

Village of Altamont Planning Board  
Special Meeting - Online  
March 30, 2020

Deborah Hext, Chair  
Stephen Caruso, Board Member  
John Hukey, Board Member  
Connie Rue, Board Member  
Barbara Muhlfelder, Board Member  
Dan Hitt, Alternate Board Member

Lance Moore, Building Inspector/  
Code Enforcer  
Dean Whalen, Village Liaison  
Allyson Phillips, Village Attorney  
  
Chuck Marshall, Stewart's Shops, Applicant  
Leah Everhart, Esq., Stewart's Shops

Guests: 23

Chairperson Hext opened the meeting at 7:00 p.m. and welcomed everyone. Planning Board Meeting was held online using Zoom video communication due to covid-19. Chairperson Hext stated that due to the Covid-19 virus, this meeting is being held remotely and all audio and video portions of this meeting will be recorded. She asked everyone to mute themselves if they are not speaking. She asked the Board Members to introduce themselves, which they did as follows: Barbara Muhlfelder; Connie Rue; John Hukey; Steve Caruso and Dan Hitt, Alternate. She said we also have present: Ginger Hannah, Village Administrative Assistant; Dean Whalen, Village Board Liaison; Lance Moore, Building Inspector; and Allyson Phillips, Village Counsel.

See attached Transcript prepared by Nancy L. Strang, Shorthand Reporter, for a full transcript of the minutes of this meeting.

Respectfully Submitted by:



Ginger Hannah

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VILLAGE OF ALTAMONT COUNTY OF ALBANY  
PLANNING BOARD

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PLANNING BOARD MEETING  
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THE TAPED AND TRANSCRIBED MINUTES of the above entitled matter by NANCY L. STRANG, a Shorthand Reporter commencing on March 30, 2020 held via ZOOM Video Conferencing and commencing at 7:00 p.m.

PRESENT:  
BOARD MEMBERS:  
  
DEBORAH HEXT, CHAIRPERSON  
JOHN HUKEY  
STEPHEN CARUSO  
BARBARA MUHLFELDER  
CONNIE RUE  
DAN HITT, ALTERNATE

ALSO PRESENT:  
  
GINGER HANNAH, ADMINISTRATIVE ASSISTANT  
ALLYSON PHILLIPS, ESQ, COUNSEL TO THE BOARD  
DEAN WHALEN, VILLAGE BOARD LIAISON  
CHARLES MARSHALL, STEWART'S  
LEAH EVERHART, ESQ., COUNSEL TO STEWART'S  
LANCE MOORE, VILLAGE BUILDING INSPECTOR/  
ZONING ADMINISTRATOR

1 CHAIRPERSON HEXT: Just a note here. There will  
2 not be an opportunity for public comment at this  
3 meeting. It is a meeting and not a hearing. April 27, if  
4 we do vote to move the meeting to the 27th, that will be  
5 a public hearing. You all have an opportunity to comment  
6 at that time.

7 One thing I would like to mention - it has  
8 been mentioned many times before at various meetings.  
9 We would respectfully ask that you don't try to  
10 contact Planning Board Members at their home, whether  
11 it is by email, whether it's in person, whether it's  
12 by snail-mail. There's a venue for that and there's a  
13 legal way to do that where it will go down in the  
14 record and officially be looked at by us. You can  
15 either send an email to Patty Blackwood, our Village  
16 Clerk, to Ginger Hannah, our Administrative Assistant  
17 or, you can email - you can snail-mail to the Village  
18 Offices, drop it off, or actually put it in the mail.  
19 The only way it will go into the record and allow us  
20 to officially view these documents is through those  
21 means. So, please don't send it to us personally. We  
22 know some of us are all friends and we talk, but if  
23 it's official Planning Board business, we can't  
24 discuss it outside of a meeting.

25 There's one change to the agenda tonight. At

1 the advice of counsel, the Planning Board will not be  
2 considering Stewart's request for comments on the  
3 dumpster placement tonight. It was decided that it  
4 would be best to delay comments until the public  
5 hearing which we will be voting on tonight and set for  
6 April 27, 2020. More importantly, we wanted to put it  
7 off until after tomorrow night's ZBA meeting. We  
8 didn't want to seem presumptuous and voting on  
9 anything or giving our recommendations on anything  
10 until the variances are either approved or  
11 disapproved.

12 With that, I guess we will get on to the  
13 published agenda.

14 Has everyone had a chance to review the  
15 minutes from our previous meeting - anyone that was a  
16 member of the Planning Board back then?

17 MR. CARUSO: Yes, I have.

18 CHAIRPERSON HEXT: Does anyone have any  
19 comments or questions?

20 MR. CARUSO: No, I don't.

21 CHAIRPERSON HEXT: Then could we have a motion  
22 to approve the minutes from July 22, 2019?

23 MR. HUKEY: I'll make a motion.

24 CHAIRPERSON HEXT: Okay, that is John who is  
25 making the motion.

1 Second?

2 MS. RUE: I'll second it.

3 MS. HEXT: Can I have a roll call, please,  
4 Ginger?

5 MS. HANNAH: John Hukey?

6 MR. HUKEY: Affirmative.

7 MS. HANNAH: Steve Caruso?

8 MR. CARUSO: In favor.

9 MS. HANNAH: Connie Rue?

10 MS. RUE: In favor.

11 MS. HANNAH: Barbara Muhlfelder?

12 CHAIRPERSON HEXT: Barb can't comment because  
13 she wasn't on the Board then.

14 MS. HANNAH: Alright.

15 Deb?

16 CHAIRPERSON HEXT: In favor.

17 MS. HANNAH: And Dan can't comment because he  
18 wasn't on the Board then either, right?

19 CHAIRPERSON HEXT: That's correct and the only  
20 way Dan could comment, even if he had been, is if he was  
21 substituting that night. He is the alternate. He doesn't  
22 get to vote.

23 Sorry, Dan.

24 MS. HANNAH: So, we have everybody?

25 CHAIRPERSON HEXT: I believe so.

1 Thanks, Ginger.

2 MS. HANNAH: Thank you.

3 CHAIRPERSON HEXT: Second, we would like to  
4 have a motion to reschedule the public hearing to April  
5 27, 2020 at 7:00 p.m. for the Altamont Fair's lot line  
6 adjustment waiver on properties 243 and 247 Brandle  
7 Road, Altamont, pursuant to Article 2, 315 - 10 of the  
8 Zoning Law.

9 Any comments on that before we make a motion  
10 to approve or disapprove?

11 MR. CARUSO: I'll make that motion, Deb.

12 CHAIRPERSON HEXT: Second?

13 MS. HANNAH: I'm sorry, who made the motion and  
14 who seconded it?

15 CHAIRPERSON HEXT: Steve made the motion and  
16 Barb seconded it.

17 MS. HANNAH: Thank you.

18 So, roll call.

19 Deb?

20 CHAIRPERSON HEXT: In favor.

21 MS. HANNAH: John?

22 MR. HUKEY: In favor.

23 MS. HANNAH: Barb Muhlfelder?

24 MS. MUHLFELDER: In favor.

25 MS. HANNAH: Steve Caruso?

1 MR. CARUSO: In favor.

2 MS. HANNAH: Connie Rue?

3 MS. RUE: In favor.

4 MS. HANNAH: Dan?

5 CHAIRPERSON HEXT: Dan can't. It will take some  
6 getting used to, not only doing it remotely but having  
7 an alternate in there. So, I hope everybody bears with  
8 us on this - getting through this first remote meeting.

9 STENOGRAPHER: Madam Chairman, this is Nancy. I  
10 am the reporter this evening. I'm wondering if you could  
11 just make a general announcement to those folks, perhaps  
12 just joining - that they really need to mute their  
13 microphone, unless they're speaking.

14 CHAIRPERSON HEXT: Yes, so I will make that  
15 announcement again.

16 Please, somebody is doing dishes or something  
17 in the background - I would ask anybody who is not  
18 speaking to mute your microphone.

19 MS. HANNAH: I think the host of the meeting  
20 can also mute everyone. That's also an option.

21 CHAIRPERSON HEXT: Okay, moving on, as I stated  
22 at the beginning of the meeting item 4 of our agenda was  
23 to consider Stewart's Shops request for an advisory  
24 opinion regarding the proposed location of Stewart's  
25 Shops' on-site dumpster. We will be holding off on that

1 and hopefully - - how do I explain this - - we will  
2 consider that at the same time we consider their  
3 application, if we vote to hold the public meeting, on  
4 April 27 for Stewart's Shops. Item five of the  
5 discussions, consider entering into an escrow agreement  
6 with Stewart's shops for the engagement of professional  
7 consultants. I know we were going to speak with Lance  
8 about this to see if he has spoken with the engineers.

9 Lance, did you get a chance to do that?

10 Lance, unmute yourself. It's okay to do so now.

11 MR. MOORE: Deb, can you hear me?

12 CHAIRPERSON HEXT: I can hear you now.

13 MR. MOORE: Sorry about that. Yes, I will do  
14 that and get back to it at a later date?

15 CHAIRPERSON HEXT: Allyson, is it okay if we  
16 hold off on this and get back to it at a later date?

17 MS. PHILLIPS: What we can do is - the Village  
18 and its Code has provisions that any Board reviewing an  
19 application can require the applicant to put money into  
20 an escrow fund to allow each Board to retain their own  
21 professional consultants to assist them in their review  
22 of the application. This is something that we just did  
23 for the ZBA review.

24 What we did was we had a general escrow  
25 agreement. In that case, it was just for legal. We



1 didn't have a technical consultant that you will need  
2 to review things like the stormwater - the SWPPP that  
3 will be provided with the site plan and more technical  
4 plans that most likely you will want the assistance of  
5 an engineer to help you review.

6 What we can do is if the Board is agreeable  
7 tonight, the Board can direct me - we could probably  
8 even do it as an addendum to the escrow agreement that  
9 we already have in place for Stewart's that would  
10 cover, providing additional funds for the Planning  
11 Board's review of the site plan and special permit  
12 application. When Lance gets a better estimate from  
13 the technical consultant the Planning Board wants to  
14 retain as to the amount - an estimate for what their  
15 review costs would be, we can kind of fill in that  
16 amount and discuss it with Stewart's. If the Board  
17 wants to authorize us to proceed with that process now  
18 - drafting an addendum to the agreement and working  
19 with Lance to get an estimate for the engineering fees  
20 that would be occurred, we can go ahead and proceed  
21 with that because ultimately it is the Village Board  
22 that executes the escrow because they have to  
23 authorize the payment of funds out of it. So, we can  
24 move forward with just preparing everything now, even  
25 though we don't have that estimate yet from the

1 engineer. We will just have to fill in amounts after  
2 we get that estimate from Lance.

3 CHAIRPERSON HEXT: All right. So, basically  
4 tonight we would just be considering entering into an  
5 escrow agreement with Stewart's for the engagement of  
6 professional consultants and the amount and time will be  
7 filled in at a later date. How would we word that  
8 differently than what it is right now?

9 MS. PHILLIPS: The Board would just be  
10 authorizing the retention of technical consultants to  
11 assist it with its review and legal counsel to have me  
12 assist you with your review and how those funds can be  
13 paid out of an escrow account to be established by  
14 Stewart's and we can determine what the sufficient  
15 amount of funding is for the initial deposit, based on  
16 the estimate that we obtain from the technical  
17 consultant that you have selected.

18 CHAIRPERSON HEXT: All right. Do we want to  
19 make a motion to proceed in that vein at this point?  
20 Anybody want to make a motion to do it that way and we  
21 will fill in all the legality later?

22 MS. PHILLIPS: The motion can be to authorize  
23 the Village Attorney to prepare an addendum to the  
24 existing escrow agreement with Stewart's to cover the  
25 Planning Board review of the special use permit and site

1 plan application.

2 CHAIRPERSON HEXT: Okay. Does someone want to  
3 make that motion - to authorize the Village Attorney?

4 MR. HUKEY: I'll make that motion, Deb.

5 CHAIRPERSON HEXT: Thank you, John.

6 Second?

7 MR. CARUSO: I'll second it.

8 CHAIRPERSON HEXT: Thank you, Steve.

9 Ginger, you're up.

10 MS. HANNAH: Okay, so, Deb?

11 CHAIRPERSON HEXT: In favor.

12 MS. HANNAH: John?

13 MR. HULEY: In favor.

14 MS. HANNAH: Barbara?

15 MS. MUHLFELDER: In favor.

16 MS. HANNAH: Steve?

17 MR. CARUSO: In favor.

18 MS. HANNAH: And Connie?

19 MS. RUE: In favor.

20 MS. HANNAH: Thank you.

21 CHAIRPERSON HEXT: Thank you, everyone.

22 Thank you, Allyson.

23 MR. MARSHALL: This is Chuck from Stewart's. I  
24 have just one other question.

25 I don't know if it has to be the same motion

1 or in the same vein, but could you direct Lance to  
2 provide submitted materials directly to the selected  
3 consultant? My thinking is we can get the SWPPP in  
4 probably over the next two weeks and potentially have  
5 at least preliminary comments by the next meeting. I  
6 think that might just help your review of the plans.  
7 Instead of those having to come through the Board, if  
8 you could just direct Lance to send anything directly  
9 to the consultant and I think that would help  
10 everyone.

11 CHAIRPERSON HEXT: Can we do it that way,  
12 Allyson, or would that be considering a different  
13 motion?

14 MS. PHILLIPS: I don't think it really requires  
15 a formal motion. You can do a separate motion aside from  
16 authorizing us to proceed with the escrow agreement just  
17 to say that materials have already been submitted, but  
18 the application materials that will be submitted with  
19 the application will be provided directly to the  
20 Planning Board's technical consultant upon receipt. That  
21 will just help to facilitate your review.

22 CHAIRPERSON HEXT: Okay, but it doesn't have to  
23 be an official motion. We can just agree to that?

24 MS. PHILLIPS: That's right. Essentially, it's  
25 your ability to set the parameters of how you're going

1 to conduct the review with your consultant. I do agree  
2 that it probably is more efficient to just have a rule  
3 in place that everything that comes in that you want  
4 your technical consultant to review - you will provide  
5 to them as it comes in just to make sure they are  
6 looking at it at the same time you are and can get you  
7 back timely comments on anything that is submitted.

8 CHAIRPERSON HEXT: Okay.

9 Lance, are you okay with doing it that way?

10 MR. MOORE: I'm on Board.

11 CHAIRPERSON HEXT: Then I guess there's no  
12 sense in making a separate motion as long as it's been  
13 noted and we are all in agreement to do it that way. It  
14 sounds like the most feasible and expeditious way to do  
15 it, that's for sure.

16 Any other Board Members have any comments  
17 that they want to add?

18 (There was no response.)

19 Item 6 is to - Stewart's Shops application -  
20 discuss scheduling a public hearing on April 27, 2020  
21 at 7 p.m. to discuss Stewart's Shops' application for  
22 special use permit and site plan approval.

23 At that time, when we discuss everything - we  
24 will go over the plans at that time, we will go over  
25 the drawings at that time and also at that time we

1 will discuss any dumpster placement concerns that we  
2 have or recommendations that we have. By then, we will  
3 know the Zoning Board's variance approvals or  
4 disapprovals.

5 Can we have a motion to set the public  
6 hearing to consider Stewart's Shops' application for a  
7 special use permit and site plan approval for April  
8 27, 2020 at 7 p.m.?

9 MS. RUE: Deb, I have a question before we make  
10 the motion. Will the Board have a chance to discuss the  
11 application before the public hearing starts? I think we  
12 need a chance to review it together as a Board and  
13 answer any questions and make sure everything is  
14 complete before we have the public hearing - is my  
15 understanding of the review procedures.

16 CHAIRPERSON HEXT: Allyson, maybe we could have  
17 a special meeting to discuss that.

18 MS. PHILLIPS: To proceed with the public  
19 hearing, the Planning Board should determine that the  
20 application is complete and that they have submitted  
21 everything they were required to submit under our Zoning  
22 Law. The law speaks specifically to an application not  
23 being complete until an EIS is complete or a negative  
24 declaration. We have SEQRA done because the plan was  
25 included in a coordinated review that was conducted by

1 the Village Board in connection with the rezoning  
2 request. It's really up to the Planning Board to  
3 determine if what Stewart's has submitted as far as the  
4 plans, application form and everything else that they  
5 submitted to the Planning Board is a complete  
6 application so that you are ready to move forward with  
7 the next step of scheduling the public hearing.

8 MS. RUE: I guess my question is: Do we know  
9 that it's complete?

10 CHAIRPERSON HEXT: We have been sent the  
11 documentation from Stewart's. Lance dropped those off.  
12 From what I could tell, and I skimmed them quickly, it  
13 did look like at the time that they were complete.

14 Do we need a meeting to discuss that or can  
15 we just review it and you can forward any concerns to  
16 me? I don't know what the best way to handle that is.  
17 I know it is a little bit out of order from what we  
18 normally do.

19 MS. RUE: I guess I was questioning - I don't  
20 know that we are ready to get into any kind of  
21 discussion, but I was questioning the demolition of the  
22 building at 107 and 109, plus the other demolition  
23 that's going to take place. Is that all supposed to be  
24 part of this application, or does that need its own  
25 application?

1 CHAIRPERSON HEXT: There's actually a separate  
2 permit that they will have to go for to do the  
3 demolition. We don't have that yet.

4 MS. RUE: If that is separate from this  
5 application, then I'm fine. I know it mentioned it in  
6 here. It mentioned demolition in the application that  
7 they submitted.

8 MR. MARSHALL: This is Chuck from Stewart's. I  
9 am unfamiliar with a separate - - I know I'd have to get  
10 a building permit application for the demolition, but  
11 according to your Code the demolition is allowed as long  
12 as there is a post development plan and that post  
13 development plan can either be - in our instance it  
14 would be the proposal of a new store or a planting  
15 schedule that's delineated by linear foot. I don't see a  
16 separate application for the demolition. It would be  
17 part of this.

18 CHAIRPERSON HEXT: I'm sorry, Chuck. If I said  
19 application, I meant permit - the building permit.

20 MR. MARSHALL: Okay.

21 CHAIRPERSON HEXT: It sounds kind of strange to  
22 have a building permit to demolish something.

23 MR. MARSHALL: Yes, but it's all one  
24 consideration for you guys.

25 CHAIRPERSON HEXT: And Connie, I don't mean to



1 speak for you, but before you can go ahead with the  
2 demolition, there does have to be a building permit on  
3 file. I don't know if that was your concern, Connie?

4 MS. RUE: I guess I just wasn't sure -- if just  
5 mentioning they are going to have a demolition on the  
6 special use permit - that's all that needed to be  
7 mentioned, or if it was something separate. I just  
8 didn't know.

9 MS. PHILLIPS: This is Allyson. I don't think  
10 that our law specifically prescribes any particular  
11 submission that would be different from what they have  
12 already submitted on the special use permit and site  
13 plan application. I think what they are representing is  
14 that the site plan that they are presenting is the post  
15 development plan that would be required prior to the  
16 issuance of a permit to do the demolition. So, we are  
17 kind of considering it all as one project, as we have  
18 done so all along, knowing that this project will  
19 require a demolition and the site plan that is being  
20 reviewed by the Planning Board is actually a post  
21 development plan that's contemplated to be implemented  
22 after the demolition. So, you are considering it as part  
23 of the same review.

24 MS. RUE: Okay, thank you.

25 CHAIRPERSON HEXT: Okay, then we are

1 considering everything as a whole then.

2 Does that answer your question, Connie?

3 MR. WHALEN: This is Dean. I'm not sure you are  
4 hearing me.

5 CHAIRPERSON HEXT: Yes, we are hearing you.

6 MR. WHALEN: Just as a practical suggestion,  
7 you have a great deal on your plate already for the  
8 27th. Is it really feasible to do two public hearings on  
9 the 27th? What I'm suggesting is a review of the plan as  
10 a Board - - and then still hold both hearings on the  
11 27th, or hold one of them further out? You could deal  
12 with some of the other issues with Stewart's that have  
13 been tabled, like the advisory opinion.

14 CHAIRPERSON HEXT: Dean, you really broke up. I  
15 didn't get a whole bunch of that.

16 MR. WHALEN: I'm sorry. I'm just wondering if  
17 it's not an awful lot to put on the agenda for the 27th  
18 to have two public hearings along with some of the other  
19 items related to both Stewart's and the Altamont Fair  
20 process. Does it make sense to either on the 27th or  
21 prior, do a Board meeting as you had talked about Deb,  
22 to make sure that you are all comfortable with what has  
23 been submitted and then either reschedule the Stewart's  
24 hearing a little further out or - - again, I'm not  
25 trying to push it out, but are you comfortable with

1 holding both on the 27th? If not, on the 27th you could  
2 do the Altamont Fair review and public hearing and also  
3 deal with some of the other items on the plate for  
4 Stewart's such as the advisory opinion for the dumpster  
5 and things like that.

6 CHAIRPERSON HEXT: Personally, I don't think -

7 MR. WHALEN: I'm just concerned that it could  
8 get long on the 27th.

9 CHAIRPERSON HEXT: Personally, I don't think  
10 that the Altamont Fair discussion is going to be a long  
11 one. In fairness to everyone, Stewart's and other Board  
12 Members and the public, I think I would like to keep  
13 this - - if everybody else is okay with this, I don't  
14 want to make the decision, but personally I would rather  
15 keep the public hearing on the 27th for Stewart's and  
16 just consider all aspects at that time.

17 I know it's going to be a long meeting.  
18 Hopefully, we will be able to keep the public to two  
19 minutes per comment and keep it reasonable. If it is  
20 going too long, we can always put the public meeting  
21 on hold and re-adjourn it to the next scheduled  
22 meeting. I would rather get it on the agenda now. If  
23 for some reason as we are reviewing it as a Board we  
24 feel it's going to be too much, at that time I think  
25 we can push it off. I would rather keep it for the

1 27th for now.

2 What is everybody else on the Board feel?

3 MR. HUKEY: I agree with you, Deb.

4 MS. MUHLFELDER: I agree with you, Deb.

5 MR. CARUSO: I do too, Deb. I think we should  
6 go ahead and put it on the agenda.

7 CHAIRPERSON HEXT: I know it's going to be a  
8 long meeting, but that's what we do. We have to give the  
9 public a chance to speak. We have to give Stewart's  
10 their chance to speak and we will take it one step at a  
11 time on that night.

12 MR. MARSHALL: This is Chuck from Stewart's.

13 One of the things that could help in ensuring  
14 the public has their opportunity - I will review with  
15 my office, but I think I can get electronic plans to  
16 the Village no later than Monday. That would give  
17 everyone about three weeks to review them. Similarly,  
18 I think I can get paper copies, as long as someone is  
19 in the Village Hall to receive them. I will send the  
20 message to Ginger tomorrow upon confirming that with  
21 my office.

22 CHAIRPERSON HEXT: Okay, because we will also  
23 have to - with the Covid19 restrictions, we're going to  
24 have to give the public an opportunity to review these  
25 documents, whether it is online or some way before the

1 April 27 meeting. Chuck, I don't know what vehicle you  
2 have to do that, but it would have to be the entire site  
3 plan with the green space, the lighting and everything.

4 MR. MARSHALL: I can send a link to Ginger. I  
5 was uncertain how tonight was going to go. I had sent  
6 the link with the full set of plans and with the  
7 dumpster and position A and position B. I could reissue  
8 that link. The only thing I'm not sure of is either A.  
9 you will have to put it on the Village website which I  
10 am fine with, or B. if you could forward the link to  
11 other people. We would just have to test the forward  
12 capabilities of the link, but I don't have a problem  
13 with that.

14 CHAIRPERSON HEXT: So, would those plans  
15 include everything that you have submitted in your  
16 packages to this date? I know there are five or six  
17 different huge plans that were printed out on a plotter  
18 or something like that. Would that be available to the  
19 public?

20 MR. MARSHALL: Yes. In addition to that, since  
21 developing those plans we have done a grading plan and  
22 that's what the SWPPP is being based off of. Anything  
23 that we have developed, we can share. The only concern I  
24 would have is, as you said, they are on plotter sized  
25 paper. So, if you printed them, they wouldn't

1 necessarily print to scale. So, that is the only caveat.  
2 I think someone should make sure that it is noted that  
3 they are not going to print to scale because they are  
4 two foot by three foot pages.

5 CHAIRPERSON HEXT: Right.

6 Allyson, is that acceptable from a legal  
7 standpoint? Does that give the public a chance to  
8 view -

9 MS. PHILLIPS: Yes. The standard in the zoning  
10 law, in general, is that the public should have the  
11 ability to meaningfully comment on the materials. So, I  
12 think to the extent we provide access to electronic  
13 copies of everything that was submitted by Stewart's, by  
14 putting the oversized plans - understanding the scale on  
15 the plans - you're not going to be able to print off a  
16 full-size copy of the plan - - but I think if we make  
17 everything available online and anyone in the public has  
18 any questions or feels they need to have an opportunity  
19 to review a hard copy of the plan - everyone knows this  
20 is kind of an evolving situation with this Covid19. We  
21 have to make sure that the Village is implementing  
22 policies that are required by the current Executive  
23 Orders put out by the Governor to protect everyone's  
24 health and safety. I think to the extent as the meeting  
25 date approaches, if there is an ability to provide

1 access to the hardcopies and I'm sure the Village would  
2 do that. If it's just not possible or feasible,  
3 providing electronic copies of the plan still allows the  
4 public to study the plans, observe the plans and submit  
5 meaningful comments at the public hearing. So, I think  
6 for our purposes right now that meets the standard that  
7 the Planning Board has to operate.

8 MR. MARSHALL: It's Chuck again.

9 The other thing I could do - the current  
10 application requires submission of 15 copies. I could  
11 submit an extra five so in the event that someone  
12 doesn't have access to electronic means, Ginger or  
13 Patty could mail that person a copy or leave them to  
14 be picked up at the Village Hall.

15 CHAIRPERSON HEXT: Okay, thank you. That would  
16 work.

17 MS. HANNAH: Just so you know, the Village Hall  
18 at this point is closed to the public. We could probably  
19 mail stuff out. We just didn't want to get that out  
20 there that people could pick them up at the Village  
21 because we are closed due to the regulations that are  
22 out there right now.

23 CHAIRPERSON HEXT: Understood. Thanks, Ginger.

24 MS. HANNAH: Thank you.

25 CHAIRPERSON HEXT: Go ahead John, sorry.

1 MR. HUKEY: We're going to be discussing the  
2 site plan the next time - - I guess this question goes  
3 to Lance.

4 They can take down all the trees they want  
5 without a site plan, Lance? I'm a little upset because  
6 they took down alongside the bank - the embankment and  
7 one of the trees - the largest tree is within two feet  
8 of that stream.

9 MR. MOORE: John, did you notice that the stump  
10 stayed in the ground? That's part of the retention. My  
11 feeling - my opinion - yes. I couldn't stop you from  
12 taking trees down on your property.

13 MR. HUKEY: No, but I am not within 100 feet of  
14 the stream.

15 MR. MOORE: So, I was over there to review it  
16 when it was happening. That's one of the things that we  
17 will be discussing. That is really up to the Planning  
18 Board down the road. I believe, correct me if I'm wrong,  
19 but Chuck, can you clarify that for me one more time?

20 MR. MARSHALL: I believe the tree that was  
21 taken in that proximity was not in the best of  
22 conditions to begin with. The stump was left as part of  
23 - to protect the bank. That's why it was not taken  
24 because there is no measure in place to secure the bank.  
25 The U.S. Fish and Wildlife guidance which was part of



1 the Village Board's SEQRA determination requires tree  
2 clearing by March 31. In the June 2019 letter, we had  
3 indicated that tree clearing would have to be completed  
4 by March 31 in order to be compliant with the U.S. Fish  
5 and Wildlife guidance.

6 CHAIRPERSON HEXT: And that's because of the  
7 bats' habitat, right - they would be migrating?

8 MR. MARSHALL: That's correct.

9 MS. EVERHART: Just to address the concerns - -  
10 I'm sorry, my name is Leah Everhart. I'm the attorney  
11 for Stewart's.

12 Taking down the trees - the timing had  
13 nothing to do with the Planning Board review. It  
14 wasn't in order to avoid Planning Board consideration  
15 of what would have to happen. It was that literally it  
16 would have an impact on what year construction could  
17 take place in.

18 FROM THE FLOOR: Nonetheless, you actually went  
19 ahead without approval.

20 MS. EVERHART: I'm sorry, who is Claire?

21 FROM THE FLOOR: Hi, my name is Claire and you  
22 went ahead without approval and you could have done it  
23 prior to -

24 CHAIRPERSON HEXT: Claire, I'm sorry but the  
25 public is not allowed to speak at this time. This is not

1 a public hearing. The discussion that is being done  
2 right now is between the Planning Board and our  
3 attorneys. I do understand your concern, but based on  
4 what ENCON tells us, we have to do the cuttings by a  
5 certain date or after a certain date. I believe it's  
6 November, which is the later date.

7 Chuck, is there any plan to replace the trees  
8 that have been cut down after construction?

9 MR. MARSHALL: Yes. The trees in between the  
10 current Stewart's and the house obviously were going to  
11 be integrated into the site plan for the new store.  
12 Then, a landscaping plan will be provided for trees  
13 along the fence line which actually acts as the  
14 delineation of area to be disturbed. That was part of  
15 the April determination that was not overturned by the  
16 Zoning Board of Appeals - that lands previously  
17 disturbed were effectively grandfathered and the  
18 proximity to the creek - I'm not going to say that it  
19 doesn't matter, but because of the Code, was previously  
20 allowed.

21 CHAIRPERSON HEXT: So, hopefully the  
22 landscaping plan - the current plan that has the  
23 planting of trees will help to mitigate any bank  
24 disturbance other than what's already been there.

25 MR. MARSHALL: There has been no bank

1 disturbance.

2 MS. PHILLIPS: This is Allyson.

3 If I can just note the reason why Stewart's  
4 was able to move forward with the cutting of the trees  
5 prior to the Planning Board site plan review is that  
6 the Code doesn't prohibit people from cutting trees on  
7 their property or require any prior approval to cut.  
8 By leaving the stumps in place, it doesn't qualify as  
9 ground disturbance within the meaning of the DEC  
10 stormwater regulations. So, it's not something that  
11 required the SWPPP to be reviewed and approved before  
12 that action could take place because the stumps have  
13 remained in place and therefore it's not considered a  
14 ground disturbance under the DEC stormwater  
15 regulations.

16 MR. HUKEY: Allyson, can I ask you a question?  
17 In our Code it says a buffer area of at least 20 feet  
18 shall be provided along the boundary line between any  
19 residential - - a buffer shall contain - - wrong one.  
20 Hold on.

21 There shall be a 100-foot buffer between the  
22 stream bank of the Bozenkill or Black Creek or the  
23 tributaries and any site disturbance. All wooded or  
24 other natural vegetation shall remain undisturbed  
25 within this buffer.

1           If we state that, I would think that in order  
2           to go against what our Code says, they have to come  
3           before the Planning Board to get approval. Where am I  
4           going wrong on this?

5           MS. PHILLIPS: It's my understanding, as Chuck  
6           had mentioned a minute ago, there was part of the prior  
7           ZBA determination - that there was no additional  
8           approval or variance or waiver needed from that  
9           provision of the Zoning Law. My understanding was that  
10          determination was made sometime last year. If I'm  
11          incorrect on that - - I obviously don't have a lot of  
12          the direct history that a lot of you here do, maybe  
13          Lance can speak to it if I'm explaining that  
14          incorrectly -

15          CHAIRPERSON HEXT: Wasn't that previously  
16          disturbed - that 100-foot buffer had been previously  
17          disturbed, so it was grandfathered in not by Stewart's  
18          long, long, long ago whatever the first building was  
19          there - that disturbance was already within 100 feet of  
20          that stream.

21          MR. HUKEY: So, does that mean it can continue  
22          on, Deb? I see for that, but when it says all wooded and  
23          other natural vegetation shall remain undisturbed - -  
24          does that mean when they decide to expand that they are  
25          going to mutilate that area, too?

1                   CHAIRPERSON HEXT: I believe that's what the  
2                   Zoning Board agreed to and Lance or Chuck, correct me if  
3                   I'm wrong, but I think that was part of the April  
4                   agreement that there would be -

5                   MR. MARSHALL: Correct. This section of the  
6                   interpretation that Lance had made was not overturned by  
7                   the Zoning Board and therefore we were effectively  
8                   allowed to disturb or cut on this side of the fence with  
9                   the fence being the boundary line of disturbance.

10                  MR. HUKEY: Chuck, are you saying that you did  
11                  not cut any trees on the stream side of the fence?

12                  MR. MARSHALL: The one large tree that was  
13                  effectively dead - we did take one tree down, but did  
14                  not remove the stump to prevent the bank issue. So, all  
15                  the other trees that were felled were on the fence side  
16                  of the property.

17                  MR. HUKEY: Okay, I think that it's a good move  
18                  Deb that we did postpone what we were going to talk  
19                  about to the next meeting, so that we can find out what  
20                  the Zoning Board did rule on and how they worded it.

21                  CHAIRPERSON HEXT: Okay, we can do that. Make a  
22                  note of that.

23                  So, that being said, shall we make the  
24                  motion, then, to set the public hearing for Stewart's  
25                  to review a Stewart's application for a special use

1 permit and site plan approval? We will set the public  
2 hearing for April 27, 2020 at 7:00 p.m. Can somebody  
3 make a motion for that?

4 MR. HUKEY: So moved.

5 CHAIRPERSON HEXT: Second?

6 MS. MUHLFELDER: Second.

7 CHAIRPERSON HEXT: Second by Barb; thank you.

8 Ginger, roll call, please.

9 MS. HANNAH: Deb?

10 CHAIRPERSON HEXT: In favor.

11 MS. HANNAH: John?

12 MR. HUKEY: In favor.

13 MS. HANNAH: Barbara?

14 MS. MUHLFELDER: In favor.

15 MS. HANNAH: Steve?

16 MR. CARUSO: In favor.

17 MS. HANNAH: Connie?

18 MS. RUE: In favor.

19 MS. HANNAH: Thank you.

20 CHAIRPERSON HEXT: That being said, I think  
21 this concludes our first ever remote Planning Board  
22 Meeting. If everything goes as it is now and with the  
23 Governor extending the Covid19 restrictions, our next  
24 meeting will most definitely be remote as well - our  
25 April 27th meeting is what I am referring to. So, stay

1 tuned to the Village website. NIZLE will give direction  
2 on how to connect to the next meeting. That being said,  
3 can I have a motion to adjourn, please?

4 MS. MUHLFELDER: I'll make a motion to adjourn.

5 CHAIRPERSON HEXT: Second?

6 MS. RUE: This is Connie and I second it.

7 MS. HANNAH: Deb?

8 CHAIRPERSON HEXT: In favor.

9 MS. HANNAH: John?

10 MR. HUKEY: In favor.

11 MS. HANNAH: Barbara?

12 MS. MUHLFELDER: In favor.

13 MS. HANNAH: Steve?

14 MR. CARUSO: In favor.

15 MS. HANNAH: Connie?

16 MS. RUE: In favor.

17 MS. HANNAH: Okay, good to go.

18 CHAIRPERSON HEXT: Okay, great. Thank you,  
19 everyone. Thank you, everyone who joined from the  
20 public. Hopefully the next one will go a little bit more  
21 smoothly. I apologize if it was a little rough there for  
22 awhile. We'll get through it. Thank you.

23 (Whereas the above proceeding was concluded  
24 at 8:04 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 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