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TOWN BOARD COUNTY OF ALBANY

TOWN OF COLONIE

A PUBLIC HEARING AND SUBSEQUENT VOTE REGARDING WITH
RESCINDING A PORTION OF LOCAL LAW NUMBER 7 OF 1988
AND TOWN CODE SECTION 97.10 HH CREATING A FIRE LANE
AT 1770 CENTRAL AVE. IN THE VILLAGE OF COLONIE

THE STENOGRAPHIC MINUTES of the above entitled matter
by NANCY L. STRANG, a Shorthand Reporter commencing on
June 18, 2020 at 7:00 p.m. at Memorial Town Hall, 534
New Loudon Road, Latham, New York

BOARD MEMBERS:

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

ALSO PRESENT:

- Michael C. Magguilli, Esq, Town Attorney
- Julie Gansle, Town Clerk

1 MS. GANSLE: This public hearing Is being held
2 by order of the Town Board to hear all persons in
3 connection with rescinding a portion of Local Law number
4 7 of 1988 and Town Code Section 97.10 HH creating a fire
5 lane at 1770 Central Ave. in the Village of Colonie.

6 Notice of this public hearing has been
7 published in the official Town newspaper which is the
8 Spotlight and has been posted on the Town Clerk's
9 bulletin board. I have an affidavit for each.

10 The Town board will now hear all persons
11 interested in this matter including questions and/or
12 comments which have been received by email.

13 MR. MAGGILLI: Apparently the only thing we
14 have received with respect to this public hearing which
15 was duly noticed are two comments and a Memorandum of
16 Law in support of rescinding Local Law number 8 for
17 1988. The owner claims that the fire lane is no longer
18 needed.

19 One thing I would like to point out is in
20 addition to the architectural matters, legally I am
21 not sure how the Town of Colonie created a fire lane
22 in the Village of Colonie back in 1988. In 1988, as is
23 now, under the New York State Municipal Home Rule Law,
24 limits Our authority and jurisdiction solely to the
25 jurisdictional boundaries of the Town and that does

1 not include the villages wholly within the Town. So,
2 that would be another reason for voting to rescind
3 this Local Law.

4 SUPERVISOR MAHAN: Mike, I would like to make
5 one correction. It was Local Law number 7.

6 MR. MAGGUILLI: I'm sorry, Local Law number 7
7 for 1988.

8 SUPERVISOR MAHAN: So, basically, this should
9 never have been put into place. That's what you're
10 telling us.

11 MR. MAGGUILLI: That's correct.

12 SUPERVISOR MAHAN: Okay, does anybody have any
13 questions about this from the Board?

14 (There was no response.)

15 MS. GANSLE: So, the first letter is from
16 Stockli & Slevin.

17 Dear Supervisor Mahan and Members of the Town
18 Board: Please be advised that I am counsel to Central
19 1770, L.L.C., the owner, of Village Square, a retail
20 plaza located at 1770 Central Avenue, in the Village
21 of Colonie, Albany County, New York.

22 The matter before this Board is a request by
23 the Owner to rescind the Town's Local Law 7 of 1988,
24 which is codified as Section 97-10(HH) of the Colonie
25 Town Code. Said Local Law purportedly establishes a

1 fire lane abutting a portion of the inline building at
2 Village Square. I respectfully request that this
3 letter be included as part of the record for the owner
4 to rescind said Local Law 7 of 1988.

5 The owner was recently made aware that the
6 Town of Colonie enacted Section 97-10(HH) of the Code
7 in 1988. By way of background, the owner acquired the
8 property from the Beltrone estate in May 2016 and for
9 approximately one year from 2017 to 2018, proceeded
10 through the Village of Colonie Planning Commission and
11 the Village of Colonie Zoning Board of Appeals
12 processes to gain municipal approvals to reconfigure
13 the parking lot and to establish a pad site for a bank
14 branch.

15 Thereafter, later in 2018 another tenant,
16 Wendy's, experienced a fire on another pad site on the
17 premises and secured municipal approvals from the
18 Village to rebuild the restaurant, utilizing the same
19 parking lot reconfiguration as was previously
20 approved. After all approvals were secured, the
21 parking lot reconfiguration was completed at
22 significant expense and the Wendy's restaurant
23 rebuilt. It was thereafter, that the owner learned for
24 the first time of the fire lane established by the
25 Town of Colonie in 1988.

1 Although Section 97-10(HH) does not clearly
2 define the lane, the Village has interpreted the lane
3 to be located in the drive lane between the Wendy's
4 restaurant and the portion of the inline building
5 where Moe's, NAMCO, Sportsclips and a portion of
6 Harbor Freight are currently located before the fire
7 lane apparently hugs the curbing up against the
8 building. This interpretation conflicts with the new
9 parking and circulation configuration approved by the
10 Village and, importantly, built in accordance with
11 said approvals.

12 The Village relies upon the cited provision
13 of the Town of Colonie Local Law to insist upon
14 maintenance of a fire lane directly in the front
15 portion of the primary building on the premises. It is
16 noted that a clear lane still exists in the drive lane
17 in the front of the primary building, even with the
18 reconfiguration of the site. More fundamentally
19 however, the validity of any exercise of jurisdiction
20 by the Town of Colonie over lands in the Village of
21 Colonie is in doubt. The question is whether the Town
22 may, in fact, exercise such jurisdiction over private
23 lands within the boundaries of the Village in a manner
24 at issue here. We believe it cannot under the
25 limitations of the New York State Municipal Home Rule

1 Law.

2 The Local Law powers granted in Article IX of
3 the Constitution as implemented by the Municipal Home
4 Rule Law, Section 10, are phrased in two-fold fashion:

5 1. the power generally relating to property, affairs
6 or government, and 2. powers relating to enumerated
7 subjects appearing there, whether or not they relate
8 to, quote property, affairs or government, end quote.

9 New York Municipal Home Rule sets forth the
10 following provisions.

11 There is a listing of Section 10 of the
12 general powers of local governments to adopt and amend
13 local laws, which is cited there.

14 Under the language of the New York State
15 Constitution, Local Laws relating to property, affairs
16 or government may not be inconsistent with the
17 provisions of the Constitution or of any general law.
18 Local laws relating to the powers enumerated in
19 Municipal Home Rule Law also may not be inconsistent
20 with the provisions of the Constitution or any general
21 law.

22 A general law is defined as a State statute
23 which in terms and effect applies alike to all
24 counties, all counties other than those wholly
25 included within a city, all cities, all towns or all

1 villages; Municipal Home Rule.

2 Constitutional and Statutory Restrictions. No
3 Local Law may be inconsistent with any provision of
4 the State Constitution -- which necessarily involves
5 the restrictions generally applicable to all laws,
6 such as due process of law and equal protection of
7 laws, as well as specific restrictions in Article IX
8 or other articles of the State Constitution, including
9 the limitations on the jurisdictional reach of acts of
10 a local government. The enumerated powers in Article
11 IX, Section 2, also contain various express
12 restrictions.

13 Restrictions Applicable to Particular Units.
14 The Municipal Home Rule grants further specific powers
15 of local legislation to particular local governments,
16 some of which contain restrictions. For example, a
17 town's power to regulate or license businesses and
18 occupations, unless otherwise specifically provided,
19 may be exercised only in the area of the town outside
20 of villages. Municipal Home Rule Law, Section
21 10(1)(a)(12) expressly provides that a county, city,
22 town or village shall have the power to adopt and
23 amend Local Laws concerning the government,
24 protection, order, conduct, safety, health and
25 well-being of persons or property therein. This

1 provision shall include but not be limited to the
2 power to adopt Local Laws providing for the
3 regulations or licensing or occupations or business,
4 provided however, that the exercise of such power by a
5 town shall relate only to the area thereof outside the
6 village or villages therein relating to the subjects
7 set forth therein. As discussed above, the power of
8 any given local government is limited to its
9 jurisdictional boundaries, with rare, and limited
10 exceptions. Thus, the adoption of Section 97-10(HH) is
11 at odds with these limitations.

12 Inconsistency with a General Law. A Local Law
13 is inconsistent with a general law which prohibits
14 what the State law permits or allows what the State
15 law prohibits is not inconsistent. For example, a
16 Local Law of a town that added additional requirements
17 for the incorporation of villages within its borders
18 to those already in the Village Law was determined to
19 be inconsistent with a general law of the State - that
20 was *Marcus v. Baron* - is inconsistent with State Law,
21 including General Laws, due to the conflict with the
22 limitations on the exercise of the Town's jurisdiction
23 embodied in Municipal Home Rule, and the Statute of
24 Local Governments. Such extra-jurisdictional acts are
25 inconsistent with State Law, and beyond the delegated

1 authority to the Town under the State Constitution.

2 Notwithstanding the above, here the Village
3 sought to rely upon Vehicle and Traffic Law Section
4 1660-a, cited in the Town's Fire Lane Law, to permit
5 the imposition of traffic regulations by the Town of
6 Colonie Town Board, on private property wholly within
7 the Village of Colonie. However, as there is no
8 statutory extension of the Town's jurisdiction to
9 private lands within the Village of Colonie, this
10 provision violates the Home Rule authority of the
11 Village and is ultra vires of the Town's
12 jurisdictional reach. The exercise of jurisdiction by
13 the Town of Colonie over the Premises under the cited
14 Local Law, was an error and is invalid for the lack of
15 jurisdictional authority in accordance with the
16 limitations of Municipal Home Rule.

17 Please consider under separate cover a letter
18 to the Town from the owner's Architect, Michael H.
19 Bellows, which confirms that the fire lane in the
20 location interpreted by the Village is unnecessary and
21 that Shopping Center provides sufficient access for
22 fire apparatus under the International Fire Code.

23 For all the reasons cited above, the exercise
24 of jurisdiction by the Town of Colonie over lands
25 within the Village of Colonie is improper here and it

1 is therefore respectfully requested that the Town
2 Board of the Town of Colonie rescind Local Law 7 of
3 1988, which is codified as Section 97-10(HH) of the
4 Town of Colonie Code, as it relates to the Property
5 located at 1770 Central Avenue, in the Village of
6 Colonie. Yours truly, Mary Elizabeth Slevin.

7 Attached is 13 pages of legal citations, as
8 well as a site map of 1770 Central Ave.

9 As an attachment there is the letter from
10 Michael Hilton Bellows, architect, PLLC.

11 Dear Supervisor Mahan and Members of the
12 Colonie Town Board: Please be advised that I have been
13 retained by Central 1770, LLC, the owner of Village
14 Square Shopping Center located at 1770 Central Avenue
15 in the Village of Colonie, Albany County, New York. I
16 have been asked by the owner to review the most
17 current site plan for the Village Square Shopping
18 Center in the context of access for fire apparatus as
19 required under the International Fire Code, as adopted
20 by the State of New York. I have attached to this
21 letter a copy of the approved site plan for your ease
22 of reference. I ask that this letter be included as
23 part of the record for the request by Central 1770,
24 LLC to rescind Local Law 7 of 1988, which purports to
25 establish a fire lane abutting the northerly curb of

1 the main building at the Village Square Shopping
2 Center.

3 Chapter 2, Section 202 of the International
4 Fire Code, defines a Fire Apparatus Access Road as
5 follows: A road that provides fire apparatus access
6 from a fire station to a facility, building or portion
7 thereof. This is a general term inclusive of all other
8 terms such as fire lane, public street, private
9 street, parking lot lane and access roadway.

10 Chapter 5, Section 503 Fire Apparatus Access
11 Roads states the following: The fire apparatus access
12 roads shall be provided for every facility, building
13 or portion of a building thereof constructed or moved
14 into or within this jurisdiction. The fire apparatus
15 access road shall comply with the requirements of this
16 section and shall extend within 150 feet of the
17 portions of the facility and all portions of the
18 exterior walls of the first story of the building as
19 measured by an approved route around the exterior of
20 the building or facility.

21 Fire apparatus access roads shall be
22 installed and arranged in accordance with Sections
23 503.2.1 through 503.2.8.

24 Fire apparatus access roads shall have an
25 unobstructed width of not less than 20 feet, exclusive

1 of shoulders, except for approved security gates in
2 accordance with Section 503.6, and an unobstructed
3 vertical clearance of not less than 13 feet 6 inches.

4 There is no language contained in Chapter 5,
5 or elsewhere in the International Fire Code which can
6 be construed as to require the location of fire
7 apparatus access road to be limited to the immediate
8 perimeter of a building. Furthermore, there is nothing
9 in the Code which would prohibit vehicular parking
10 within the 150 foot distance between the un obstructed
11 20 foot access road or the parking lot lane and the
12 exterior face of the building.

13 There are numerous examples within the
14 Village and Town of Colonie where there is vehicular
15 parking immediately adjacent to the building
16 perimeter. The interpretation which is being expressed
17 in which the previously approved current parking
18 layout for Village Square is being deemed in violation
19 of the provisions of the International Fire Code,
20 would by extension, essentially prohibit any scenario
21 in which there is quote on-street end quote, parking.

22 While I cannot speak to the legal impact the
23 Town's Local Law has on real property located in the
24 Village of Colonie, I can conclude that the currently
25 configured and approved site plan conforms to the

1 pertinent requirements of the International Fire Code
2 and provides sufficient access for fire apparatus.

3 Sincerely, Michael Hilton Bellows, Architect, PLLC.

4 Attached to that is Building Reconstruction
5 Site Plans of Wendy's, 11 pages.

6 Those were all the comments received in
7 connection with the public hearing.

8 SUPERVISOR MAHAN: Mike, is there anything in
9 there that -

10 MR. MAGGUILLI: No, I agree with all of it - I
11 agree with all of the legal part of it.

12 SUPERVISOR MAHAN: The legal part of it; yes.
13 So, the legal language that the Town could not create
14 that Local Law.

15 MR. MAGGUILLI: That's correct.

16 SUPERVISOR MAHAN: After hearing all of that,
17 does anybody have any questions?

18 (There was no response.)

19 Okay, we will close the public hearing.

20 MS. GANSLE: We have a Resolution rescinding a
21 portion of Local Law number 7 of 1988.

22 MS. JEFFERS-VONDOLLEN: So moved.

23 MS. MURPHY: Second.

24 SUPERVISOR MAHAN: Supervisor votes aye. Clerk,
25 call the roll.

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(The roll was called.)

MS. GANSLE: The ayes have it, Madam
Supervisor.

SUPERVISOR MAHAN: The Resolution is adopted.

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

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