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TOWN BOARD COUNTY OF ALBANY

TOWN OF COLONIE

PUBLIC COMMENT

THE STENOGRAPHIC MINUTES of the above entitled matter by NANCY L. STRANG, a Shorthand Reporter commencing on February 6, 2020 at 7:20 p.m. at Memorial Town Hall, 534 New Loudon Road, Latham, New York

BOARD MEMBERS:

- PAULA MAHAN, SUPERVISOR
- LINDA MURPHY, DEPUTY SUPERVISOR
- DAVID GREEN
- MELISSA JEFFERS-VONDOLLEN
- RICK FIELD
- JILL PENN
- DANIELLE FUTIA

ALSO PRESENT:

- Michael C. Magguilli, Esq, Town Attorney
- Julie Gansle, Town Clerk
- John Cunningham, Commissioner, DPW
- John Drake
- Lisa Drake
- Jim Quirk

1 SUPERVISOR MAHAN: Does anyone have anything
2 for public comment?

3 MR. DRAKE: Good evening, supervisor Mahan and
4 Board Members. My name is John Drake and I live at 4
5 Catalina Drive.

6 Three weeks ago my wife Lisa spoke to you
7 regarding the 12 foot plus tall 400 to 500 foot long
8 concrete wall that has been built as a foundation for
9 the 18 foot tall garages at the Summit at Forts Ferry.
10 To the best of my knowledge, the wall was never
11 mentioned, let alone discussed at any Planning Board
12 meeting or other public meeting.

13 After the last meeting, Lisa, as directed,
14 followed up with Jack Cunningham. Mr. Cunningham sent
15 a response back to all of us earlier this week. Mr.
16 Cunningham's response was very clear. Everything is
17 being built consistent with the approved plans and no
18 more information is being provided. He said he would
19 not answer questions that involved speculation and I
20 agree. The request was not to speculate but to
21 investigate and understand what happened.

22 Based upon Mr. Cunningham's response, the
23 wall was part of the approved plans.

24 I submitted a FOIL request asking for all
25 documents received by the Planning Department prior to

1 the October 2018 meeting where final Planning Board
2 approval for the Summit project was given. There was
3 nothing in the documents that I received that would
4 indicate a 12-foot wall was being built as the garage
5 foundation. Were some of the requested documents
6 withheld from my FOIL request? If there are documents
7 that show the wall, did the Summit team ensure that
8 the TDE and the Director of Planning understood that a
9 roughly 30 foot tall structure was being built along
10 the eastern and northern border of the 100-foot buffer
11 to single-family residential homes?

12 Was the Planning Board aware that the wall
13 was part of the project plan?

14 If there were no documents submitted by the
15 Summit team that showed the wall and no one within the
16 Planning Department was aware of the wall, I believe
17 we have a serious gap in what the Summit project team
18 submitted and in our planning process. If people
19 within the Planning Department were aware of the wall,
20 I believe we have a serious ethical issue in not
21 bringing that information forward to a public meeting
22 with the Planning Board.

23 My understanding is that several of you have
24 come over to see the construction site. I hope you
25 would agree that the wall and the garages have a major

1 impact on our neighborhood and it should absolutely
2 have been part of the public discussion with the
3 Planning Board prior to approving the project. If you
4 don't believe that is the case, then you should do
5 nothing.

6 However, if you feel that what has happened
7 is not right, I would ask that we use this project to
8 help improve the planning process. I would ask that
9 you task our new Director of Planning and Economic
10 Development to understand how this happened and what
11 action should be taken to prevent it from happening in
12 the future. I know that at this point nothing is
13 changing for the Summit project and that the
14 potentially additional 100 feet of concrete with 10
15 more garages may be my new neighbor in the spring.

16 I hope that by studying what happened with
17 the Summit project, an improved planning project could
18 provide better transparency to the Planning Board and
19 residents for future projects. Thank you.

20 SUPERVISOR MAHAN: Thank you.

21 Jack, did you have any clarification on any
22 of that?

23 MR. CUNNINGHAM: I'm not certain at what Mr.
24 Drake had been looking at. The plans that I looked at do
25 not call out a 12-foot wall. What they do show is the

1 difference in grade between the top and the bottom of
2 the garage. If you do the math on that, it indicates
3 that the wall is going to be approximately 12 feet high.
4 So, on that plan, that's where you get that information.

5 Saying that no one knew about it -- I can't
6 speak for anybody because I don't know what anybody
7 knew or not. I think it may be kind of a
8 representation of something that if nobody asked - we
9 all knew about it, but it's not like we were looking
10 for it and no one was asking about it. To say that no
11 one brought it up, I think, is not a fair
12 representation of that. I wasn't at the meeting so I
13 don't know what discussions took place. I can only
14 tell you what I found so far in that is the plan shows
15 the grade difference which showed that the wall is
16 there.

17 MR. GREEN: Jack, the document that you're
18 referencing - you and Joe and myself - we looked at it
19 that day - is that document available? Have the Drakes
20 seen that?

21 MR. CUNNINGHAM: I believe it's probably what
22 he received. He might not know where to look to see that
23 grade. I'm not sure.

24 MR. DRAKE: Again, I would be happy to sit down
25 with you or the new Director to look at that document

1 and share with what I received. Where I struggle - -
2 this is literally a 400 to 500 foot long 12 foot high
3 concrete wall that's a foundation for garages that
4 literally is somewhere between one to 10 to 12 feet from
5 the buffer. This is the back edge. It is along
6 Harrowgate and Omega Terrace. These are long garages. I
7 don't understand how any planning process - - many of
8 you have been there - more than half a dozen Planning
9 Board meetings on this project. I've stood here many
10 times and we've had many discussions in the Supervisor's
11 office on this - how anyone could think this wasn't an
12 important part of the project, I don't understand. This
13 is a huge structure that honestly has far more
14 visibility impact on neighbors than the actual apartment
15 building. Shame on me and all of us that somehow we
16 didn't recognize it, but we didn't. If this was being
17 discussed within the Planning Department and it was
18 never shared in a public meeting, I think that's a
19 problem.

20 MR. CUNNINGHAM: I don't know that was
21 discussed -

22 MR. DRAKE: Then you find the transcript. I was
23 at every single Planning Board meeting. I was there and
24 you weren't. I promise you that if that topic had come
25 up, we would have talked about it. If you find me a

1 transcript, I'll come back here and say I was wrong. We
2 all sat there with many of our neighbors and it didn't
3 come up, to the best of my knowledge. We took a lot of
4 time to listen and to read transcripts and try to follow
5 up. That's where I struggle.

6 MR. GREEN: If it wasn't discussed, that just
7 leaves us in limbo. It could be and everybody missed it
8 type of thing. It is on the map. The retaining wall and
9 the grade on the plans - the site plan. Is it possible
10 that this is just something that nobody discussed in the
11 planning process? It just went through as such?

12 MR. DRAKE: Again, I think you may have been
13 over in our neighborhood. I just can't understand
14 knowing the level of detail that we went through - - one
15 of the things that came up at the very last Planning
16 Board meeting was adding these spruce trees - five or
17 six feet tall spruce trees. We have had many follow-up
18 discussions about whether they are going to grow. Now we
19 know that they are sitting behind a structure that's 30
20 feet tall. It would seem to me that would be an
21 important thing to talk about - that we put these spruce
22 trees - - it's not just a garage which I think we just
23 all assumed. A 6 to 8 foot tree behind the garage is a
24 good buffer, right? That will come up a good chunk of
25 the wall. A 6 to 8 foot tree behind a 30 foot structure

1 is not much of a buffer. That's why it would seem like -
2 - it's just so big. That's the thing. This is not like a
3 single car garage that wasn't really that important.
4 This is 37 bays that is spread out over 400 to 500 feet
5 - that's 30 feet off of what is now ground-level. I just
6 can't imagine how that could not of been worth talking
7 about. That's where I struggle.

8 MR. GREEN: I'm sure you struggle, but I'm
9 trying to bring some understanding to this.

10 SUPERVISOR MAHAN: There were many changes
11 throughout the process. I think at one time I was told
12 that the garages were on the other side. Why they moved
13 there, I don't know. I know that at one time they were
14 on the other side.

15 MR. GREEN: I know that it wasn't concealed -

16 MR. CUNNINGHAM: That was basically my point. I
17 don't think there was any effort to conceal any
18 information from anyone.

19 MR. DRAKE: So, the project team submitted it
20 and the Planning Board had that drawing that you guys
21 looked at before the final Planning Board meeting.

22 MR. GREEN: That was in July 2018, if I
23 remember correctly.

24 MR. CUNNINGHAM: I don't recall, but it was a
25 final plan.

1 MR. DRAKE: That is good to hear, but then I
2 guess the question is why wasn't it brought up? To me,
3 that would be an important thing for the Planning Board
4 to be aware of.

5 MR. MAGGUILLI: Mr. Drake, there are other
6 people who have business before the Board. But we can
7 continue this at the close of the meeting?

8 SUPERVISOR MAHAN: Thank you.

9 Anybody else?

10 MS. DRAKE: I'm Lisa Drake, 4 Catalina Drive.

11 I wanted to speak to Paula - your comments -
12 - it was a thank you that you issued on January 7 at
13 the Planning Board meeting - thanking the outgoing
14 Planning and Economic Development Director. Some of
15 your comments that you said - that planning was at the
16 top of your list ever since you became Supervisor in
17 2008 and that you are taking and moving and thanking
18 the PDD for helping to move the Town in the right
19 direction and to get us on a level playing field.

20 I learned through your words that thank you
21 that night - that the TDE's had been suggested to be
22 brought on Board by the developers. I learned that
23 through your words of thanking Mr. LaCivita.

24 There's no other place for me to go and have
25 public comment. It's here at this Board. I can't do it

1 at planning unless I've got a project that I want to
2 speak on behalf. We have done that with the Summit.

3 I would say the Summit is a done deal. I feel
4 it's a done deal to this entire Board.

5 To our newly appointed staff members - - we
6 did just hire and swear in tonight, or do a Resolution
7 for our new PDD and I would really ask how else we can
8 go to move forward and really not getting in the
9 situation.

10 The Summit at Forts Ferry has been a hot mess
11 since day one.

12 Mrs. Murphy you just thanked a lot of the
13 people from the DPW to be here and support of this new
14 Resolution for new building.

15 MS. MURPHY: They were from Pure Waters.

16 MS. DRAKE: Excuse me, Pure Waters. But you
17 thanked them to be in support and I have never heard you
18 say thank you to many, many taxpaying Town residents for
19 supporting this Summit at Forts Ferry project - never
20 once heard that.

21 It always seems to me that the Board feels
22 that we are that thorn in the side. We are not. We can
23 do better. If we want to do a level playing field,
24 we've got the time right now. We have new staff.
25 Whether you want to use the Summit at Forts Ferry as

1 the review - I believe that was a hot mess.

2 We are going to bring somebody else on to
3 fill a vacancy in the Planning Board. So, please let's
4 do better.

5 SUPERVISOR MAHAN: You did say what I said -
6 that I think Joe for working with us in making a level
7 playing field.

8 I try not to bring up the past. What I meant
9 by that was we corrected a very corrupt system to make
10 it a level playing field for all. In other words, it
11 was not operating the way everybody thought it was
12 operating. I can't go into it now but a lot of what
13 happened in that area of Target, and the area of
14 Omega, and the area of Harrowgate and through that
15 area - a lot of what happened there was part of what
16 was done the past. Again, I can't keep going back.

17 I know we fought hard for the residents. We
18 went to Court for the residents. We brought this to
19 the Supreme Court for the residents to fight for the
20 buffer that was never given, but we fought it on the
21 intent. The Supreme Court Judge - his ruling was that
22 there was no buffer and the only way the Town could
23 change the buffer was through a Local Law. How do I
24 know that they knew how to do that? Because you know
25 where Harrowgate is, which is a couple streets behind

1 you. They did a Local Law for the buffer there, but
2 they didn't do a Local Law for the buffer against
3 Catalina. I know where Catalina is.

4 You guys were told that was forever wild.
5 Some people were told that. It was never forever wild
6 and that connection was always there. The fact is that
7 the buffer was never put there which was the start of
8 this whole thing. This is been going on for a long,
9 long time. There is ownership of property next to
10 where the buffer was and whatever was done back at the
11 time when Target was being done. I can tell you that
12 things were not being done correctly at that time. I
13 know because with just a few people, we fought that
14 for things to be done correctly. I didn't know
15 anything about the buffers at the time. I didn't know
16 anything about who had what and what they put in or
17 the Local Laws. That was not the interest. The
18 interest was to try to - if this is going to happen,
19 then it should be done right. There were a lot of
20 things that went wrong in that area with that project.

21 Right where you are, money was taken from the
22 landfill to complete that road from bonded money. We
23 had to pay all that back. There was so much that went
24 on. That's only one area and one project.

25 So, when I thanked Joe for the work that he

1 did, which he has done to the best of his ability -
2 the best job that he could do because he had a lot on
3 his plate. We all get frustrated sometimes. I know
4 that.

5 I think the Board always tries to present
6 themselves in a professional manner. He has taken a
7 lot, too. A lot of the times he should not have been
8 treated that way. The fact is I understand where
9 you're coming from.

10 I said from day one that I would have
11 preferred just to have senior housing there and all
12 the green space. That was the best scenario that I
13 think could have happen there. That was just my
14 opinion. Unfortunately, with everything that occurred,
15 the developer had a right to build what was zoned
16 there in 2007 before we got here which was
17 office/commercial/residential. So, he had a right to
18 do that. My preference has always been - and I told
19 you guys that.

20 I live down the road from there. I know
21 exactly the whole area. My preference would have been
22 to just have that senior housing with the green space.

23 We took rides up to Wilton in different
24 places where they have the Summit. It looks nice like
25 that. I think from a planning perspective, the senior

1 housing is less impact on traffic. Typically, they are
2 quiet areas and seemed very compatible with that.

3 If anything that we can say that may be can
4 help - out of every situation, it's where we go from
5 there? We certainly want things to turn out to the
6 best that they possibly can. I can tell you that those
7 are some of the things where we do have some tools
8 when of the comprehensive plan is done. That allows us
9 to go to the next step with the amendments that we
10 think need to be looked at - the laws that need to be
11 looked at and the zoning. What are the priority areas
12 that we can take a look at to possibly make that work
13 better? Especially when you have that zoning that was
14 changed from residential to
15 office/commercial/residential. So, that's where we go
16 from here. We have the opportunity to do that.

17 Sean is here tonight. Sean is the new
18 Director. He has a lot of experience in those areas.
19 Those are the kinds of things that we can focus on as
20 we move forward. From what I saw, that was a very
21 tough situation because of the way everything had been
22 rezoned in the way property was sold then. The Local
23 Laws were not done the way they should've been. I
24 would feel the same way that you feel. If it was
25 talked about at meetings that we were going to get

1 that buffer, I feel the same way that you do. However,
2 at the time, the Town knew the proper way to execute
3 that law. They knew what they needed to do. They did
4 it a couple streets behind you on Harrowgate. They
5 chose not to do that for whatever reason.

6 I have my thoughts on that, but I will keep
7 that to myself.

8 At this point and what I think David is
9 trying to say as well - where we go from here? How can
10 we do better? We can by trying to make some amendments
11 to those laws. I know I'm over my three minutes. We
12 can try to do some amendments to the laws - to the
13 zoning where it's going to make things better. That's
14 our plan, as we move forward.

15 There is no question that this has been a
16 difficult one for a number of reasons. How do we move
17 on, as John said. How do we move from here to do
18 better than that? I know everyone has their own
19 opinion on development and the types of development.

20 Joe, when he was here - he is not here to
21 defend himself. I know you asked about that. Joe's
22 focus was the priority that we gave him and that was
23 on redevelopment with underutilized vacant property.
24 We don't want boarded up buildings. We don't want
25 things like that. There are some things that are out

1 of our control and we can only do the best with those
2 situations. Some things are results of what we were
3 left with. It's not an excuse. It doesn't make it any
4 better for you. We have to work within the parameters
5 that we are given. You don't have to believe me on any
6 of it.

7 I can tell you that years ago we did an
8 extensive, extensive review of that whole thing when
9 it was going on with Target. We were there. I was
10 there with my husband and just a few people. Gary
11 Rinaldi was from your neighborhood, but no one else
12 came out. I can tell you that I brought it to great,
13 great lengths. So, when I said - as you said I said -
14 I thanked Joe for making a level playing field. He did
15 work very hard doing that. We have worked very hard at
16 making that happen because I can tell you very
17 confidently the system was not right. I know that's an
18 awful lot, but I can explain it. I can't just say a
19 few words to give you an answer because it's very,
20 very complex. I think he deserved thanks for the job
21 that he did. I think he had a very hard job.

22 Although people may not like it, the fact is
23 from looking at it from an economic development
24 perspective, we are rated very highly for a very good
25 process and the results are very good regarding the

1 kind of economy that we have here in the Town. That is
2 related to the way things have been handled. Again,
3 none of this makes it any easier. You don't have to
4 agree. I'm just giving you how I can summarize it from
5 the other side.

6 MS. DRAKE: I'm going to be forward-looking and
7 not continue to look at the last 12 years or however
8 many years it was. My only concern to this Board and to
9 the staff that are hired - are currently on staff and
10 are hired is that we not allow any more 12 foot or
11 higher up to 24 foot walls to be separating
12 neighborhoods just because a developer wants to develop
13 a parcel of land. Thank you.

14 SUPERVISOR MAHAN: Thank you. We appreciate
15 everything that you guys have set as well.

16 Anyone else?

17 MR. QUIRK: Good evening. My name is Jim Quirk
18 and I live on Sylvan Avenue. I didn't plan on speaking
19 tonight, but with what Mr. Drake said - I didn't want to
20 bring something up that really Lisa had talked about.

21 I live on Sylvan Avenue and adjacent to
22 Sylvan Avenue is the Schuyler Meadows development
23 that's being built. When that project was approved -
24 and I was the one that kind of pushed for it, I asked
25 the Planning Board to put in a provision where there

1 could be no construction traffic on Sylvan Avenue.
2 That got passed through. The developer immediately
3 started to disregard the rule. I interacted quite a
4 bit with Joe LaCivita. He was great. He was very
5 responsive and proactive. We pushed with the Planning
6 Board again and with Joe to get a sign put down on
7 Route 2 by Sylvan Avenue saying not a construction
8 entrance. The developers completely ignored that, as
9 well.

10 So, in my conversations with Joe and now with
11 Mike Tengeler, who has also been great - the issue is
12 that the developers are ignoring that because there
13 are three lots on Vista Avenue. They are using Sylvan
14 Avenue to get up to those lots, even though they can
15 use Vista. They're not supposed to be on Sylvan Avenue
16 - the construction traffic.

17 What I found out was there's really no
18 enforcement mechanism that the Planning Board or the
19 Planning Department have to rein in the developers.
20 They can call them up and say you shouldn't do that,
21 but there's really no way to have an effective
22 enforcement; be it financial or administrative or
23 whatever you might be able to do.

24 In talking with Joe and now Mike Tengeler and
25 with the property being flipped over to Bob Marini,

1 there is talk of putting in language in the building
2 permits for the Vista Avenue lots that say you can't
3 put any construction traffic on Sylvan Avenue. As I
4 understand it, the Building Department has ticketing
5 authority so maybe that will get their attention.

6 The core issue from is there is no way to get
7 in front of the Planning Board and give them feedback
8 to say you put these rules in effect, how did you
9 expect to enforce them? As far as I can see, the
10 Planning Board and the Building Department don't have
11 a way to enforce them.

12 MR. MAGGUILLI: This has come to my department
13 and you're absolutely correct. One of the terms and the
14 conditions of the approval was no construction traffic
15 on Sylvan.

16 I have attempted to contact Bob Marini.

17 I have talked to the Police Department about
18 this because we do have enforcement efforts that we
19 can use. We start off trying to use the least drastic
20 method - asked them to voluntarily comply. When that
21 doesn't work, we can go step-by-step and issue
22 violations including stop work orders.

23 I have worked with Mr. Marini in the past and
24 he's usually pretty good about it. I hope to have this
25 resolved by tomorrow. We agree with you. There should

1 be no construction traffic on Sylvan.

2 MR. QUIRK: Marini has not been a problem yet
3 because he really hasn't taken over. They've been
4 developing those three lots with the infrastructure with
5 the ones that are over on Vista, but they haven't
6 started to build homes on it yet.

7 I'm retired and I live on Sylvan Avenue. I
8 kind of put forth these requests in front of the
9 Planning Board. So, I kind of think that I have an
10 obligation to be a little proactive.

11 I have noted to Joe LaCivita immediately -- I
12 texted him that there were seven violations - or, 11,
13 I'm sorry. Seven of them I had pictures and videos of
14 the traffic. It's not my word against theirs. We've
15 got photographic evidence that Valente disregarded the
16 rule.

17 MR. MAGGUILLI: Our efforts have been somewhat
18 delayed because of the computer problems we've been
19 having. This is a priority and I hope to have it
20 resolved to your satisfaction and your neighbors by
21 tomorrow.

22 SUPERVISOR MAHAN: Can you just call my office
23 and leave a message? The weekend is coming in as we get
24 into Monday - if this continues, that would be the
25 fastest way because Mike told me about this today. It

1 came to his attention. Unfortunately, we have to go
2 through the process and each step. That would be helpful
3 if you could just give us a buzz if it continues because
4 that's the fastest way.

5 MR. QUIRK: I can text you pictures and videos.

6 SUPERVISOR MAHAN: We have email now. We have
7 it back. Don't be afraid to call.

8 MR. QUIRK: I appreciate that. Again, Bob
9 Marini hasn't started to put houses on those lots and I
10 suspect that those lots might be some of the last sold
11 because I think they are really selling out very quickly
12 in the new neighborhood. It being in the middle of the
13 winter, they aren't doing any construction on those
14 lots. There's a lot of construction going on in the new
15 neighborhood.

16 SUPERVISOR MAHAN: Can't they get back there
17 from Route 2?

18 MR. QUIRK: To Vista?

19 SUPERVISOR MAHAN: No, not to Vista - if they
20 go into the part of the development if they go through
21 Route 2 in the back?

22 MR. QUIRK: Yes, the construction entrance is
23 down by On The Farm. They can get back into the main
24 development. They can't get to the lots that are on
25 Vista.

1 SUPERVISOR MAHAN: I know you mean. You go to
2 the end -

3 MR. QUIRK: Yes, there are actually three homes
4 being built there.

5 MR. MAGGUILLI: I will give you one of my cards
6 and you can contact me directly tomorrow.

7 MR. QUIRK: I think I went over the three
8 minutes so I apologize. Thank you for listening.

9 SUPERVISOR MAHAN: Thank you.

10 Anybody else?

11 (There was no response.)

12 We will close the public comment period.

13 (Whereas the above entitled proceeding was
14 concluded at 7:40 p.m.)

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CERTIFICATION

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I, NANCY L. STRANG, Shorthand Reporter and
Notary Public in and for the State of New York, hereby
CERTIFY that the record taken by me at the time and
place noted in the heading hereof is a true and
accurate transcript of same, to the best of my ability
and belief.

Dated: _____

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