

1 PLANNING BOARD COUNTY OF ALBANY

2 TOWN OF COLONIE

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4 POLLOCK ROAD REZONING
5 59 POLLOCK ROAD
6 RECOMMENDATION TO TOWN BOARD TO REZONE 10.655 ACRES
7 FROM OFFICE/RESIDENTIAL SINGLE FAMILY RESIDENTIAL

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9 THE STENOGRAPHIC MINUTES of the above entitled
10 matter by NANCY L. STRANG, a Shorthand Reporter,
11 commencing on November 15, 2016 at 7:35 p.m. at The
12 Public Operations Center, 347 Old Niskayuna Road,
13 Latham, New York.

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11 BOARD MEMBERS:

- 12 PETER STUTO, CHAIRMAN
- 13 LOU MION
- 14 BRIAN AUSTIN
- 15 TIMOTHY LANE
- 16 KATHLEEN DALTON

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16 ALSO PRESENT:

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- 18 Joseph LaCivita, Planning and Economic Development
19 Department
- 20 Michael Tengeler, Planning and Economic Development
21 Department
- 22 Joseph Grasso, PE, CHA
- 23 Jason Dell, PE, Lansing Engineering
- 24 Patrick Quinn
- 25 Pollock Road
- Amy McCaine
- Mark Burdell

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1 CHAIRMAN STUTO: Pollock Road Rezoning, 59 Pollock
2 Road, recommendation to Town Board to rezone 10.655
3 acres from office/residential single family residential.
4 Joe, do have any comments on this?

5 MR. LACIVITA: Just to get a couple of important dates
6 on the record here: November 17, 2015 we first saw the
7 project with DCC. Shortly thereafter was saw it on
8 January 12, 2016 for sketch. We have seen it a couple of
9 other times along the way as this project has started to
10 change to get to where we are today. May 24th 2016 and
11 June 21, 2016; again, we are here tonight for the
12 recommendation to the Town Board of the rezoning of that
13 accessory parcel.

14 I will turn it over to Jason.

15 MR. DELL: My name is Jason Dell and I'm an Engineer
16 with Lansing Engineering here in behalf of the applicant
17 for the Pollock Road Residential Subdivision.

18 As Joe mentioned, we are here tonight for a
19 recommendation for rezoning of the 10.6 acre portion of
20 the parcel on the eastern side of the power lines. The
21 overall parcel itself is about 35.4 acres and about 24.8
22 acres on the western side of the power lines is
23 currently zoned for single family residential in the
24 10.6 acre portion east of the power lines is currently
25 zoned office/residential. We are here tonight and as

1 part of the project we need to have the office portion
2 of the property rezoned to single family residential to
3 be more in keeping with the project.

4 As we discussed on multiple occasions the development
5 of the 46 proposed lots will all happen on the portion
6 of the property on the western side and the entire
7 portion on the eastern side will remain as permanently
8 preserved.

9 So, we are here tonight asked the Board to pass along a
10 positive recommendation.

11 MR. LANE: It has to be the same zoning because -

12 MR. LACIVITA: They're using it for the green space
13 calculation and it cannot be a separately zoned
14 district. It has to be the same.

15 MR. DILL: That's correct.

16 CHAIRMAN STUTO: Does anybody have any questions or
17 comments? We have seen this before. We also see what is
18 being proposed for the conservation subdivision.
19 I think it's a great land preservation part that is
20 being preserved. So, I would be in favor of making a
21 positive recommendation.

22 Joe Grasso?

23 MR. GRASSO: So, we did issue a letter dated October
24 28 that I'm going to refer to it in our comments.
25 An application has been made to the Town Board for the

1 rezoning of a portion of the overall project site. There
2 is 10 acres proposed to go from office/residential to
3 single family residential so that the entire site would
4 be zoned entirely single family residential. The whole
5 site is included in the conservation development overlay
6 district.

7 The proposed rezoning from OR to SFR is generally
8 considered a down zoning that would result in less
9 intensive land use and less environmental impacts
10 associated with development of the property. The 10
11 acres are relatively constrained with areas of steep
12 slopes, federally designated wetlands and a stream.
13 Although this portion of the site has extensive frontage
14 along Pollock Road, access to the parcel is constrained
15 based on the slope of Pollock Road and its horizontal
16 alignment that limits site distances along its frontage.
17 Given the constraints of the project site and
18 understanding that Pollock Road serves as a collector
19 road to residential development, we believe single
20 family residential zoning is more appropriate than
21 office/residential zoning for the site. Although this
22 portion of the project site was previously proposed for
23 limited residential development, as part of the Pollock
24 subdivision application it is now our understanding that
25 these 10 acres are proposed as open space and will be

1 permanently restricted for future development.
2 It should be noted that the proposed rezoning will
3 result in an increase in the maximum development
4 potential for the remainder of the property by allowing
5 some of the 10 acres to be included in the maximum
6 allowable density calculation. That said, because the 10
7 acre portion includes some areas suitable for
8 development or mineral extraction in the rezoning will
9 likely result in the permanent protection of the 10
10 acres, we support the proposed rezoning.

11 CHA has prepared a draft recommendation for the
12 Planning Board to the Town Board for consideration. The
13 rezoning application is an unlisted action pursuant to
14 SEQR and as such a coordinated review is not required.
15 The Town Board is the only involved agency associated
16 with the rezoning application. We expect the Town Board
17 will assume lead agency status associated with the
18 rezoning application and render a SEQR determination.
19 Should the Town Board act to approve the proposed
20 rezoning to SFR, any development proposals other than a
21 construction of one single family residence would be
22 subject to subdivision plan review by the Planning
23 Board. Since the property is located in a conservation
24 development overlay district, the conservation analysis
25 will be required to identify constrained lands, open

1 spaces and recreation and resources, buffer areas and
2 lands exhibiting resource value and it will be required
3 to preserve the majority of constrained lands plus a
4 minimum of 40% of the unconstrained lands.

5 CHAIRMAN STUTO: Does the Board have any questions?

6 MS. DALTON: Joe, where it says that 10 acres is now
7 proposed as open space will be permanently restricted -
8 - what ensures that it will be permanently restricted
9 from development?

10 MR. GRASSO: Nothing, other than the fact that this
11 application as presented tonight discusses that. There
12 is no assurance. There is the chance that the Town Board
13 could go through the rezoning and then the subdivision
14 application never comes to fruition. I think what we've
15 tried to do in our letters outline all of the
16 ramifications of that and we don't see that there is any
17 negative impact by the rezoning -

18 MS. DALTON: As you point out, if there was going to
19 be other development on it they would have to come in
20 front of us anyway.

21 MR. GRASSO: That's right.

22 CHAIRMAN STUTO: Were there any members of the public
23 -- I don't think anyone signed up for this one.

24 Mr. Quinn?

25 MR. QUINN: I have one question and one comment.

1 How many members of the Board have actually visited
2 this site?

3 (Several Planning Board members raise their hands.)

4 I'm glad to see that. That's great.

5 Just across the street from where the pink notice is
6 -- by the way, there's only one little pink notice. It
7 is a long way from the local residents who may or may
8 not know what's going on. A little further up there is a
9 kind of a junkyard and further north is an enormous sand
10 and gravel excavation quarry, which is likely to be
11 submitted to this Board in years to come for a housing
12 development. That is how Green Meadows came about. Now I
13 live there and it's beautiful. There is the likelihood
14 that that will be requested for development may be not
15 in my lifetime, but probably in yours.

16 The question I have is: I understand from the
17 presentation that the whole parcel is to be conserved.
18 How was I guaranteed for the future?

19 CHAIRMAN STUTO: That's the same question that Kathy
20 asked.

21 Joe, do you want to answer that again?

22 MR. GRASSO: So, the expectation is that there will
23 be a subdivision application which includes those lands
24 and it will be up to the Planning Board to decide during
25 that review process whether or not that property should

1 be permanently preserved and a method that will be
2 preserved. There are various ways to preserve property.
3 Deed restrictions is one, conveyance to another land
4 conservation organization is another.

5 MR. QUINN: Can someone requests that this Board act
6 to ensure that there is a clause if a provision is
7 granted to rezone -- that there is a clause that covers
8 that and preserves this indefinitely and recommends to
9 the master Planning committee for that to be so. Can
10 that be done? I think that's critically important.

11 CHAIRMAN STUTO: We will talk about it.
12 Do you have any other questions?

13 MR. QUINN: Well, we've talked about a lot over the
14 last couple of years about preservation and am very
15 anxious to see that and so are many of my colleagues in
16 Green Meadows are anxious to see that. Provisos are made
17 in the review of the master plan to cover such
18 incidences. Thank you very much.

19 CHAIRMAN STUTO: Thank you.

20 Joe, I'll ask you if you have a comment. I'll see if
21 the applicant has any comment or objection to that.

22 MR. GRASSO: I think just to clarify -- the question
23 was: Could there be a condition placed on the rezoning
24 application to permanently protect the lands? I don't
25 see any reason why it couldn't be done, but that is not

1 part of the application that is at the purview of the
2 Planning Board. I think that it's appropriate to
3 establish those types of protective measures as part of
4 the development plan application and not just a rezoning
5 application. I think that's the better forum to do it
6 when you're looking at things and all the different
7 issues and considerations. That is just my
8 recommendation to the Board.

9 CHAIRMAN STUTO: What does the applicant had to say
10 about that?

11 MR. DELL: Prior to making the application for the
12 rezoning to the sport, a month prior we had submitted
13 the conceptual application to the Board and we were
14 directed that the rezoning had to be done first. As part
15 of that concept submission, we are identifying these
16 areas much like it is right now on the same map as to be
17 permanently protected. So as that process unfolds and as
18 this Board directs us, those areas are identified to be
19 permanently protected.

20 CHAIRMAN STUTO: How does the rest of the Board feel
21 about that?

22 MS. DALTON: If I was understanding what the applicant
23 sat and what Joe said that this is going hand-in-hand
24 with the other application and you're going to be using
25 this parcel as part of your green space requirement for

1 the overall plan and therefore, sir, that would mean
2 that they must keep that is green space because it is
3 part of the calculation of their overall plan and then
4 what Joe just reaffirmed was that if there were any
5 changes to that, they would have to come back and talk
6 to us about it -- I assume as either part of the other
7 application or new application. But basically they've
8 already got a plan to develop an adjacent area and that
9 becomes the green space calculation. I think then, it
10 must stay green.

11 Did I understand not properly?

12 MR. GRASSO: No, you didn't. I might have confused
13 you.

14 So, the action tonight and the rezoning if it becomes
15 SFR does not mean that the land must become open space.

16 MS. DALTON: That's not what I said. What I said this
17 when they come in for future application that in order
18 to count that green space - what I heard somebody say as
19 part of the other project is that needs to be zoned
20 exactly the same as the other parcel. So before the new
21 application comes before us, this rezoning has to take
22 place. The plan is that when the new application comes
23 before us, it will include this parcel in the green
24 space component for the rest of the development.

25 MR. DELL: Correct.

1 MR. GRASSO: Correct.

2 MR. SHAMLIAN: But if I understand it correctly, the
3 risk here is that we make our recommendation, the Town
4 Board grants the rezoning, this project falls apart, 15
5 years from now somebody can come in inconceivably put up
6 a single house on the parcel - on the 10 acres.

7 MR. GRASSO: Correct. We tried to address that in our
8 letter.

9 MR. SHAMLIAN: The most that they could do was one.

10 MR. LANE: The rest is not developable.

11 MR. GRASSO: That's right.

12 MR. SHAMLIAN: To me, while it may be simpler and
13 cleaner and I guess in some respects to deal with it
14 when the project comes back, I guess I don't see any
15 reason why we don't have the provision limiting it to
16 permanently conserving -

17 CHAIRMAN STUTO: I'm not sure that we can legally do
18 that.

19 MS. DALTON: That's why I thought that was a good idea.
20 I agree with Joe -- the reason why I think that waiting
21 because at the end of the day rezoning -- the only thing
22 that is before us right now is whether or not were going
23 to recommend that this be rezoned to single family.
24 That is all we are doing.

25 MR. GRASSO: That's correct.

1 MS. DALTON: So, single family is a less intensive use
2 than what it is currently zoned at. Even if we come
3 back with whatever they come back with, it's going to be
4 less intensive than what is currently zoned for. No
5 matter what we do right now, we improve the state of
6 this property by recommending that it be common SFR
7 zone.

8 MR. DELL: The applicant is currently in contract for
9 the property for the subdivision portion of it that we
10 do have an application on file. So, to put potential
11 restrictions on this area for potential future projects
12 other than what we have already applied for, we would
13 want to encumber the gentleman's property or the owner's
14 property in the future if the project were to fall
15 through. We do have an application on file. We are just
16 waiting for the rezoning to go through to be back before
17 you folks for the concept discussion and hopefully move
18 along to preliminary. This all is very clearly
19 identified as preservation -

20 MS. MCCAINE: My name is Amy McCaine. Into your name
21 is?

22 MR. SHAMLIAN: Craig Shamlan.

23 MS. MCCAINE: I think that Craig brings out a very
24 good point and it's one that I guess I have a question
25 about. When the project comes in and you're making a

1 decision based on a certain set of facts and that
2 decision is that particular piece of property should not
3 be developed, it is any conservation zone - why would
4 you not want to approach should in what I think is an
5 appropriate incremental fashion which is okay, decision
6 one is your rezoning and you are setting this aside in
7 perpetuity. No matter what happens with the project and
8 we saw one today -- they come and go, right? You never
9 know. People have the best intentions and things happen.
10 Then, you know what the future of that land is going to
11 be. As it is, if you just rezone, you really don't. It
12 seems to me that it would make somewhat more logical
13 sense for the Board to act on what's before them which
14 is rezoning because of the set aside which was what was
15 presented today. If that's not the reason, then why the
16 rezoning?

17 MR. LANE: You're not entirely correct. We are not
18 doing the rezoning. We are making a recommendation to
19 the Town Board will on a rezoning application. This step
20 would be nothing more than that.

21 MS. MCCAINE: I do understand that you're making a
22 recommendation. I assume that the Town Board will act on
23 your recommendation. So, in essence unless they're going
24 to second guess you on a recommendation, this Board is
25 making a decision to recommends to the Town Board who is

1 an actionable body that this property be rezoned. What I
2 am hearing is all this hesitancy about taking care of
3 the business that has been put before you and instead
4 pushing it down the road. I guess I'm with Craig.

5 CHAIRMAN STUTO: Let her finish what she has to say
6 and then we can go and make all of our comments.

7 MS. MCCAINE: That's what I am saying. I think that it
8 is probably cleaner in the long run to deal with each
9 thing as it comes forward and that of the project moves
10 forward no harm done. If it doesn't move forward, then
11 there is protection for the future for that particular
12 development. You don't have to go back and see what
13 so-and-so said 10 years ago in the minutes.

14 CHAIRMAN STUTO: Thank you.

15 MS. DALTON: The reason that I want to respond to you
16 is this: If we wanted to protect that property in
17 perpetuity, first of all that is not what is before us.
18 What is before us is the question of should we make this
19 single family residential or keep it at a higher level
20 of usage. I think the answer to that is that we would
21 rather put it at a less intensive usage. When you ask us
22 to restrict this property when everything else has not
23 been taking care of, that removes somebody's property
24 rights when in fact a planned use might completely fall
25 through. They don't even have an application before us

1 yet. There's just the plan. So, I don't want to tell
2 whoever owns this property that in perpetuity they can't
3 put one house on 10 acres if nothing happens on that
4 other parcel of land. I don't think that is fair.
5 So, you're asking me why I'm not preemptively taking
6 action on a parcel of property, my answer to that is
7 until I see an application for the whole thing I don't
8 want to take somebody's property rights.

9 CHAIRMAN STUTO: Does anybody else want to say
10 anything?

11 MR. SHAMLIAN: I was actually in between you coming
12 up in the applicant speaking, the issue came up about
13 essentially they have a contract for the property and I
14 echo what Kathy said. Based on that, while there is some
15 merit to the other, I would be uncomfortable taking the
16 owner's property rights at this point because it could
17 fall through in the owner's rights have been diminished
18 unnecessarily just for the sake of expediency when in
19 the end we didn't accomplish what we wanted, I think.

20 CHAIRMAN STUTO: I also do not know if it's legal.
21 There was a lawsuit in the Town and I am not intimately
22 involved in it, but I think it was
23 commercial/office/residential that was zoned
24 commercial/office/residential in the last rezoning but
25 there was a caveat where the map said that the buffer

1 should be greater than other
2 commercial/office/residential. My understanding is that
3 the initial court finding was that all
4 commercial/office/residential has to have the same
5 conditions on them which would be a buffer of X number
6 of feet.

7 Besides agreeing with Kathy and Craig anyway, I'm not
8 sure that it's legal because I don't know if you can say
9 yes you can rezone it but you cannot build on it. I
10 don't know if it's legal. I think it's a very low risk
11 proposition. I think this is a very real proposal. I
12 think we are going to see it come back and I think we're
13 going to be voting on concept is the Town Board approves
14 the rezone. The worst-case scenario is that maybe they
15 can get a single house on there sometime in the future.
16 That's how I feel about it.

17 Any other comments?

18 MR. BURDELL: My name is Mark Burdell and on the
19 resident directly across from the said parcel.

20 CHAIRMAN STUTO: Can you show us where you are?

21 MR. BURDELL I'm right here (Indicating). I have the
22 whole 10 acres across from me. When I moved in there in
23 1988, there were agricultural activities going on. In
24 other words, corn was being planted and harvested. Later
25 on after that, George's market got it there and was

1 doing pumpkins, I guess. So, what I would like to know
2 what this rezoning is: Can agricultural activities
3 continue? At the present time the land is fallow. The
4 weeds are 6 feet high. You can't see anything. There's
5 animals roaming around in there because we used to have
6 dozens of turkeys that you would see in the winter in
7 the springtime before was plowed. The current deer
8 population poses a direct threat for the drivers that
9 are driving down Pollock Road particularly at night.
10 There have been several accidents involving deer over
11 the past few years. They freely travel back and forth
12 across the road. So, hopefully whoever is under contract
13 or whoever the current owner is will push the field down
14 so will be clear. Beyond that, I would like to be able
15 to see agricultural activities continue not only for the
16 aesthetic value but also because it maintains my
17 property values for having a clear space to look over.
18 If it's allowed to just go natural, this could be trees
19 and brush and all the stuff which I consider to be an
20 aspect that would decline my property value. That is one
21 of the key things about my property is that I overlooked
22 this space and I can see the top of the Fourth of July
23 fireworks from the south mall from my porch and it's a
24 pleasant scenario without all the regular natural
25 treeing and brush and all that stuff.

1 CHAIRMAN STUTO: Okay, any other questions?

2 MR. BURDELL: No, that's it. I just wanted to ask
3 about the agricultural part.

4 CHAIRMAN STUTO: It's single family now - that's what
5 he's talking about. Is agricultural a permitted use
6 there?

7 MR. GRASSO: Yes, it is.

8 CHAIRMAN STUTO: It is a permitted use but it's up to
9 the owner.

10 Any other comments or questions?

11 Okay, we have a resolution before us. I would ask that
12 the stenographer put the entire Resolution to the
13 record.

14 Joe Grasso, I will let you handle how you want to read
15 the Resolution.

16 MR. GRASSO: I'm going to paraphrase, but I'm going to
17 read from it. So, it's a recommendation from the
18 Planning Board to the Town Board.

19 Whereas the Town Board referred the proposed rezoning
20 of land located at 59 Pollock Road from OR to SFR,
21 Whereas, Frank Barbera of Barbera Holmes and development
22 and Dolores Haberly, owner, seek to rezone 10 acres of a
23 35 acre parcel,

24 Whereas, the 10 acres considered for rezoning includes
25 areas of steep slopes, federally designated wetlands in

1 the stream,

2 Whereas, the 10 acres have extensive frontage on
3 Pollock Road with access constraint based on a slope of
4 Pollock Road and its horizontal alignment to implement
5 site distance along its road frontage,

6 Whereas, the Land Use Law has requirements in the
7 conservation development overlay zone to assure that the
8 siting and design of the development is sensitive to
9 environmental and historic resources and constraints
10 including a conservation analysis to identify
11 constrained lands, open space and recreational
12 resources, buffer areas and lands exhibiting resource
13 value, preservation of the majority of constrained lands
14 plus 40% of the unconstrained lands which may result in
15 a reduction of the lot sizes and area, bulk or
16 dimensional standards.

17 Now therefore be it resolved, that the Planning Board
18 recommends that the rezoning request under Resolution
19 486 for 2015 be approved based upon the following
20 findings of fact.

21 Number one: The rezoning of 10 acres of the parcel
22 from OR to SFR would allow less intensively and uses in
23 be a continuation of the existing SFR zoning district to
24 the west

25 Number two: Under the proposed rezoning request to

1 SFR the maximum density allowed in the conservation
2 development overlay district is two lots per acre of
3 unconstrained lands with the majority of constrained
4 lands plus 40% of the unconstrained lands to be
5 preserved in perpetuity. Lands zoned SFR are included in
6 the maximum allowable density calculation for
7 development in accordance with the conservation
8 development standards.

9 Number three: Any proposed development activity on
10 this subject parcel other than the construction of one
11 single family residence would be subject to subdivision
12 plan review by the Planning Board. The Resolution shall
13 take effect immediately and shall be transmitted to the
14 Town Supervisor and Members of the Town Board.

15 CHAIRMAN STUTO: Does the Board have any comments or
16 questions?

17 Do we have a motion?

18 MS. DALTON: I'll make that motion.

19 MR. LANE: I'll second that.

20 CHAIRMAN STUTO: Any discussion?

21 (There was no response.)

22 All those in favor, say aye.

23 (Ayes were recited.)

24 All those opposed, say nay.

25 (There were none opposed.)

1 The ayes have it. Thank you.

2 MR. DELL: Thank you.

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4 (Whereas the above entitled proceeding was concluded at
5 7:34 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 _____

