that the money be used for projects
6 that would appeal to the neighborhood surrounding the
7 project site.

8 For example, the Staybridge Suites project
9 donated 112 acres of open space along Sand Creek Road
10 as an incentive zoning provision for that project.
11 These lands could be improved with trails of signage
12 to make it more publicly accessible or additional open
13 space lands in the area could be permanently
14 protected.

15 CHAIRMAN STUTO: With that change, do we have a
16 motion on the negative declaration?

17 MR. MION: I'll make the motion.

18 MR. LANE: Second.

19 CHAIRMAN STUTO: Any discussion?

20 (There was no response.)

21 All those in favor say aye.

22 (Ayes were recited.)

23 All those opposed say nay.

24 (There were none opposed.)

25 The ayes have it.

1 Thank you.

2 I would like to thank the applicant, too. We
3 appreciate the work. It's beautiful.

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6 (Whereas the above entitled proceeding was
7 concluded at 10:47 p.m.)

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CERTIFICATION

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I, NANCY L. STRANG, 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 L. STRANG

Dated _____

