

1 PLANNING BOARD COUNTY OF ALBANY

2 TOWN OF COLONIE

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4 LIFE CHURCH
687 WATERVLIET SHAKER ROAD
5 AMENDMENT OF FINAL APPROVAL REQUEST TO
REMOVE CONDITIONS

6 *****

7 THE STENOGRAPHIC MINUTES of the above entitled
8 matter by NANCY L. STRANG, a Shorthand Reporter,
9 commencing on October 18, 2016 at 7:51 p.m. at The
Public Operations Center, 347 Old Niskayuna Road,
Latham, New York.

10

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

19 ALSO PRESENT:

20

21 Kathleen Marinelli, Esq. Counsel to the Planning Board
22 Joseph LaCivita, Planning and Economic Development
23 Department
24 Michael Tengeler, Planning and Economic Development
25 Department
Andy Brick, Esq. Donald Zee, PC
Joseph Grasso, PE, CHA

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1 CHAIRMAN STUTO: Okay next item on the agenda
2 like the church, 687 Watervliet Shaker Rd., amendment
3 of final approval request to remove conditions.

4 Joe, do you an introductory remarks.

5 MR. LACIVITA: The applicant is back tonight to
6 discuss some of the conditions as to why they want to
7 remove them. We are going to turn it over to Andy
8 Brick who is one of the attorneys for the applicant to
9 talk as to why they are looking to remove the
10 conditions.

11 MR. BRICK: Good evening. Thank you for the
12 opportunity.

13 First what I like to do is clarify for the
14 Board - so that we were all in the same page of the
15 intended uses of the property. Some of the uses and
16 the anticipated uses of the property have changed
17 since the original project narrative and subsequent
18 project narratives have been submitted. So, I just
19 want us all to know exactly what is being proposed.

20 In a nutshell, is a principal place of worship
21 but we are seeking to remove these conditions so that
22 it is clear that the applicant can engage in customary
23 in typical uses associated with a principal place of
24 worship. Your typical ancillary uses to a place of
25 worship; religious activities, religious services.

1 some of those activities in the project narrative --
2 some of the project narrative stated that they
3 wouldn't be taking place. Over the course of the three
4 years of change that this project has progressed there
5 are now some different intentions for the property. I
6 want everyone to know exactly what what is going to be
7 taking place on the property. Then, what I would like
8 to do is go through each of the conditions that are
9 currently in place and discuss with you why we believe
10 it is suitable to have them removed.

11 CHAIRMAN STUTO: Let me just hesitate for a
12 second.

13 Is there anyone that has a full knowledge of
14 where we are procedurally for this, in terms of what
15 actually has to be changed? I know there is the site
16 plan which has final approval. There is an ODA - an
17 open development area similar to the last one. That
18 has to be amended. What else has to be amended?

19 MR. GRASSO: The SEQR determination.

20 CHAIRMAN STUTO: Do you have the proper
21 paperwork to act on those things tonight?

22 MR. GRASSO: No.

23 CHAIRMAN STUTO: I just want to make sure that
24 we have our ducks in order.

25 MR. GRASSO: No.

1 CHAIRMAN STUTO: You understand that there are
2 three different things that have to be amended?

3 MR. BRICK: There are four events to take
4 place.

5 MR. GRASSO: We issued a letter that I just
6 passed out.

7 MR. BRICK: What we are here for, according to
8 the Town this evening, is for the recommendation back
9 to the Town Board for the removal of the conditions on
10 the ODA.

11 CHAIRMAN STUTO: Is that where we are today?
12 That's not what it says on our agenda.

13 MR. BRICK: We are seeking two -

14 CHAIRMAN STUTO: I want to be clear on the
15 procedure.

16 MR. BRICK: I understand. So do I.

17 CHAIRMAN STUTO: I don't even know if you
18 understood it until very recently - where we were on
19 the procedure.

20 MR. BRICK: I understand where we are in the
21 procedure.

22 CHAIRMAN STUTO: There is a record of having
23 asked for a bunch of documents that we still haven't
24 gotten as to, when we finalized this agenda. We are
25 trying to help you to move this along.

1 MR. BRICK: In the interest of clarity -

2 CHAIRMAN STUTO: Now you're saying ODA --
3 that's not what we were presented with.

4 MR. BRICK: We were originally scheduled for
5 the August 23 agenda.

6 CHAIRMAN STUTO: Right, and you didn't get your
7 documents in.

8 MR. BRICK: Well, we did. We were placed on
9 that agenda. Subsequent to being removed from that
10 agenda when we requested an explanation why, we were
11 given a list of additional documents that was
12 suggested that we provide to the Board. Those
13 documents were provided to this Board on Friday of
14 last week. Those documents have been submitted.

15 CHAIRMAN STUTO: Okay, the agenda was already
16 finalized by that point.

17 MR. BRICK: What I am saying is that list of
18 documents was given to us after we were removed from
19 the agenda.

20 CHAIRMAN STUTO: Well, well before Friday.
21 August 25 -- so, you have all of September and half of
22 October to get the documents.

23 MR. BRICK: Correct.

24 CHAIRMAN STUTO: And you didn't get them until
25 after the agenda was finalized. It's a two-way

1 street. I just want you to know that.

2 MR. BRICK: I understand that. When you are
3 saying is accurate and what I'm saying is accurate, in
4 terms of the chronology.

5 The applicant's intended use of the property,
6 as I said -- it is already approved for a principal
7 place of worship. It is now determined that it will be
8 utilized for typical and customary ancillary religious
9 activities incidental to the principle use as a place
10 of worship which are the types of events and
11 activities that occur at every church, synagogue,
12 house of worship and worship center in the Town. they
13 would include such things as funerals, banquets,
14 weddings, meetings, social events and anything that is
15 a customary use to the principal place of worship. As
16 it currently stands, those can't occur as a result of
17 some of the conditions. That's why we are seeking
18 their removal.

19 There are six conditions. They were originally
20 seven conditions that this Board recommended to the
21 Town Board on the ODA. When the Town Board and acted
22 the ODA, they removed one of the conditions. of the
23 six conditions we believe that condition number one
24 which involves providing documentary proof of our
25 right to use Moffet Lane as an access point -- we

1 believe that condition has been satisfied. That was
2 something that had to take place prior to the site
3 plan approval. So, we think condition number one is
4 moot. For clarification we would ask that it be
5 removed as it is no longer necessary.

6 The same with condition number two -

7 CHAIRMAN STUTO: Let me just ask - do we have
8 agreement on that?

9 MR. GRASSO: No, because that's a condition
10 that will run forever with the property. Any new
11 application can always look to change that. We see no
12 reason to change it along with this use.

13 CHAIRMAN STUTO: So, it was a matter of showing
14 proof that he had the access. That's what he is
15 saying.

16 MR. BRICK: Let me read condition number one.

17 Satisfactory proof shall be demonstrated to the
18 town that the subject property and any future heirs
19 successors and assigns have legal right-of-way or
20 perpetual easement providing unrestricted
21 ingress/egress of public utility access over Moffet
22 Lane. Such proof shall be provided prior to final site
23 plan approval for the subject property.

24 CHAIRMAN STUTO: Okay, what did you provide?

25 MR. BRICK: We provided proof to the

1 satisfaction of the Town Attorney's office. We
2 obtained final site plan approval. What we are saying
3 is that condition is no longer necessary.

4 CHAIRMAN STUTO: Okay, will double check that.

5 MR. BRICK: Please do.

6 CHAIRMAN STUTO: Do you know what that was? Was
7 that a deed? Was that an easement?

8 MR. BRICK: I believe I provided a copy of Town
9 Attorney. Again, we never would have gotten final if
10 I had not provided that. it was provided to the Town
11 Attorney's office and they can confirm.

12 Second: primary access to the subject property
13 shall only be through the use of Moffet Lane and
14 development of no new curb cuts shall be permitted
15 between Moffet Lane and the Exit 5 interchange ramp.
16 Final design was approved clearly shows that the only
17 access is through Moffat Lane. There are no new curb
18 cuts shown on the plan. To create a new curb would
19 require a return to the Board. So, we would argue
20 that number two is no longer necessary and can be
21 removed because the final plan shows the use of Moffet
22 Lane.

23 CHAIRMAN STUTO: This is a condition of what?

24 MR. BRICK: The recommended conditions that you
25 recommended to the Town -

1 CHAIRMAN STUTO: Why would we remove that from
2 the ODA? If you satisfied it, the record shows that
3 you satisfied it. Why do you have to amend the ODA to
4 show that?

5 MR. BRICK: Because there are other conditions
6 where we haven't satisfied it. I'm just pointing out
7 the first two conditions that are, in our opinion,
8 moot and unnecessary.

9 CHAIRMAN STUTO: Their moot. They do not need
10 to be removed because you have satisfied them.

11 MR. BRICK: But for clarification purposes if
12 they are removed, they are removed. Those are the easy
13 ones.

14 Three: any additional building development on
15 the subject property shall be subject to re-review of
16 both the ODA by the Town Board and site plan by the
17 Planning Board. Such review shall not be construed
18 to limit reasonable expansion of the proposed house of
19 worship, but to allow a thorough review of additional
20 uses or expansions are planned for the site.

21 Our position would be that the language
22 contained in that condition is a redundancy. Section
23 190-56(b) of your Town Land Use Law requires that any
24 expansion or addition to come back for an amendment to
25 the site plan. So, all this is doing is repeating back

1 what is already required by us to perform under
2 190-56(b).

3 CHAIRMAN STUTO: So, it's harmless.

4 MR. BRICK: It's harmless, so we would seek for
5 it to be removed for clarification purposes.

6 CHAIRMAN STUTO: What if the Town Law is
7 amended?

8 I'm not going to get into it. I want to extend
9 this out. Tonight is not going to be her last night.

10 MR. BRICK: It's a good question.

11 Those are ones that we think can be removed
12 easily either through mootness the redundancy; it's
13 already required by Code.

14 Four: a traffic control officer shall not be
15 used to control access to the subject property within
16 the Watervliet Shaker Road right-of-way without Town
17 Board approval.

18 Our position on this would be any time a
19 Traffic Control Officer is requested, it requires Town
20 Board approval and my client isn't being treated any
21 different than any other person who would seek a
22 Traffic Control Officer from the Town of Colonie than
23 the condition is a redundancy. That is what is
24 required by anybody. If we are treated consistently
25 and fairly, everybody has to go to the Town Board for

1 a Traffic Control Officer. If that is not the case, if
2 the process and the Town -- there is a process where
3 you can request a traffic control officer for events
4 from the Town Police Department - if that doesn't
5 require Town Board approval, then we would ask that
6 this condition be removed to make clear that we are
7 subjects to whatever else is required if we seek a
8 Traffic Control Officer, we are treated the same as
9 any other person seeking a Traffic Control Officer for
10 events and we are treated fairly and consistently with
11 anybody else in the Town making that request. this
12 adds an additional layer where we have to go to the
13 Town Board and no one else does, we would ask that be
14 removed so that we are treated consistently.

15 Number five on your original recommendation was
16 removed by the Town Board. That had to do the
17 duration between service times. That was removed as
18 part of the ODA. I don't believe it was a condition
19 of your approval. It is not relevant.

20 The new number five is: Sunday service times
21 shall be limited to the three services without
22 additional Planning Board review. The original
23 project narrative did say that initially the applicant
24 was going to have three Sunday services. That has now
25 changed. Their plans have changed. They are seeking

1 removal of this condition. They are seeking to have
2 the ability to have as many Sunday services as they
3 deem appropriate. They don't want any type of
4 restriction whatsoever the number of services that can
5 be held on the Sunday. I have been unable to locate
6 the type of restriction on any other place of worship
7 or synagogue or worship center in the Town. Again, we
8 would ask that that would be removed.

9 We have also submitted, and it's in your
10 packet, the letter from our traffic engineers which
11 stated that since they analyzed traffic in the worse
12 case scenario the Sunday, it doesn't matter how many
13 services there would be on a Sunday. They also
14 pointed out that if you have more services than three,
15 you are actually defusing the traffic that you have
16 more opportunities for people to attend. Rather than
17 forcing all the traffic to three specific events, if
18 you have more throughout the day you were defusing the
19 traffic throughout the day. So, we would condition be
20 removed.

21 The last is that when weekday service times
22 shall start no earlier than 6:30 p.m. additional
23 Planning Board review. The applicant has again
24 requested customary and traditional ancillary
25 religious activities able to be performed during the

1 week such as a funeral and a restricted by this
2 particular provision. Although this provision
3 specifically references service time, we make a
4 differentiation between services and activities
5 because worship services seem to denote specific type
6 of an event in everybody's mind where religious that
7 could take place on the property wouldn't necessarily
8 be services, but it would be a traditional ancillary
9 religious activity. What we are seeking is no
10 restriction on the ability to religious services or
11 religious activities during weekdays or any day of the
12 week. That's why we are seeking condition to be
13 removed.

14 MS. DALTON: Mr. Brick, in another week, there
15 was also an issue with regard to weddings, funerals
16 and banquets.

17 MR. BRICK: Correct.

18 MS. DALTON: You didn't call that out
19 specifically.

20 MR. BRICK: Right. The June 8th letter
21 specifically references weddings and funerals and
22 banquets. The may not have the October 18 letter yet.
23 I'm saying is that weddings, funerals and banquets are
24 just examples types of religious activities -

25 MS. DALTON: So, you are putting the heading of

1 religious activities.

2 MR. BRICK: Correct. These are not events that
3 traditionally frequently at my clients other houses of
4 worship. The way my client's houses are designed --
5 they don't have center aisles. Very few weddings take
6 place because weddings tend to want to have a center
7 aisle and the same with funerals. It's only on
8 intermittent and rare occasions when a wedding or
9 funeral would take place. They are seeking the right
10 to have that ability to offer to their congregants.
11 They just want to be treated as everybody else. They
12 want to have the ability to perform whatever worship
13 services or religious activities that -

14 MS. DALTON: So, I just want to go on record as
15 saying that I completely understand your argument
16 here. I remember numerous times in the past when you
17 all have appeared - I think I was the one but if it
18 wasn't me someone specifically said why wouldn't you
19 hold weddings and funerals? All places hold weddings
20 and funerals. You are on the record as saying why are
21 you telling us this will not happen. I don't recall
22 the answer. We were told unequivocally that this is
23 not your service model. What's up?

24 MR. BRICK: I'm not sure of the date of this
25 statement this project is been winding its way to the

1 process now for over three years. The service model is
2 evolving and has changed.

3 MR. LANE: That's why we put these kind of
4 covenants on this.

5 MR. BRICK: Understood. That is why we are back
6 discussing it. There are also the other components of
7 it are just wanting to be able to perform the same
8 type of functions as other religious entities
9 throughout the Town.

10 MR. SHAMLIAN: When you are not a piece of
11 ground that is like every other. It was a very unique
12 piece of property with some specific traffic concerns
13 associated with it. Those were the conditions that we
14 recommended the place on the property. You and your
15 client went forward and accepted the conditions that
16 we placed on it. So, my question to you is that you
17 haven't even opened your doors yet - why are you back
18 to us trying to change things when you can't
19 demonstrate to us that even the conditions that we put
20 on it are working?

21 MR. BRICK: First of all, I don't think it's a
22 fair characterization say we have accepted the
23 conditions. I think I'm on record as saying am not
24 agreeing to them. I understand that they may be
25 coming.

1 MS. DALTON: That is actually not what was
2 said.

3 MR. BRICK: At no point did I ever agree to the
4 conditions on behalf of my client.

5 MR. SHAMLIAN: You're splitting hairs.

6 MS. DALTON: Mr. Zee who is your partner -

7 MR. BRICK: My law partner.

8 MS. DALTON: - said, when he was asked "I just
9 want to point out that when we first made a
10 presentation you may not have been there that evening.
11 We also mention the fact that this church doesn't have
12 weddings for its members whatsoever or funeral
13 services that some other churches have. It's really
14 just for services on Sunday, youth ministry on
15 Wednesday evening."

16 So, yes, your firm specifically said when they
17 were specifically asked: No, it doesn't happen and it
18 won't happen. So, again I'm not saying that you
19 shouldn't have the right. I don't know where I'm going
20 to go now. I want to know what changed.

21 MR. BRICK: Our applicant's position on the
22 matter has changed. They are now seeking to confirm
23 that they have the ability to perform religious
24 activities.

25 MR. AUSTIN: Can I just jump in there? Is it

1 been changed because now the building is built and now
2 we can't do anything about building that? Now, you
3 can come in say oh, we just changed our minds and now
4 we want to do weddings and funerals. When in fact in
5 the other locations around, they possibly have been
6 doing them all along. Now, we're just going to say - I
7 have it on record right here is question was: "You
8 mentioned that there are no weddings or funerals. So,
9 where do they get married and where do they get
10 buried?" It says: "Funerals - we do it funeral homes
11 as well as graveside." We do not do them in the church
12 and weddings as well -- "

13 MR. SHAMLIAN: The narrative has repeatedly
14 changed and -

15 MR. BRICK: And that's why the first thing that
16 I started out tonight to say is that there are
17 different statements in the narrative that we want
18 clarified tonight that are no longer valid. That's
19 why I started. I'm not running from that.

20 To the question of now that the building is
21 built to be go in there and try to -- no.

22 MR. AUSTIN: You have agreed with everything
23 that we put conditions on. So, we approved everything.
24 Then, you go ahead and build the building and then you
25 come back and say oh by the way, the whole process is

1 changed. I know that churches do weddings and
2 funerals.

3 MR. MION: What it sounds like you haven't
4 given it a chance to get off the ground yet and I
5 think that where we are coming from is why don't you
6 at least open the doors, start it and see what you
7 actually need. Then, you can have some data to support
8 what you're doing now. You don't have any data to
9 support that. He's got a big empty building that you
10 so making. You're still building it. You haven't even
11 opened the doors to it yet. Here, you're back to us
12 already to change what you are trying to change.

13 MR. BRICK: And I wouldn't agree that we have
14 accepted the conditions. I think I'm on record at
15 least once saying that we object to the conditions,
16 but we recognize that you may place them on the
17 approvals. Candidly, the conditions are the subject of
18 federal litigation. So, I don't think my client agreed
19 to them. They are litigating them. I am here is not a
20 part of that. I am here to see if we can resolve these
21 conditions to the process.

22 CHAIRMAN STUTO: You are entitled to apply to
23 amend your site plan. Everybody's entitled to do that.
24 You are entitled to apply to amend your ODA. You are
25 entitled to amend the SEQR. My problem is more

1 procedural. We don't have any clear application for
2 all of those things in front of us. So, we have all
3 the issues out on the table - most of them, anyway.

4 Joe, I think it would be a good opportunity now
5 to review - some of these things are engineering
6 questions. I know one of the biggest issues was
7 traffic. Environmental impacts -- traffic is a
8 component of that.

9 Our Town Designated Engineer has reviewed this.

10 You tell us - let us know what you review has
11 found, Joe?

12 MR. GRASSO: Yes. So, we just prepared today
13 dated October 18, our first review letter on the new
14 application materials. Just to get into the record - I
15 think a lot of the questions I been brought up tonight
16 touched on in our letter. I'm going to go through it.

17 The first comment is regarding the procedure
18 because just to clarify, when we received the
19 application materials it was presented as a site plan
20 amendment. Just to reiterate to the Board - there were
21 many steps in the process along with the site plan
22 approval. All of those steps need to get redone to
23 allow this amendment to be memorialized. The previous
24 application included a negative SEQR determination by
25 the Planning Board which is really important. The

1 Planning Board was lead agent for SEQR, along with
2 certain conditions that you imposed on it. It included
3 a recommendation by the Planning Board to the Town
4 Board on the previous open development area
5 application along with conditions that you placed on
6 that. Then, the Town Board acted favorably upon the
7 ODA application and also reinstated conditions that
8 were consistent with the Planning boards. Then, it
9 came back for final site plan approval by the Planning
10 Board which again included the same conditions. So,
11 the conditions of the neg dec, the ODA approval in the
12 site plan were all consistent. So, this application
13 is going to require for similar actions.

14 The first, before the ODA can get acted on a
15 negative declaration needs to be done and we believe
16 that shall lie with the Planning Board. Then, it will
17 go back to the Town Board for consideration of the
18 ODA. Then, it will come back to the Planning Board
19 for site plan amendment. In terms of SEQR is an
20 unlisted action so, a coordinated review is optional.
21 Consistent with the original application, we believe
22 that the Planning Board should accept lead agency
23 status which you could do tonight. You will need to
24 make a SEQR determination prior to the action by the
25 Town Board on the ODA in prior to your action on the

1 site plan amendment.

2 Now, you will recall that when we reviewed the
3 application originally, the applicant provided Parts I
4 and II of a full EAF. That description of the project
5 and the site is the same as it was before, even though
6 the narrative that we are looking at tonight is the
7 actual SEQR form - it's still adequately described a
8 project and it could be used in support of the
9 Planning board's determination.

10 Regarding the removal of the limit of the
11 number of Sunday's service times: the conditions of
12 approval specifically stated "Sunday's service times
13 shall be limited to up to three services without
14 additional Planning Board review."

15 You will recall that the purpose of the
16 restriction was to accommodate but the applicant
17 described as typical Sunday service times at 8:30,
18 10:30 a.m. and 11:30 a.m. we restricted additional
19 services because we thought that it would be likely
20 that those would occur during the afternoon and those
21 could occur when they were peak traffic times on
22 Watervliet Shaker Road and the reform potentially
23 cause significant traffic impacts.

24 The application materials that you have before
25 you tonight stated that allowing a greater number of

1 service times would cause list traffic impacts by
2 spreading the traffic over more hours of the day. We
3 disagree with that methodology as the level of trip
4 generation could be just as great during later service
5 times. Because the traffic study is based on a large
6 number of assumptions regarding trip generations,
7 including an estimate on the number of patrons per
8 service in an estimate on the number of patrons per
9 car in the fact that the facility has yet to be placed
10 in operation, consideration should be given to
11 refining the trip generation numbers once the facility
12 is in operation and basically being able to an after
13 the fact traffic count. Additionally, the traffic
14 consultant should extract the data from the previous
15 studies which demonstrate when that peak hour of
16 adjacent street traffic is, which we were not able to
17 retrieve in our current files. A new impact analysis
18 should be run with accurate trip generation data
19 during the peak hour of adjacent street traffic and if
20 no significant impacts are demonstrated, the removal
21 of the restriction on a number of Sunday service times
22 appears reasonable.

23 CHAIRMAN STUTO: Who should do that analysis?

24 MR. GRASSO: The applicant's consultant.

25 Number 4 in our letter: regarding the removal

1 of any restrictions upon the applicant's ability to
2 request traffic control services from the Town of
3 Colonie, the conditions of approval specifically
4 stated that a traffic control officer shall not be
5 used to control access to the subject property within
6 the Watervliet Shaker Road right-of-way without Town
7 approval. It was determined that during the review of
8 the original traffic studies that use of a traffic
9 control officer could result in additional along
10 Watervliet Shaker Road and we recommended the use of a
11 traffic control officer should be at the sole
12 discretion of the Colonie Town Board. We believe the
13 condition of approval does not impose unreasonable
14 restrictions on the ability of the applicant to
15 request use of a traffic control officer and therefore
16 we believe that the Town Board should retain such
17 authority.

18 Number 5: Regarding the request to allow
19 weddings and funerals banquets regardless of time or
20 day, we recommend additional specificity regarding the
21 size and frequency of these events and the likelihood
22 that they would occur within or around the p.m. peak
23 hour of adjacent street traffic. Full occupancy events
24 during the week to a p.m. peak hour will likely cause
25 significant traffic delays that have not been

1 appropriately mitigated.

2 Lastly, the clarification prior approval allows
3 for services on and around major religious holidays
4 that would occur on weekdays to the infrequent
5 occurrences of the special services and the
6 understanding the traffic delays during holiday
7 periods are common. We have little concern with
8 services occurring regardless of time or day around
9 major religious holidays in granting the request
10 appeared reasonable.

11 That's it for comments.

12 CHAIRMAN STUTO: I see a road map here. We need
13 more information. That's how I see it.

14 MR. LANE: Can I just comment on the one
15 regarding the authority of the Town Board in regard to
16 traffic control? that being said, it doesn't seem
17 reasonable that we would not have the authority to
18 change that. It would be at the discretion of the Town
19 port to determine whether or not they are going to
20 pretend that.

21 MR. GRASSO: You can definitely change your
22 condition of your approvals and include with your
23 recommendations to the Town Board that you think that
24 condition should change or be eliminated.

25 CHAIRMAN STUTO: It's currently the Town

1 practice that the Town of Board approves that. We
2 have added as a condition of the Town Board has to
3 approve it - that if the town's practice goes away
4 this condition still remains. We believe based upon
5 traffic impact -

6 MR. GRASSO: It's very unique. Normally you
7 think using a traffic control officer just makes all
8 the situations better. The traffic study that they
9 prepared demonstrated that when you have a traffic
10 control officer, the delays on Watervliet Shaker Road
11 will increase in favor of the people trying to enter
12 and exit. Again, not having the facility up and
13 running and not getting future representation of just
14 what that level of traffic impact is going to be,
15 having traffic control officer could exacerbate that
16 situation.

17 CHAIRMAN STUTO: Can these studies be done
18 before the building is built?

19 MR. GRASSO: They can be done. The level of
20 accuracy is not going to be as great. Rarely do you
21 have the ability to do a traffic study after the
22 facility is up and in operation. They have obviously
23 spent the past year or so working on the building and
24 it looks like it is within a couple of months of
25 completion.

1 MR. BRICK: Less than that.

2 MR. GRASSO: They have obviously been working
3 on these conditions for a multiple number of months
4 because of the ability of a traffic study with much
5 better data, I think they would go a long ways toward
6 answering some of the questions that we had and
7 eliminating some of the traffic concerns of the Town.

8 MR. MION: Without traffic control officer - if
9 they have one every Sunday and every Saturday, they
10 would have to go to the Town Board to get that
11 approval because that affects the manning of the
12 police department, from not mistaken. If it is on an
13 occasional type thing or like the school has a game
14 they ended up having a police officer there - can't
15 they submit a letter having specific event so that the
16 Police Department has the manpower to facilitate that?
17 That is for potential events. If you want to let
18 officer there, then they would have to go to the Town
19 Board.

20 MR. GRASSO: I don't know that policy. I don't
21 see the Town. I had heard that on occasion that they
22 didn't have to go to the Town Board approval but
23 basically that was part of the reason for the
24 condition, to make sure that the Town Board was aware
25 if a traffic officer was going to be in use.

1 MR. MION: Permanently.

2 MR. GRASSO: No, at any time. This condition's
3 for all instances.

4 MR. SHAMLIAN: Because it was going to make the
5 traffic numbers.

6 MR. MION: I understand that.

7 MR. LACIVITA: I honestly don't know the
8 policy. I do know that we have talked about it several
9 times in our department into the Town attorney's
10 office. I know once we heard, there was a letter
11 request to the Chief. So, we really to have to define
12 the policy.

13 MS. MILSTEIN: So, it is a policy and not a
14 rule or regulation?

15 MR. LACIVITA: But honestly do not know.

16 MR. SHAMLIAN: I'm not sure that it matters.

17 MS. MILSTEIN: Andy, just for my own knowledge
18 - there is a federal lawsuit is pending?

19 MR. BRICK: Correct.

20 MS. MILSTEIN: You're seeking the exact things
21 - I'm guessing that if you objected to the conditions,
22 that is what the lawsuit is about.

23 MR. BRICK: Pardon my ignorance, but I even to
24 federal court. I'm not an expert. My understanding
25 is that the conditions I am here seeking to be removed

1 are also the subject of the lawsuit. They are seeking
2 to have them removed from a federal judge. That's not
3 my role. My role is to be here and hopefully work
4 with you to obtain these four events that Joe has
5 identified that need to take place - well we saw both
6 the concerns my clients have about the conditions and
7 the restrictions on their use of the property. At the
8 same time that will resolve -- if you and I can
9 resolve these conditions then the lawsuits issues in
10 effect, are resolved.

11 MR. LACIVITA: Andy, Resolution 340 of 2016
12 which was done in July specifically says that your
13 request was to remove conditions 6 and 7. Tonight you
14 look to remove a lot more conditions. This Resolution
15 been updated in order for the Planning Board to even
16 act appropriately?

17 MR. BRICK: No. We haven't gone back to the
18 Town Board. The Town Board - the Resolution was to
19 seek a recommendation from you a removal of the
20 conditions.

21 MR. LACIVITA: Just 6 and 7 as stated in the
22 whereas clause. Is not all the ones that you have
23 asked for tonight. That was, again, by 340 of 2016,
24 July 7, it was adopted. You're asking for additional
25 recommendations or different conditions be removed

1 than what this Board has the capability to do because
2 that is all that is before them is items 6 and 7 of
3 this Resolution. We have asked to update this and that
4 hasn't been done; correct?

5 MR. BRICK: Correct.

6 MR. LACIVITA: There's no reason why this Board
7 can't act tonight's either.

8 MR. AUSTIN: Have a question. This church is -
9 for lack of better terms - a franchise. It is based
10 out of Oklahoma. So, the services are provided via
11 streaming. That was one of the issues we had when we
12 had the initial service times. So, those are the only
13 through service times that are streamed live - are you
14 expecting more service times to be streamed live or
15 taped? Will be a replay?

16 MR. BRICK: I would not characterize it as a
17 franchise. It's a global church that is growing
18 significantly. That is how it operates. There are
19 services streamed in and I don't know the technology.
20 Some of them are live. They don't necessarily have to
21 be live. For example, the first three during the day
22 could be live in the subsequent three could be a
23 repeat of the first three. They don't all have to be
24 live. I would suspect that they probably aren't all
25 live. It is probably a combination of both. There is

1 definitely a specific timeframe between them because
2 of the length of what is streamed - service that is
3 streamed.

4 MS. DALTON: Again, I understand what you're
5 saying but I also remember us asking because we were
6 talking about the times of the three services and I
7 remember not necessarily being comfortable with this
8 times and we weren't sure there was enough time for
9 everybody to get out and everybody to get in. We were
10 told that those times were set in stone because that
11 is when the live streaming was going on. So, my
12 impression that is left with me tonight was that that
13 - again, but going back to your service model. Your
14 whole model was about a live intimate connection with
15 the central church. Again, what we are hearing is that
16 it doesn't matter anymore because now you want
17 something else. Did you change the whole premise of
18 your church?

19 MR. BRICK: No. The premises remain the same.
20 The use of the technology has remained the same. Just
21 by way of example, if after the three services there
22 was proposed to be a wedding - if after three services
23 there was proposed to be some type of religious
24 experience event with a certain segment of the
25 congregation - teenagers, couples or men or women or,

1 whatever it is -- on a Sunday arguably someone could
2 say under the language of this condition - well, you
3 can't do that because you've had your through services
4 so you can't have that wedding, you can't have that
5 funeral, you can't have that religious event on
6 Sunday.

7 MS. DALTON: I understand all of that. In fact,
8 we understand it deeply because we kept asking you
9 about it saying - it doesn't sound like any church
10 that we are familiar with and we want to have a full
11 picture of what you are proposing here and we kept
12 getting assurances that you knew your church, you knew
13 your model and it was operating already and other
14 areas of the country, you were already operating on
15 the Sand Creek Road. This was written in stone. I
16 don't have an objection with anything that you are
17 saying about how you want to use a house of worship
18 because we were all saying typically -- we wanted to
19 approve or disapprove an entire well thought out
20 package when you first proposed it to us in 2014. I
21 won't speak for anyone else, but I'm having a big
22 problem right now. There is a sense that there's been
23 a beat and switch here. You told us at the time you
24 told it to us because it seems like that would work
25 for you. Now that there is a building there and all of

1 these financial investments have gone on, now the
2 story has changed and your back to a much more
3 traditional type a house of worship that we all asked
4 you if you were going to be and she kept telling us
5 that you weren't. So, I have a problem with that.

6 MR. BRICK: Response would be: The model
7 always evolves.

8 MS. DALTON: That was not said two years ago.
9 Two years ago you said we are written in stone. We do
10 what they do and Oklahoma.

11 MR. BRICK: Each and every place where the
12 church is located that has a principal place of
13 worship, not one of them anywhere in the country or
14 the world has any type of restrictions on the types of
15 activities that can take place.

16 MS. DALTON: That is not what we asked you.
17 What we asked you is if there were banquets. We asked
18 you if there was going to be weddings - just to get a
19 good sense of how you were going to use the space in
20 the Town that we all share when you know as well as I
21 do that we had a room full of people here - we had a
22 room full of your people who wanted your church which
23 was great. We also had a room full of people who said
24 the traffic there is horrendous and is a safety issue.
25 More than anything else, we can't say we were

1 interested in knowing about the uses so that we can
2 attend to the safety issues that the neighbors are
3 concerned about.

4 Let me just finish.

5 Not just the safety issues but headlights in
6 people's houses from people exiting late at night. You
7 told us that wasn't going to happen. That's going to
8 happen if you have a banquet. So, this is not a small
9 matter when you consider how many neighbors and
10 residents you all made assurances to when you first
11 made this application to us. Now, those people are
12 not here to speak again because it just looks like a
13 tinkering - there was no public hearing announcement.
14 And yet the terms and conditions under which everybody
15 agreed - or at least accepted want to be changed. I am
16 really uncomfortable with agreeing to that when we
17 don't go to the same process and allow those other
18 people who are going to be affected to come and speak
19 about that.

20 MR. SHAMLIAN: This is all about traffic and
21 safety.

22 MS. DALTON: And an impact on the neighborhood.

23 MR. SHAMLIAN: I can't speak for other people
24 on the Board but had you laid out, or your partner
25 laid out all of things you wanted to that you were

1 trying to get approval for back what it was before us
2 for approval, I would not have voted in favor of the
3 project. I voted in favor of the project taking into
4 consideration where it is located in the traffic and
5 safety considerations of where it is located in the
6 scope of use that you are proposing - that seem to
7 reasonable given the fact that it was a religious
8 house of worship. If it had been something else, I
9 still would not have approved it. I accommodated it
10 because it was a house of worship. Now, you want to
11 intensify the use to a level that I would have never
12 approved of in the first place. Again, I am not
13 speaking for anybody else on the Board, but that is my
14 position.

15 CHAIRMAN STUTO: I'll try to sum this up, if I
16 can. I don't think were taking a vote tonight. The
17 way that I see the documentation here in the way the
18 presentation has been made, I would like to summarize.

19 We have a letter June 8 from Donald Zee asking
20 for 4 different things. I'm not sure how they
21 correspond to the conditions of the ODA.

22 We have a Resolution from the Town Board the
23 following month which would be July asking to consider
24 removing 2 conditions - if we would study that
25 consider it; 6 and 7. We were not handed your project

1 narrative until tonight. It's stated stamped October
2 14th and today is October 18th. So, it's a lot to
3 digest and it's a lot of different things in different
4 places.

5 To go back to what really has to be amended in
6 order for your application to be fulfilled - it's the
7 environmental review which is the SEQR and that has to
8 occur before any other actions are taken. Then, it's
9 a modification of the ODA which can come second or
10 third, I guess. Also, there is a modification of the
11 site plan. The Town Board has to act on the ODA as
12 well.

13 I am personally not opposed to any of that as
14 long as it's justified and presented in a proper order
15 a coherent fashion. We do not the ODA in front of us.
16 We do not have proposed ODA language shape in front of
17 us. So, essentially, I'm looking at it that you are
18 briefing us on what you intend to do - or hope to have
19 happen with your application. To me, it all has to be
20 justified in terms of any hearing studies whatever
21 other persuasive arguments need to be made.

22 MS. DALTON: Can I ask a question? I don't
23 think that there is the requirements for another
24 public hearing on these requests. Considering that
25 there were public hearings people who spoke

1 specifically to these issues, I would feel comfortable
2 getting those neighbors -

3 CHAIRMAN STUTO: I think that when we have a
4 site amendment that we would notify the neighbors.

5 Were the neighbors notified tonight?

6 MR. LACIVITA: Not for this one. We didn't
7 know until the last minute and we weren't able to meet
8 the timeframes.

9 MS. DALTON: So, the next time that it comes on
10 the Board agenda, there will also be a public notice?

11 MR. LACIVITA: Yes.

12 CHAIRMAN STUTO: Joe Grasso, can you help us?
13 What do we need in order to systematically review the
14 application?

15 MR. GRASSO: Before it comes back to the
16 Planning Board, three things, I think, should occur.
17 One is that we should check the Resolution on the
18 referral to the Planning Board from the Town Board to
19 make sure that the Town Board is asking the Planning
20 Board for something that is either consistent or
21 specifically inconsistent with what you're asking.
22 Really, Joe is right. That's the only thing that you
23 should be acting on is what the Town Board is
24 requesting.

25 CHAIRMAN STUTO: Do you have a copy of that

1 Resolution?

2 MR. BRICK: I do. I have a copy of the packet
3 of plans that Joe, you had received.

4 CHAIRMAN STUTO: You're saying review that or
5 go back to the Town Board and ask them?

6 MR. GRASSO: That's up to them. Right now
7 there are only two things. What we touched on in our
8 letter is everything in their application.

9 CHAIRMAN STUTO: What is their application? I
10 don't see anything.

11 MR. GRASSO: I don't have the document.

12 CHAIRMAN STUTO: I see project narrative and I
13 see Resolution from the Town Board.

14 MR. GRASSO: It's the June 8th letter regarding
15 request for amendment to the site plan for Life
16 Church. All I'm trying to say is that those things in
17 that request is what we touched on in our review
18 letter.

19 CHAIRMAN STUTO: Is this what you elicited the
20 Resolution from the Town Board? The Town Board is a
21 month later. This is June and the Town Board
22 Resolution is July of 2016.

23 MR. BRICK: When I sent that request on June
24 8th, Mr. LaCivita contacted me and said our policy is
25 that you go to the Town Board first for the ODA for

1 the referral. I then called up with a letter to the
2 Town Supervisor requesting to be on their agenda.
3 That's how we got on their agenda.

4 CHAIRMAN STUTO: If this is your application
5 and I don't know if that's a proper application for a
6 site plan amendment, an ODA amendment or to revise the
7 SEQR. You're calling it an application but is it an
8 application?

9 MR. LACIVITA: It's not the formal application,
10 Peter, that you see from a site plan. We don't have
11 this level of -- when it comes to amending or asking
12 for a request, we don't have this type of definitive
13 application process. So, yes, this would have been
14 accepted as an application request.

15 CHAIRMAN STUTO: So, does this have to be
16 expanded or is this staying that they want a condition
17 6 and 7 -- or no, the Town Board is asked us about 6
18 and 7. I want to give clear directions.

19 MR. GRASSO: Based on their presentation, I
20 think that they need to go back to the Town Board and
21 clarify what the charge of the Planning Board is.
22 Which of the conditions are being asked to be
23 eliminated or changed? That's step one.

24 CHAIRMAN STUTO: So, let's assume that we get
25 another Resolution, then what happens?

1 MR. GRASSO: Then the applicant should respond
2 to the comments in our October 18th letter. We should
3 be given an opportunity to review that new information
4 and do another letter and present it to the Planning
5 Board.

6 CHAIRMAN STUTO: What about revising SEQR?

7 MR. GRASSO: Typically we support the Planning
8 Board on drafting those application materials, but
9 what I would rather do is let's get a chance to review
10 and comment on their revised materials and present
11 them to the Planning Board without any recommendations
12 for approval or disapproval. Let's come back for
13 another meeting -

14 MR. LANE: What about lead agency status at
15 this point?

16 MR. GRASSO: That's one action that you can
17 take at any time, and I would recommend it.

18 CHAIRMAN STUTO: You recommend it tonight?

19 MR. GRASSO: You can do it at any time.

20 CHAIRMAN STUTO: We don't even know what is in
21 front of us.

22 MS. DALTON: Yeah, I think that we should wait.

23 CHAIRMAN STUTO: That's how I feel about it.

24 MR. GRASSO: There is no harm in waiting. Lead
25 agency has to be accepted and a determination needs to

1 be made at some point before the first formal
2 approval.

3 CHAIRMAN STUTO: Do you have any questions?

4 MR. LANE: Doesn't lead agency have to be
5 changed before anybody can start an action? Is that
6 not necessary?

7 MR. GRASSO: The application materials are
8 evolving so it's okay to withhold making that a lead
9 agency determination yet. You typically do it as
10 early as you can in the process. Because of the
11 questions that were raised tonight, I'd feel
12 comfortable holding off on it.

13 MR. BRICK: I would also add that I don't
14 believe that SEQR is an issue for the Town Board
15 Resolution requesting a recommendation or a
16 recommendation back because it's only recommendation.

17 MR. GRASSO: That's right.

18 CHAIRMAN STUTO: Agreed.

19 Any further questions?

20 (There was no response.)

21 Any other matters before this Board, Joe
22 LaCivita?

23 MR. LACIVITA: Nothing here.

24 CHAIRMAN STUTO: Without objection, we will
25 adjourn.

1 (Whereas the above entitled proceeding was
2 concluded at 8:29 p.m.)

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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 _____

