

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PLANNING BOARD COUNTY OF ALBANY  
TOWN OF COLONIE

\*\*\*\*\*  
DONNA DRIVE SUBDIVISION  
REVIEW OF PLANTING REMEDIATION PLAN

\*\*\*\*\*  
THE STENOGRAPHIC MINUTES of the above entitled matter  
by NANCY L. STRANG, a Shorthand Reporter commencing on  
March 31, 2020 at 7:00 p.m. held via Zoom Video  
Conference

BOARD MEMBERS:  
PETER STUTO, CHAIRMAN  
CRAIG SHAMLIAN  
STEVEN HEIDER  
SUSAN MILSTEIN  
CHIP ASHWORTH  
LOU MION

ALSO PRESENT:  
  
Kathleen Marinelli, Esq., Counsel to the Planning  
Board  
Joseph Grasso, RLA, CHA  
Luigi Palleshi, ABD Engineers  
Susan Laurilliard  
Susan Weber  
Clay LaPorte  
Nancy Garry  
Kirsten Kolber  
Mary Ellen Lorini

1 MR. MAGUIRE: Good evening. This is Sean  
2 Maguire from Planning and Economic Development. We have  
3 opened up the room so everybody is in here now and as  
4 other people join, they will show up here.

5 I'm just going to take a minute to just go  
6 over a quick orientation before the meeting begins.  
7 Again, before the meeting begins, I just want to go  
8 over things with everybody here - Members of the Board  
9 and public alike.

10 Today is March 31, 2020. This is the Town of  
11 Colonie Planning Board. This meeting is being  
12 conducted remotely in accordance with Executive Order  
13 202.1 that was issued by Governor Cuomo on March 12,  
14 2020 that allows Boards to meet remotely during this  
15 Covid19 emergency.

16 The overview of the meeting - the Board  
17 staff, applicants and those providing public comments  
18 are participating in this meeting on a Zoom platform.  
19 Registration is required by all attendees and if you  
20 are in the program - generally if you a computer, the  
21 media controls will appear like this. You'll see a  
22 mute button, a stop video button, participant button,  
23 share, chat and so on.

24 The chat feature - we just ask that you only  
25 use that if you're having some issues.

1                   At the start of the meeting, all Board  
2                   Members and staff will be visible and microphones will  
3                   be turned on. Applicants will appear when projects are  
4                   being discussed.

5                   If a Board Member's camera is turned off, it  
6                   will be as if they have left the room. Board Members  
7                   should be connected by audio and video. You may need  
8                   to allow Zoom to use your camera and/or connected  
9                   device or computer audio. Or, you will need to call in  
10                  and use the instructions for phone call.

11                  Public comments - when the public comment  
12                  period begins, the Chairman will call on those  
13                  registered to provide comments. Your microphones will  
14                  be needed. If you do not hear your name called, please  
15                  raise your hand by selecting raise your hand. You can  
16                  lower your hand if you happen to do that by accident.

17                  This meeting is being recorded and being live  
18                  streamed onto YouTube. We will be starting the  
19                  recording now and you will know when the meeting is  
20                  recorded because it will indicate so on your screen.  
21                  It will also know when that starts streaming to  
22                  YouTube because you will see that as well.

23                  Pete, once I set that up, we are all ready to  
24                  begin.

25                  Peter, if you're ready, I will start the

1 meeting.

2 CHAIRMAN STUTO: Sure. Welcome to the Town of  
3 Colonie Planning Board meeting. We have one item on the  
4 agenda. We hope everyone is safe and sound at home and  
5 staying busy and getting exercise and doing all that  
6 kind of stuff.

7 These are special times and we are trying out  
8 a new mechanism here that allows us to be sheltered at  
9 home.

10 The project today is the Donna Drive  
11 Subdivision. We are going to give you a presentation,  
12 primarily, by Sean Maguire who is the head of our  
13 department and Joe Grasso, our Town Designated  
14 Engineer. We will also provide for public comment.

15 I think without further ado, I would just  
16 turn it back to you, Sean. You and Joe Grasso - if you  
17 could work out the presentation.

18 I will say this: The Board left with Sean  
19 Maguire and Joe Grasso the task of working out a  
20 remediation plan. This is a plan that they worked hard  
21 on. I participated in parts of it and other Board  
22 Members have had input. I will let Sean describe the  
23 plan and take away from there. I guess that's probably  
24 the best way to do it.

25 MR. MAGUIRE: Thanks, Pete.

1                   Everybody can hear me okay, right?

2                   CHAIRMAN STUTO:   Yes.

3                   MR. MAGUIRE:   Just circling back to our last  
4 meeting, our Town Attorney Mike Magguilli briefed the  
5 Board on the situation that occurred at the Donna Drive  
6 Conservation Subdivision there. I will go back to that  
7 because I think that was pretty well-established at the  
8 last meeting.

9                   At that meeting, the Board did provide myself  
10 and the Town Designated Engineer, Joe Grasso from CHA,  
11 with some direction to establish and develop a plan to  
12 present tonight. So, that's what were going to do  
13 tonight - which is walk through that.

14                   You should see on your screen right now a  
15 site plan that was developed by CHA. Joe Grasso is the  
16 Town Designated Engineer. So, I'm going to ask Joe to  
17 walk through that plan and then we will go through and  
18 discuss the recommendations that I have.

19                   MR. GRASSO:   Thanks, Sean.

20                   There were two other exhibits that I  
21 presented at the last meeting that I just wanted to  
22 touch on. One was a plan that showed where the limits  
23 of clearing and grading had exceeded - the limits  
24 shown on the approved subdivision plan.

25                   We also identified areas of the site that we

1 did not investigate prior to the last meeting. Then,  
2 there was another exhibit that you may recall that  
3 showed additional clearing and grading that they  
4 wanted to do on the lots that they thought they would  
5 need to do to build out the lots and maintain the  
6 drainage pattern as shown on the approved plan.

7 The other thing that we showed at the last  
8 meeting was some photos that we had taken from various  
9 viewpoints showing where the additional clearing and  
10 grading had occurred that we had documented.

11 Those were the things that the Planning Board  
12 told us to focus on when we were trying to create a  
13 remediation plan. Really, we had the opportunity to  
14 kind of look at the whole project comprehensively as a  
15 result of the feedback that we got from the Planning  
16 Board and some additional public comment.

17 So, I'm going to walk through the different  
18 parts of the subdivision plan to orient everybody and  
19 give everybody an understanding as to where the  
20 additional landscaping is proposed and where it's not.

21 The other thing that we did since the last  
22 Planning Board meeting is we have been out to the site  
23 a couple of times trying to not only understand the  
24 areas that we previously investigated, but also  
25 understand other areas of the site where they were

1 basically unobstructed views between the proposed  
2 homesites and the existing adjacent residences. We  
3 thought it was important and that's where we should be  
4 focusing our efforts.

5 You will recall that the overall subdivision  
6 includes 24 new homesites and that's important to know  
7 because there were a few lots that during our  
8 investigation we determined did not need additional  
9 landscaping over and above that was shown on the  
10 approved subdivision plan.

11 So, Sean, if you could focus in on lots 47 to  
12 53. Those are to the south side of the site.

13 These four lots basically back up against an  
14 existing school and an existing church. Between the  
15 existing trees that are going to be left there and  
16 then for additional trees that were previously  
17 approved as part of the original subdivision, we did  
18 not feel it was warranted to add any additional  
19 landscaping there and that we would focus our efforts  
20 on the additional lots.

21 Before I go into what the proposed  
22 landscaping is, I do want to talk about what the  
23 applicant had originally shown on the approved  
24 subdivision plan.

25 Sean, there is a typical lot layout more

1           toward the right side of the plan. If you could pan  
2           over to that? If you pan a little up on the view, you  
3           will see a typical lot layout. So, it's up at the top  
4           of the screen. So, what this typical lot layout showed  
5           was landscaping that was approved on the original  
6           subdivision plan that would include two five to six  
7           foot high Norway Spruces as well as two Dogwoods.  
8           Those are located on the 24 lots into the rear of the  
9           lot. Also, there are two street trees proposed per  
10          lot. Basically we took into account that these plants  
11          were already going to be installed and what we did was  
12          we added additional landscaping in addition to this  
13          landscaping that was originally proposed.

14                 So, Sean, if you could pan over to lots 42  
15                 through 48?

16                 If you look at lots 42 through 48 on your  
17                 screen now, what we have shown is additional  
18                 landscaping across the rear of those lots. We tried to  
19                 keep the proposed landscaping within the deed  
20                 restricted areas that would be restricted from any  
21                 future clearing. Based on the density we are trying to  
22                 achieve and the amount of screening, some of the  
23                 larger deciduous trees - we couldn't squeeze into that  
24                 deed restricted area because we felt it was too dense  
25                 and the growth of all the trees could result in some

1 die-offs. For the most part we kept the proposed  
2 landscaping in the deed restricted area, but in some  
3 cases you'll see the large deciduous trees that we  
4 have just outside the deed restricted areas across the  
5 backs of those four lots.

6 You can pan over to Lots 50 through 52.

7 Lots 50 and 52 right in the center of your  
8 screen - - these were two lots that we had previously  
9 taken some photos of. There is some existing mature  
10 trees in the back of these lots and they're going to  
11 be retained. We didn't feel like it was necessary to  
12 add any more large trees, but we did add some  
13 understory deciduous trees and shrubs across these  
14 lots just to have it look more natural and fill in  
15 with what we were doing across the rest of the  
16 subdivision.

17 If you continue to pan over toward the north,  
18 Sean - 54 all the way over to 60.

19 These are lots where they had been clearing  
20 past the approved limit line. So, we added additional  
21 trees and shrubs both coniferous and deciduous within  
22 the back yards of these lots, as well as some larger  
23 deciduous trees outside the deed restricted areas.

24 Lot 60 around the corner - there were some  
25 existing Spruce trees there to remain that we could

1 take advantage of as well as, like I said, for  
2 additional trees that were shown on the approved  
3 subdivision plan. We didn't want to provide additional  
4 screening along the side yard of Lot 60 - where that  
5 lot butts up against another adjacent residential  
6 structure. So, we did propose additional trees there.

7 Moving across the street to Lot 75, this is  
8 an area that we had previously identified, but there  
9 are some open views between these lots in the adjacent  
10 residences. So, we added some additional understory  
11 plantings underneath the large maple tree that has  
12 been retained. Then, across the backs of these lots we  
13 added a similar density of trees and shrubs across the  
14 backs of each of these lots.

15 Sean, if you could just pan across the Lots  
16 71 all the way down to 57.

17 Again, that's a consistent pallet. There was  
18 some wide open views between the proposed lots and the  
19 adjacent residences. Again, we added additional  
20 landscaping within the deed restricted areas as well  
21 as larger deciduous trees just outside the deed  
22 restricted area.

23 Then, if you could focus on Lots 57 and 59,  
24 Sean?

25 These were two lots that had some existing

1 trees remaining in the deed restricted area. We were  
2 able to work around those. The approved subdivision  
3 plan also had those four trees per lot that we were  
4 able to take advantage of. We were able to add some  
5 additional lower lying deciduous evergreen shrubs to  
6 those.

7 A comprehensive list of all the plants are  
8 shown. So, all of these symbols are keyed off to the  
9 plan. So, like I had said, we did a combination of  
10 coniferous and deciduous trees and shrubs. The plant  
11 schedule shows the size of the trees and shrubs at the  
12 time of planting.

13 You can pan over little bit more so I can see  
14 the quantities.

15 So, a combination of Norway Spruce and White  
16 Spruces - those are 12-foot heights. We tried to pick  
17 plants that were fast-growing that would provide some  
18 immediate impact that were hearty for the location  
19 where they are being planted. Also, trees which were  
20 readily available. We did confirm with Northern  
21 Nurseries, which is a large wholesaler in the Town of  
22 Colonie for nursery stock and they provide many of the  
23 landscape installations in the region. We were able to  
24 confirm that all of these plants are readily  
25 available. We tried to go with some significantly

1 sized trees just so that we could get some significant  
2 buffering right off the get-go. Also, they could fill  
3 in over time and continue to provide appropriate  
4 separation in the future and they wouldn't choke each  
5 other out.

6           Going down the list, we are showing the  
7 deciduous trees. You may recall that the first symbol  
8 and the third symbol under deciduous trees were the  
9 ones that were street trees. Those were approved as  
10 part of the original subdivision. We have added those  
11 to the list because we have recommended an increase in  
12 the size of those street trees from 2 1/2 inch caliper  
13 to 3 1/2 inch caliper. We did that so that it would  
14 create more of a grown-in look at the initial time of  
15 planting those trees. The front yards would be  
16 something that would be installed later at a later  
17 date when each lot went up for its own house  
18 construction. We think that increasing the size of  
19 those trees is important because not only does it  
20 improve the streetscape as you drive to through the  
21 neighborhood, but as you look across the whole  
22 subdivision from the adjacent residences, this will  
23 create more of a separation between the development as  
24 you look across. I think that is a really important  
25 feature of the revised plan.

1                   Then, the middle deciduous tree symbols are  
2                   the Sugar Maples that you will see that across the  
3                   landscape remediation plan across the backs of the  
4                   lots. Typically they are outside of the restricted  
5                   areas because these are going to be large fast-growing  
6                   trees. So, we wanted to not create an overcrowding  
7                   with the additional trees and shrubs in the back.

8                   You can see the quantities of each plant as  
9                   shown on the quantity table. The October Glory Red  
10                  Maple and the Bradford Flowering Pears - there are 24  
11                  of each of those and that's because one of each was  
12                  shown on the original approved subdivision plan.

13                  Further on down we have added a bunch of  
14                  deciduous and evergreen shrubs. These were all planted  
15                  within the deed restricted areas and will continue to  
16                  fill in over time. We've got a variety of sizes from  
17                  two feet all the way up to 10 feet. When you look at  
18                  all of the additional landscape plants that were added  
19                  over and above what was shown on the approved  
20                  subdivision plan, you would know that it's a little  
21                  over 400 plants - 413 because those 48 where the  
22                  street trees that we had increase the size. So, when  
23                  you look at all the plants that were either modified  
24                  or added to, we're up to 461 plants. We weren't trying  
25                  to focus on a particular number of plants per lot but

1 obviously like I said, there were 20 lots that we  
2 added plants to. So, there is an average of 20  
3 additional trees and shrubs per lot. Also, we weren't  
4 focused on a particular value, but we did look at the  
5 value of the plant material as well as the  
6 installation costs and we valued the overall  
7 installation at a little over \$200,000. It's a  
8 significant amount, but we felt it was commensurate  
9 with the charge of the Planning Board coming out of  
10 the last meeting.

11 Unless there were any questions on the  
12 specific landscaping plan, Sean, I will turn it back  
13 over to you to talk about some additional  
14 implementation items.

15 MR. MAGUIRE: Did you want to take any  
16 questions now from anybody?

17 CHAIRMAN STUTO: No. Can you talk about how you  
18 are going to ensure that the plantings are actually  
19 going to occur? What is your recommendation from the  
20 department?

21 MR. MAGUIRE: Sure. As Joe covered sort of the  
22 background of the conditions, like he said, this plan  
23 includes more trees and shrubs along the site which is  
24 pretty significant. Some of the important changes there  
25 were that we asked that the size of the plantings be

1 increased both in height and in caliper. So, the  
2 coniferous trees are measured in height. The deciduous  
3 trees are measured in caliper. We did ask for that plan  
4 to include an increase to mitigate against the clearing  
5 and grading of the existing trees on the site. Getting  
6 back to the size of the tree that was there is pretty  
7 much impossible, but that we get to the limits that we  
8 could with the available stock that we could find in the  
9 area nurseries.

10 Most of the plants you'll see are proposed in  
11 the deed restricted area. We talked about the  
12 deciduous trees that are outside that deed restricted  
13 area that fall into those areas of the limits of  
14 grading and clearing. Because of those types of trees,  
15 we thought they were best suited at the rear of the  
16 lot to provide an additional leaf screening,  
17 additional heights and the stacking that existed. We  
18 believe that the transfer of the removal is limited,  
19 versus putting smaller trees and shrubs up to the deed  
20 restricted line. We tried to really focus efforts on  
21 the deed restricted line and plants that will remain  
22 because they won't be touched.

23 Again, we talked about the upsizing of the  
24 street trees on the lot from 2 1/2 inches in caliper  
25 which is what's in the Town Code for a minimum of

1 street trees to 3 1/2 inch caliper.

2 Again, the recommendation that I bring to you  
3 tonight has a number of points. At first, having the  
4 applicant remediate the site per the approved  
5 landscape remediation plan that you will approve - we  
6 presented one to you tonight, subject to your  
7 modifications. They include 14 twelve-foot Norway  
8 Spruces, 24 twelve-foot White Spruces, 42 3 1/2 inch  
9 caliper Fall Fiesta Sugar Maples, 49 two-foot Northern  
10 Bayberrys, 116 three-foot Summer Wine Nine Barbs, 75  
11 four-foot Purple Leaf Sand Cherries, 8 4-foot American  
12 Cranberry Bushes, 55 foot Chinese junipers and 35  
13 10-foot Moon Glow Junipers. The increase to street  
14 trees across the site would be increased from 2 1/2  
15 inches caliper and those include 24 3 1/2 inch caliper  
16 October Gloria Red Maples, 24 3 1/2 inch caliper  
17 Bradford Flowering Pears. We would require the  
18 applicant to continue planting the 2 5 to 6 foot  
19 Norway Spruces and Dogwoods that were previous shown  
20 in a typical conservation subplot landscape package  
21 planned that was approved on site plan and also the  
22 remediation plan. The total plantings across the site  
23 shall be 557 in total. I just asked that any  
24 deviations from the schedule of plantings be approved  
25 by the Town at your direction.

1           We asked that the remediation work to the  
2 rear of the yards - that's all the work including the  
3 street trees be completed on or before June 15, 2020,  
4 so that way we get that planting done during the  
5 current planting season.

6           Again, any extensions to this date, we just  
7 asked that the Planning Board authorize the Town to  
8 approve any extensions.

9           We have a current situation where we don't  
10 know where we're going to be by then, but we would  
11 like to at least establish a date now.

12           Finally, we asked that the Planning Board  
13 require the applicant warrantee the rear yard  
14 landscaping for one year until we get the issuance of  
15 certificate of occupancy. Let me correct that. That  
16 they warrantee all the landscaping for one year upon  
17 the issuance of a certificate of occupancy.

18           So, in consideration of the accepted  
19 landscape remediation plan tonight, and the receipt of  
20 a \$100,000 cash escrow with the Town of Colonie which  
21 represents about 50% of the estimated value of this  
22 plan, we recommend that the stop work order is  
23 partially lifted to allow the construction to continue  
24 on the model homes that were already started on the  
25 existing lots under contract to date and the

1 installation of all landscaping shown in the rear  
2 yards on the approved remediation plan.

3 We just note that the installation of street  
4 trees may be deferred and completed as each home is  
5 completed. We recommend that the final agreement with  
6 the Town require inspections done throughout the  
7 landscaping plan installation to ensure that the  
8 proper installation techniques with random spot  
9 inspections throughout the warranty period to ensure  
10 appropriate maintenance. This should be done by the  
11 Town, the TDE or independent arborist or landscape  
12 architect.

13 An important note here: If the builder or  
14 vendor elects to work during the shutdown directed by  
15 Governor Cuomo in response to Covid19, we would  
16 suggest that we require before any work begins, a  
17 safety plan be submitted to the Town documenting the  
18 practices used during constructions to eliminate  
19 community contact spread of the virus.

20 As you know, last week the Governor made a  
21 change to its Executive Order on nonessential work  
22 that initially addressed construction as an essential  
23 service, but changed that to really put a limitation  
24 except for emergency work on its existing site to  
25 secure it. So, it would be a safe site. So, once the

1 remediation plan is complete on all yards and  
2 following the acceptance by the Planning and Economic  
3 Development of the remedial landscaping plan, we would  
4 recommend that the full stop work order is lifted on  
5 the remaining lots and the rest of the site's  
6 infrastructure.

7 At that time we would suggest reducing the  
8 cash escrow - - and I would suggest \$25,000 be held  
9 until the end of a one-year warranty period or the  
10 existing performance bond on the infrastructure  
11 improvements is increased by similar value.

12 Then, finally within 30 days of the one-year  
13 warranty period, a follow-up inspection be done by the  
14 Town or a TDE to determine if any plants that may be  
15 replaced one year after the replacement of the plants  
16 identified by the Town or a TDE - that can remain in  
17 cash escrows released, or the performance bond is  
18 reduced accordingly.

19 I do want to also add a piece in here. There  
20 was a discussion at the last meeting about termination  
21 of the fence near the stormwater management area that  
22 would occur in the middle of a pre-existing lot on  
23 Alfred Drive. I would just ask that the Planning Board  
24 allow my department to work with all parties on the  
25 solution that will allow us to consider possibly

1 changing the placement of that, so that way we don't  
2 have that termination in the middle.

3 That's what I have for each item in terms of  
4 our recommendation, as well as the plan from the TDE.  
5 I will turn it back over to you.

6 CHAIRMAN STUTO: Thank you. That was an  
7 excellent presentation.

8 I want to make a couple of points. We  
9 prioritize this meeting, I think, for good reason. The  
10 reason being that we wanted the plantings to go in  
11 during the spring, if possible. So, we wanted to  
12 hopefully get this thing finalized so that we can  
13 remediate the site during the planting season.

14 I also want to mention that I'm not going to  
15 interpret the Governor's order, but my understanding  
16 is single-family construction is not an essential  
17 service. We are not granting permission for the  
18 applicant to do the construction. That's up to the  
19 Governor to grant permission.

20 I know we have the Town attorney here, Mike  
21 Magguilli.

22 Mike, do you want to add to that? Is that  
23 sufficient?

24 MR. MAGGUILLI: The builder or the developer  
25 has to be absolutely clear that we are not giving him

1 authority to do anything in contravention of Executive  
2 Order 202.1. The way I understand the Executive Order is  
3 construction for single-family homes is not essential.  
4 All we are accomplishing tonight is essentially agreeing  
5 to the remediation plan and nothing more.

6 The Planning Board has approved the  
7 conditions of the plan. However, as far as actual  
8 construction work goes, putting people on the site to  
9 do the work - that is solely controlled by the  
10 Governor's Executive Order.

11 CHAIRMAN STUTO: Okay, thank you.

12 We have several members of the public that  
13 have asked to speak. We can turn to them, or if any  
14 Board Members - they will obviously get their chance  
15 to chime in. If there's anything that any Board Member  
16 wants to clarify at this point -

17 MR. HEIDER: I do, Peter.

18 CHAIRMAN STUTO: Yes, Chief.

19 MR. HEIDER: Sean, you had mentioned that  
20 within the Governor's plan - he can start construction  
21 again on the two models that he already started. I  
22 thought in previous conversations that you are also  
23 going to let him go with additional contracted houses  
24 that he had already under contract.

25 MR. MAGUIRE: Notwithstanding the Governor's

1 Order, which supersedes any action here tonight, the  
2 suggestion was to allow him to continue working on his  
3 model homes and anything that he had under contract at  
4 the time of the stop work order.

5 MR. HEIDER: Okay, so that is included then.

6 MR. MAGUIRE: That would be my recommendation.

7 MR. HEIDER: Because that's not what you said  
8 before.

9 MR. MAGUIRE: I apologize, thank you.

10 MR. MAGGUILLI: I'm not sure I understand this.  
11 We are not giving him permission to begin work on the  
12 model homes or any other home whatsoever. The only thing  
13 we're doing tonight is agreeing to a mitigation plan. I  
14 don't think we can give him permission to work, given  
15 the terms of the Executive Order.

16 CHAIRMAN STUTO: I think what we are saying,  
17 Mike, is that we are going to recommend lifting to stop  
18 work order on those lots. He still is under whatever  
19 prohibition exists under the Governor's Executive Order.

20 MR. MAGGUILLI: What I thought I heard Sean say  
21 was that we were giving him permission to go ahead with  
22 construction on the model homes. That is not what were  
23 doing. We will lift the stop work orders and I will  
24 reinstate recommending the Building Department to  
25 reinstate the building permits, but other than that, we

1 don't have the authority to supersede the Executive  
2 Order in any way. He has to comply with the Executive  
3 Order in all respects.

4 MR. MAGIURE: Maybe my audio broke out there,  
5 Mike. I started out by saying notwithstanding the  
6 Governor's Executive Order that would supersede any  
7 authority that the Planning Board would grant. That  
8 certainly comes in first and foremost. If the Governor's  
9 Executive Order limits nonessential activities including  
10 residential construction, including residential  
11 construction, that would remain in place. That would  
12 come into consideration first.

13 MR. MAGGILLI: As long as everybody is clear  
14 on that. I don't want any misunderstanding. There's  
15 already been some. That's what started this whole thing  
16 was an apparent misunderstanding. I wanted to be  
17 absolutely clear that all we are doing is lifting the  
18 stop work order and reinstating the building permits.  
19 The builder is still under an absolute duty to strictly  
20 follow the terms of the Executive Order.

21 CHAIRMAN STUTO: Okay, thank you.

22 Anything else the Board was clarified before  
23 we turn over?

24 (There was no response.)

25 Okay, we are doing the best we can here and

1 Sean is providing a list of people who have requested  
2 to speak. So, hopefully we'll get this and it is  
3 accurate.

4 Susan Laurillard, are you there?

5 MR. MAGUIRE: I will see if I can find her on  
6 my list here. I would say that if we call your name and  
7 I can't find you, I would ask you to type into the chat  
8 window.

9 Susan, if you're not able to speak if you  
10 could just type your comments in the chat and I will  
11 relay them to the Board.

12 CHAIRMAN STUTO: Do you have her as being  
13 registered?

14 MR. MAGUIRE: I see her in the meeting. I don't  
15 see that her audio is connected, unless she's on a phone  
16 line here. That's the other question.

17 I will mute everyone and asked Susan to  
18 speak.

19 MS. LAURILLARD: Hi, good evening. My question  
20 has to do with what landscaping or why landscaping was  
21 not proposed along lot 29, 27, 2523 and 21 Alfred.

22 CHAIRMAN STUTO: Is that the conclusion of your  
23 remarks? Let's be sure she concludes all of her remarks.

24 MS. LAURILLARD: Yes, that was my first  
25 question that had to do with that. I am glad to see that

1 you are going to be requiring an escrow amount for the  
2 landscaping.

3 Will there be a written agreement reflecting  
4 the remediation plan in addition to the minutes of the  
5 Planning Board? Those are my questions. Thank you,  
6 very much.

7 CHAIRMAN STUTO: Yes, there will be an escrow  
8 agreement. Either Joe or Sean -

9 MR. GRASSO: I can speak to it, Peter.

10 Sean, are you able to call up the landscaping  
11 plan again?

12 MR. MAGUIRE: Yes, just one second please.

13 MR. GRASSO: In the lower left corner are Lots  
14 23 through 29 along Alfred. So, we didn't propose any  
15 additional landscaping between the subdivision and Lots  
16 23 through 29 along Alfred Drive because they are  
17 adjacent to the Town's stormwater management area.

18 There was a number of existing trees that you  
19 can see in the plan that are being retained here. So,  
20 those are the lots there. You can see along Alfred  
21 Drive - 23, 25, 27 and 29. Each of those lots back up  
22 against the proposed stormwater management area and  
23 there are a number of existing trees that have been  
24 preserved between those lots and the new subdivision  
25 development including the road. So, we didn't feel

1 that it was warranted to plant any additional trees  
2 there. We wanted to focus on where there were open  
3 views between new homesites in existing adjacent  
4 residences.

5 CHAIRMAN STUTO: Okay, thank you.

6 Is Susan Weber signed up?

7 MS. WEBER: Yes. Can you hear me?

8 CHAIRMAN STUTO: Yes, I can.

9 MS. WEBER: First thing I want to say is I was  
10 very gratified that Planning Board Members were so upset  
11 about the fact that the developer or his people  
12 seemingly ignored your approved plan.

13 I'm really glad that you required the TDE and  
14 Sean McGuire to go out there and do a really, really  
15 good job coming up with a fine remediation plan.

16 I am hoping that another part of this may be  
17 some kind of penalty in addition to this.

18 I have a question and then a couple more  
19 things.

20 I noticed that along the outer boundary of  
21 Lots 73 and 75 - Sean if you wanted to bring that up  
22 so we could see that?

23 CHAIRMAN STUTO: We will ask Sean to do what he  
24 needs to do. Please make your statement and we will  
25 appreciate it.

1 MS. WEBER: Okay, I noticed that quite a wide  
2 area of remediation trees are suggested for that area. I  
3 wanted to make the point that in that area, there were  
4 no trees there before that were removed. So, this was  
5 not an area that needed to be remediated.

6 If the developer wants to make a lovely place  
7 - a lovely barrier there between the lots he is  
8 selling and the lot he still owns, by the way, then  
9 that would be up to him and I would suggest that the  
10 rest of those plantings there that are quite extensive  
11 be placed in the other areas where he trashed the deed  
12 restricted lands in violation of the law.

13 I would also like to bring up the fact that I  
14 believe - I think Mr. Magguilli has said several times  
15 that there have been some misunderstandings here with  
16 regard to the development here. I would like to just  
17 draw the Board's attention to a reason that this may  
18 be the case and just show you that this has happened  
19 on other sites - other projects - other developments  
20 as well.

21 I would point out that what happens is after  
22 your Planning Board approves the plan, the PEDD staff  
23 makes changes in the field including changes to  
24 stormwater, tree cutting and those sorts of things.  
25 So, I don't know if this is going to be the case under

1 Mr Maguire. One would hope not. It was extremely clear  
2 that this happened under Mr. LaCivita. I would like to  
3 give you a couple of examples.

4 CHAIRMAN STUTO: Sean, can you mute her now?  
5 I'm not going to have her defame Joe LaCivita.

6 MS. WEBER: I'm not defaming him. I'm going to  
7 add some examples -

8 CHAIRMAN STUTO: You're getting far afield of  
9 what this project is.

10 MR. MAGGUILLI: Peter, let me say this: I just  
11 want to make it clear that the developer claimed that  
12 there was a misunderstanding. There was no  
13 misunderstanding on the part of the Town. In his  
14 defense, when he came to us after I issued the stop work  
15 orders, he had claimed that there was a  
16 misunderstanding. It's not that I am acknowledging one.  
17 It was something that he had alleged to the Town. That's  
18 all I had said. I don't want anything misconstrued and  
19 again, this is not a public hearing, Peter.

20 MS. WEBER: All right, if you are going to cut  
21 me off, I will stop talking. I will write you a letter.

22 MR. MAGGUILLI: No one is cutting you off.

23 CHAIRMAN STUTO: You can continue to talk, but  
24 let's talk about the landscape plan for this project.

25 MS. WEBER: I just wanted to point out that a

1 similar situation occurred with Maxwell Village where  
2 the developer thought -

3 CHAIRMAN STUTO: All right, we are not talking  
4 about a different project, here. I totally disagree with  
5 you. They are entirely different circumstances. Do you  
6 have any other comments on the remediation plan that  
7 were talking about tonight?

8 MS. WEBER: It looks really good. Thank you  
9 guys.

10 MR. GRASSO: This is Joe. Can I speak to the  
11 landscape plan regarding Lot 73 and 75?

12 Sean, if you could call up that plan and  
13 focus on those areas?

14 Susan, I appreciate your comments regarding  
15 the strength of the plan and obviously you have taken  
16 a close view of what's proposed and compared it to the  
17 original plan.

18 Lot 73 and 75 is on the far side to the  
19 north.

20 MR. MAGUIRE: I believed that Susan was done  
21 speaking. If that's not the case, let me know.

22 MR. GRASSO: So, obviously the plan that we  
23 have up here is just the proposed landscape remediation  
24 plan. At the last meeting we had shown an additional  
25 area of clearing and grading. Although our investigation

1 didn't focus on these areas, Lot 73 and 75 - there were  
2 two singular trees on each of those lots that had been  
3 removed without authorization which the builder had told  
4 us when we were doing our site investigation.

5 Then, when we compared the new limits of  
6 clearing and grading to the approved plan, we saw that  
7 there was some additional work proposed in the rear  
8 yards.

9 Also, when we did our investigation on  
10 numerous occasions, we could tell that there were wide  
11 unobstructed views from these new lots to those  
12 adjacent lots along Sand Creek Road. So, we took it  
13 upon ourselves and hearing the feedback from the  
14 Planning Board that we felt like additional  
15 landscaping was, in fact, warranted in the rear yards  
16 of these two lots. We felt like it would make an  
17 overall more attractive subdivision and provide  
18 appropriate buffering to the adjacent neighbors.

19 All right, Pete.

20 CHAIRMAN STUTO: Thank you.

21 Clay LaPorte?

22 MR. LAPORTE: I just have one question to Sean.

23 I had been in and we talked a couple of weeks  
24 ago, I guess. Time is in a warp right now.

25 CHAIRMAN STUTO: It sure is.

1 MR. LAPORTE: This is a question to Sean and he  
2 doesn't have to answer right now. Just in the  
3 conversation that we had in his office where he works -  
4 I was just wondering whether he had gotten out to the  
5 site, or not near my lot where the retaining wall is to  
6 take a look and see.

7 We were talking about the fence. I was just  
8 wondering if he had gotten out there to take a look at  
9 it.

10 I also did talk to him about Lot 60 that  
11 borders along one side of my property. On the original  
12 plan that was shown was to keep all the pine trees  
13 there - I guess they're Spruce trees. There's about  
14 seven or eight of them there. It was mentioned that  
15 they were pretty much all going to be taken out except  
16 the ones right on the perimeter where the fence is.  
17 So, that would be taking more than half of those trees  
18 out because they were all slated to leave there. I was  
19 just wondering if that was still going to happen.

20 I guess one other person mentioned something  
21 about - the last person mentioned something about you  
22 guys stepping up and having the trees planted and  
23 larger trees. That's all great.

24 She mentioned that she was wondering if there  
25 was any fines that you decided what going to be

1           levied. I don't know if there was going to be fines,  
2           or if the trees were going to be the fines. I don't  
3           know.

4                       Also, when they put the fence in down on the  
5           retaining ponds, once again they're working along the  
6           boundary line and put the fence up and obviously they  
7           have to get in there to put them up. They pretty much  
8           - I won't say clear-cut it, but they took all the  
9           shrubs out and I don't know how many small trees  
10          because I don't walk into there. You can see where it  
11          is extensively cleared out and got in there with  
12          whatever equipment they were using to install the  
13          fence. So, once again, there was encroachment within  
14          the 15 foot boundary, removing stuff that really  
15          shouldn't have been moved.

16                      The last quick thing is - at the last meeting  
17          that we had, I don't know if any of you on the Board  
18          were aware of it or not, but out in the hallway there  
19          was a confrontation. It was a pretty verbal and pretty  
20          confrontational threatening type of - put forth upon  
21          the residents by some outside person, or persons.  
22          Several people - I don't know who they were. They  
23          didn't identify themselves - I have suspicions as to  
24          who they may be, but they were threatening and  
25          swearing at one of the residents of the Town. I don't

1 know if that needs to be addressed and why they were  
2 threatening members of the Town.

3 The last thing - what was sent out to notify  
4 of this meeting today - I guess they were sent out by  
5 the civil engineer's office. So, they were sent out  
6 and all the other ones they sent out before - we all  
7 got those. This last time, they decided to put them in  
8 mailboxes without any postage on them, which is a  
9 federal offense.

10 CHAIRMAN STUTO: Are you all set with your  
11 comments?

12 MR. LAPORTE: Yes, sir. Thank you, very much.

13 CHAIRMAN STUTO: Sean, can I let you handle the  
14 response and use Joe Grasso, to the extent that you need  
15 to?

16 MR. GRASSO: Pete, this is Joe. I can speak to  
17 what is proposed on Lot 60, if Sean wants to call that  
18 up.

19 So, this plan shows the proposed house  
20 location and the associated grading on Lot 60. You are  
21 correct, Mr. LaPorte, there are some Spruce trees  
22 there right at the location of the proposed house that  
23 are going to be removed if they haven't been removed.  
24 I can't remember. I was just out there today. There  
25 are five or six Spruce trees that extend into the lot

1 that are going to be removed.

2 Then, there's about eight or 10 Spruce trees  
3 along your back property line and they're going to be  
4 retained. So, we took advantage of that.

5 We also focused our landscaping along the  
6 side property line. Obviously it doesn't provide  
7 tremendous benefit to the lot, but it will help create  
8 a more desirable view in the development.

9 We did add some larger deciduous trees across  
10 the back, as well. Our thought was that with the four  
11 additional trees that are proposed by the applicant,  
12 that will help fill in some of those gaps along the  
13 rear property line. They are proposing to remove a few  
14 of those Spruce trees that jut into the lot where the  
15 house is located.

16 MR. MAGUIRE: I guess the part I will speak to  
17 is the question about fines. I will refer to our Town  
18 Attorney, because it is the place of the Planning Board  
19 to levy fines.

20 What we did look at was how we could develop  
21 such a plan that had a greater public benefit in the  
22 form of the increased landscaping. So, that was my  
23 rationale and requesting that these trees that are  
24 proposed here being increased from a 2 1/2 inch  
25 caliper to a 3 1/2 inch caliper. It is a much more

1 significant investment in terms of the landscaping  
2 going in as well as the actual - what it takes to  
3 plant those.

4 Joe, you know this better than I do - just to  
5 give the public an idea of the difference between the  
6 2 1/2 inch caliper and a 3 1/2 inch caliper, what  
7 would be the height just say on a maple tree of that  
8 type?

9 MR. GRASSO: So, a 2 1/2 inch caliper tree is  
10 generally going to be about 10 feet tall on average. I  
11 would say 3 1/2 inch caliper tree would probably be 14  
12 or 15 foot tall. There's quite a bit of age difference  
13 between the two. A 2 1/2 inch caliper tree is probably  
14 four to five-year and the three and half inches probably  
15 6 to 7 year range. Obviously, the value is exponential.  
16 There's quite a bit of value difference to go from a 2  
17 1/2 to a 3 1/2 caliper tree. You're probably adding a  
18 few hundred dollars to the purchase price, as well as  
19 doubling that for the install costs. Each tree - to go  
20 from 2 1/2 to 3 1/2 inch caliper is about an additional  
21 \$600 of installed value.

22 MR. MAGUIRE: That was my rationale with that  
23 discussion. Did we leave off anything there that you  
24 would like us to address?

25 CHAIRMAN STUTO: Well, he talked about the

1 retaining wall.

2 MR. MAGUIRE: We discussed this in terms of the  
3 retaining wall that was on the initial plan and  
4 obviously the grading/clearing occurred and those walls  
5 aren't there anymore.

6 The landscape has already been stabilized. I  
7 think it was the wiser to redirect resources that we  
8 have the developer commit to mitigating this. The  
9 actual plantings and greenscape here - I think just  
10 going back in and restoring retaining walls where the  
11 work has already been done - it was sort of a  
12 trade-off here. It was our recommendation to just  
13 leave the grading as is and use the resources that we  
14 would have needed to do that grading and then the  
15 retaining wall and invest in the landscaping and the  
16 natural environment.

17 CHAIRMAN STUTO: Okay. Richard Notke?

18 MR. MAGUIRE: Mr. Notke, are you there?

19 (There was no response.)

20 I have unmute everybody, Peter, but maybe if  
21 Mister Notke is here and just hasn't connected - if he  
22 could just type in the chat window and maybe we can  
23 come back to him.

24 CHAIRMAN STUTO: Nancy Garry?

25 MS. GARRY: Thank you. I just had a quick

1 question on the plantings.

2 I think it's obviously an excellent job. The  
3 limits of clearing and grubbing that are along the  
4 houses along Alfred Drive - it is my understanding  
5 that the contractor will not be allowed to go pass  
6 those limits of clearing and grubbing and they're just  
7 going to add additional trees along those lots? That's  
8 my only question.

9 CHAIRMAN STUTO: Joe or Sean?

10 MR. GRASSO: This is Joe Grasso. I will take  
11 that.

12 Based on my site inspections, I think that  
13 the clearing that's going to take place has already  
14 been done. I think this plan shows the clearing pretty  
15 much up to the deed restricted line.

16 On Lots 57 and 59 there's a few trees that I  
17 think are outside of that deed restricted line, but I  
18 think pretty much he's cleared up, or is going to or  
19 he's obviously pushed a lot of fill back there. I  
20 think when he gets into developing and regrading the  
21 lots and creating that swale, some of that fill will  
22 be pulled back a little bit. I think the clearing work  
23 is basically done.

24 What we have tried to do is focus the  
25 additional plans within the 15-foot deed restricted

1 area that goes across the backs of each of those lots,  
2 except for those larger deciduous trees. Hopefully,  
3 that answers your question.

4 CHAIRMAN STUTO: Thank you.

5 Kirsten Kolber.

6 MS. KOLBER: First of all I just want to say  
7 that you guys are doing great under all the  
8 circumstances. That includes all the Board Members and  
9 everybody involved.

10 At this point, you have really basically  
11 answered all my questions. So, I will leave it for  
12 another time, but I thank you very much for asking.

13 CHAIRMAN STUTO: Thank you.

14 Richard Notke - did you find him, Sean?

15 MR. MAGUIRE: I did not get him in here.

16 CHAIRMAN STUTO: Mary Ellen Lorini.

17 MS. LORINI: Thank you. A couple of  
18 clarification questions for me.

19 I think the plan is a really good one. My  
20 understanding of the reason why there was a  
21 designation in the first place of the no-cuts was to  
22 in part mitigate any erosion or run-off. So, the  
23 greenery and the growth that was left was supposed to  
24 help avoid that. Some of it was cut without  
25 permission. In this plan obviously it put back some of

1           that growth.

2                       So, my questions are: In terms of anything  
3           that remains from the previous designated no-cuts zone  
4           - this doesn't change that, correct? Those areas that  
5           remain still can't be cut and this plan just adds  
6           plantings to put back what was done and maybe add a  
7           little bit more to other areas. It doesn't change the  
8           fact that the prior approved plan, to the extent a  
9           no-cut zone still exists - they still have to be left  
10          alone.

11                      CHAIRMAN STUTO: I'm pretty sure that's  
12          correct, but I'll let Sean and Joe answer that.

13                      MS. LORINI: Along those lines, given that the  
14          purpose of the no-cut zone was to mitigate run-off, I  
15          think those lots that butt up against the school - I  
16          think it was like 47, 51 and 53 - something like that -  
17          where they're supposed to be no-cut zones there and now  
18          it's not under this plan, or were there never supposed  
19          to be? In other words, why isn't there planting there to  
20          mitigate run-off? That would be my second question.

21                      Third, as far as the plantings - are they  
22          going to be professionally done? The purpose of this  
23          is to again make sure that this whole restitution  
24          takes and that the growth takes and the root systems  
25          take. So, are the plantings going to be done

1 professionally and with the one-year warranty covering  
2 - is that enough time to make sure that the plantings  
3 take? Will there be a maintenance contractor -  
4 somebody responsible for watering and caring for these  
5 throughout the period to make sure that your whole  
6 point of doing this - that the trees live and the rest  
7 lives so as to accomplish the result of having a  
8 decent amount of growth to mitigate run-off?

9 Finally, if you could just explain the escrow  
10 again? I didn't quite catch what amounts were in place  
11 and for how long.

12 CHAIRMAN STUTO: Okay, thank you.

13 Joe?

14 MR. GRASSO: Yes, this is Joe, Pete.

15 Sean, if you can call up the plan and focus  
16 on Lots 47 to 53 on the left side of the plan. Those  
17 are great comments and I apologize if I missed some of  
18 them.

19 Yes, the no-cut deed restricted area is not  
20 changing. Those limits are still as per the approved  
21 plan. Obviously based on our investigation, what we  
22 presented is that there has been work in some areas  
23 that were areas within those deed restricted areas.  
24 The restriction remains in place as of today. Other  
25 than adding these plans, there should never be any

1 cutting or clearing of vegetation or mowing of grasses  
2 within those areas. So, that's the way those areas  
3 should remain. That's the reason why we try to focus  
4 our plants there so that it's not at the discretion of  
5 the future landowner whether or not these plants  
6 should continue to be there and provide the buffer to  
7 the adjacent neighbors.

8 Lots 47 and 53 - there are deed restricted  
9 areas across the backs of each of those lots. You are  
10 right. One of the indirect benefits of the deed  
11 restricted area is that there is no soil  
12 disturbance, so it does reduce the amount of potential  
13 for erosion. I think the primary purpose was to either  
14 protect trees or provide an area where new trees are  
15 going to be added that would be protected from being  
16 cut in the future. We chose not to add any additional  
17 trees to the back of Lots 47 and 53 because the  
18 existing trees that are already protected within the  
19 site and the lack of any adjacent neighbors behind  
20 those lots and the fact that the applicant is already  
21 on the hook to plant for trees within the rear yards  
22 of each of those lots.

23 Those are the reasons why we took that effort  
24 and we wanted to focus it on other areas of the plan  
25 that will provide much more significant benefits to

1 the adjacent neighbors.

2 Sean, if you want to talk on the landscaped  
3 installation and how that would be controlled.

4 CHAIRMAN STUTO: I'm going to make a suggestion  
5 that we hold that question. I know Board Members have  
6 concerns about that, as well. When we turn it over to  
7 the Board, will have Sean go over that.

8 MR. MAGUIRE: I think there's a question about  
9 the escrow. Do you want me to just explain what that  
10 will be?

11 MR. MION: That was one of my questions, too -  
12 is about the escrow. So, you might want to hold off on  
13 that.

14 MR. MAGUIRE: Okay.

15 CHAIRMAN STUTO: Let's hold off until we turn  
16 it over to the Board. That will be the first thing that  
17 we talk about.

18 Richard Notke - did we get him, or no?

19 MR. MAGUIRE: No, we didn't get him. I checked  
20 my emails and I didn't have any notes from him so maybe  
21 he did make it into the meeting.

22 CHAIRMAN STUTO: Okay, we have a representative  
23 here from the applicant, right?

24 MR. PALLESHI: Yes, Luigi.

25 CHAIRMAN STUTO: That's the end of the public

1 comment. Do you have anything you would like to say or  
2 add?

3 MR. PALLESHI: Yes, just so it sounds like  
4 we're agreeable to the landscaping plan that's before us  
5 tonight. The one thing that we would like to clarify is  
6 how soon we can get that work order lifted.

7 The biggest issue out there right now as we  
8 all know - there is a safety issue with National Grid.  
9 They have open trenches and now that the service is  
10 connected throughout the two subdivisions, people are  
11 walking the streets and it is a safety concern that  
12 somebody could fall into the open ditch. So, the  
13 sooner that we can get that stop work order lifted,  
14 the better for all of us. If we can get to that  
15 tonight, that would be what we are looking for.

16 CHAIRMAN STUTO: If this goes through, we are  
17 going to recommend the lifting of the stop work order  
18 for those purposes and for the lots that have already  
19 been identified. You still have to comply with the  
20 Governor's Executive Order, as I'm sure you know.

21 MR. PALLESHI: That's correct.

22 CHAIRMAN STUTO: Sean, would you like to talk  
23 about the escrow account and what you recommend in term  
24 of warranty and installation of the landscaping.

25 MR. MAGIURE: So, during the discussion we

1 wanted to have some guarantee for the Town of the work  
2 that would be completed and done per the plan. We  
3 initially talked about a full valued escrow. We think  
4 that 50% escrow of the value of the work is sufficient.  
5 Certainly the builder has an incentive to finish the job  
6 and take up these lots to be built and completed. So, my  
7 recommendation is a cash escrow deposit with the Town  
8 for \$100,000 would be sufficient to do that. As I said,  
9 once all the rear lot mitigation has been completed, I  
10 would recommend reducing that escrow to recognize that -  
11 to release some of those funds, but continue to hold a  
12 smaller value to ensure that the street trees are  
13 completed. My recommendation includes an increase in the  
14 caliper and a 3.5 inch street tree like the Bradford  
15 Pear and the Maple that are in the remediation plan.

16 CHAIRMAN STUTO: What do you know about who's  
17 likely to install the plants and what are we talking  
18 about in terms of warranty and what you recommend in  
19 terms of warranty from the developer?

20 Maybe Joe wants to talk about the likelihood  
21 of things dying. I know Joe has a strong background in  
22 landscape architecture.

23 MR. GRASSO: In the landscape plan - based on  
24 my experience, the larger plants have at the time of  
25 planting, the greater chance of die-offs within the

1 first few years. We had to reach a balance between  
2 plants that are reasonably sized to provide screening,  
3 but also not so large that we increase the risk that  
4 many were going to die-off.

5 Another thing that we find is that in any  
6 landscaped installation of this type, it wouldn't be  
7 surprising that we could get 25% plant die-off within  
8 the first year or so. That's why we are recommending a  
9 strong cash escrow for a one-year warranty period and  
10 why we proposed the variety of trees and shrubs and  
11 the density that we've got on the plan, knowing that  
12 although most of the die-outs occur within the first  
13 year because of the shock from the transplant. Some  
14 die-off and may continually occur years down the road  
15 through a variety of reasons. We took that all into  
16 consideration with our landscaping approach including  
17 the sizes and I think the appropriate approach to a  
18 large cash escrow until all the plants are done and  
19 then reduce the escrow throughout at least a one-year  
20 warranty period is something that we are not in strong  
21 support of.

22 CHAIRMAN STUTO: Who is likely to do the  
23 install?

24 MR. GRASSO: Because the applicant is a  
25 contractor and I submit that he's got the equipment, it

1 would be something that he was probably able to  
2 self-perform himself. I wouldn't be surprised that based  
3 on the scale of the landscape installation, that he  
4 brings in additional resources that other landscape  
5 crews that he works with. Obviously he had some  
6 landscaping already proposed on the plan that I'm sure  
7 he was going to have done by either his own forces or an  
8 additional crew. So, it will probably be a combination.  
9 Obviously, I think that's where the Town's inspection  
10 and oversight of the process is something that's really  
11 important - just to make sure things go as good as they  
12 can. Landscaping isn't rocket science, but there's good  
13 ways to do it and it's always in the interest of the  
14 developer to take care of the plants throughout the  
15 one-year warranty as he is developing these lots because  
16 there's a significant cost to replacing these plants.  
17 Based on the scale of this installation, it's unlikely  
18 that he's going to get a warranty out of the nursery.  
19 It's going to be up to him to ensure that they are  
20 installed right and maintained right so that there is a  
21 higher chance of survivability.

22 CHAIRMAN STUTO: Okay, do any Board Members  
23 want to be heard on that?

24 MR. MION: I would like to say something. I'm  
25 not so much concerned about the trees on the street, but

1 the whole reason for this is because of the clear-cut in  
2 the back. We're going to be putting trees there. As you  
3 said, Joe, we are going to be putting in 3 1/2 calipers.  
4 So, if I understand correctly, the nurseries don't want  
5 - it's more the contractor that would warrant it. I  
6 think instead of a year, I think maybe we should look at  
7 two years based on exactly what you just said. You're  
8 going to lose some maybe in the first year, but you  
9 could very well do something in the second year. After  
10 the second year, I think they should be rooted enough to  
11 where either they're going to make it, or they're not.  
12 Personally I think that we should extend that warranty -  
13 the contractor should give at least two years from the  
14 time they planted. We have to work it where they can't  
15 do anything until they get all those trees planted. So,  
16 it's going to be two years from that point.

17 As far as the escrow, I would like to see  
18 something more in the neighborhood of \$50,000 rather  
19 than \$25,000 to ensure that we have money in there if  
20 we need it to put the trees back.

21 CHAIRMAN STUTO: Okay, thank you for those  
22 comments.

23 Anybody else like to speak on that issue?

24 MR. ASHWORTH: Yes, Peter. My feeling is that  
25 with those banks on 46 through 52, they're fairly steep.

1 All you need is a real good gully-washer and all that  
2 sand is going to come down. Is the developer going to  
3 put biodegradable mats down or sodded so we don't get  
4 that wash out?

5 CHAIRMAN STUTO: Joe Grasso, can you respond to  
6 that?

7 MR. GRASSO: That's something we can look at.  
8 Typically, they're not proposing any slopes greater than  
9 one on three. When you get a one-on-one slope, we  
10 typically start to look at erosion control protection.  
11 That is something that ensures the applicant is aware of  
12 the need to stabilize those slopes. I highly doubt  
13 they're looking to sod all of these lots. Stabilizing  
14 the slopes is something that is strictly controlled by  
15 the Town's stormwater management office and they do  
16 weekly inspections on the stormwater management plan and  
17 the re-establishment of vegetation on all the lots until  
18 the development is completely built out. So, it is  
19 something that's going to be controlled, but I'm not  
20 sure it meets the needs of the erosion control blankets  
21 at this time.

22 MR. ASHWORTH: My concern was that some of  
23 those - some places along the property line are pretty  
24 close to the people in the back. I feel that at least in  
25 some places there should be some attempted erosion

1 control.

2 MR. GRASSO: There shouldn't be any more  
3 grading within the deed restricted area. So, the areas  
4 that we are doing the plants shouldn't be too steep. No  
5 doubt, right on the edge of that deed restricted areas  
6 where you start some of those slopes down to those  
7 homesites. That's something that we can look at, Chip -  
8 those areas that we have the long runs of one-on-three  
9 slope across those lots, we can look at adding some  
10 erosion control blankets.

11 MR. ASHWORTH: Tood. Thank you.

12 CHAIRMAN STUTO: Who else would like to speak?

13 MR. ROSANO: I do, Peter.

14 I guess I go with Joe first. Start the area  
15 behind 23, 25, 27 and 29 - it's a slope down and it is  
16 a treed area. The fencing has already been started.  
17 It's a pretty big area. Who is going to own it? Who is  
18 going to maintain it? Will that be something that they  
19 would give to the Town at a later time? It's right to  
20 the east side of the retention - behind those four  
21 houses right on the east corner.

22 MR. GRASSO: Yes, Paul, that whole lot there is  
23 proposed to be conveyed to the Town when all the  
24 infrastructure gets dedicated. That whole lot including  
25 the area of the existing trees will remain. So, the

1 entire stormwater management area is fenced. You can see  
2 the black post out there today. That whole lot is to be  
3 dedicated to the Town.

4 MR. ROSANO: So, the Town at some point when  
5 this is turned over to us, we will be responsible to  
6 maintain that area.

7 MR. GRASSO: That is correct.

8 MR. ROSANO: Okay, thank you.

9 CHAIRMAN STUTO: Craig?

10 MR. SHAMLIAN: I agree with Lou that the  
11 warranty needs to be two years and I think it should be  
12 two years from the issuance of the certificate of  
13 occupancy on each of the lots.

14 I also think that it should include the  
15 street trees because at 3 1/2 inch caliper, some of  
16 those are going to die and I don't think it's fair to  
17 throw the onus on new homeowners to have to replace  
18 those relatively expensive and large trees.

19 I also agree with Lou that the escrow amount  
20 that gets reduced down should be \$50,000.

21 Back to something that I think Sean pointed  
22 out - the escrow should be a cash escrow and should  
23 not be a bond escrow. It's too hard sometimes for the  
24 Town to go after bond escrow.

25 CHAIRMAN STUTO: I think they are proposing a

1 cash escrow.

2 MR. SHAMLIAN: And I just want to make sure  
3 that's what were headed.

4 The last thing I had right now was can we  
5 clarify exactly which lots - so we know which lots  
6 they have models under construction on. Do we know  
7 exactly which lots are currently under contract,  
8 because we are giving him permission to get moving on  
9 those - obviously the Governor's Executive Order  
10 superseding everything, but ultimately we are giving  
11 him permission to move forward on the lots. I want to  
12 make sure we know exactly which lots those are so that  
13 we think one thing and they move somewhere else - or  
14 we think it's five lots and they start doing something  
15 on seven. I want to make sure we're buttoned up on  
16 that, that's all.

17 CHAIRMAN STUTO: Can you rattle those lots off,  
18 Sean?

19 MR. MAGUIRE: I can't rattle them off, but my  
20 suggestion was we draw a line in terms of the date -  
21 draw a line in the sand here that says that any lots  
22 that were under contract at the time the stop work order  
23 be allowed to continue with those lots as well as the  
24 model homes. So, that way if he has got other lots under  
25 contract while he's been in a stop work condition - he

1 wasn't able to start work on those anyway. but prior to  
2 this he was in a position to start work. So, if we could  
3 restore that back to his condition prior to the stop  
4 work order, I think that would be my recommendation. I  
5 don't have that count.

6 Maybe asked Luigi if he knows, from ABD?

7 MR. PALLESHI: I don't know off the top of my  
8 head either, but I believe it's 73 and 67 are under  
9 construction right now. I know that when I was part of  
10 the staff meeting, we did discuss several other lots  
11 that were under contract and we can get a list for you  
12 on those.

13 MR. MAGUIRE: I know that at least three others  
14 - - because we had somebody at the last meeting who  
15 provided - -

16 MR. HEIDER: That was 60, 49 and 54.

17 MR. MAGUIRE: So, that would be five homes  
18 under construction.

19 MR. PALLESHI: I think at the staff meeting we  
20 also talked about the ones all the way to the left of  
21 the page because they bordered the school.

22 MR. MAGUIRE: So, that would be lots 53, 51, 49  
23 and 47. Again, 49 - we are already aware of a contract  
24 under that. I think that was Mr. Lockhart's lot and that  
25 I think he came and spoke to the last meeting.

1 MR. SHAMLIAN: So, I'm sorry, what's the  
2 status? So, 49 I understand is one of the ones -- we  
3 get to five that were either under contract or model  
4 homes. Now we're talking about a couple more.

5 MR. PALLESHI: Any of the lots that border the  
6 school.

7 MR. SHAMLIAN: And what was that?

8 MR. PALLESHI: 47, 51 -

9 MR. MAGUIRE: And 53. I think we talked about  
10 that but my recommendation remains that we limit this to  
11 what was under contract. Again, 73 and 67 are the model  
12 homes. I do know 54 is one of the homes where the person  
13 who is under contract was at the last Board meeting. We  
14 do know 49. Number 60 is probably the one - I don't have  
15 anything in front of me. Sorry, we do know 60 because  
16 that's also the one we talked about that there were some  
17 trees on the one side. I would agree with those five  
18 sites; two model homes and three under contract.

19 MR. SHAMLIAN: I just don't want us to think  
20 it's five and then it ends up being eight. That's not  
21 what were going to do.

22 MR. MAGUIRE: Right, I think those were  
23 identified.

24 Craig, if you want, we can identify those as  
25 the ones we would allow first until all the work is

1 complete.

2 MR. SHAMLIAN: Okay.

3 MR. GRASSO: Sean, this is Joe. When I was out  
4 there today there's a board up that shows all the  
5 proposed lots and six of them say sold on it. That's  
6 what I was always going by. In my notes it is six lots  
7 that were either sold or under contract.

8 CHAIRMAN STUTO: Okay, anybody else want to  
9 speak about the escrow or the length of the warranty?

10 MS. MARINELLI: Peter, I just want to make sure  
11 we are clear on the lots we are going to let go through  
12 once the Executive Order is out of place because there  
13 seems to be a lot of confusion on it. It's just going to  
14 be the model homes and the lots that were under contract  
15 as of the date the stop work order was put into place.  
16 Is that were going with it?

17 CHAIRMAN STUTO: I'm not sure. I think that's  
18 what Sean recommended.

19 MR. MAGUIRE: Yes, because I didn't have the  
20 exact addresses here. That was my recommendation that we  
21 establish that based on the landmark of the stop work  
22 order.

23 MS. MARINELLI: I just want the Board to be  
24 clear because I don't want to have any confusion down  
25 the line with the developer. If that's what it is,

1 that's what it is. If the Board is going to take action  
2 on it, I want them to be clear on what we're going to  
3 do.

4 MR. MAGUIRE: I'm just going to chime in here  
5 on what things are under contract -- it may affect  
6 homeowners financing. It leaves them stuck in the middle  
7 here.

8 MR. ASHWORTH: Pete, I have expressed a long  
9 time ago that I also was in favor of a two-year warranty  
10 on this landscaping.

11 CHAIRMAN STUTO: Okay

12 MR. HEIDER: Pete, can I say few things?

13 CHAIRMAN STUTO: Sure.

14 MR. HEIDER: I know I wasn't at the meeting,  
15 but I did watch the meeting on video. I concur with  
16 everybody's general disgust about how this took place.

17 A couple things about the landscaping: First  
18 of all, in my experience if a plan is going to die,  
19 it's going to die within the one-year period. Most of  
20 the time if it's going to die at the nursery, it's  
21 going to die within the first three weeks and it's  
22 going to be gone.

23 If the vote is on a two-year warranty that's  
24 fine, but a one-year warranty is typically more than  
25 enough.

1                   One thing that I think the Board needs to  
2 understand - and I've talked to Joe about this - to  
3 me, this is overkill. Don't get me wrong, I fully  
4 understand the developer made a mistake. If you look  
5 at the plantings and how they are in the backyards,  
6 that's not going to be very pretty in five years.  
7 That's can be so overgrown because the people are not  
8 to be able to trim it and won't be able to do  
9 anything. I'm not too sure that they're going to like  
10 the way it looks after five years. I'm talking about  
11 the neighbors on both sides of the property.

12                   When you're planting plants so close - - all  
13 you have to do is ride around this Town and you can  
14 see a lot of commercial projects that plant pines and  
15 spruces so close and even on this site here, those  
16 seven spruces in the back - some of them were almost  
17 dead because they were planted so close. They almost  
18 killed each other in the process. I just bring that up  
19 to the Board so they understand that.

20                   On talking about warranting the street trees  
21 and warranting the big old Sugar Maples. Almost  
22 probably 38 of the 42 Sugar Maples aren't being  
23 planted in the conservation zone. From day one, people  
24 can chop them down and we have no control over that.  
25 Street trees, from day one, they can take down and we

1 have no control over that. So, my understanding is  
2 that we wanted to preserve the conservation zone.  
3 Well, you're putting plants outside the conservation  
4 zone that people have total control over. We have no  
5 control. Yet, you are putting a lot of plants in the  
6 conservation zone, which in my view are going to grow  
7 so dense and so together that they're liable to kill  
8 each other in 5 to 10 years. So, I think we have to be  
9 cognizant of that.

10 As far as reducing the escrow, I'm not  
11 opposed to going to the \$50,000, but I think if the  
12 Town does its job in making sure the majority of the  
13 work is done before it's reduced to the \$25,000, I  
14 think that's ample escrow.

15 Other than that, that's all I have.

16 CHAIRMAN STUTO: Okay, thank you.

17 Joe, did you want to address any of that?

18 MR. GRASSO: Yes, I appreciate the comments and  
19 obviously it's a balance and we try to do what we  
20 thought was reasonable.

21 I agree with the Chief. There are some  
22 significantly sized trees that are planted outside of  
23 the deed restricted areas. We tried to pick a plant  
24 that was very desirable and significantly sized that  
25 has enough value to it that we don't think or we hope

1 a future landowner is not going to want to see that  
2 tree taken down and that it will be mutually  
3 beneficial to not only shielding to the adjacent  
4 neighbors, but also look nice within the lots  
5 themselves.

6 I agree wholeheartedly about the street  
7 trees. There is no restriction that those can't be cut  
8 at some point in the future, but I think the way they  
9 are laid out and the species that are chosen are very  
10 desirable trees. When you get to be a 3 1/2 inch tree,  
11 you're talking about a tree that's probably \$1,000 a  
12 piece and we hope it's significant enough that  
13 somebody's not going to want to cut it down at any  
14 point in the future and will work hard to try to take  
15 care of it.

16 I appreciate the comments that the plan may  
17 be overdone. It's a balance because we understand how  
18 perception is going to be when this landscape first  
19 goes in. Some people are going to say well, I expected  
20 it to be a lot more than that. I agreed that 10 or 20  
21 years down the road some of these plants may fill-in  
22 and start to choke themselves out but again, we're  
23 trying to create a buffer to protect the adjacent  
24 residences. I appreciate the comments, though.

25 CHAIRMAN STUTO: Okay, any other comments from

1 the Board?

2 MR. ASHWORTH: I also live in a development and  
3 I haven't seen any street trees cut down at all. There  
4 are 89 lots in my subdivision. I haven't seen it.

5 CHAIRMAN STUTO: Okay.

6 Anybody else from the Board?

7 MS. MILSTEIN: I just want to make sure that we  
8 know what the plan is for the installation. I don't want  
9 to be left to guess work. I just think that they should  
10 put a plan together and the PDD can approve it and  
11 oversee it. So, there's no more misunderstandings about  
12 the plans and the intentions and everything else.

13 CHAIRMAN STUTO: Okay.

14 MR. MAGGUILLI: Peter, I would just like to  
15 make one more thing clear. We also have a separate  
16 violation proceeding pending in Colonie Town Court. The  
17 Town is alleging that after we had issued the stop work  
18 order, that the developer ignored the stop work order  
19 and proceeded to perform work. Specifically, the  
20 National Grid work that was referred to earlier. This  
21 has no effect on the Town's ability to proceed on the  
22 violation proceeding. We intend to proceed with the  
23 violation as a totally separate and distinct matter. I  
24 just want to make sure that's clear to the Board and  
25 that it's clear to the applicant as we go forward.

1                   CHAIRMAN STUTO: That raises another issue  
2                   which I would like to address, which is a penalty. I  
3                   personally don't favor a penalty at this point. I think  
4                   this is an excellent landscaping plan and a very  
5                   adequate - and some have argued more than adequate  
6                   landscaping plan. I don't know if we have the authority  
7                   to impose a penalty. I think the developer - I think the  
8                   financial price tag that has gone with this is  
9                   sufficient, so that the developer knows where we stand.  
10                  That's just my personal opinion.

11                  MR. MAGGUILLI: We will be looking for a  
12                  penalty in the separate proceeding, just so you know  
13                  that. To me, it is a totally separate and distinct  
14                  issue. This is just resolving the stop work order. They  
15                  are fully aware of the stop work order and the very  
16                  following day after our meeting, they had people out  
17                  there working. So, we filed a violation that day. This  
18                  is not going to limit the Town's ability to prosecute  
19                  that violation in any way. That's not part of this plea  
20                  bargain, if you want to call it. I just want to make  
21                  that clear.

22                  CHAIRMAN STUTO: Okay, anybody else?

23                  (There was no response.)

24                  Do we have a motion - - this is what I  
25                  suggest - that we take a motion and then we can have

1 somebody describe what they propose for the warranty  
2 and for the escrow.

3 So, do we have a motion to adopt the  
4 subdivision plan that is before us, subject to further  
5 comment?

6 MR. MION: Motion.

7 CHAIRMAN STUTO: Do we have a second?

8 MR. ASHWORTH: I will second.

9 CHAIRMAN STUTO: Can somebody make a proposed  
10 amendment as to what they think the warranty should be  
11 and the escrow amount?

12 MR. MION: I'll step in and start it.

13 I think the warranty for the trees in the  
14 back of the lot should be extended to two years and  
15 the escrow should be the \$50,000.

16 CHAIRMAN STUTO: Does anybody else have a  
17 comment on that?

18 MS. MARINELLI: The only things that I would  
19 add, if that's where you're going to go, that there will  
20 not be any more clearing in the deed restricted areas. I  
21 know Joe talked about that. Once the stop work order is  
22 lifted after the Governor's Executive Order is no longer  
23 in effect, the contractor will be able to proceed with  
24 the model homes and the three currently under contract  
25 when the stop work order was issued.

1                   CHAIRMAN STUTO: Let me clarify. When does he  
2 get to start working on the other lots? When the  
3 plantings are substantially complete?

4                   MR. MION: Yes.

5                   MR. SHAMLIAN: I think the rear landscaping  
6 needs to be complete and not substantially complete.

7                   MR. MION: Right.

8                   CHAIRMAN STUTO: Okay does anybody have any  
9 changes to that motion as stated?

10                  MS. MILSTEIN: Is the amount going to be  
11 changed from \$100,000 and then decreased to \$50,000?

12                  CHAIRMAN STUTO: Yes. It starts at 100.

13                  MS. MILSTEIN: Okay, that was not mentioned.  
14 Again, I want any plan for the planting to be approved  
15 by the Planning Department.

16                  CHAIRMAN STUTO: Okay, so they will submit a  
17 planting plan for the department's approval.

18                  MR. MAGUIRE: Do you want me to summarize this  
19 because I'm taking notes just so we have it for the  
20 record.

21                  CHAIRMAN STUTO: You think you can do a good  
22 job of it.

23                  MR. MAGUIRE: I think I can do a great job.

24                  So, the applicant shall submit the motion as  
25 it is an amended - it appears to be that the applicant

1 shall deposit a cash escrow of \$100,000 with the Town  
2 of Colonie which represents approximately 50% of the  
3 estimated value of the remediation plan. The applicant  
4 shall remediate the site per an approved landscaping  
5 remediation plan including the plantings identified on  
6 the planting schedule. The applicant shall increase  
7 the size of previous plan street trees from 2.5 inch  
8 caliper to 3.5 inch caliper and that includes the 24  
9 October Gloria Red Maples and 24 Bradford Flowering  
10 Pears. The applicant shall plant two five foot to six  
11 foot Norway Spruces and two Dogwoods, as previously  
12 shown on "typical conservation subdivision lot  
13 landscaping package plan". The total plantings for the  
14 site shall be 557 in total. Any deviations from the  
15 schedule plantings must be approved by the Planning  
16 Board or the Planning and Economic Eevelopment  
17 Department.

18 CHAIRMAN STUTO: Could I have the Town  
19 Attorney? I would say the Planning Board approves the  
20 change, or you as the department head with the Town  
21 Attorney. The same thing with the timing of it, if they  
22 can't get it all in by June 15.

23 MR. MAGUIRE: Do you want my department and the  
24 Town Attorney to do with the administration of this and  
25 the fact that there might be minor changes that are

1 requested?

2 CHAIRMAN STUTO: Yes

3 MR. MAGUIRE: So, I will amend that any  
4 deviations from the schedule must be approved by the  
5 Director of Planning and Economic Development and the  
6 Town Attorney.

7 The remediation work to the rear yards shall  
8 be completed on or before June 15, 2020. Any extension  
9 of the state shall be subject to the approval of the  
10 Director of Planning and Economic Development and the  
11 Town Attorney.

12 The applicant shall warranty rear yard  
13 landscaping for two years to begin upon the issuance  
14 of a certificate of occupancy.

15 MR. GRASSO: Hey, Sean. I'm not sure what that  
16 certificate of occupancy is tied to. You may want to  
17 make that lifting the stop work order on the remaining  
18 19 lots, so it's one defined date.

19 MR. MAGUIRE: Does the Board agree with that  
20 modification?

21 CHAIRMAN STUTO: Yes because that coincides  
22 with the completion of the landscaping installation.

23 MR. GRASSO: Correct.

24 MR. MAGUIRE: Applicant shall warranty the rear  
25 yard landscaping for two years for the plantings and

1 that the rear lot remediation and lifting of the stop  
2 work order across the site

3 CHAIRMAN STUTO: Is that it?

4 MR. MAGUIRE: There's a couple more here.

5 In consideration of the accepted landscaping  
6 remediation plan or receipt of the cash escrow, the  
7 Planning Board recommends that the stop work order is  
8 partially lifted to allow the construction to continue  
9 on model homes already started on the existing lots  
10 under contracts to date and the installation of all  
11 landscaping shown in the rear yards remediation plans.  
12 The construction of the homes is limited to the six  
13 lots that are identified as sold by the builder.

14 MR. HEIDER: I have one question, Sean. I am  
15 sorry to interrupt.

16 Once the lots are turned over to the  
17 homeowner, they are not supposed to do anything within  
18 that conservation zone, correct?

19 MR. MAGUIRE: That's correct.

20 MR. HEIDER: So, how do we hold a developer  
21 responsible if they, in turn, do something with that? Do  
22 you see where I'm going? They see bushes in the backyard  
23 and they don't like it and they yank them out. They're  
24 in a conservation zone. You want the developer to  
25 warranty them for two years. Who does that

1 responsibility fall on? You have to be fair to the  
2 developer at this point.

3 MR. ROSANO: Deed restriction, Sean. I would  
4 think that you probably would want a deed restriction  
5 just to make that clear for every lot that there be no  
6 clearing in the conservation and have that marked on  
7 their building lot plans when they're talking with the  
8 builder.

9 MR. MAGUIRE: The conservation areas are  
10 already marked on the stamped plans with the County  
11 Clerk.

12 MR. ROSANO: I want to put the onus on the new  
13 landowner a little bit because I've seen what's happened  
14 in the past. Not so much of this, but I have seen a lot  
15 of encroachment from the other direction. So, I just  
16 want to make sure that even though it's going to be  
17 marked and everything else - as we say, no  
18 misunderstandings five years from now.

19 MR. SHAMLIAN: To kind of get back to what the  
20 point Steve made, Cillis has a huge interest in making  
21 sure that these new homeowners know that they can't  
22 going to pull stuff out. The fact that if somebody does,  
23 then Cillis has to replace it if it's within the two  
24 years -- honestly, there's a part of me that says oh  
25 well. You shouldn't have cut down the trees in the first

1 place and this wouldn't be a problem. I know that's  
2 rather harsh, but make sure you explain to people that  
3 they can't do it and hope they don't, as far as Cillis  
4 is concerned. At the end of the day, the only thing that  
5 we want is that buffer area is as close to what it  
6 should of been as we can get. That's my view on it.

7 CHAIRMAN STUTO: So, here is a suggestion. We  
8 could require that the developer put that in his  
9 contracts and that clause should survive the closing.  
10 Anybody like that idea?

11 MR. HEIDER: Yes.

12 MR. GRASSO: That's good

13 MR. SHAMLIAN: That's fine.

14 MS. MARINELLI: I think that's where we want to  
15 go.

16 MS. MILSTEIN: I like that idea I agree that  
17 that really puts the purchaser on notice.

18 MR. MAGUIRE: So, will require that the builder  
19 add a clause into - - in terms of the six already under  
20 contract -

21 CHAIRMAN STUTO: He can notify them and put it  
22 in the contracts.

23 MS. MARINELLI: He has a transfer to deed yet  
24 on the six lots. He can add a deed restriction.

25 CHAIRMAN STUTO: Well, there already is

1 supposed to be a deed restriction.

2 MR. MAGGUILLI: If I'm not mistaken, this has  
3 already been marked on the approved plans. This is a  
4 no-build zone. It's on the plans on file in the County  
5 Clerk's office, then it is enforceable against all  
6 subsequent owners, purchasers and the like.

7 The only other thing that I would add, Peter,  
8 is that I would have the warranty run to both the Town  
9 and to purchasers of the property because they will  
10 have the most interest in enforcing the warranty. They  
11 will be better able to determine if the warranty has  
12 been breached.

13 Secondly, the agreement has to include  
14 language which is all subject to the terms of the  
15 Executive Order.

16 MR. MAGUIRE: Mike, that will be in my last  
17 piece of the whole thing - is the Executive Order.

18 MR. MAGGUILLI: Okay, thank you.

19 MR. MAGUIRE: Since this is already deed  
20 restricted on the plan, do you still want language in  
21 closings and in the closing documents, or are you  
22 satisfied?

23 MR. MAGGUILLI: I like having the clause in the  
24 deed - the deed restriction. I agree with Kathleen.

25 CHAIRMAN STUTO: And any new purchase

1 contracts.

2 MR. MION: That way you have it both ways.

3 MR. MAGUIRE: Because the deeds haven't been  
4 written for these. So, when those deeds are written,  
5 they will have a clause about the limits of the no  
6 clearing in the conservation area.

7 MR. MAGGUILLI: It can be as simple as  
8 referring them to the note on the map.

9 MR. MAGUIRE: So, require that the builder  
10 shall add a clause into new purchase contracts and all  
11 deeds that the lots have a conservation area where no  
12 clearing may be performed in to refer to the master  
13 filed with the County Clerk. Once the remediation is  
14 complete on all rear yards and following its acceptance  
15 by the Town of Colonie that the remedial landscaping  
16 installation is complete, the stop work order is lifted  
17 on the remaining lots and the rest of the state  
18 infrastructure, at that time the cash escrow is reduced  
19 to \$50,000 until the end of the two-year warranty  
20 period.

21 At the end of the two-year warranty period, a  
22 follow-up inspection shall be done by the Town or its  
23 Town Designated Engineer to determine how many plants  
24 need to be replaced after one year and after the  
25 replacement of the plants identified by the Town or

1 its Town Designated Engineer, the remaining cash may  
2 be released.

3 I also recommended that Bob is allowed to  
4 work with Public Works and the builder to adjust that  
5 fence on the stormwater area to be more acceptable to  
6 the neighboring property owner.

7 CHAIRMAN STUTO: Sounds good to me.

8 MR. MION: Sean, going back to at the end of  
9 the two-year warranty - can you change the second  
10 sentence - - you said after one year. Shouldn't it be  
11 two years?

12 MR. MAGUIRE: Two years - thank you, Lou.

13 This decision does not override or supersede  
14 the Executive Order issued by Governor Cuomo in  
15 response to Covid19 and the builder subject to all  
16 conditions issued under the Governor's Executive  
17 Order.

18 CHAIRMAN STUTO: Or any future Executive  
19 Orders.

20 MR. MAGUIRE: Or any future Executive Orders.

21 CHAIRMAN STUTO: Is that it?

22 MR. MAGUIRE: That's all I've got. I got that  
23 all written down. That's the motion that everybody is  
24 agreeable to -

25 CHAIRMAN STUTO: Any comments or questions?

1 MS. MILSTEIN: I'm question. Can you go back  
2 because I don't think it was clear about which  
3 properties they can continue the work on. It's any  
4 property up until the time of the stop work order. I  
5 want to make sure that we're clear on that because it  
6 wasn't clear to me.

7 MR. MAGUIRE: Joe said he went out to the site  
8 and saw that six lots were sold according to the Board  
9 there. We can either go by that, or we can establish  
10 that the lot that they continue construction on - - we  
11 set under contract -

12 MS. MILSTEIN: So, it was the model homes -

13 MR. MAGUIRE: It was the model homes and then  
14 the homes that are under contract.

15 MS. MILSTEIN: Or any contracts as of the time  
16 of the stop order.

17 MR. MAGUIRE: If you want to do it as the time  
18 of the stop order, we can do that way if you prefer. I  
19 had amended it to just the six homes after Joe's  
20 inspection that said the Board at the site said six lots  
21 were sold.

22 MR. SHAMLIAN: So, really what were talking  
23 about is eight total houses here; six homes, plus two  
24 models?

25 MR. MAGUIRE: No, I think it is six in total;

1 two models, plus four sold.

2 MR. SHAMLIAN: Okay, I like that better.

3 CHAIRMAN STUTO: I think you're probably now  
4 looking for some response.

5 MS. MILSTEIN: I just want it to be clear. I  
6 just want to make sure we are clear on what we are  
7 agreeing to. If it's a total of six, two models and four  
8 under contract that's fine. I just want to make sure  
9 that everybody is clear on that.

10 MR. HEIDER: Peter, I think it is in the  
11 minutes. It's 49, 67, 73 and 60 and 54. Lot 47 is sold,  
12 but it sold to the person who owns the land. If you want  
13 to include 47 -

14 MS. MARINELLI: Peter I think it's better if we  
15 shy away from using numbers because we're not exactly  
16 sure. I think we should go with the two models and  
17 whatever was under contract as of the date of the stop  
18 work order.

19 MR. HEIDER: I'm just saying that was under  
20 contract.

21 MS. MILSTEIN: Okay, that's fine.

22 CHAIRMAN STUTO: Okay, six total; two that are  
23 the model homes and for that are under contract, as of  
24 the day of the stop work order that he can demonstrate  
25 to the department had.

1 MS. MILSTEIN: Just for something obvious in  
2 terms of the escrow, it only gets refunded if everything  
3 is - the plantings are properly installed, etcetera.  
4 It's not that the money can be used for any replacement,  
5 etcetera in order to fulfill the planting requirements.

6 CHAIRMAN STUTO: Sounds good.

7 MR. MAGUIRE: So, it will be the to model homes  
8 plus the four homes under construction provided that - -  
9 I'm sorry. Two model homes and four homes under contract  
10 provided those four homes under contract were under  
11 contract prior to the stop work order. How about that?

12 MS. MILSTEIN: Perfect.

13 CHAIRMAN STUTO: I like to just add that the  
14 escrow agreement shall be as approved by the Town  
15 Attorney with whatever safeguards that the Town Attorney  
16 wants in there.

17 MS. MILSTEIN: Agreed.

18 MR. MAGUIRE: So, my first point the applicant  
19 shall deposit the cash escrow - we were also attached to  
20 that with an escrow agreement as approved by the Town  
21 Attorney.

22 CHAIRMAN STUTO: Right. Anything else?

23 MR. MAGUIRE: Just the language that I think we  
24 ended with the Executive Order and that's all I've got.

25 CHAIRMAN STUTO: Anything else, Board Members?

1 (There was no response.)

2 We have a motion before us and we're going to  
3 take a vote.

4 All those in favor, say aye.

5 (Ayes were recited.)

6 All those opposed, say nay.

7 (There were none opposed.)

8 I don't hear any opposed and I would like to  
9 say that for the record. The ayes have it.

10 Many Board Members have any feelings about  
11 how we should conduct future Board meetings, please  
12 let Sean or me know or email the whole Board. Sean and  
13 I have talked about maybe doing the meetings - for to  
14 continue doing in this way, maybe doing them at 6  
15 o'clock or maybe even do them once a week because he  
16 is starting to build up a backlog.

17 Does anybody have any comments about any of  
18 that?

19 MR. HEIDER: I'm all for the 6 o'clock thing.

20 MR. SHAMLIAN: Yes, I like that idea as well.

21 CHAIRMAN STUTO: Because even people at home -  
22 I think it will work for them as well.

23 MR. ROSANO: I think we have to go with once a  
24 week until we get to the point where Sean is  
25 comfortable.

1 MR. MAGUIRE: I would like to suggest that what  
2 we do is - because this is a different format, I think  
3 if we go to once a week, we may drop the typical  
4 caseload by maybe one or two cases - just so were not  
5 here all night.

6 CHAIRMAN STUTO: Yes, we will have shorter  
7 meetings but more frequently. We all have a lot of time  
8 on our hands, I think. I do. I'm not going out to dinner  
9 restaurants, that's for sure.

10 MR. MAGUIRE: And we will talk about the  
11 logistics behind it because I know that we have a  
12 meeting scheduled for next Tuesday. We do have some  
13 notice requirements for some of those projects. So, we  
14 will sort through that and then keep everybody posted.  
15 It is our plan in the Planning Department to certainly  
16 get the 72 hours notice out there. Our notice is out  
17 five days ahead of time last Thursday. I'd like to try  
18 to get to that because that's the notice requirement for  
19 our projects for placarding.

20 MR. MION: Is the next meeting going to be part  
21 of the packages that we've already received?

22 MR. MAGUIRE: I think I need to talk to Pete  
23 about that. I'm not sure yet. Pete, do you have any  
24 thoughts on that?

25 CHAIRMAN STUTO: I think we have to go through

1 all the upcoming projects in space them out so that the  
2 meetings - we're still making good decisions that don't  
3 last too long. It's a little bit cumbersome. Feel free  
4 to call Sean or me if you have any opinions tomorrow.

5 MR. MAGUIRE: The only thing I wanted to add as  
6 we had number three on the agenda which is my report.  
7 I'll be doing that regularly. We do have some open  
8 referrals from the Town Board that were working through.  
9 That's the other reason to keep meetings because we have  
10 other things that are not just those projects but other  
11 actions that the Town Board is asking the Planning Board  
12 to weigh in on.

13 CHAIRMAN STUTO: Okay, if there is no further  
14 business, we shall adjourn. Thank you. Everyone stay  
15 safe and busy if you can.

16 (Whereas the above entitled proceeding was  
17 concluded at 8:48 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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