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PLANNING BOARD COUNTY OF ALBANY

TOWN OF COLONIE

LIFE CHURCH
687 WATERVLIET SHAKER ROAD

THE STENOGRAPHIC MINUTES of the above entitled matter
by NANCY L. STRANG, a Shorthand Reporter Commencing
on August 22, 2017 at 8:16 p.m. at The Public
Operations Center, 347 Old Niskayuna Road, Latham,
New York

BOARD MEMBERS:
PETER STUTO, CHAIRMAN
LOU MION
BRIAN AUSTIN
CRAIG SHAMLIAN
STEVEN HEIDER
KATHLEEN DALTON
SUSAN MILSTEIN

ALSO PRESENT:

Michael C. Magguilli, Esq. Town Attorney's Office
Michael Tengeler, PEDD
Andrew Brick, Esq.
Joseph Grasso, PE, CHA
Amy McCaine
Rich Notke

1 CHAIRMAN STUTO: Next item on the agenda is Life
2 Church, Watervliet Shaker Road, clarification about hours of
3 operation for final approval.

4 Mike Tengeler, do you have any introductory
5 remarks on this project?

6 MR. TENGELER: I have nothing to say.

7 CHAIRMAN STUTO: We will turn it over to the
8 applicant.

9 MR. BRICK: Good evening. I am Andy Brick from
10 Donald Zee's Law Firm, on behalf of Life Church.

11 With me this evening is Mark Allen from Life
12 Church as well as my co-counsel Steve Dimmick from the
13 Jackson Law Firm in Dallas.

14 We are here this evening requesting that you
15 consider amending the conditions of the previous site plan
16 approval for the Life Church worship facility at 685
17 Watervliet Shaker Road. We had submitted back in October
18 our request and we were before you in October. If you
19 recall, we were sent away with some steps that the Board
20 wanted to see us take before they would consider removal
21 of certain conditions. Specifically, conducting
22 supplemental traffic studies.

23 We have since conducted a supplemental traffic
24 study which we had submitted to Clough Harbour and the
25 PEDD for Sunday traffic which specifically shows according

1 to our traffic engineer - and I believe confirmed by CHA -
2 that the removal of the condition that limits the number
3 of Sunday services to three - removing that restriction on
4 the number of Sunday services will not have any impact on
5 traffic and it is something that the Board can consider.
6 We are asking you to do that - consider removing that
7 condition this evening.

8 Also, we had requested clarification that the
9 restriction on weekday services does not involve services
10 on or around major religious holidays that will happen to
11 occur on weekdays. I believe Clough Harbor has previously
12 stated to the Board, but they didn't have any issues or
13 objections to that clarification. So, what we are
14 requesting here this evening, specifically, is that the
15 previous condition of approval limiting the number of
16 Sunday services to three be eliminated and to clarify that
17 the prior approval allows for services on and around major
18 religious holidays that will occur on weekdays. That is
19 set forth in our project narrative. That is why we are
20 here this evening. I will answer any questions that the
21 Board may have.

22 CHAIRMAN STUTO: I know the traffic is obviously
23 important.

24 Joe Grasso, our Town Designated Engineer from
25 CHA has reviewed your study.

1 Joe, can you give us your opinion on that?

2 MR. GRASSO: Sure. In your packets we had issued
3 a letter dated June 20th on the application materials. Just
4 to clarify what we had reviewed by the time we had issued
5 our letter - it was on May 23, 2017 prepared by Donald Zee's
6 office requesting the amendment to the site plan and the
7 recommendation to the Town Board.

8 Secondly, as Andy had mentioned, there is the
9 supplemental traffic study that was prepared by Greenman
10 Pedersen.

11 Also in your packets, just to provide
12 clarification -- was the August 7, 2017 project narrative.
13 That was issued, obviously, after our June 20th letter.

14 In that narrative Andy mentioned that it does
15 provide some clarification regarding the intent of the
16 requested amendment which is helpful. I think our letter
17 goes through and adequately covers the issues that are
18 being requested and the August 7th letter.

19 In our letter, we went through just for the
20 Board's edification - there were six conditions of
21 approval. These were conditions that were consistent
22 between the negative declaration that the Planning Board
23 had issued, the conditions of approval that the Town Board
24 had granted regarding the open development area and then
25 the conditions of approval that the Planning Board

1 attached to the site plan. So, I have provided those in a
2 letter.

3 CHAIRMAN STUTO: Were they also consistent with
4 the application?

5 MR. GRASSO: The conditions were consistent and
6 based on information provided as part of the application
7 materials, it was basically acknowledging and clarifying
8 what the applicant had described as the proposed use of the
9 site.

10 CHAIRMAN STUTO: Thank you.

11 MR. GRASSO: Regarding the request, to clarify
12 that a prior approval was granted, allows for services on
13 and around major religious holidays which is something that
14 we had stated in our October 18, 2016 letter that we believe
15 that the prior approval was given which allowed that. We
16 continue to believe that is the case now.

17 Regarding our previous condition issued by the
18 Planning Board, it was that Sunday service times shall be
19 limited to up to three services without additional
20 Planning Board review. So, since that time, the applicant
21 has provided a supplemental traffic study to allow us to
22 evaluate what those additional services and what traffic
23 impact that might have on the Town's roadway network and
24 within the site.

25 We do provide comments within our letter. I'm

1 just going to go through those. They are pretty
2 self-explanatory.

3 The traffic study provides additional
4 information not included in the previous traffic studies
5 for the project including data on the peak hour of the
6 adjacent street traffic which is Watervliet Shaker Road
7 including actual trip generation data, whereas before the
8 previous traffic study was before the facility was in
9 operation. So, it was based on engineering estimates as
10 well as an updated capacity analysis based on this actual
11 traffic data.

12 The traffic data in the study establishes that
13 the Sunday peak hour of traffic on Watervliet Shaker Road
14 is from 12 noon to 1 o'clock which is something that we
15 did not know before. The study also demonstrates that the
16 Sunday peak traffic generated from the site occurs in the
17 morning from 9:30 to 11 o'clock which are the times that
18 they are having services. They have documented 411 total
19 trips during the peak hour which is less than the March
20 14th estimate in the previous study which had estimated
21 522 trips. So, 20% reduction from their previous
22 estimates.

23 There were trips generated during the peak hour
24 of the adjacent street traffic - so, when Watervliet
25 Shaker Road is peaking, it is only 328 trips. So, that is

1 further reduced.

2 We agree with the methodology of analyzing the
3 condition of the Sunday peak hour of Watervliet Shaker
4 Road as well as the churches peak hour. What they did was
5 overlap those two. So, they took the maximum peak of the
6 site occurring at that maximum peak of Watervliet Shaker
7 Road and evaluated those of the worst case conditions. We
8 agree with that methodology.

9 The study shows that during both of these
10 conditions, Watervliet Shaker Road will operate at a level
11 of service B or better in the south bound approach at
12 Moffett Lane will experience levels of service E.

13 As you recall, levels of service is rated from
14 A to F, with increasing levels of delay as you go from
15 level of service A to an F.

16 CHAIRMAN STUTO: So, it is the people that are
17 leaving the property?

18 MR. GRASSO: Well, level of service E is for only
19 the traffic that is exiting the site from Moffitt Lane.
20 There are a number of other factors that you have to
21 consider. Those factors include looking at the short peak
22 period of time that traffic is exiting the site only after
23 services and the volume to capacity ratio of the various
24 roadways. So, based on that, it is our conclusion that these
25 operations are acceptable and no mitigation is required to

1 accommodate these traffic editions. As such, we did not
2 recommend any manual traffic controls for example, the use
3 of a police officer or other types of intersection controls
4 at the Watervliet Shaker Road and Moffitt Lane intersection
5 to accommodate the conditions that were represented in the
6 study.

7 The other thing that I want to mention is that
8 the study - because it looks at the peak travel times of
9 the traffic from the church as well as from Watervliet
10 Shaker Road. It can be concluded that operations during
11 other hours of the day will be either at or better than
12 the operations shown in the study. So, since the analysis
13 shows no significant impact, removal of the Sunday service
14 restriction appears reasonable.

15 Then, regarding SEQR - the negative declaration
16 previously issued by the Planning Board included the above
17 referenced conditions. As such, an amended negative
18 declaration should be considered prior to amendment of the
19 conditions associated with the site plan amendment.

20 That is all we've got, based on our review at
21 this time.

22 CHAIRMAN STUTO: Any questions or comments from
23 the Board, at this time? We do have one member of the
24 public that did sign up.

25 Amy McCain?

1 MS. MCCAIN: I have a question and this may have
2 been answered by your traffic study. I don't know.

3 I made a mistake of trying to mail a letter at
4 11 o'clock on a Sunday morning and got over to that area.
5 They were people both coming in and going out and it was
6 very congested and there was a Colonie Police Officer
7 directing traffic which appears to be pretty necessary. My
8 question really is: Is that something that the Town tax
9 payers are going to be supporting unknowing that we are
10 going to have a Police Officer at that intersection on
11 some days? If so - and there are more services, does that
12 mean there is more investment of the police officers?

13 CHAIRMAN STUTO: My understanding is that in the
14 case where they did have a police officer, they had to apply
15 to the Town and they have to pay for the Police Officer.

16 Am I correct in that?

17 MR. HEIDER: That is correct.

18 CHAIRMAN STUTO: So, the applicant paid for that.

19 MS. MCCAIN: That was really my only question.

20 MR. MAGGILLI: They use the Police for traffic
21 control and it is at no cost to the Town. They pick up
22 everything from hourly rates to benefits. That's not just
23 this church, but anyone that wants to use the Police for any
24 type of special event.

25 MS. MCCAIN: I didn't know if they had requested

1 it or if it's something that the Town just did to try to
2 relieve the congestion at the intersection.

3 MR. MAGGUILLI: They have to request it. They
4 fill out a form and whether the request is approved or not,
5 depends on the use of the Police. If they have the officers
6 available or if they have officers -- correct me if I'm
7 wrong, Chief - it's guys who are off-duty who come in and do
8 this.

9 MR. HEIDER: Correct, they are not on-shift
10 personell.

11 MS. MCCAIN: They are using Town equipment,
12 right?

13 MR. HEIDER: They are bona fide, certified actual
14 Police Officers and they are not assigned to that shift.

15 MS. MCCAIN: That was my only question, thank
16 you.

17 CHAIRMAN STUTO: Thank you.

18 MR. BRICK: On behalf of the applicant I can
19 confirm that they are contractually paying for Police
20 services. They originally requested internal building
21 security, but in some instances the Police Officers have
22 taken it upon themselves to conduct traffic control. They
23 have been absolutely spectacular. We are very happy with
24 them. It's been a great relationship. We think they enjoy
25 being there on Sundays and we are very appreciative to have

1 them.

2 MR. MAGGUILLI: Just to be clear, this is nothing
3 that the town has requested or demanded that as far as the
4 use of police officers. It is solely something that your
5 clients decided that it wanted; is that correct?

6 MR. BRICK: That is correct. We requested them
7 originally to go to the Chief's Office for just regular
8 security just to have a presence in the building. It has
9 been a great relationship. We are very happy with it.

10 CHAIRMAN STUTO: Just in terms of process, if we
11 are going forward -- I'm sorry, can you go up to the
12 microphone?

13 MR. NOTKE: Hi. I'm Rick Notke. I live in 19
14 Sherwood Drive. I live right down the road from the church.

15 I have seen the traffic control. I thought that
16 the Planning Board had originally stated that they weren't
17 supposed to use traffic control without the expressed
18 permission of the Town Board. It was condition 4, I
19 believe. The original condition 4 that states a traffic
20 control officer shall not be used to control access to the
21 subject property within the Watervliet Shaker Road
22 right-of-way without Town Board approval.

23 CHAIRMAN STUTO: Well, I think the Town Board
24 has set up that application process.

25 Do you want to address that, Mike?

1 MR. MAGGUILLI: That is correct. What you are
2 saying is absolutely correct. Basically what it requires
3 them -- and not just them but any applicant - they have to
4 fill out a form and they agree to the terms and conditions
5 that we place on anyone that wants to use the Police for a
6 private event.

7 MR. NOTKE: So, when it says Town Board approval,
8 it's not the Town Board actually convening and doing a
9 Resolution - and doing it that way. The applicant submits
10 for a traffic control officer and goes directly to the
11 Police Department?

12 MR. MAGGUILLI: That's correct.

13 MR. NOTKE: Where does the Town Board get
14 involved in that, if at all?

15 MR. MAGGUILLI: Just in the initial portion of
16 it. The first time anybody applies; not just them. I don't
17 know if that answered your question.

18 MR. NOTKE: It kind of does, yes.

19 Where is that for located? Can you get it
20 online?

21 MR. HEIDER: It may be online now.

22 MR. NOTKE: What if they request for a major
23 service of the Town traffic control and Police cannot
24 accommodate the request? What happens then?

25 MR. MAGGUILLI: They can still go ahead and

1 conduct their service.

2 MR. NOTKE: But they can't have any other sort of
3 traffic control. They can't just put their own people out
4 there and direct traffic.

5 MR. MAGGUILLI: No, and they can't use officers
6 from another agency like the State Police or Watervliet or
7 the Menands Police. We only allow Town Police except for
8 cases of emergency to conduct traffic in the Town. It has
9 always been that way.

10 MR. NOTKE: So, it is totally no cost to the
11 taxpayer.

12 MR. MAGGUILLI: That's correct.

13 MR. NOTKE: Thank you.

14 CHAIRMAN STUTO: Thank you.

15 Susan, did you have a question?

16 MS. MILSTEIN: I would recommend that we define
17 major holidays so we all are clear with what the major
18 holidays are.

19 MR. BRICK: My client is of the Christian faith.
20 So, I think it would be safe to say it would be Christmas
21 Eve, Christmas Day, Easter Eve and possibly Good Friday.

22 MR. MAGGUILLI: To be real honest with you, what
23 may be a major holiday for one religious group, may not be a
24 major holiday to another. So, we should be really very
25 careful in trying to define anything like that. We don't

1 want to do anything that would be seen as an infringement of
2 anybody's free practice of their religion. I'm not saying
3 that it is. There is nothing in our law that defines the
4 term service or religious services.

5 I took a look around and I couldn't find in any
6 Town in New York State or elsewhere that actually defines
7 the term services. If you could find one, Mr. Brick, I
8 would be happy to look at it. I think everybody just uses
9 their common sense as to when the service is. That is the
10 comment that I have. I think that we would be treading on
11 dangerous ground if we try to define a major religious
12 service.

13 MS. MILSTEIN: I would agree with that.

14 CHAIRMAN STUTO: Any other comments? We are free
15 to comment, but I want to talk about what we have to do
16 procedurally before going forward with this.

17 Joe Grasso was very helpful in helping get
18 organized on this. We have to talk about the environmental
19 aspect of this. We have to make an ODA, that's an open
20 development area recommendation and we have to amend the
21 site plan.

22 We are agreeing with that, Joe?

23 MR. GRASSO: Correct.

24 CHAIRMAN STUTO: With respect to the
25 environmental review, Joe Grasso is recommended this

1 language and we have agreed with him.

2 Does anybody have anything to say before we
3 start going forward with the motions?

4 MR. MAGGUILLI: There is an amendment to the
5 proposal. It is marked on the handout, if you going to give
6 it to the public.

7 CHAIRMAN STUTO: With respect to the
8 environmental, would the Board consider or propose or a
9 Board Member propose a motion to declare the Town of Colonie
10 Planning Board has lead agency of the amended site plan
11 application and to adopt a negative declaration pursuant to
12 the Environmental Quality Review Act?

13 MR. MION: I will make a motion.

14 CHAIRMAN STUTO: We need a little bit more before
15 you do that.

16 This declaration includes the elimination of
17 the previous condition number five which had stated that
18 Sunday service times shall be limited to up to three
19 services without additional Planning Board review. The
20 record of the amended negative declaration shall include
21 the acknowledgment that the declaration does not include
22 any restrictions of the facility having weddings, banquets
23 and funerals and having services on and around major
24 religious holidays.

25 Do we have a motion to that effect?

1 MR. MAGGUILLI: I would like to propose an
2 amendment to this - that the term restriction be removed and
3 replaced with condition. So, there is no issue whatsoever -
4 - we have to understand that there were never any
5 restrictions on having weddings, banquets and funerals in
6 any of the documents approved by the Town. That was
7 something that came up and came to our attention when the
8 applicant made a request to essentially clarify what they
9 could and could not do at the property. I want to be clear
10 that there was never anything in the written documents or
11 the Local Law that placed any type of condition for
12 weddings, banquets and funerals. In fact, the record
13 actually shows the opposites - that unprompted by any member
14 of the Planning Board or anyone from the Town -- Life
15 Church, the applicant, represented that they did not conduct
16 weddings, funerals or banquets at the site and if they did
17 those, they were done off-site elsewhere and the Town just
18 accepted that. We had never made any kind of formal written
19 condition in the plan.

20 What I think we should do so there is no
21 question at all for the future because this matter is in
22 litigation - we acknowledge that the church can hold
23 weddings, banquets, funerals or any other services that
24 they want to hold at their property without any type of
25 input or approval by the Town - and that we not only

1 didn't limit it to the Sunday services, but any service.
2 That way, you are free to do whatever it is that you
3 believe is necessary in performing your religious
4 functions.

5 MR. BRICK: Speaking on behalf of the church,
6 that sounds wonderful.

7 MR. MAGGUILLI: That's kind of a long-winded
8 amendment, but you get my drift.

9 CHAIRMAN STUTO: We will change the word
10 restriction to conditions.

11 Do we have a motion.

12 MR. MION: I'll make a motion for the changes.

13 CHAIRMAN STUTO: Do we have a second?

14 MS. DALTON: I will second.

15 CHAIRMAN STUTO: Any discussion?

16 MR. GRASSO: If I could, what Mike had mentioned
17 kind of went one step further. There was a condition number
18 six which said weekday service times shall start no earlier
19 than 6:30 p.m. without additional Planning Board review. So,
20 if it is the desire of the Board, I would like to propose
21 that we add a limited condition number six so that there is
22 no restriction on services during weekdays as well, if the
23 Board so chooses.

24 MR. MAGGUILLI: I think that's a great idea, Joe.

25 MR. MION: I agree.

1 MR. GRASSO: After that end quote, I will add
2 condition number six which stated: Weekday service time
3 shall start no earlier than 6:30 p.m. without additional
4 Planning Board review. Then, it will continue on with the
5 record of the amended negative declaration.

6 CHAIRMAN STUTO: Okay, let's have a new motion as
7 recommended be amended by Joe Grasso.

8 MR. MION: I will make that motion.

9 MS. DALTON: I will second it.

10 CHAIRMAN STUTO: Discussion?

11 (There was no response.)

12 All those in favor, say aye.

13 (Ayes were recited.)

14 All those opposed, say nay.

15 (There were none opposed.)

16 The ayes have it.

17 With respect to a recommendation to the Town
18 Board, would any of the Board Members like to make a
19 motion to provide a positive recommendation to the Town
20 Board relative to the proposed amended open development
21 application? The recommendation includes removal of any
22 condition regarding the number of Sunday services and
23 further acknowledging that there are no restrictions on
24 the facility having weddings, banquets, funerals and
25 having services on or around major religious holidays or

1 having services any time they so desire - I think that's
2 what were saying.

3 MR. GRASSO: So, I would just like to add to that
4 - the second sentence would read: This recommendation
5 includes removal of any conditions regarding the number and
6 times of Sunday and weekday services.

7 CHAIRMAN STUTO: And further acknowledging that
8 there are no restrictions on the facility having weddings,
9 banquets and funerals and having services on or around major
10 religious holidays.

11 Do we have a motion.

12 MR. MION: I will make that motion.

13 MS. DALTON: I will second it

14 CHAIRMAN STUTO: Discussion?

15 (There was no response.)

16 All those in favor, say aye.

17 (Ayes were recited.)

18 All those opposed, say nay.

19 (There were none opposed.)

20 Joe, do you want to read the last one? It looks
21 like you're marking them off.

22 MR. GRASSO: Sure. So, this last one is regarding
23 the site plan approval amendment. A motion to approve the
24 amended site plan application with the removal of previous
25 condition of approval number five which stated quote Sunday

1 service time shall be limited to up to three services
2 without additional Planning Board review", and condition
3 number six which had stated "weekday service time shall
4 start no earlier than 6:30 p.m. without additional Planning
5 Board review." the record of the amended site plan approval
6 shall include the acknowledgment that the approval does not
7 include any conditions on the facility having weddings,
8 banquets and funerals and having services on and around
9 major religious holidays.

10 CHAIRMAN STUTO: Anybody want to make a motion?

11 MR. MION: I will make it.

12 MS. DALTON: I will second it.

13 CHAIRMAN STUTO: Discussion?

14 (There was no response.)

15 All those in favor, say aye.

16 (Ayes were recited.)

17 All those opposed, say nay.

18 (There were none opposed.)

19 The ayes have it.

20 MR. MAGGUILLI: I just have one more question. I
21 move to ask if the applicant has any objections to any of
22 the language that they just heard with respect to the
23 recommendations to the Town Board, the SEQR review and the
24 like and if so, would you take a minute, if you like, to
25 huddle with your clients and please let us know what if any

1 objections you have or what language you would like to see
2 changed, what language you would like to be added. Would you
3 like to take a few minutes?

4 MR. BRICK: I don't believe that we do. We have
5 listened very carefully and we think you are very
6 deliberative and thoughtful.

7 Thank you, Joe Grasso, for working through the
8 language. We are very happy with the result. Thank you,
9 very much.

10 CHAIRMAN STUTO: Okay, thank you.

11

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13 (Whereas the above entitle proceeding was
14 concluded at 8:40 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 _____

