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TOWN BOARD COUNTY OF ALBANY

TOWN OF COLONIE

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AGENDA SESSION

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THE STENOGRAPHIC MINUTES of the above entitled matter by NANCY L. STRANG, a Shorthand Reporter commencing on September 12, 2019 at 6:00 p.m. at Memorial Town Hall, 534 New Loudon Road, Latham, New York

PRESENT:BOARD MEMBERS:  
PAULA MAHAN, SUPERVISOR  
LINDA MURPHY, DEPUTY SUPERVISOR  
DAVID GREEN  
MELISSA JEFFERS-VONDOLLEN  
PAUL ROSANO  
JENNIFER WHALEN  
CHRISTOPHER CAREY

ALSO PRESENT:

Michael C. Magguilli, Esq, Town Attorney  
Julie Gansle, Town Clerk  
Joseph LaCivita, Director, Planning and Economic Development

1 MR. MAGGILLI: We will start out with  
2 personnel.

3 First we have a Resolution creating a  
4 position of Law Clerk in the Justice Department and  
5 appointing Matthew Lorini to that position. He is  
6 going to be a part-time Law Clerk to our three  
7 justices at \$28.56 an hour effective September 16.

8 Matthew was a recent graduate of Albany Law.  
9 He has taken the Bar and he is waiting the results, I  
10 believe. This appointment is pending his passing the  
11 Bar. He has been provisionally admitted by the  
12 Appellate Division, Third Department. So, under the  
13 direct supervision of an attorney, he can do pretty  
14 much everything a lawyer does, pending his formal  
15 passage and admittance to the Bar.

16 Then we have Resolution 377 B, which is  
17 permanently promoting Zach Harrison to the Planning  
18 Department's position of Planner, Grade 15. He is  
19 currently a Plan Examiner. This is a vacancy created  
20 when Kelly Mateja left. The annual salary is \$69,984  
21 and he will start September 13.

22 Resolution 377 C is appointing Monique Wahba  
23 Roter to a Senior Planner in the Planning and Economic  
24 Development Department. This is a Civil Service  
25 appointment.

1 She has attained permanent appointment status  
2 as a Senior Planner. Her annual salary is established  
3 at \$79,380 and that goes into effect tomorrow.

4 Resolution 377 D is provisionally appointing  
5 Shannon Egan as a Senior Resource Specialist in the  
6 Senior Resources Department; \$40,144. She is filling  
7 the vacancy of Abbie Lavaze [sic].

8 Resolution 377 E is provisionally appointing  
9 Emily Hough to the position of Real Property  
10 Appraiser, Grade 13 in the Assessors Office. She is  
11 replacing Michael Prince; \$58,242 starting September  
12 23.

13 Resolution 377 F is appointing Dale Hebert to  
14 the position of Paramedic in the EMS Department;  
15 \$63,060 effective September 16.

16 Resolution 378 is the public hearing. This is  
17 the public hearing that would allow minor changes to a  
18 planned development district to be made after  
19 application to and referral by the Town Board to the  
20 Director of our Planning and Economic Development  
21 Department. This follows a number of other Local Laws.  
22 The language here primarily comes from the City of  
23 Albany's statute. Many other municipalities have this.

24 Jennifer, I responded to your email and I  
25 sent you a whole bunch of -

1 MS. WHALEN: I know. I just got it at 5:38. I  
2 did scan it and I did notice that a lot of the  
3 provisions in those villages and towns were a little bit  
4 more specific.

5 Like, there was an appeal process that a  
6 person could make if they weren't content with the  
7 Code Enforcement Officer's decision which we don't  
8 have anything like that available in here.

9 I looked at them really quickly and I can see  
10 that they were distinguishable because of the level of  
11 specificity more than anything in the definitions of  
12 like minor and major modifications. We can't really  
13 table this, right? It's going to be at a public  
14 hearing tonight?

15 MR. MAGGUILLI: Well, it is scheduled for  
16 public hearing. Also, what this does -

17 MS. WHALEN: Excuse me for interrupting but  
18 I'll forget. I just looked at one of them quickly. I  
19 don't know what Town. Another one was very specific.  
20 Like, a lot of them I notice gave the authority to the  
21 Code Enforcement Officers and not the Planning Board  
22 Director of their town or village.

23 In addition, they had definitions of what was  
24 major and minor in an appeal process, if you disagreed  
25 with the zoning person's decision.

1           Then, they also had specifics like - some  
2 weren't even relevant to PDD's. One was site plan  
3 modification. I know the difference between a site  
4 plan modification and a PDD which is different, right?  
5 One was like very specific with regard to the PDD. It  
6 said like if the PDD application amendment that is  
7 being sought is specific to one house on the PDD - -  
8 like, that lady's screened in porch last week. That  
9 narrowed the scope of the decision-making to like  
10 three things. Then, it just seemed like they were more  
11 artfully drafted.

12           I didn't look at the City of Albany that we  
13 are emulating.

14           MR. MAGGUILLI: Joe, do you have the City of  
15 Albany?

16           MR. LACIVITA: I have the City.

17           SUPERVISOR MAHAN: Jennifer, I could be wrong  
18 but I think when they are referring to the Code Officer,  
19 that could also may be be - - we have a Building  
20 Department. They may not have soemthing as extensive as  
21 we have. We have Code Officers, but we have Building  
22 Inspectors, as well.

23           In the case of that screened-in porch, that  
24 would come in at that point for permits and  
25 inspections and things like that.

1 MS. WHALEN: The one thing that I am interested  
2 in knowing about how it works though - - it would come  
3 to us for referral.

4 SUPERVISIOR MAHAN: For review and referral.

5 MS. WHALEN: Right, review and referral to Joe,  
6 right now. So, we could sit here is a body and still  
7 deliberate and say no, we don't want to refer to Joe.

8 MR. MAGGUILLI: Correct.

9 MS. WHALEN: So, that makes me feel a little  
10 better. But then, where would it go?

11 MR. GREEN: It would just die. It would be  
12 dead. We still have a level of review.

13 MS. WHALEN: But we are not like experts at  
14 Planning.

15 MR. GREEN: But it has to be in compliance with  
16 the density, location and uses already. So, I mean what  
17 kind of changes are we talking about here?

18 MR. LACIVITA: The intent of this - - when we  
19 talk about PDD's, when you look at Canterbury Crossings  
20 which is a residential neighborhood, the neighbors in  
21 that neighborhood do not know what the heck a PDD is,  
22 nor do they care. They think of it as a neighborhood.  
23 They consider it just like Archmont Knolls and Dutch  
24 Meadows. What they are trying to do is get amenities  
25 such as a deck, a pool or a shed. That's all I'm asking

1 this law to consider; a deck, pool and a shed.

2 When you talk about specificity, that's what  
3 I'm asking for, Jennifer. Anything that someone can go  
4 into a typical residential neighborhood and get by  
5 accessory use. That's all I'm looking to do.  
6 Otherwise, you're talking about going three weeks to  
7 get a building permit versus three months.

8 MS. WHALEN: I understand the typical  
9 residential neighborhood scenario - like, the Canterbury  
10 Crossings which just so happens to be a PDD. This one is  
11 totally not the average neighborhood PDD - Maxwell. I  
12 had that concern about that screened-in porch last week  
13 and not because I am adverse to screened in porches or  
14 people putting them on if they comply with the setback  
15 requirements. In that particular instance, we had a  
16 thoughtful conversation about the abutting neighbors in  
17 the institutional history of what they have gone through  
18 in the past four years or five years. The neighbors who  
19 have called us to stand in their homes in their kitchens  
20 and look out at their backyards because that was clear  
21 cut and they didn't get what they were promised, or it  
22 is still under advisement or whatever is going on - -  
23 they are looking at a construction site now for three  
24 years. That might be a little different than a guy  
25 putting in a pool in Canterbury Crossing in a

1 neighborhood.

2 First of all, it is a neighborhood. He is in  
3 the middle of a neighborhood and not like abutting the  
4 neighbors that have been suffering because of some  
5 series of mistakes that were made. I'm not saying  
6 anyone is wrong, or anyone is right. I just think that  
7 in the weird PDD processes, it is difficult to make  
8 like a one-size-fits-all decision on even something as  
9 simple as a deck, or a pool, or a shed. There are  
10 extenuating circumstances sometimes surrounding it.  
11 That is all I'm saying. I don't know if we could carve  
12 out other protections or something.

13 In this particular instance, the trees were  
14 cut down. People have had to look at construction and  
15 even if they are not looking directly into the  
16 townhouse that this porch is being built off of, they  
17 can still hear it - - if there were big trees there  
18 still, or bushes, or something - noise pollution from  
19 construction is cut down and softened by trees. There  
20 are none in this particular development.

21 MR. LACIVITA: Are we penalizing the homeowner  
22 versus the developer? What you are doing is you are  
23 holding the ills in the way that the developer practices  
24 the way to get that place built. You are holding the  
25 homeowner at fault now. I think that's the wrong

1 decision.

2 MS. WHALEN: Are we penalizing the many, or the  
3 few? It is a balancing test, right? It's like, do we  
4 continue to make life a living hell and have property  
5 values driven down for the people on Margaret Drive and  
6 that other street where there are like houses off in a  
7 cul-de-sac. I forgot the name of it. Like, are we going  
8 to think of the many, or the few here? I don't want to  
9 penalize anybody, but this is a situation that we are in  
10 for whatever reason. I don't know - clearcutting  
11 permits, lack of permits, landfill from highways - I  
12 have heard it all. It is what it is, right? So, the many  
13 can continue to suffer or one person?

14 Quite frankly, I'm a lawyer. I do real estate  
15 closings. I would tell clients of mine to think long  
16 and hard before they bought in a residential PDD. That  
17 is my job to advise a client that is buying a house.  
18 Oh, you are buying in a PDD. You better watch it.  
19 You're going to have to go not just to the Building  
20 Department to get a permit. You're going to have to go  
21 above and beyond. If that's the case, my client may  
22 not go and buy from the developer that has caused  
23 these atrocities or has been somewhat inconsiderate of  
24 the neighbors around the development as he is  
25 developing. Maybe everybody should be wary of buying

1 in a PDD and they should be informed.

2 It's not up to us to feel sorry for someone  
3 who made the sad mistake really of buying in a PDD  
4 where the developer hasn't made good on what has been  
5 owed to the neighbors. That's all. So, it is good to  
6 have the deliberation. Maybe Joe and his head would  
7 have this deliberation between himself when he has got  
8 this power, but I do think that it is good to  
9 deliberate.

10 MR. LACIVITA: No, that's not going to be that  
11 way. It's not autonomous here. This is going to be the  
12 Building Department and the Commissioner of Public  
13 Works. It's not Joe LaCivita. Take me out of the  
14 equation. This is a full review still, internally.

15 MR. CAREY: It comes before us first of all.  
16 Let's go back to the last meeting when we approved the  
17 addition to someone's home with the screened-in porch.  
18 That does not abut somebody else's property. It is  
19 forever wild behind the woman's house. We don't know if  
20 she was advised that she bought into a PDD.

21 Jennifer, you may do something in your line  
22 of work as a realtor. We don't know what was done with  
23 those neighbors.

24 If somebody comes to us and wants a  
25 screened-in porch that abuts Margaret Drive, then we

1 may look at that differently. There is a different  
2 circumstance there and maybe we don't like it.

3 The last meeting - I don't think we should  
4 have penalize the homeowner. We don't know what she  
5 knew or what she didn't know. She doesn't affect  
6 anybody else besides herself because there's nobody  
7 behind her.

8 MR. GREEN: Is there anything in this new law  
9 that prohibits us as a Town Board at the application  
10 stage - - does anything prohibit us if this were to be  
11 passed from kicking this back to a public hearing?

12 MR. MAGGILLI: No. What this law is going to  
13 do is this: This gives you an extra option. Right now  
14 the way the laws set up, a person who applies to the  
15 Town Board for a planned development district - the  
16 developer - - typically it comes to you and the Town  
17 Board says yes, let's refer to the Planning Board for  
18 the Planning Board's review and recommendation back to  
19 the Town Board. That's how it works now. You can say no,  
20 we're not even going to send it to the Planning Board.  
21 Or, you could say yes and we will get the recommendation  
22 and have a second public hearing. What this does is -  
23 you still have that option.

24 What this really applies to is an individual  
25 homeowner. They would come to you and say to you I

1 want to put in a swimming pool in the back.

2 We've got one of those on tonight, I believe.

3 You can say no, I'm going to deny it. We  
4 don't think you should have a swimming pool, or you  
5 can say well, I think this is big enough where we  
6 should have a whole Planning Board review it so were  
7 going to forward it to the Planning Board for its full  
8 review.

9 MS. WHALEN: You can do that?

10 MR. MAGGUILLI: Yes, you can still do that.

11 MS. WHALEN: Where does it say that?

12 MR. MAGGUILLI: All it says is that this gives  
13 you an additional option. It gives you that third option  
14 of saying this is a small one and it doesn't affect the  
15 density, location or uses of the approved PDD.

16 It is something like the Sisters of St.  
17 Joseph that they had to move a generator pad eight  
18 feet. What it tries to do is make it fair for the  
19 homeowner. We want to be able to treat a person who  
20 buys a house in a regular subdivision the same as  
21 somebody who buys a house in a planned development  
22 district. We shouldn't make a person who buys a house  
23 in a planned development district have to come to us  
24 and then for something minor like putting in a pool -  
25 something that doesn't affect the community at large -

1 be able to do the same thing that an owner and a  
2 regular subdivision does. Apply to us and then go  
3 through the normal process. This is not just Joe  
4 making the decision. It's got to go through all the  
5 departments, just like everything else.

6 MS. WHALEN: This is H, right? Can we just  
7 parse this so I'm satisfied?

8 After a PDD is approved, that would be like  
9 that Maxwell Road development was approved in 2000,  
10 right? Any subsequent development proposed which  
11 substantially complies with the density, location and  
12 uses of the approved PDD shall be, after application  
13 to and referral by the Town Board, administratively  
14 reviewed for approval by the Director of the Planning  
15 and Economic Development Department. So, who is that,  
16 Joe? Who is that person right now?

17 MR. MAGGUILLI: That's Joe.

18 MS. WHALEN: Without the need for additional  
19 public hearings. So, where does that say that we have an  
20 alternative to bypass them and send it to the Planning  
21 Board for the full review?

22 MR. MAGGUILLI: And the rest of Chapter  
23 190.65 -

24 MR. GREEN: We could also could define  
25 development a little bit more. I think it's confusing

1 when you say the word development. I automatically jump  
2 to the overall development and not just the homeowner. I  
3 don't know if it makes a difference, but if we define  
4 development as by the individual homeowners, rather than  
5 the grand scheme of things, that would make me feel  
6 little bit better.

7 MR. LACIVITA: What I am looking for is: What  
8 are those accessory uses that are permitted for a deck,  
9 a pool and a shed? That's all I'm looking for.

10 MR. MAGGUILLI: What this does is gives the  
11 Town Board - - I wrote this in such a way - I looked at  
12 a whole bunch of different statutes in other  
13 municipalities and what they have done. This is  
14 primarily modeled from the City of Albany. The reason  
15 why use the City of Albany is because in my mind, and  
16 gave the Town Board the most discretion. It was broad  
17 enough where you decide. The first time in every  
18 instance, what does or does not substantially comply  
19 with density, location and uses. So, in those events  
20 where you think it's something that should be referred  
21 to Planning, you can still do it under the balance of  
22 the PDD statute. This is just a new Paragraph 8 that  
23 gives you that third option. That is the intent.

24 SUPERVISIOR MAHAN: I see what David is saying.  
25 We know what the meaning is. Someone can construe it

1 differently.

2 MR. GREEN: That's it, where the applicant is a  
3 homeowner.

4 MS. MURPHY: It would only be the homeowner.

5 MR. GREEN: It just clarifies the statute.

6 MR. MAGGUILLI: Doesn't say. It just says any  
7 subsequent development proposed, which substantially - -  
8 it doesn't say who proposes it.

9 MS. MURPHY: It's going to be a shed or  
10 swimming pool, it's only going to be the person who owns  
11 that.

12 MR. MAGGUILLI: It could be the developer, as  
13 well, though. It could be making extra money by putting  
14 in a swimming pool or something.

15 MS. WHALEN: In the Town of Clay that you sent  
16 me, Mike, it says - they sort of define the  
17 modifications. It says the proposed change is applicable  
18 to one property within the PDD. The proposed change  
19 complies with the land use dimensional and performance  
20 standards. Anyway, it narrows it down to the proposed  
21 change being requested that is applicable to one  
22 property within that PDD - like, the individual  
23 homeowners and not like, the big huge development at  
24 large.

25 MR. ROSANO: Where there is a wrong here is:

1 Where that homeowner is having that house built -

2 MR. GREEN: The application still comes into  
3 the contractor because it still in a construction stage.

4 MR. ROSANO: And the developer says hey, Mr.  
5 Contractor -

6 MR. GREEN: Or how about say - for the benefit  
7 of an individual lot.

8 MR. ROSANO: The developer still has title to  
9 that. So, you can excluded it all.

10 MR. GREEN: So, say, to benefit any individual  
11 lot.

12 MR. ROSANO: Yes, not a person and not an  
13 entity; just this particular lot.

14 MR. MAGGUILLI: How about the situation we had  
15 - - there was one where they wanted to add one thing  
16 that affected all the units in the plan development  
17 District. They wanted one location for all the  
18 mailboxes.

19 MR. ROSANO: Yes, that was Northern Pass.

20 MR. MAGGUILLI: What about that? That's what  
21 I'm trying to keep this broad enough. I don't care  
22 either way, to be honest with you. Sometimes I think  
23 you're better off keeping things broader and letting you  
24 guys deal with it in a case-by-case situation. In every  
25 instance, it has to go before you. The Town Board

1 decides.

2 SUPERVISOR MAHAN: It would be defined in the  
3 request in the Resolution that comes before us. It would  
4 be spelled out there.

5 MR. MAGGUILLI: I try to keep things as broad  
6 as possible.

7 SUPERVISOR MAHAN: It would have to be spelled  
8 out there.

9 MR. MAGGUILLI: I can make it tighter, if you  
10 want. I don't think it's the right thing to do.

11 SUPERVISOR MAHAN: It would be spelled out in  
12 the Resolution. In other words, whatever that item is,  
13 it would be in that Resolution.

14 MS. WHALEN: It says in that regulation - the  
15 individual site and not the developer or the homeowner  
16 like just as it impacts one individual piece.

17 MR. MAGGUILLI: You can have that authority,  
18 anyway.

19 SUPERVISOR MAHAN: Like Mike was saying, with  
20 the mailbox, that is a lot of people's mailboxes. Some  
21 of these are still in the hands of the developer.

22 MR. MAGGUILLI: I think it was the homeowners  
23 association the came in.

24 MS. WHALEN: How would that apply - is it  
25 Rossetti that wants to put in a pool? It's not like a

1 little homeowner and the lot. He wants to put in, what,  
2 a pool?

3 MR. MAGGUILLI: It will always come before the  
4 Board.

5 MS. WHALEN: But that's a bigger one rather  
6 than the resident wanting to put on a deck.

7 SUPERVISOR MAHAN: That would be defined in the  
8 Resolution. If need be, we always have that opportunity  
9 to reach for it to the Planning Board.

10 MR. MAGGUILLI: Which one do we have on  
11 tonight?

12 MS. WHALEN: I don't know, but I think that's a  
13 lot different than a deck.

14 MR. LACIVITA: It is number 388.

15 SUPERVISOR MAHAN: I don't think we can paint  
16 everything with such a broad brush.

17 MS. WHALEN: Let's say this was in effect as it  
18 is written right now, how would we approach this one?  
19 This is a developer's request for like a community pool  
20 that he is asking for an amendment. Can we just say  
21 okay, let's just refer it to the PDD? Would we say let's  
22 referred to the Planning Board? How would we play this  
23 out?

24 MR. MAGGUILLI: That's how you would vote - how  
25 you would want to do it.

1 MR. GREEN: We get to decide.

2 MS. WHALEN: That's what I'm asking. Like, we  
3 don't have to send this to Joe if we don't want to.

4 MR. GREEN: We don't have to, but if it is a  
5 big enough deal and if it is substantial enough -

6 MS. WHALEN: So, we could still say, oh, this  
7 is a developer's request to amend a substantial part of  
8 his PDD development. It impacts the developer more than  
9 just one individual person. Let's send it to the  
10 Planning Board. We could do that.

11 MR. MAGGUILLI: Right.

12 MS. WHALEN: Because the Planning Board might  
13 have had like a five-hour discussion with residents  
14 there about this particular PDD - like, 1 million years  
15 ago.

16 MR. MAGGUILLI: Let's take Resolution 388 as an  
17 example.

18 This came to us by a letter from the  
19 homeowner at 15 Nantucket Street. They wanted to  
20 install an inground pool and deck at 15 Nantucket  
21 Street, which is part of the Shelter Cove PDD. That  
22 would come in before the Town Board, if this Local Law  
23 passes, and then you would decide okay an inground  
24 pool is a thing that I think Economic Development and  
25 the Departments can handle. So, we will do that. Or,

1 you can decide know, this is big enough where we want  
2 to refer a recommendation to the Planning Board.

3 So, the Resolutions I write in the future are  
4 going to have to be different. They may have to be an  
5 either/or. The Resolutions will be that you A. Refer  
6 it to Planning, or B. referred it to Planning and  
7 Economic Development Department.

8 MR. GREEN: These PDD's must have some kind of  
9 homeowners association.

10 MR. LACIVITA: Yes.

11 SUPERVISOR MAHAN: This is for an individual  
12 only.

13 MR. MAGGILLI: Why should this person have to  
14 go through and pay for three public hearings and through  
15 all the time and expense that is involved with that - be  
16 treated differently than his neighbor that lives in a  
17 regular subdivision one-half mile down the road? That's  
18 the whole thing.

19 Again, I can tighten up the language anyway  
20 you guys like. My recommendation is always keep it  
21 broad and you leave the discretion with the Town  
22 Board. You make a decision on a case-by-case basis. If  
23 you want me to tighten it up, I will be happy to. We  
24 can adjourn it, but it is up to you guys.

25 MS. MURPHY: I think it's a fair way to do it

1 for individual owners.

2 MS. WHALEN: Whatever they said in the Town of  
3 Clay; individual sites.

4 MR. GREEN: So, if you put in any subsequent  
5 development, for the benefit of any individual lot, -

6 MR. MAGGUILLI: I would not limited to one lot  
7 only because you know what happened when you have a  
8 homeowners association that comes in that wants  
9 something like a central location for their mailboxes.  
10 You have to make them go through the whole thing?

11 MS. WHALEN: It says individual site. So, like  
12 a mailbox site you could argue is like a site and a  
13 house.

14 MR. MAGGUILLI: If anything changes, the way it  
15 is written now, anything that substantially changes the  
16 density, the use - it's got to go to Planning, or you  
17 can deny it.

18 SUPERVISOR MAHAN: Density would have a big  
19 impact. In the development that you are talking about at  
20 Maxwell, that was actually a different PDD. When that  
21 was approved years ago, it was approved with apartments.  
22 That's what was going to go there - apartments and the  
23 town houses, I think. I think that the people that are  
24 buying in that development - they are spending a lot of  
25 money. To them, that is their home. They are spending a

1 lot of money on those homes and it is just - I don't  
2 think they're asking for anything different if they are  
3 asking for a deck or a pool or something like that.

4 MR. MAGGILLI: If you would feel better, I can  
5 tighten up the language, we can adjourn it tonight and  
6 then I can sit down and try to come up with something.  
7 You are taking your own discretion away. I hope you  
8 understand that.

9 MR. GREEN: I'm okay keeping our discretion  
10 merely because we are doing it on a case-by-case basis  
11 at this level.

12 MS. WHALEN: Some of us are not trained - like,  
13 really trained. We refer this to the Planning Board for  
14 reason. Like, usually when I get the recommendation back  
15 from the Planning Board, I actually read it because I am  
16 a real estate lawyer, but I have some experience in this  
17 but I'm not going to profess that I am an expert in  
18 municipal land development or anything of the sort.  
19 Obviously, we are referring it to the experts for reason  
20 and not for us to just determine whether this is  
21 standard.

22 MR. GREEN: Isn't it nice to know whether you  
23 don't have to do it and you can lean upon them only if  
24 you need it? It does give you that choice.

25 MS. WHALEN: As long as we have a choice. It

1 wasn't clear to me that we had a choice to say were  
2 going to refer to this person or the entire Planning  
3 Board.

4 MR. GREEN: Right, I agree.

5 MS. WHALEN: I'm glad that it is on the record,  
6 at least. Like, that is the understanding.

7 SUPERVISOR MAHAN: Keep in mind that a decision  
8 is not just made by one person. We have access to all  
9 the departments, the engineers and everything like that.  
10 If you have a question about anything that comes up,  
11 they are here. We ask questions all the time. It's not  
12 like you're going to make a decision on something and if  
13 you have a question you're going to ask that question  
14 and get an answer before you make a decision. Everybody  
15 works together. It's not a vacuum and you look at it and  
16 make a decision. If you have questions, then certainly  
17 the departments are there.

18 MR. MAGGILLI: I think as a practical matter,  
19 as these things come in, it's going to be real clear  
20 what is minor and what is not. In order to get things  
21 like the lady that wanted the screened-in porch or  
22 whatever it was - people that want inground pools and  
23 they want to add a shed or something -

24 SUPERVISOR MAHAN: Or when the generator was  
25 moved at Shaker Pointe for the sisters of Carondelet.

1 Moving that - you would want to know where you're moving  
2 at. Is there any infrastructure there? Do we have any  
3 easements? Things like that. Do we need to get  
4 underground there? That is something that we would have  
5 to check out.

6 MR. MAGGUILLI: That's something that the  
7 Building Department and Joe would be doing.

8 SUPERVISOR MAHAN: That would be the main  
9 concern there. Obviously, you're going to look at if it  
10 has an impact on anybody else. That is something that  
11 can be looked at and resolved through the departments.  
12 It's not a big deal.

13 MR. MAGGUILLI: You are using that as an  
14 example. When that was first approved, there was a much  
15 larger project there. It had a component of multi-family  
16 housing and apartments to it. That was approved in the  
17 year 2000. They came to us and said we want to change  
18 that. They wanted all apartments and we wouldn't let  
19 them do it. Something like that, you would know that it  
20 should go to - if you wanted to deal with it at all -  
21 you should send it to the Planning Board.

22 MS. WHALEN: Couldn't somebody - - this  
23 language seems a little bit broad, right? You said  
24 that's good for us, but isn't it bad in the sense that  
25 someone on the other side who is applying and thinking

1 oh, it is a subsequent development and in their mind and  
2 doesn't really substantially adjust density, location  
3 and use and they apply and they are referred to the  
4 Planning Board. They're going to start crying foul. They  
5 may even possibly say that we were wrongful in  
6 misconstruing this language - subsequent development,  
7 instead of restricting it.

8 Like, a big developer's request to amend as  
9 opposed to an individual's request to amend, or an  
10 individual sites request to amend. Like, I think it  
11 should be narrowed because developers may look at this  
12 and say well, I have a right to get something through.

13 MR. MAGGILLI: Then, they have to bring an  
14 Article 78 proceeding so that the Board's decision was  
15 arbitrary and capricious and an abuse of discretion. If  
16 they did that, then you would have been wrong.

17 On the other hand, if we are not arbitrary  
18 and capricious and you guys exercise your discretion  
19 correctly, I would look for attorney's fees for that  
20 Article 78 proceeding, which we have been very  
21 successful in getting lately. Courts are very prone to  
22 give municipalities attorneys fees these days because  
23 they're trying to protect the public.

24 MS. WHALEN: After a PDD is approved, any  
25 subsequent development proposed which substantially

1 complies shall be referred to the Director - any. It's  
2 like any and all.

3 MR. LACIVITA: It doesn't alter density in  
4 there.

5 MS. WHALEN: It says: Which substantially  
6 complies with density location and uses of the approved  
7 PDD.

8 MR. MAGGUILLI: It's written in the positive  
9 instead of the negative. As long as what they are  
10 proposing complies with the density, location and uses  
11 of the approved PDD, then you have the discretion to do  
12 one of three things; deny it completely, send it to  
13 Planning or send it to the Planning and Economic  
14 Development Department. You have those three choices.  
15 Right now you only have two choices.

16 MS. WHALEN: Okay, well, thank you anyway.

17 MR. MAGGUILLI: Do you want me to adjourn it?

18 SUPERVISOR MAHAN: Would it make sense to add a  
19 statement in there - a section where the Town Board has  
20 the right to refer it to the Planning Board?

21 MR. GREEN: It has already encompassed that  
22 section of law. So, that would be redundant. This is  
23 really a benefit to the homeowner and I really wouldn't  
24 mind limiting my discretion by saying to the benefit of  
25 an individual lot.

1 MS. WHALEN: How about a shed, or pool or a  
2 deck?

3 MR. GREEN: If it inconveniences the developer  
4 for mailboxes, I'm not overly concerned about  
5 inconveniencing a developer right now.

6 MR. MAGGUILLI: But the developer may be the  
7 homeowners association.

8 MR. GREEN: Even so, that is something that can  
9 be planned out far enough in advance and you're holding  
10 everyone up and not just one individual. We don't want  
11 to hold up one individual to having the same right as  
12 their neighbor does. I get that portion. So, we write  
13 and three little words for the benefit of any individual  
14 lot, or site.

15 SUPERVISOR MAHAN: I think that this is  
16 something that doesn't have to be done right the second.  
17 I think we know what the purposes.

18 MR. MAGGUILLI: Jennifer, why don't you put  
19 together some language?

20 MS. WHALEN: No. We will have one of our five  
21 counsels or six counsels. I will review the language  
22 that they put together for me.

23 MR. MAGGUILLI: After a PDD is approved, any  
24 subsequent development proposed which substantially  
25 complies with the density, location and use of the

1 improved PDD -

2 MR. GREEN: And is for the benefit of granting  
3 an individual lot, site or unit -

4 MR. MAGGUILLI: For the soul benefit of any  
5 individual lot -

6 MR. GREEN: Lot, site or unit. That's it.

7 SUPERVISOR MAHAN: So, David, in the case of  
8 Shaker Pointe and the generator moving eight feet -

9 MR. MAGGUILLI: Always better to keep things  
10 broad. You're not going to foresee everything that's  
11 going to come down the pike.

12 MS. WHALEN: I just don't want to see  
13 developers abusing this.

14 MR. MAGGUILLI: You're going to prevent them  
15 from abusing it, Jennifer. The Town Board is going to  
16 decide.

17 MS. WHALEN: I'm going to be somewhere else in  
18 January.

19 MR. MAGGUILLI: Well, whoever's on the Town  
20 Board at that time. Whoever takes your place, will step  
21 into your shoes and prevent them from abusing it.

22 SUPERVISOR MAHAN: An individual site or unit  
23 or minor request. Something like that.

24 MR. GREEN: You're right because it's foolish  
25 to have public hearings for generator pads.

1 SUPERVISOR MAHAN: It pulls it in and yet we  
2 have that right and if there's something bigger, move it  
3 out.

4 MS. WHALEN: This is what this one says: the  
5 proposed change is applicable to one property within the  
6 PDD.

7 MR. MAGGUILLI: They must not trust their Town  
8 Board.

9 MS. WHALEN: Well, you sent me this; the Town  
10 of Clay.

11 MR. MAGGUILLI: You asked for examples of  
12 municipalities.

13 SUPERVISOR MAHAN: I like the way the David is  
14 specifying individual. I think if we add in there - or  
15 minor request, I think we've got it covered because if  
16 something large comes in, we are most likely going to  
17 refer to the Planning Board to go in depth.

18 MR. MAGGUILLI: For going to adjourn this, were  
19 going to have to adjourn it after October 7.

20 MS. WHALEN: That's good. Do we have a long  
21 line of shed and pool requests for PDD's?

22 MR. LACIVITA: Yes, we actually do.

23 MS. WHALEN: How many?

24 MR. LACIVITA: Twelve.

25 MS. WHALEN: Where?

1 MR. LACIVITA: Canterbury Crossings and Shelter  
2 Cove.

3 MR. CAREY: Why can't we make the change in the  
4 language now?

5 SUPERVISOR MAHAN: Why can't we make the  
6 amendment now?

7 MR. CAREY: Joe just said there are 12 people  
8 waiting.

9 SUPERVISOR MAHAN: Can we do that, Mike? Can we  
10 amend the language?

11 MR. CAREY: We have done that before.

12 SUPERVISOR MAHAN: Just to make it more clear -  
13 we can do that.

14 MR. MAGGUILLI: How do you want the street,  
15 now?

16 MS. WHALEN: For the sole benefit of any  
17 individual lot, site or unit.

18 MR. MAGGUILLI: About minor amendment?

19 MR. GREEN: Yes.

20 MR. MAGGUILLI: That takes care of things like  
21 moving the generator pad over.

22 MS. WHALEN: Can you put pool, shed or deck and  
23 similar minor amendments?

24 MR. MAGGUILLI: As long as we are not making a  
25 substantial change the changes the character of the

1 proposed Local Law. If we are changing the character of  
2 it and the intent, then I think we have to adjourn it  
3 and renote it for a public hearing. If it is a minor  
4 amendment in the wording that doesn't change the intent.

5 MR. GREEN: I think it's just clarifying it.

6 SUPERVISOR MAHAN: I think everybody is on the  
7 same page with the understanding of what we want.

8 MS. WHALEN: You also have to leave a roadmap  
9 for future administrations and Town Boards, too. You  
10 don't want them to make their own wild interpretation of  
11 what this means. It's good to have things locked down so  
12 there is a wild interpretation capability. I think any  
13 subsequent development - certainly were doing a better  
14 job of narrowing.

15 MR. MAGGUILLI: After A PDD is approved any  
16 subsequent development proposed which substantially  
17 complies with the density location and uses of the  
18 approved PDD for the sole benefit of any individual lot,  
19 or unit, or any minor amendment shall, after application  
20 to an referral by the Town Board, shall be  
21 administratively approved.

22 SUPERVISOR MAHAN: You are just defining  
23 subsequent development proposed.

24 MR. MAGGUILLI: I don't like limiting it to a  
25 single lot, but as long as we put in - - that kinda

1 gives the flavor of what you want to do.

2 MR. GREEN: Exactly.

3 MR. MAGGUILLI: And then any minor amendment.  
4 That would take into consideration changes. In the case  
5 of the sisters, their engineer goofed up. They had the  
6 generator pad in the wrong spot. They had to go through  
7 the whole thing and I felt real sorry for them.

8 SUPERVISOR MAHAN: That is minor.

9 MR. MAGGUILLI: All we're doing is clarifying  
10 and I think we are okay.

11 First we need a motion to amend.

12 MR. ROSANO: I make a motion to amend.

13 MR. GREEN: I will second it.

14 SUPERVISOR MAHAN: Whichever way you want to do  
15 it. I think everybody understands that we are clarifying  
16 subsequent development.

17 MR. MAGGUILLI: So, the way it's going to read  
18 is: After a PDD is approved, any subsequent development  
19 proposed which substantially complies with the density,  
20 location and uses of the approved PDD for the sole  
21 benefit of any individual lot, or unit, or any minor  
22 amendment shall be, after application to and referral by  
23 the Town Board administratively reviewed for approval by  
24 the Director of Planning and Economic Development  
25 without the need for additional public hearing.

1                   Why don't we do this - just to make it  
2 absolutely clear. I can see some of the confusion.  
3 Instead of shall be, it will be may be. It will be may  
4 be so that it makes it clear that you don't have to.  
5 That was not the intent but it could be read that way.

6                   Is everybody good with that?

7                   MS. GANSLE: We have a motion and a second.

8                   All in favor.

9                   (Ayes were recited.)

10                  Any opposed?

11                  (There were none opposed.)

12                  MR. MAGGUILLI: Resolution 379, which I'm sure  
13 David is going to recuse himself from, is appointing  
14 David as a marriage officer for the period limited to  
15 September 12, today, to September 17, 2019.

16                  Next we have a Resolution authorizing Paula  
17 to enter into a renewal agreement with Mr. Wunderlich.  
18 This is for sand and ice control. We are renewing the  
19 bid under the same terms and price as last year.

20                  Resolution 381 as authorizing acceptance of  
21 construction material for a new restroom located at  
22 the Municipal Training Center. There is an outdated  
23 bathroom there and various vendors have offered to  
24 donate the toilet, shower, sink and lighting in order  
25 to update it. DiNovo Home Improvement and the Fire

1 Services personnel have agreed to donate services to  
2 do the actual installation. So, this will be at no  
3 cost to the Town.

4 Resolution 382 as authorizing the General  
5 Services Director to advertise for bids for repairs to  
6 the Municipal Fire Training tower structure.

7 Resolution 383 is appointing Assistant Chief  
8 Christopher Rench to replace Christopher Kostyun as  
9 our member of the Employee Assistance Program  
10 Committee. It is a 12-member committee which is  
11 nonpaid.

12 Resolution 384 as authorizing Doug to  
13 advertise for bids in connection with the Police  
14 Department/FBI training facility at 12 Arrowhead  
15 Drive.

16 Resolution 385 - we are rejecting all bids in  
17 connection with the Mohawk Park Pavilion project in  
18 authorizing Doug to re-advertise for them.

19 The bids received were all greater than what  
20 was allotted for the project. So, that will be rebid  
21 if you prove that Resolution.

22 Resolution 386 is authorizing Paula to  
23 reimburse \$2,338.08 to Elizabeth Cullen and Greg  
24 Coriarty at 5 Patroon Place for overestimated water  
25 usage.

1                   Resolution 387 is a contract with Plan  
2                   Source. This is to complete the flexible spending  
3                   compliance package for nondiscrimination testing. The  
4                   underlying contract was approved back in 2018. Plan  
5                   source did not settle on a price at that time and they  
6                   came up with \$315 which is \$100 more than they charged  
7                   us in 2018.

8                   Resolution 388 is calling a public hearing  
9                   regarding the Planning Board recommendation for a  
10                  proposed amendment to Shelter Cove. Again, this is the  
11                  inground pool. The public hearing will be on September  
12                  26 at 7:00 p.m. On August 27 of this year the Planning  
13                  Board heard this matter and made a recommendation with  
14                  conditions that this inground pool be approved.

15                  Resolution 389 as authorizing Paula to sign a  
16                  change order. This is a change order with respect to  
17                  the William Sanford Library. This is the one that we  
18                  have been going over time and again. What we had  
19                  decided to do after consulting with Doug Sippel and  
20                  John Frazer is that this payment will go to the  
21                  plumber who is acting on instruction from the  
22                  architect in this matter. Then, we are going to look  
23                  to the architect to be made whole. That's how we  
24                  decided to do this because the plumber in this thing  
25                  has clean hands. We think that if anything, it was the

1 architect that dropped the ball. We don't think that  
2 the Town should be made to bear the full expense of  
3 this change order. So, it's an increase of \$3,323.  
4 It's not a lot, but it's enough.

5 Resolution 390 as authorizing Doug to  
6 advertise for bids for Phase 2 roofing improvements at  
7 the library.

8 Resolution 391 as authorizing Paula to sign a  
9 service agreement with Johnson Controls. This is for  
10 our ABS software at the library. This is a three-year  
11 term; \$3,709 per year. The contract will run to August  
12 31, 2022.

13 Resolution 392 is in agreement with  
14 AudioVideo Corporation. This is with the sound and  
15 audio upgrades at the Town Library in two rooms. The  
16 cost is not to exceed \$56,330.78.

17 Resolution 393 is declaring an emergency and  
18 paying ANJO \$5,740.96 on August 15. A clay pipe failed  
19 causing avoid underneath the road which required  
20 immediate repair. It also blocked the sewer main and  
21 caused a sinkhole.

22 We have another emergency repair for ANJO for  
23 \$5,261.81. This was an August 5, 2019 sinkhole. A  
24 16-inch cement pipe had failed and flooded a road and  
25 caused a sinkhole. It had to be repaired immediately.

1 Resolution 395 is declaring a 2001 high cube  
2 van and a CCTV pipe inspected system surplus. This  
3 essentially allows Pure Waters to transfer the  
4 equipment to the Highway Department. They are two  
5 separate legal entities, so we need the Resolution.

6 Resolution 396 is entering into an  
7 engineering agreement with GHD Consulting. This is for  
8 services to the Mohawk View Water Pollution Control  
9 Plant clarifier rehab project. This is not to exceed  
10 \$610,000. This is a Capital Plan project.

11 Next we have our annual maintenance agreement  
12 with Indemnia and Security USA. This is for our  
13 digital imaging and fingerprinting for the Police  
14 Department; \$5,270. The contract runs until October  
15 31, 2020.

16 Resolution 398 is another contract with the  
17 Porter Lee Corporation to maintain our evidence room  
18 computer software; \$744 and that goes to October 31,  
19 2020.

20 Resolution 399 is a maintenance agreement  
21 with Hewlett-Packard for the Police Department for CAD  
22 servers; \$2,752.80. This only runs to January 31,  
23 2020.

24 Resolution 400 is authorizing Doug to  
25 advertise for bids for the demolition of 1366 Central

1 Avenue.

2 Along with that, we have a companion  
3 Resolution, 401. This orders the demolition and  
4 removal of the building under Chapter 62 of our Town  
5 Code. This stems and goes back all the way to March 2,  
6 2017. There was a structure fire at the place. Since  
7 then, it has deteriorated to the point where it's  
8 unsafe and it has become a public risk.

9 Resolution 402 is a RAN agreement for  
10 \$2,800,000. This will be issued on the fourth quarter  
11 sales taxes and will be paid off by January 31, 2020.

12 SUPERVISOR MAHAN: We don't get our fourth  
13 quarter until January. Once we get a, this pays this  
14 off. We do it every year.

15 MR. MAGGUILLI: Next we have a Resolution -  
16 Jack Paradise - I don't know if any of you knew Jack. He  
17 has been our insurance adjuster for the Town for  
18 probably 25 years. Jack came to us recently. As you  
19 know, he is quite old - elderly.

20 We need to get some proposals to replace and  
21 for our insurance claim adjusting services. He repaid  
22 the and his balance of his retainer. So, we have that  
23 already. I don't know how well you guys knew Jack, but  
24 he's quite a guy.

25 Resolution 404 is calling for public hearing

1 to amend our Vehicle and Traffic Law. We have gotten  
2 requests from a number of people to change the speed  
3 limit on Boght Road in both directions from Elm Street  
4 to Saint Agnes Highway. It's about 1.7 plus or minus  
5 miles - from 40 down to 30.

6 SUPERVISOR MAHAN: It is an area that was a  
7 country road from years ago when farmers were there.  
8 With the new homes, we talked to the members of the  
9 Police Department as well and other people that live  
10 there and we are not in favor of increasing it.  
11 Sometimes you get some neighbors who want to increase it  
12 because it keeps the traffic moving. Definitely in that  
13 particular area there are a lot of homes and a lot of  
14 kids.

15 On a good note, before we go downstairs, some  
16 of you may not have seen this - - Melissa brought it  
17 to my attention. There was a ranking on upstate New  
18 York's best places to start a family. Out of 33 areas,  
19 we came in number four and no one else in Albany  
20 County -

21 MR. MAGGUILLI: We tied for third with the Town  
22 of Brighton.

23 (Whereas the above entitled proceeding was  
24 concluded at 7:10 p.m.)  
25

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