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PLANNING BOARD COUNTY OF ALBANY

TOWN OF COLONIE

SHELCO OPEN DEVELOPMENT AREA
34 DENISON ROAD
OPEN DEVELOPMENT AREA RECOMMENDATION
TO TOWN BOARD

THE STENOGRAPHIC MINUTES of the above entitled matter
by NANCY L. STRANG, a Shorthand Reporter commencing
on January 23, 2018 at 7:00 p.m. at The Public
Operations Center, 347 Old Niskayuna Road, Latham,
New York

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

ALSO PRESENT:

Joseph LaCivita, Director, Planning and Economic
Development Department
Kathleen Marinelli, Esq. Counsel to the Planning
Board
Melissa Currier, PE, C.T. Male
Edward Vopelak, C.T. Male
Joel Weingarten, Birchwood Neighborhood Association
Susan Webber
Lawrence Palleshi
Jessica Mahar
Paul Rosano, Town Board

1 CHAIRMAN STUTO: Next on the agenda is Shelco
2 open development area, 34 Dennison Road, open
3 development area recommendation to Town Board.

4 Joe LaCivita, would you like to introduce
5 this?

6 MR. LACIVITA: Yes. The project before us,
7 Peter, is asking under Resolution by the Town Board for
8 this Planning Board to review the request of a three-lot
9 subdivision, but also an open development area where the
10 three lots that have sufficient frontage Under zoning
11 perspective -- they're going to look at the three lots
12 to have one access point on Dennison Road.

13 Melissa Currier is here on behalf of the
14 applicants today to walk us through the request for
15 this Board to make a recommendation back to the Town
16 Board.

17 CHAIRMAN STUTO: Okay, on open development area
18 the normal Town frontage is eight feet, correct?

19 MR. LACIVITA: What it does is it's giving the
20 road frontage and the relief of not having any access to
21 a dedicated Town road. So, this would be a private drive
22 coming in.

23 CHAIRMAN STUTO: Not having frontage on it?

24 MS. CURRIER: Hi, I am Melissa Currier from
25 C.T. Male. Good evening.

1 I will just explain this just a little bit
2 more.

3 Each one of these parcels actually have the
4 frontage on a road.

5 CHAIRMAN STUTO: Not 80 feet of frontage,
6 though.

7 MS. CURRIER: Yes. They do meet all the zoning
8 requirements on the SFR zone.

9 Let me just give you a quick overview and
10 then I can go into the reasoning behind the shared
11 driveway.

12 CHAIRMAN STUTO: I want to talk about the open
13 development area first. Why do they need an open
14 development area?

15 MS. CURRIER: They prefer to have an open
16 development area because they were trying to limit the
17 amount of disturbance on the site with the thought that
18 they would keep as many trees as possible. It is a very
19 steep terrain and it would limit the amount of
20 disturbance by having one driveway versus the three.

21 It is a family development. It is a shared
22 driveway access amongst family members, but they do
23 have the lots developed in such a way that if they
24 were to sell, they all comply with the current zoning
25 in regard to frontage, square footage and setback

1 requirements for each of those.

2 CHAIRMAN STUTO: This is the first time that we
3 have seen this where they have the frontage.

4 MS. CURRIER: The shared driveway is what I
5 thought triggered it.

6 MR. LACIVITA: Yes, the shared driveway. I
7 think that was part of it. When we first met with them
8 they always contemplated a single access point with it
9 because he wanted to preserve the integrity. You do see
10 some road constraints with driveways and so on.

11 Correct me if I'm wrong, Melissa, but this
12 lines up next to the other side of the road - it's
13 proximity.

14 MS. CURRIER: It's close to the other side of
15 the road. There is an existing waterline easement so we
16 can put the driveway on top of that -- for the sake of
17 changing the terrine of the waterline because the Town
18 requirements of driveway grades, we would have to end up
19 changing the waterline itself to meet those criteria. We
20 are exactly across from Branchwood. It's just off that
21 easement, but very close to that.

22 MR. LACIVITA: So, instead of having three
23 separate driveways on these parcels which, again, are
24 all conforming lots, they are looking at a single access
25 point to make a better plan.

1 CHAIRMAN STUTO: Please continue with your
2 presentation.

3 MS. CURRIER: Right now what we are looking to
4 do is ask for a positive recommendation to the Town
5 Board to grant an ODA. If they accept the ODA and they
6 agree with the understanding of the shared driveway, we
7 will come back for the Town's review for a minor
8 subdivision application and that will include grading,
9 and utility design for the three homes. Right now we do
10 not have that because we don't know if they are going to
11 accept the shared driveway which is not going to be
12 accepted without the ODA.

13 So, the overall project is 103 acres. Each
14 one of the parcels are divided amongst the 4 acres of
15 this portion of lands which abuts up against Denison
16 Road. There is an existing sewer line that is on
17 Denison Road and the water main going up to the new
18 water tank is where the water access will come from.
19 Again, those will go for review after we get the ODA
20 approval.

21 CHAIRMAN STUTO: What's the spec for the
22 driveway?

23 MS. CURRIER: It would comply with the Town
24 driveway standards. It would have a 16 foot width of
25 pavement. There is a turnaround in there. I know that

1 the Fire Department had asked to have that.

2 MR. LACIVITA: Which is also just like we did
3 on the road off of Route 9 where we made it to support -

4 CHAIRMAN STUTO: Is it in writing anywhere as
5 to what the spec is?

6 MS. CURRIER: No, it is not. Really, we are
7 trying to say if it's going to be allowed to have a
8 shared driveway and then we'll have those designs sent
9 to the Town for review. So, we are not looking for the
10 minor subdivision approval, we are just looking for the
11 ODA recommendation.

12 CHAIRMAN STUTO: We understand.

13 I don't mean to be difficult, but it seems
14 like we would require the spec, the drawing, the
15 width, thickness and all of that stuff.

16 MS. CURRIER: It would comply with Town road
17 standards; absolutely.

18 CHAIRMAN STUTO: Road or driveway standards?

19 MS. CURRIER: If they want to have the fire
20 truck it would have to be Town road.

21 CHAIRMAN STUTO: That's why we want to know
22 what the dimensions are.

23 MR. LACIVITA: The only thing that we see here
24 from Fire Services in their packet on October 4th is it
25 says: We have reviewed the open development area

1 drawings for the above-noted project and have only the
2 following comment. A fire hydrant will be required on a
3 cul-de-sac where the houses will require residential
4 fire sprinklers.

5 Again, they are not looking at a road design
6 at this point because we have to go through the
7 approval process in order to start the design in order
8 for Fire Safety to review it.

9 CHAIRMAN STUTO: I do not think that is true.
10 I guess we could say subject to Fire Safety's approval.
11 Haven't we gotten dimensions before we have approved it?

12 Can you help me, or no?

13 MR. ROSANO: No, Peter. They are not at that
14 stage yet.

15 CHAIRMAN STUTO: Because we are not going to
16 say it again, once we vote on it. It is a minor
17 subdivision.

18 MR. ROSANO: You will see the dimensions, if
19 they agree to it.

20 CHAIRMAN STUTO: When are we going to see it as
21 a Board? It is a minor subdivision. That is what I'm
22 saying.

23 MR. LACIVITA: You are making the
24 recommendation to have the process go forward. In your
25 recommendation you can certainly make conditions like

1 you do with other planning projects. If you wanted to
2 make sure that Fire Safety has a secondary look to make
3 sure that the access and design and everything else is
4 in compliance with Town road standards, you can make
5 that condition.

6 CHAIRMAN STUTO: But I'm saying that I think it
7 is something in between.

8 MR. ROSANO: Peter, we have done that before.
9 Lou and I worked on a couple. You can put it in your
10 comments for us to review at the Town Board level. If we
11 accept it, then we accept it - as long as it is spelled
12 out. We did the same thing with Bacon Lane.

13 MR. LACIVITA: That was when I was thinking of
14 earlier.

15 CHAIRMAN STUTO: We made them keep coming back
16 until they drew it so we could see what they were
17 putting in, didn't we? I am trying to avoid that.

18 MR. MION: They did come back several times.

19 MR. ROSANO: You can make that a condition.

20 CHAIRMAN STUTO: Any other questions?

21 There are several neighbors that have signed
22 up.

23 MS. DALTON: I have just one.

24 On the actual proposal here under scope it
25 says: Building lots to be known as 34 and 36 the

1 proposal will utilize the proposed driveway from the
2 third home proposed at 36.

3 So, there is an error in this. It should be
4 38 -- or, 34 and 38 to be utilized -

5 MR. LACIVITA: Is it saying only a two lot?

6 MS. DALTON: This is a two lot at 34 and 36,
7 but then he said the driveway is at 36. It should be 36
8 and 38.

9 MS. CURRIER: I see that.

10 CHAIRMAN STUTO: I will say that at first blush
11 it looks good. Instead of three curb cuts, you have one.
12 That is my comment. As long as the ambulance and the
13 fire trucks can get you there.

14 Joel Weingarten.

15 MR. WEINGARTEN: I have some information for
16 you to be put into the record.

17 My name is Joel Weingarten. I am a resident
18 of 14 Tulip Tree Lane. Although it is Niskayuna, it is
19 the Town of Colonie.

20 I am also the President of the Birchwood
21 Neighborhood Association and I am an officer of the
22 Coalition of Neighborhoods.

23 Now I'm sort of hearing a little bit that
24 this is just for the ODA just for the driveway.

25 What I have to present to you -- and I am not

1 going to read this whole packet to you. I'm not going
2 to take this to 12 o'clock from what I heard two weeks
3 ago what happened. This is sort of with regards to the
4 ODA and to this minor possible subdivision, as a whole
5 - with regards to everything else that is going on.

6 We do not believe that this application
7 should be approved with regards to Shelco Developers
8 LLC for the ODA. We feel that it doesn't conform to
9 the Town of Colonie Comprehensive Plan and to the New
10 York State Town Law Section 280-A.

11 If you go to page 3 you can sort of follow
12 where it's going to be. The ODA approval to allow
13 Shelco to develop three residential building lots
14 again without any conservation overlay district will
15 not be an accordance with the Town Comprehensive Plan.

16 CHAIRMAN STUTO: Let me stop you right there.

17 Is this in a conservation overlay district?

18 MR. LACIVITA: It is in a conservation overlay.

19 CHAIRMAN STUTO: Okay, we will get back to
20 that.

21 MR. WEINGARTEN: So, we believe that Shelco's
22 current proposal is a blatant attempt to circumvent the
23 Town's Comprehensive Plan and the conservation overlay
24 district requirements because they have selected a
25 creation of predevelopment lots already identified as

1 constrained lands which contain steep slopes and open
2 space areas. If a full subdivision application was
3 submitted by Shelco for the entire 102.8 acre, these
4 lots and their location would be subject to all of the
5 requirements for the development within a conservation
6 overlay district.

7 Section 190-29 of the Land Use Law
8 specifically exempts minor subdivision from the
9 conservation overlay district regulations. The ODA
10 approval request ignores the availability of approved
11 road access plans which were already vetted during the
12 2009 concept approval.

13 I do understand and acknowledge and put out
14 there that the 2009 concept approval has expired, but
15 I'm still going back to that because it does set
16 precedents with regards to where things are plotted
17 out.

18 CHAIRMAN STUTO: Can you make that point again?

19 MR. WEINGARTEN: So, as Mr. Magguilli has
20 stated before numerous times with regards to the Town
21 Board meetings --

22 CHAIRMAN STUTO: There was a concept approval.

23 MR. WEINGARTEN: There was a concept approval
24 for this full area of approximately 102 acres that had
25 expired.

1 CHAIRMAN STUTO: So that has expired.

2 MR. WEINGARTEN: It is not valid, but the issue
3 at hand is that you still have engineering studies that
4 have been done that are still essentially valid with
5 regard to steep slopes, what is going on with the land,
6 has been anything major that has gone on with regards to
7 earthquakes, major destruction of the topography and so
8 forth.

9 CHAIRMAN STUTO: So, what are you saying? The
10 access on that is different than this? That was your
11 issue with it?

12 MR. WEINGARTEN: Let me continue and everything
13 will be explained.

14 That concept approval had an access point
15 further south on Denison Road and an access point via
16 the Londonderry Ridge subdivision. The proposed ODA
17 access point was not approved in 2009, again. I know
18 that expired.

19 That map for 2009 is actually the last page
20 in the packet, if you want to take a look at that.

21 The aerial site plan that Shelco provides
22 does not show the entire -- we have here 118 acres
23 which was before the whole water tower high pressure
24 system went in and so forth -- does not show that
25 entire site with already existing road access via the

1 Londonderry Ridge subdivision. It also does not show
2 the existing full site frontage along Denison Road to
3 the south.

4 The 2009 concept site plan confirms the
5 proposed lots are located in constrained lands and we
6 do have a copy of that plan layout which did receive
7 the 2009 concept approval. It shows a connection to
8 Londonderry Ridge as well as a road connection and a
9 more southerly location along Denison Road. The 2009
10 concept approval shows two building lots at 34 and 36
11 which is currently where they want to put in their
12 current subdivision with the request for the ODA where
13 34 was currently planned -- 36 is now behind 34.
14 Although, 34 and 36 were side-by-side on that plan.
15 So, the 2009 concept approval shows two building lots,
16 34 and 36 directly on the frontage of Denison Road.

17 I am assuming that C.T. Male did its job back
18 in 2009 as to whether that 34 and 36 were compliant to
19 the Town Code.

20 Shelco's ODA request does not comply with New
21 York State Town Law Section 280-A.

22 Chairman Stuto, you had remarked on several
23 occasions that the Board should carefully review any
24 OTA applications as the approval and the development
25 which does not have adequate road frontage is

1 troublesome and not desirable. In fact, New York
2 State Town Law 280-A expressly forbids just that. No
3 permit for the erection of any building shall be
4 issued unless a street or highway giving access to
5 such proposed structure has been duly placed on the
6 official map of the plan or that there be no official
7 map or plan unless such a street or highway is A. An
8 existing state, county or Town highway or, B. A street
9 shone upon a plat approved by the Planning Board as
10 provided in 277 of this article as in effect at the
11 time such plan was approved or C. A street on a plat
12 duly filed and reported in the office of the County
13 Clerk registered prior to the appointment of such
14 Planning Board and a grant of such Board of the power
15 to approve plats.

16 CHAIRMAN STUTO: The exception of that
17 restriction is an ODA, right?

18 MR. WEINGARTEN: Correct. Shelco's ODA
19 application clearly violates the directive of the New
20 York State Town Law 280-A. The Planning Board has
21 reviewed ODA approval requests before and as you know
22 these are not mandatory approvals, but allows the Town
23 Board to take into account the State Law prohibition in
24 light of an individual applicants circumstances.

25 Chairman Stuto, each time you recognize that

1 there is a reason for a requirement that building lots
2 have road frontage, courts have recognized that an
3 integral part of the municipality's approval of the
4 ODA should be whether the applicant is suffering from
5 a practical difficulty or unnecessary hardship
6 requiring the municipality to deviate from the
7 requirement of New York State Town Law 280-A. Section
8 280-A of the Town Lot requires a consideration for
9 whether there is adequate emergency access for fire
10 and first responders and whether the road's
11 maintenance will be ensured to allow such access,
12 which I know you were asking about that a few moments
13 ago.

14 Shelco's narrative identifies no practicable
15 difficulty with site access to justify a violation of
16 New York State Town Law Section 280-A. Shelco's only
17 justification is that they will be minimizing site
18 disturbance for a shared driveway.

19 The narrative fully advises that the intent
20 is to keep as many trees as possible for the
21 development maintaining screening around the proposed
22 homes. Shelco has made no showing that it is facing
23 any practical difficulty requiring this ODA
24 application, access points and layout for the three
25 lots of this particular configuration and location

1 other than for Shelco's only convenience.

2 As I stated earlier, Shelco is able to design
3 a plan where there are separate lots directly along
4 the frontage of Denison Road which presumably are in
5 compliance with the Town. Minimizing tree removal and
6 site disturbance as stated in the hardship section of
7 the site narrative is also not a proper justification
8 for a violation of Section 280-A. Shelco is already
9 required, pursuant to Chapter 177 of the Town Code to
10 minimize tree disturbance. Chapter 177 restricts the
11 cutting and removal of trees upon a plat or
12 subdivision unless the area is to be occupied by the
13 building thereon and for driveways within a distance
14 of 10 feet around the perimeter of such building or
15 driveways.

16 This ODA approval request is purely for
17 Shelco's convenience and a subterfuge for the
18 application of the conservation overlay development
19 standards, the Town Comprehensive Plan and even
20 Chapter 177 of the Town Law.

21 This is also a form of segmentation. Based
22 upon the applicant's own projected project narrative,
23 this ODA request will allow the developer to divide
24 the site and develop three lots consisting of
25 approximately 4 acres and retain the remaining

1 approximate 99 acres for future development. Even the
2 statement of intent to develop the remainder of this
3 site and the pre-disposal by this applicant for a
4 major development of this site -- again, although that
5 previous proposal had expired and didn't go through
6 again, the site was approved by the Town. We believe
7 this project approval would be segmentation under
8 SEQR, State Environmental Quality Review Act.

9 If I can bring this all together, if you take
10 a look at that last page that I gave to you, it is the
11 overall subdivision plan for the subdivision for 34
12 Denison Road. This is from 2008 which was approved for
13 2009. If you take a look you will see that 34 and 36
14 Denison Road are planned out already. I know that this
15 plan is expired, but this is showing correlation from
16 this previous plan that has expired with regards to
17 correlation of the current plan that is on the table
18 for the ODA.

19 With regards to May 18, 2016 -- if you take a
20 look at the sheet before that, I have the Town of
21 Colonie Latham Water District mains, hydrants and
22 contours from the presentation that John Fraser gave
23 to the Neighborhood Association with regards to the
24 high-pressure district. If you take a look at the
25 yellow dot that I have placed under where it states

1 Town of Colonie, that is lining up directly with 34
2 Denison Road. You can see the map layout and light
3 gray underneath, which will correlate to the 2008 site
4 plan for the whole project.

5 This is in no way a hardship for Shelco.

6 Back in 2005 it was identified that there
7 were 38 acres that were slated for green space under
8 the Comprehensive Plan. That 238 acres was obtained by
9 Shelco. Half of that acreage was taken and was sold
10 off by Shelco and was developed by Charlew Builders
11 which is now Forest Hills, across the street. The
12 remaining 102 were essentially -- approximately 103
13 acres that is left and remaining -- if this project
14 was reviewed in total, it would be reviewed under the
15 Comprehensive Plan. Which, if you take a look at those
16 maps again, you will see that based on the contour map
17 of the Latham Water District and also with regards to
18 the current map that Shelco has provided you tonight,
19 the plan map for 2008, you will see that they know and
20 knew back then from the engineering studies that were
21 done that these are constrained lands.

22 This is difficult land to build on. You can
23 also take a look at the packet. I have pictures that I
24 took, with regards to going from the streets, that you
25 can see that the land goes straight up. There is

1 buildable space at 34 Denison. You can probably
2 squeeze in another home directly off to the side, but
3 they have 36 Denison Road proposed as being set behind
4 34 Denison which is right into the hillside. It is
5 going right up that hill. If you take a look at the
6 topography map from the Latham Water District, you
7 have lines that are close together and you are looking
8 at a steep grade. You are truly looking at a steep
9 grade.

10 With regards to 38 Denison -- yes, it does go
11 across the high water district line that was already
12 placed there so that land is already cleared and
13 that's fine, but you still have to get up that angle.
14 That is a steep angle.

15 CHAIRMAN STUTO: If you could take a break -- I
16 will not cut you off. I want to get some facts out and
17 get some answers. I will ask our folks and also the
18 applicant can respond.

19 This is in a conservation overlay district.
20 I'm trying to get through issue by issue and hurdle by
21 hurdle.

22 This is in a conservation overlay district.
23 Do we need to do conservation overlay analysis or at
24 least think about it?

25 MS. MARINELLI: The Code specifically exempts

1 minor site plan developments from analysis under the
2 conservation overlay district. So, no, technically you
3 don't have to do it.

4 MR. WEINGARTEN: That's correct, chairman. That
5 is totally correct. If it is less than four, it doesn't
6 have to be reviewed under the conservation overlay
7 district. The point that I'm also trying to make is that
8 they knew back then that this was constrained lands.

9 CHAIRMAN STUTO: We will get into that, as
10 well.

11 MR. LACIVITA: Melissa, can you address how you
12 are designing the parcels to maybe take in some
13 conservation practices with what you are saving?

14 CHAIRMAN STUTO: Why don't you talk about the
15 steepness and stuff and whether they are buildable lots?
16 Can you explain? You said it was a family thing. Can
17 you get into that?

18 The other questions that I want to address
19 are what are the requirements for the open development
20 area? I don't have the full statute in front of me.
21 The reason why you need frontage -- I am not sure what
22 our standard is. He seemed to say that you need to
23 have a hardship. I don't recall that as being a
24 requirement. So, those are the questions that I would
25 like answered.

1 MS. CURRIER: Understood. Yes, this is a very
2 steep hill. It is very steep terrain. That is one of the
3 main reasons why we wanted to do just one driveway to
4 help work with the terrain naturally so that we don't
5 have as much disturbance and soil removal and the moving
6 of the soil. There is still going to be. You still have
7 to work with the grades. You still have to go through
8 the time requirements.

9 CHAIRMAN STUTO: These are family members?

10 MS. CURRIER: Yes.

11 CHAIRMAN STUTO: And they want to build
12 personal residences there? Is that what you're saying?

13 MS. CURRIER: Yes, that is what I am saying.

14 CHAIRMAN STUTO: You are not saying that they
15 are going to sell it.

16 MS. CURRIER: No. We designed it so if that
17 were to happen --

18 CHAIRMAN STUTO: I've seen it before where they
19 have said that. Obviously, people change their minds and
20 people also fib once in a while.

21 MS. CURRIER: That's how these are designed.
22 Every single parcel has the appropriate frontage. It has
23 the appropriate square footage and the appropriate
24 setbacks. So, as designed, if for whatever reason this
25 falls apart, there is going to be an ingress/egress

1 easement on this so that the shared access to each of
2 the parcels agreed upon in the deed -- if that falls
3 apart and the family decides not to move them there,
4 that will still hold. They will still have all those
5 access agreements in place on the sale of that property.
6 That is one comment in regards to that. The terrain is
7 steep. There are a lot of lands that will be preserved
8 and not developed on. They are bigger parcels, at least
9 the two over on the 36 and 38 - they are bigger ones.
10 So, there are lands preserved. These are steep slopes
11 not necessarily at the percent grade - the grade of
12 constraints. There are rules in the Town Code with
13 regard to constrained lands; wetlands, surface
14 percentage of slope. Those are already distinguished in
15 the Code and we would avoid those. We have to avoid
16 those. In this case, that's the reason for the shared
17 access.

18 CHAIRMAN STUTO: The one on 36 - is that the
19 footprint of the building?

20 MS. CURRIER: Yes.

21 CHAIRMAN STUTO: That's a different looking
22 building. How big is that building?

23 MS. CURRIER: Very small.

24 CHAIRMAN STUTO: Small?

25 MS. CURRIER: I was looking at 34. I am sorry.

1 CHAIRMAN STUTO: How big is 36?

2 MS. CURRIER: I don't know off the top of my
3 head. I will have to look. I did not write it in.

4 CHAIRMAN STUTO: They are odd angles.

5 MS. CURRIER: Yes.

6 CHAIRMAN STUTO: You don't know more about the
7 house?

8 MS. CURRIER: No. Quite frankly, we're not sure
9 if it is going to go forward. I haven't seen
10 architectural plans. So, I don't have the square footage
11 and what it looks like. This was the footprint that was
12 given to me.

13 CHAIRMAN STUTO: What are the requirements of
14 280-A. does somebody have a copy of that?

15 MR. LACIVITA: I'm just looking through that
16 right now, Peter. When you look at what the Town Board
17 made by Resolution establishing an open development
18 area, of course it has to go through the proper
19 planning. It refers it to the Planning Department and I
20 know that Mr. Weingarten made several allegations as to
21 a violation of certain things. I did not see the
22 specifics of those.

23 CHAIRMAN STUTO: Kathy, do you want to take a
24 glance at that?

25 MS. MARINELLI: Yes.

1 CHAIRMAN STUTO: We'll talk about something
2 else while you guys look at that.

3 MS. CURRIER: The three parcels could be
4 designed in a separate driveways. They would have more
5 disturbance.

6 CHAIRMAN STUTO: I favor that design, rather
7 than have three curb cuts. All things being equal, I
8 favor that. I don't know how the rest of the Board
9 feels. I think the rest of the Board feels that way,
10 too.

11 Did you have any additional points?

12 MR. WEINGARTEN: Yes. I just want to say that
13 with regards to segmentation -- as I said, Shelco is
14 taking this property of about four acres from a bigger
15 piece of about 103. By segmenting this off and still
16 knowing that they are going to be developing, you are
17 skirting the fact that you have to follow the
18 conservation overlay district guidelines. It's under
19 four homes as being a minor subdivision.

20 CHAIRMAN STUTO: So, you are saying that they
21 are technically correct, but they are violating the
22 spirit of it. Is that what you're saying?

23 MR. WEINGARTEN: I'm sorry.

24 CHAIRMAN STUTO: It is technically correct that
25 they don't have to comply with the conservation

1 analysis?

2 MR. WEINGARTEN: Right. The fact that it is
3 being done like this and segmenting off that property of
4 the four acres from the bigger property as a whole, they
5 know that you can't build on something like this because
6 -- 36 and 38 on the previous site plan was not even
7 there. Where it is currently located now -- and 38 was
8 not there. That 36 was on the frontage right next to 34
9 on the previous plan.

10 MS. MARINELLI: I'm looking at some of the
11 things cited in this memo and I'm not finding it in the
12 ODA statute and it looks like has has cited from cases
13 that we don't have access to.

14 CHAIRMAN STUTO: Is there anything from the
15 statute itself that you can tell us what our criteria
16 are for evaluating?

17 MS. MARINELLI: Basically it defines the word
18 access and it is basically what you said. It has
19 sufficient frontage to allow ingress and egress of fire
20 trucks, ambulances and the frontage of 15 feet shall be
21 presumptively sufficient.

22 CHAIRMAN STUTO: So, it's our discretion. Is
23 that what you're saying?

24 MS. MARINELLI: Yes.

25 MR. WEINGARTEN: It is your discretion. With

1 regards to a hardship there is not a hardship to be able
2 to build this because Shelco has had in total 238 acres
3 that they made a profit on when they sold half of it off
4 to Charlew to build Forest Hills.

5 CHAIRMAN STUTO: I'm saying, where is it
6 required that they have to show a hardship?

7 MR. WEINGARTEN: They are saying that they have
8 a hardship here with regards to.

9 MR. VOPELAK: My name is Edward Vopelak with
10 C.T. Male. I work with Melissa. The applicant, as
11 Melissa said, can develop three lots there.

12 CHAIRMAN STUTO: We understand that. We are
13 talking about hardship. Why does he use the word
14 hardship? Does he use the word hardship? I don't know
15 what he is referring to.

16 MR. WEINGARTEN: A summary of hardship in the
17 C.T. Male project narrative.

18 MR. VOPELAK: Maybe hardship was the wrong word
19 to use. The applicant would like to have three lots.

20 CHAIRMAN STUTO: We know that.

21 MR. VOPELAK: They think it would be better to
22 have one driveway to the three lots.

23 CHAIRMAN STUTO: We know that.

24 MR. VOPELAK: If they didn't want, driveway,
25 they wouldn't even be here.

1 CHAIRMAN STUTO: We know that.

2 MR. VOPELAK: We think the three lot
3 subdivision with a common driveway is the best way to go
4 for that lands. It preserves the property. It limits the
5 access to the road.

6 CHAIRMAN STUTO: That's all been stated. We
7 understand that.

8 MR. VOPELAK: The word hardship is not the
9 right word.

10 CHAIRMAN STUTO: Thank you. That's what I was
11 asking.

12 Jessica Mahar.

13 MS. MAHAR: I'm glad to have microphones
14 because I have laryngitis.

15 My name is Jessica Mahar and I live at 5
16 Brickell Drive.

17 So, thank you for hearing about all of this.
18 It sounds like three lots. The project narrative
19 explicitly states by the applicant that they have
20 plans or may have plans in the future to develop the
21 rest of this entire property. It is 100+ acres. That
22 shows intent. Plus, there are prior plans for that 100
23 acres.

24 At every meeting that I have been in with
25 Town Officials and my neighborhood, which is this area

1 (Indicating), they have talked about coming soon
2 developments in our neighborhood. There was Forest
3 Hills. There was Londonderry. There was Natick Hills,
4 which may or may not be happening anymore. There was
5 Ridgeview or Ridgewood -- or whatever this was called.
6 It's on the map from public works. It's been in every
7 conversation we had. This is a known quantity. This
8 developer is a known element in our area. So, to take
9 this for what's on this piece of paper is a bit
10 disingenuous. There is intent there to go further.

11 Given that intent, we must think about the
12 fact that these lands in a previous design and review
13 were deemed constrained. As Joel said, they have
14 resources and steep slopes. So, if I had a development
15 proposal that was expired and were thinking about
16 coming back in later, I might go in and say gee, maybe
17 I'll do this little guy first and get some pieces
18 there where I might not have been able to get them and
19 what I need to go through the conservation subdivision
20 design standards and then come back and propose what I
21 could for the rest of my lot.

22 CHAIRMAN STUTO: Can you prove that they were
23 designated constrained lands?

24 MS. MAHAR: Yes. That was shown on the prior
25 plans.

1 CHAIRMAN STUTO: It is constrained, or it's
2 conserved lands?

3 MS. MAHAR: I will admit that I do not know the
4 difference.

5 CHAIRMAN STUTO: Constrained means that you are
6 not allowed to build on it. It is either wet, or it is
7 steep. Conserved means and a conservation subdivision
8 that you have to conserve.

9 MS. MAHAR: I don't believe there was a
10 conservation subdivision. I believe that this predated
11 the conservation subdivision.

12 CHAIRMAN STUTO: Can you help us?

13 MS. CURRIER: The original 2009 approved plan
14 that was expired was in the conservation overlay
15 district and was designed as such in the overlay
16 district.

17 CHAIRMAN STUTO: Was it designated constrained
18 or just conserved?

19 MS. CURRIER: Now, there is a strip of
20 constrained lands in this area. The rest of this was not
21 constrained (Indicating). There are no wetlands here.
22 There are slopes on the parcel.

23 CHAIRMAN STUTO: Stay with the point. You are
24 saying that it is constrained. She is saying that it is
25 not.

1 MS. CURRIER: These are different shapes. There
2 is an additional one. They were right in saying that.
3 There were two parcels here on the original development.

4 CHAIRMAN STUTO: The three lots that we are
5 talking about were never designated constrained.

6 MS. CURRIER: No.

7 CHAIRMAN STUTO: This is important.

8 MS. CURRIER: I understand. I don't disagree.
9 There are portions in this area that are constrained
10 (Indicating), but not where we are showing the homes.

11 CHAIRMAN STUTO: You guys are saying that they
12 are constrained. You are neighbors. You're not lawyers
13 or professionals on this. I want to get the facts
14 straight. They are not constrained.

15 MS. MAHAR: I also want to point out that this
16 is in the airport area GIS and we have an update going
17 on. This is an area where open space was noted in the
18 2005 Comprehensive Plan. We are still chugging along
19 with development proposals in all of these areas.

20 I also have a question for this Board. When
21 are we going to actually take a look at these
22 developments and think about waiting to see what those
23 plans propose? We have had significant development
24 underway in this area in Albany with Forest Hills and
25 Londonderry. That's almost 200 new homes in this area

1 under a 20-year ago GIS plan.

2 We have significant water pressure problems
3 in this area. This is the area of Town where there
4 are people on my street and there are people in Joel's
5 neighborhood that have very low water pressure. The
6 new homes don't have that problem because they got a
7 brand new water tank. I believe there is a study
8 underway right now to look at the Town of water
9 infrastructure in our neighborhoods.

10 I asked John Frazier what the status of that
11 study was prior to tonight's meeting and was not able
12 to get a response.

13 CHAIRMAN STUTO: How would you be getting water
14 to this project?

15 MS. CURRIER: From the new pressure zone.

16 MS. MAHAR: That's convenient.

17 MS. CURRIER: We have to because of the
18 elevation.

19 MS. MAHAR: We are also at a high elevation,
20 but we don't have the luxury of hooking up to the new
21 water tower.

22 So, I will leave it at that. I would just ask
23 the Board to consider the fact that this is a
24 voluntary thing that you can grant people.

25 CHAIRMAN STUTO: Right, and if we say no they

1 are going to do three lots with three driveways, which I
2 think is the worst configuration, personally.

3 Lawrence Palleshi.

4 MR. PALLESHI: Good evening. My name is
5 Lawrence Palleshi. I live at 58 Denison which is at the
6 other end of where they are working. I have lived in
7 this house for 33 years.

8 I have been through every battle for this
9 whole area for about 31 of those 33 years. I have a
10 very long history of what is going on here and what
11 has taken place.

12 I am also a registered licensed civil
13 engineer. I have also recently retired.

14 CHAIRMAN STUTO: From where?

15 MR. PALLESHI: The Dormitory Authority. I was a
16 project manager there. You think you guys have problems
17 here with water -- I have a couple comments.

18 A lot of what the residents say is true. The
19 water pressure is terrible. It has no bearing on what
20 we are looking at here. What really strikes me about
21 this is that it is very evident that the contractor or
22 the owner is going around the GIS that was originally
23 issued for this area. This is the fifth segregation
24 off of that GIS -- the fifth one. They've already
25 built on a couple here and a couple there. What he is

1 doing is chopping pieces where he knows he can fit it
2 in, then filling the rest of it out. That's not what
3 the GIS is supposed to be. It says you are not
4 supposed to be segmenting pieces off. Here we are with
5 number five.

6 So, for me to say yes, that's okay, go ahead,
7 I have a real problem with that. They need to go out
8 and get a new GEIS.

9 Besides that, the traffic study in that GEIS
10 is probably over 15 years old - before any of the
11 other developments were done. There is a problem with
12 that.

13 The real kicker to this is -

14 CHAIRMAN STUTO: What GEIS are you referring
15 to?

16 MR. PALLESHI: The one that covers the two
17 sides.

18 MR. WEINGARTEN: The airport area GEIS.

19 MR. PALLESHI: No. The GEIS for the
20 subdivisions that they had. They had one for
21 here, (Indicating) and it was supposed to include both
22 sides.

23 CHAIRMAN STUTO: It was a privately paid for
24 GEIS.

25 MR. PALLESHI: As a matter fact, we kind of

1 updated here with everybody sitting in their chair the
2 last time that it was coming through. It was pretty
3 amazing. This road here (Indicating). I can guarantee
4 you -- I don't know what C.T. Male was thinking, but you
5 cannot build a road up that slope. You cannot walk up
6 that slope. If you cut either side to get a side slope
7 in there to build a road up in there, you're going to be
8 in the water line. I'm telling you, if you don't
9 believe me, take a trip out there or stop there on your
10 way to work -

11 CHAIRMAN STUTO: What waterline are you
12 referring to?

13 MR. PALLESHI: Take a look up that hill.

14 MR. WEINGARTEN: That's the high pressure line
15 that went in with the new water tower.

16 MR. PALLESHI: I am telling you that you can't
17 even walk up that hill. How were they going to get a
18 fire truck up that hill? You are not.

19 The other issue that I kind of have with it
20 is -- the reason that I know this is the original plan
21 for this side -- they wanted to put a street lining up
22 with this street (Indicating). I was working with the
23 neighborhood association back then. I said, that's not
24 a real good idea. That's a really steep street. Even
25 if you did cut the sides back and put the street in,

1 the cars will be sliding right off onto Denison Road
2 on a slippery day.

3 The other thing is when kids get on their
4 sleds and go down the hill, they're going to be going
5 out in the middle of Denison Road. That's a terrible
6 spot for a road.

7 Now we are looking at it here and we have a
8 little bit of an offset. You might want to talk about
9 this to some highway people if that is a real good
10 idea. I don't see that as a real plus for the
11 neighborhood. It is nice that we have these big
12 chunks, but I'm telling you that he just segmented it
13 off so he could use it. That's all that is happening.

14 I feel really bad about that because we went
15 through so much trouble to develop everything and now
16 we are getting everything nickeled and dimed here.

17 As far as the other points the people brought
18 up, I agree with you.

19 CHAIRMAN STUTO: Do you guys have the GEIS that
20 he is referring to?

21 MR. LACIVITA: I don't have that with me, no.

22 CHAIRMAN STUTO: He is a civil engineer, I
23 think he knows the difference.

24 MR. PALLESHI: It supposedly covered both sides
25 of the road.

1 CHAIRMAN STUTO: They studied the development
2 of both sides of the road. Is that what you're saying?

3 MS. CURRIER: I think the oldest study is the
4 Albany Airport GEIS which is both sides of the road and
5 I believe Londonderry was in it.

6 CHAIRMAN STUTO: We are familiar with the
7 airport area GIS.

8 MS. CURRIER: That is only one that I am aware
9 of.

10 CHAIRMAN STUTO: He is saying that there is a
11 GEIS for private development.

12 MS. CURRIER: We didn't do it.

13 MR. PALLESHI: I am wrong. It's the SEQR for
14 boths sides. You're not supposed to be dividing that
15 off.

16 CHAIRMAN STUTO: That's when they were
17 considering building on it and doing more major
18 developments.

19 MR. LACIVITA: As we go through this process,
20 the ODA does not relieve the applicant from compliance
21 with all underlying zoning, the environmental, building,
22 Land Use Law -- all of this stuff is going to be taken
23 care of through the process. Right now it's in a design
24 with this being an acceptable practice. Then, it goes to
25 the Town Board for the adoption.

1 CHAIRMAN STUTO: Joe, we understand that. They
2 are bringing up assertions and we are trying to separate
3 the fact from the fiction. He is saying that there is a
4 GEIS. I want to know what GEIS he is talking about. I
5 think he has admitted that he has misspoken. We have to
6 sort through these issues.

7 MR. LACIVITA: That is what I am saying.

8 CHAIRMAN STUTO: They said it is constrained
9 lands and now we know they are not constrained lands.
10 When the public brings it up, we have to go through
11 them.

12 MR. LACIVITA: Exactly. I am looking through
13 every comment of our departments. If you go back
14 historically, when it is in the GIS area, it is
15 identified.

16 Michael Lyons, who has since retired -- any
17 time a project is in the GEIS, that's the first
18 comment on every one.

19 CHAIRMAN STUTO: You are saying this is outside
20 the GEIS area?

21 MR. LACIVITA: Peter, I don't see anything
22 identified within the GEIS.

23 MR. SHAMLIAN: This gentleman asserted that
24 there have been other parts -- small minor subdivisions,
25 it sounds like, but have been parceled off with this

1 property.

2 MR. LACIVITA: I don't know how many. You are
3 correct and he is correct. I think there has been a
4 single lot -

5 MS. MAHAR: There was one off of Walnut Lane.

6 MR. LACIVITA: That's correct. Walnut was one
7 that I remember.

8 MS. MAHAR: On this parcel (Indicating). On the
9 side of the road. There was one on Walnut Lane.

10 MR. WEINGARTEN: There is also 17 Tulip Tree
11 which was a 15 acre estate.

12 MR. PALLESHI: They weren't going to let him
13 have water so he subdivided it off and said I'm going to
14 put a wall here.

15 MS. CURRIER: In addition, there was Forest
16 Hills and Londonderry. It was over in that GEIS. I
17 believe that's probably what they're talking about.

18 CHAIRMAN STUTO: We have sat through a number
19 of presentations. The Latham Water District is studying
20 distributing that water pressure.

21 Paul, do you know?

22 MR. ROSANO: Actually we had two meetings and
23 Joel and Jessica were at them. I will clarify this.

24 They want water pressure and they have not
25 wanted Forest Hills. They never wanted water tanks,

1 but they can't have water pressure without water
2 tanks.

3 MS. MAHAR: Excuse me, Paul, don't put words in
4 my mouth. I didn't even live here back then.

5 MR. ROSANO: I'm sorry, Jessica. I'm just
6 telling you the facts.

7 They need water pressure and they need it
8 desperately. The only way you get water pressure up
9 there was with the new water tanks. As they were at
10 the meeting, and Joel was there, there has to be a new
11 line run that will probably go down Vly Road and cut
12 over -

13 CHAIRMAN STUTO: And they have built those
14 tanks to provide extra capacity.

15 MR. ROSANO: Exactly. They are way over on
16 capacity. We are studying that and we are going to try
17 to bond for that in the future, but I am not going to
18 make promises here tonight in the way that's going to
19 happen. We are looking at it. John Frazier had two
20 meetings in this room and he covered all of this from
21 beginning to end and I think that everybody agreed at
22 the time that we are going in the right direction as far
23 as water pressure is concerned.

24 What we are talking about with water pressure
25 now and the ODA -- we are getting outside the scope of

1 this conversation.

2 CHAIRMAN STUTO: The point that I was asking
3 you to help me with was we are studying water pressure.
4 We are studying delivering it to other houses, even
5 existing. That is handled by the Latham Water
6 Department, primarily. It comes in stages and it costs
7 money.

8 Mr. Palleshi, continue. You have the floor.

9 MR. PALLESHI: Yeah, I meant to say SEQR. There
10 is a SEQR that covers both of these pieces of land. As
11 far as I can read the SEQR guidelines, you're not
12 supposed to separate bits and pieces off of it.

13 CHAIRMAN STUTO: Kathleen, do you think that
14 this constitutes segmentation? Do we have any SEQR
15 review from the Town Attorney's office?

16 MR. LACIVITA: No. The Town Attorney will do it
17 at -

18 CHAIRMAN STUTO: So, we are only making a
19 recommendation.

20 MR. LACIVITA: That's correct. The Town
21 Attorney does the public hearing and then the SEQR.

22 CHAIRMAN STUTO: We don't grant the ODA. We
23 make a recommendation.

24 MR. LACIVITA: Correct.

25 CHAIRMAN STUTO: Kathleen, do you see anything

1 here that triggers segmentation under SEQOR?

2 MS. MARINELLI: I'm not the SEQOR expert.

3 Rebekah Kennedy does that. I don't see anything off the
4 top of my head.

5 CHAIRMAN STUTO: So, we can still ask her to
6 review that.

7 MS. MARINELLI: Yes, I would have Rebekah
8 review that.

9 CHAIRMAN STUTO: We're going to give it to the
10 Board now.

11 Does the Board want to make any comments?

12 (There was no response.)

13 FROM THE FLOOR: I'm a civil engineer, too.
14 What this person has said is absolutely true. There
15 contour lines should be put on there.

16 The first thing that I want to ask you is who
17 the hells snowplow is going to climb that steep hill?
18 The Town Colonie?

19 CHAIRMAN STUTO: They are proposing as a
20 private driveway.

21 FROM THE FLOOR: You would be buy a new
22 transmission every year. That's horseshit.

23 CHAIRMAN STUTO: Can you watch your language,
24 sir?

25 FROM THE FLOOR: Good for you. We used to go up

1 that hill and throw snowballs down out to Denison. Why?
2 We didn't give a shit about Town of Colonie Police. They
3 wouldn't go up that hill in a million years. We got away
4 with that for years. That's how steep that hill is.

5 MS. DALTON: For me, there are two major
6 issues. Unfortunately, they are opposed to each other.
7 The first is if they are going to develop lots, the
8 options are three curbcuts cuts or one, and I think the
9 ODA makes a lot of sense. It saves trees. It helps with
10 the severity of the steepness and all the other things
11 that they have said that have been in our packets. In
12 that case, I would be for it.

13 If there is any reason to believe that there
14 is any issue with segmentation here, unless these
15 three lots are being proposed as a ruse to get out of
16 meeting other requirements, I think that is something
17 we have to look at.

18 Since we don't have an expert here this
19 evening to talk about that, I am reluctant to move
20 forward until we have information.

21 CHAIRMAN STUTO: I was going to ask a couple
22 more questions. One has to do with the steepness. What
23 are the current conditions that you propose to do, if
24 anything, with the grade.

25 The other has to do with the water

1 maintenance going through there.

2 MS. CURRIER: The water main that is going
3 through there we are proposing not to touch the water
4 main.

5 CHAIRMAN STUTO: Can you show where it is?

6 MS. CURRIER: Sure. It's off to the north side
7 of the driveway. There are dashed lines.

8 CHAIRMAN STUTO: Directly across from
9 Branchwood?

10 MS. CURRIER: Yes.

11 CHAIRMAN STUTO: I can see the dashed lines.
12 They allow you to put a driveway over that, is that
13 correct?

14 MS. CURRIER: We do. We are not putting a
15 driveway over it, but they do allow it.

16 CHAIRMAN STUTO: For the one house, you are.

17 MS. CURRIER: We are crossing it, yes, I'm
18 sorry. It would be a hold harmless agreement.

19 CHAIRMAN STUTO: Let's talk about the
20 steepness.

21 MS. CURRIER: The max grade on the driveway has
22 to be 10%. The Town Law requires that. No matter what, I
23 cannot put in a driveway at a greater than 10% grade. I
24 have to prove, and design, to the Town's Review that I
25 can put that driveway in at a 10% maximum grade.

1 CHAIRMAN STUTO: How does the grade go? Does it
2 go up and then keep going up?

3 MS. CURRIER: It does. It is much steeper on
4 the section (Indicating) and it's really steep up in
5 this area. There are some areas where it is steep here
6 and not as steep and flattens out. This has more of a
7 flatter area on this end of it (Indicating).

8 CHAIRMAN STUTO: You have looked at
9 topographical maps here, right?

10 MS. CURRIER: Oh, yes.

11 CHAIRMAN STUTO: Is it steeper than a 10%
12 grade? Do you know that yet?

13 MS. CURRIER: Yes, there are some areas.

14 CHAIRMAN STUTO: Then, he will have to move
15 some dirt.

16 MS. CURRIER: We have to move some dirt,
17 absolutely.

18 MS. DALTON: If we were to go through with
19 three separate driveways, would you be able to meet the
20 10%?

21 MS. CURRIER: Yes. I can do it either way,
22 conceptually.

23 CHAIRMAN STUTO: Anything else from the Board?

24 (There was no response)

25 Anything else from the public?

1 Susan Webber.

2 MS. WEBBER: Thank you for letting me speak on
3 this. I am just concerned about the segmentation. I will
4 tell you why.

5 I was here for the CGM discussion earlier
6 tonight. It seems to me that this is kind of the same
7 sort of thing. In that project there were two phases.
8 There was one big parcel; it was a little parcel here
9 in a bigger parcel up here (Indicating). You made them
10 discuss what was going to happen with Phase 1 and
11 Phase 2.

12 Here, it is obvious that they have more than
13 Phase 1. They had two phases, too. They have the three
14 lots over here (Indicating) and they have all these
15 other lots that are actually delineated on the map. I
16 think you have a segmentation problem here. I am just
17 pointing that out.

18 CHAIRMAN STUTO: Thank you.

19 MR. PALLESHI: Is there a right of way where
20 that water line is?

21 MS. CURRIER: There is an easement.

22 CHAIRMAN STUTO: The answer is yes.

23 MR. PALLESHI: So, all these driveways and the
24 circle and the places where it crosses -

25 CHAIRMAN STUTO: There is going to be a circle

1 which impinges upon it a little bit according to the map
2 and there is a driveway going to one of the houses. It
3 gets crossed.

4 MS. CURRIER: It is not a right-of-way, it is
5 an easement. It is still owned by the Latham Water
6 District.

7 MR. LACIVITA: To the Planning Board Members
8 one of the things that I think you can do to address the
9 concerns of segmentation -- because we have no project
10 before us in the larger parcel. That project has gone
11 away. Design standards have changed since -

12 CHAIRMAN STUTO: Joe, he's asking about the
13 waterline easement. We have not resolved that.

14 Is that your only question?

15 MR. PALLESHI: Yes. I just want to know if that
16 was a right-of-way. I have a right-of-way at the other
17 end of the road.

18 CHAIRMAN STUTO: It is a utility easement. That
19 is a more accurate term.

20 MR. PALLESHI: But they are going to have to
21 get permission to put those roads in.

22 CHAIRMAN STUTO: The Town routinely allows
23 people to put driveways over if they sign a hold
24 harmless and indemnity agreement. My mother had a sewer
25 line going through her house and there was a shed on top

1 of it and they made us sign a hold harmless and
2 indemnity and the Town permitted it. If they have to get
3 to the line and they have to rip apart your shed, then
4 it's tough turkey.

5 MR. VOPELAK: Peter, it is an easement. Latham
6 Water would let us lower the line if we had to.
7 Obviously, we don't want to do that. The land is still
8 owned by the developer. To relocate the pipe at his
9 expense -- Latham Water will not let them do that.

10 CHAIRMAN STUTO: But that is not an issue here,
11 right?

12 MR. VOPELAK: No.

13 CHAIRMAN STUTO: So, let's not talk about that.
14 Joe, what were you going to say about
15 segmentation?

16 MR. LACIVITA: I was trying to answer Susan
17 Webber's question about segmentation. If there has been
18 a practice where one lot was peeled off of this, I think
19 one of the conditions that you can put into the
20 recommendation that no future minor subdivisions or
21 parcels be built on the larger lot and the future. That
22 becomes a condition of the Town Board action, moving
23 forward. Again, we don't have a project on the larger.
24 Everything will change because of the changes in the
25 laws for development from DEC, through stormwater and

1 even through lot sizes and everything else going
2 forward. That has to come before us, anyway. That
3 condition that you put on -- no additional minor
4 subdivisions be granted on the larger -

5 CHAIRMAN STUTO: I am not inclined to do that,
6 myself, personally.

7 MR. LACIVITA: I'm just giving you an option.

8 CHAIRMAN STUTO: I would put a condition that
9 the Town Attorney if the Town Attorney reviews it and
10 doesn't find segmentation.

11 MS. CURRIER: I have a question. This might be
12 for my own information.

13 If the template is doing a SEQR action,
14 that's correct?

15 CHAIRMAN STUTO: Yes.

16 MS. CURRIER: That could be part of the SEQR
17 action - the review of the segmentation.

18 CHAIRMAN STUTO: Correct.

19 MS. CURRIER: I am just making sure.

20 CHAIRMAN STUTO: We are getting close to taking
21 a vote. Does anybody want to speak before we entertain a
22 motion?

23 MR. PALLESHI: You want to take a look at the
24 grade, just go to the Water Department and get the cut
25 where they put the waterline. You will see what the

1 grade is.

2 CHAIRMAN STUTO: We are told that the maximum
3 is 10%. The applicant is admitting that there are spots
4 that are steeper than that and in those cases they are
5 going to have to grade.

6 MR. WEINGARTEN: The pictures that I submitted
7 for your packet -- the pictures don't do it justice, but
8 you could actually see on the pictures the grade that
9 you're looking at.

10 MR. HEIDER: The grade has to be established
11 and verified by building or stormwater and everybody
12 like that.

13 MS. CURRIER: If an ODA recommendation is made
14 and the Town Board accepts it, then we have to go
15 through the Town Review process showing a driveway and
16 grade, showing utility connections, showing all those
17 things to prove that it would comply with the Town.

18 CHAIRMAN STUTO: Any other comments from the
19 Board?

20 (There was no response.)

21 I would like to add a condition. Do we have a
22 Resolution in front of us? A special rule of the
23 Planning Board setting conditions and limitations and
24 recommending establishment of an open development area
25 for 34 Denison Road. Is that a correct citation?

1 MS. CURRIER: Technically, the address is 34;
2 right now.

3 CHAIRMAN STUTO: Denison Road, Town of Colonie,
4 pursuant to Town Law Section 280-A. There are six
5 conditions, if you will, at the bottom. I would like to
6 add subject to Town Board SEQR review, which is a given
7 anyway and a determination that the adoption of the ODA
8 does not constitute a segmentation under SEQR.

9 MS. MILSTEIN: Should be subject to have it
10 reviewed and whether it meets -- whether it is a
11 segmentation. I'm just not sure whose responsibility it
12 is -- whether segmentation lies with us or lies with the
13 Town Board.

14 CHAIRMAN STUTO: We are making a
15 recommendation. That's not an action under SEQR. You
16 have to complete your SEQR review before you take an
17 action. We are making a recommendation. That is not an
18 action because it is only a recommendation. It is not a
19 binding act. So, whoever takes the action would be the
20 Town Board. They are the ones who will create the ODA.
21 So, they would be the one who would be responsible for
22 SEQR, under normal circumstances. That includes every
23 aspect of SEQR. That's how I see it.

24 Kathleen, do you see it any differently?

25 MS. MARINELLI: No, I agree.

1 MR. SHAMLIAN: Maybe we should just talk for a
2 minute and adding that any future minor subdivisions -
3 they need to come back before the Planning Board. I know
4 that is a high hurdle, but it kind of puts them on
5 notice. I don't particularly think it's segmentation,
6 but it is getting close.

7 CHAIRMAN STUTO: It raises the question.

8 MR. SHAMLIAN: It does raise the question.
9 Certainly, they need to look to come back and before
10 they carve off another lot or two. They are probably
11 starting to get over the line. I'm not a lawyer and I
12 don't know that specifically. I guess at some point here
13 I want to make sure that we are protected and that they
14 have to come back and we have a bite at the apple.

15 CHAIRMAN STUTO: How does the rest of the Board
16 feel about that?

17 MR. MION: I think it's a good idea.

18 MS. MILSTEIN: I agree.

19 MS. DALTON: We are talking about three
20 properties; 34, 36 and 38. Yet, the ODA is only talking
21 about two parcels at 34 and 38. Doesn't 36 also have to
22 be part of the ODA?

23 MS. CURRIER: Yes, I don't know why it was
24 written that way. I read the same thing after you said
25 it. It should say all three, I thought.

1 MR. LACIVITA: I think it says that at the
2 bottom of number six. The owners of the proposed lots
3 34, 36 and 38.

4 MS. DALTON: No, number one. The address of
5 these two parcels being 34 and 38 Denison.

6 MR. LACIVITA: You are right.

7 CHAIRMAN STUTO: So, the last whereas needs to
8 be corrected. It says two and it should say three. The
9 other number should be added; number one, the same
10 thing.

11 MS. DALTON: The last whereas is the two
12 proposed lots of 34 and 38 Denison. I just think if we
13 are going to do it, it is the three lots.

14 CHAIRMAN STUTO: Correct. We agree.

15 MR. LACIVITA: Could I ask a question as to
16 Craig's point? Would that be number eight? Any proposal
17 for a minor subdivision must be reviewed by the Town
18 Planning Board?

19 CHAIRMAN STUTO: Yes, from the greater parcel;
20 however that is identified.

21 MR. HEIDER: And that is what?

22 CHAIRMAN STUTO: He is saying if they snip off
23 another piece, we have to see it.

24 MR. HEIDER: But not the specific three lot.

25 CHAIRMAN STUTO: That's correct. That is what

1 Craig's proposal is.

2 FROM THE FLOOR: Doesn't the Town of Colonie
3 Zoning Law state that if a certain number of lots are
4 subdivided over a certain period of time, it
5 automatically becomes a major?

6 CHAIRMAN STUTO: Do you know that, Joe?

7 MS. CURRIER: I think that is true.

8 CHAIRMAN STUTO: Where do minors get triggered
9 to majors; if you do more than one subdivision?

10 MR. LACIVITA: Minor/major is four lots.

11 CHAIRMAN STUTO: Right, but what about
12 repetition?

13 FROM THE FLOOR: In a certain period of time if
14 they did two more lots, it would be automatically be
15 considered as a major, wouldn't it, under your rules?

16 MR. LACIVITA: I think the rules are three
17 years.

18 FROM THE FLOOR: So, every three years you can
19 do a minor subdivision.

20 MR. LACIVITA: Yes.

21 MS. DALTON: Except for now.

22 FROM THE FLOOR: What distance are you going to
23 require from Denison Road going back up that slope to be
24 flat so those people have a chance to stop before
25 sliding out onto Denison Road; 10%? That 10% is too

1 steep. They have to have a flat area to stop.

2 MR. LACIVITA: That is our standard.

3 CHAIRMAN STUTO: I'm not an engineer, but you
4 hopefully want to level it off.

5 MR. WEINGARTEN: Besides Denison, you are also
6 at the intersection where the Forest Hills Subdivision
7 comes out onto Denison. It is almost like a four-way
8 intersection.

9 MR. SHAMLIAN: You do understand that they can
10 do four lots here.

11 MR. WEINGARTEN: I totally understand. They
12 have the right to do that.

13 CHAIRMAN STUTO: I'm asking you as a civil
14 engineer, what you think is safe? Do you think it should
15 be 10% rate out to the curb?

16 MR. PALLESHI: Obviously, you want a little
17 flat area at the bottom. The Town Code requirements tell
18 you what you need. In some towns they have it as steep
19 as 12%. In Colonie it is 10.

20 MR. SHAMLIAN: Relatively speaking, what is the
21 slope on the right-of-way? Is there any sense on how
22 wide the right-of-way is there?

23 CHAIRMAN STUTO: What you mean right-of-way?

24 MR. PALLESHI: The Town Road -- it's 60 feet,
25 probably.

1 MS. CURRIER: It is a 50 foot right-of-way for
2 Denison Road.

3 MR. SHAMLIAN: That's why I was asking what the
4 slope was in that part.

5 MS. CURRIER: It does carry over a little bit.

6 CHAIRMAN STUTO: Do you have the verbiage for
7 Craig's condition there?

8 MR. LACIVITA: Yes, I just read it. Future
9 proposals of a minor subdivision from the remaining
10 lands must be reviewed by the Town Planning Board.

11 CHAIRMAN STUTO: Okay, we have added two extra
12 conditions. One had to do with the SEQR review and the
13 particular review of segmentation.

14 The other is that other future minor
15 subdivisions off the remaining parcel are subject to
16 Planning Board approval.

17 MR. SHAMLIAN: Joe, review and approved.

18 MR. LACIVITA: Review and approved, okay.

19 CHAIRMAN STUTO: And we will ask for that
20 entire Resolution be submitted to the stenographer.

21 MS. MILSTEIN: Can you read it again?

22 MR. LACIVITA: We are adding items seven and
23 eight to this. Number seven is in Peter's language and
24 said subject to the Town Board SEQR review and
25 determination and adoption of the ODA does not

1 constitute segmentation under SEQR.

2 Then, we added number eight as to Craig's
3 recommendation. A future proposal of a minor
4 subdivision on the remaining lands, must be reviewed
5 and approved by the Town planning Board.

6 MS. MILSTEIN: Which remaining lands?

7 MR. LACIVITA: The larger parcel in the back.

8 CHAIRMAN STUTO: The 99 acres.

9 MS. MILSTEIN: We should clarify that.

10 MS. CURRIER: You could call it parcel number
11 40. That would be the new address.

12 MR. LACIVITA: It will go in parentheses and
13 approximately 99 acres.

14 CHAIRMAN STUTO: Do we have a motion?

15 MR. MION: I will make that motion.

16 CHAIRMAN STUTO: Second?

17 MR. SHAMLIAN: I will second.

18 CHAIRMAN STUTO: Any discussion?

19 (There was no response.)

20 All those in favor, say aye.

21 All those opposed, say nay.

22 (There were none opposed.)

23 The ayes have it.

24 Thank you to the public for coming. It's not
25 always satisfactory to everyone.

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(Whereas the above entitled matter was
concluded at 8:30 p.m.)

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CERTIFICATION

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.

Dated: _____

NANCY L. STRANG
LEGAL TRANSCRIPTION
2420 TROY SCHENECTADY RD.
NISKAYUNA, NY 12309

