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6 NASSAU COUNTY LEGISLATURE

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8 RICHARD NICOLELLO

9 PRESIDING OFFICER

10

11 PLANNING, DEVELOPMENT AND

12 THE ENVIRONMENT COMMITTEE

13

14 LEGISLATOR LAURA SCHAEFER

15 CHAIR

16

17

18 Theodore Roosevelt Building

19 1550 Franklin Avenue

20 Mineola, New York

21

22

23 February 7, 2022

24 2:23 P.M.

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2 A P P E A R A N C E S:

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4 LEGISLATOR LAURA SCHAEFER

5 Chair

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7 LEGISLATOR TOM MCKEVITT

8 Vice Chair

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10 LEGISLATOR JOHN GIUFFRE

11

12 LEGISLATOR DENISE FORD

13

14 LEGISLATOR CARRIE SOLAGES

15 Ranking member

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17 LEGISLATOR ARNOLD DRUCKER

18

19 LEGISLATOR SIELA BYNOE

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2 LEGISLATOR SCHAEFER: Call the
3 Planning, Development and Environment
4 Committee to order and I will ask the clerk to
5 please call the roll.

6 MR. PULITZER: Thank you madam.
7 Legislator Arnold Drucker.

8 LEGISLATOR DRUCKER: Here.

9 MR. PULITZER: Legislator Siela
10 Bynoe.

11 LEGISLATOR BYNOE: Here.

12 MR. PULITZER: Ranking Member
13 Carrie Solages.

14 LEGISLATOR SOLAGES: Here.

15 MR. PULITZER: Legislator Denise
16 Ford.

17 LEGISLATOR FORD: Here.

18 MR. PULITZER: Legislator John
19 Giuffre.

20 LEGISLATOR GIUFFRE: Here.

21 MR. PULITZER: Vice-chairman
22 Thomas McKevitt.

23 LEGISLATOR MCKEVITT: Here.

24 MR. PULITZER: Chairwoman Laura
25 Schaefer.

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2 LEGISLATOR SCHAEFER: Here.

3 MR. PULITZER: We have a quorum
4 ma'am.

5 LEGISLATOR SCHAEFER: I believe
6 Legislator McKevitt is going to be recusing
7 himself from this item.

8 So, there is one item on the agenda
9 today which is clerk item 11-22. Clerk item
10 11-22 is a resolution to authorize the release
11 of the surety bond and escrow deposit covering
12 improvements on the map of Toretta Estates
13 situated in Farmingdale, Town of Oyster Bay,
14 County of Nassau, New York.

15 May I have a motion. Moved by
16 Legislator Ford. Seconded by Legislator
17 Giuffre. This item is before us. Mr.
18 Sallie.

19 MR. SALLIE: Good afternoon.
20 Sean Sallie, Nassau County Department of
21 Public Works.

22 This is an application for a
23 release of bond, a surety bond and escrow fee
24 for the subdivision map known as Toretta
25 Estates in the Village of Farmingdale. The

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2 proposed release includes a bond covering the
3 cost of public improvements in the amount of
4 \$503,285.32 and an escrow deposit also
5 covering public improvements in the amount of
6 \$17,627.38.

7 The application was first brought
8 before the Nassau County Planning Commission
9 for a recommendation to this legislature on
10 November 4, 2021. The county planning
11 commission recommended approval of the release
12 of bond and escrow after testimony and public
13 comment.

14 I'm prepared to answer any
15 questions that the legislature may have.

16 LEGISLATOR SCHAEFER: I'm just
17 going to start with the first question. Can
18 you tell me what public improvements are
19 covered by this?

20 MR. SALLIE: Sure. In this case
21 the public improvements I actually have the
22 bond estimate in my possession. This
23 particular single family subdivision the
24 bonded improvements included grading and
25 drainage in the public realm of the

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2 subdivision. Which included the cul-de-sac
3 which was slated for dedication to the Village
4 of Farmingdale. And also a retaining wall, a
5 single retaining wall spanning the rear of
6 several homes on the north side of the
7 subdivision. Paving for the cul-de-sac.
8 Sidewalks. Again, associated with the
9 cul-de-sac. Driveway aprons. Curb and
10 gutter. Again, part of the cul-de-sac. Storm
11 drains and dry wells. That's drainage
12 pertaining solely to the cul-de-sac. Sanitary
13 sewer infrastructure.

14 Diffusion well, dry well I already
15 mentioned for the roadway. The retaining wall
16 as I mentioned. Fencing, PVC fencing at the
17 western end of the subdivision. Street signs,
18 street lighting and survey monuments. Again,
19 within the public realm, within the public
20 right of way. Water supply, water mains and
21 sediment and erosion control measures. Hay
22 bales, silt fencing associated with the
23 construction phase of the project.

24 LEGISLATOR SCHAEFER: Thank you.
25 Can you also tell me if the county has

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2 received any complaints regarding this
3 project?

4 MR. SALLIE: We did receive
5 comments at the planning commission hearing
6 for the recommendation for release of surety
7 bond. We actually received four notifications
8 of opposition. One being from the neighbors
9 to the north of the subdivision, which lie
10 actually upgradient, and several other
11 neighbors in the immediate vicinity. Those
12 comments were read into the record at the
13 planning commission level.

14 LEGISLATOR SCHAEFER: Has there
15 been anything done in response to the
16 comments? The complaints?

17 MR. SALLIE: Sure. So, the
18 comments were, the majority of the comments
19 were from the neighbor to the north of the
20 subdivision involving potential slope
21 destabilization abutting the property to the
22 north and the subject subdivision. The county
23 Department of Public Works has a construction
24 inspector that's assigned to all subdivision
25 applications within the planning commission

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2 purview or jurisdiction.

3 So, an initial inspection report
4 was performed prior to the public meeting that
5 recommended the release of the bond in
6 escrow. At the meeting there were comments
7 again read into the record. Within the one
8 week between the hearing and the vote our
9 construction inspector met with the building
10 department, met with some of the neighbors and
11 went back out to the site to review the
12 comments and concluded and found that while
13 there are esthetic issues, garbage, silt
14 fencing that was not installed properly or
15 construction fencing I should say, they were
16 not germane to the public improvement bond
17 being held by the county planning commission.

18 A lot of the issues were under the
19 jurisdiction of the village. And again, a lot
20 were esthetic. The structural issues that
21 were pointed out around the retaining wall and
22 potential destabilization of the slope and
23 structural issues our construction inspector,
24 after consulting with the village and the
25 reports that the village had received, after

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2 consulting with the developer, after reviewing
3 the site, found that there were no issues with
4 the constructed public improvements and,
5 again, that the bond and escrow should be
6 released.

7 Our construction inspector did, in
8 speaking with the village, confirm that COs
9 have been issued for four of the homes on the
10 north side. Those homes abut the retaining --
11 or the retaining walls I should say are within
12 those building lots. And again, that grading,
13 everything, including the homes, are subject
14 to the jurisdiction of the building
15 department.

16 So, in issuing the COs our
17 construction inspector felt comfortable that,
18 again, that all of the proper reviews were
19 performed, the investigation was performed and
20 the work was done satisfactorily to both the
21 village requirements as well as the county's.

22 LEGISLATOR SCHAEFER: Does
23 anybody else have any other questions?
24 Legislator Ford.

25 LEGISLATOR FORD: Thank you

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2 Legislator Schaefer. You're saying that the
3 property is adjacent to homeowners. How many
4 homes were built in the Toretta construction
5 site?

6 MR. SALLIE: It's a ten lot
7 subdivision. Six homes have been built to
8 date. There is a -- just trying to pull out
9 the map here.

10 LEGISLATOR FORD: It looks like a
11 hilly area, correct? Is this basically a
12 hilly area because of the need for retaining
13 walls?

14 MR. SALLIE: Exactly legislator.
15 It slopes from north to south. So the north
16 side had to be held back by the retaining
17 walls. As part of the design, the initial
18 design that was approved by the planning
19 commission in the Village of Farmingdale and
20 the Town of Oyster Bay, the town line actually
21 cuts diagonally through the site. But there
22 was one retaining wall proposed and that
23 retaining wall was bonded under the county
24 bond and escrow.

25 During the course of construction,

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2 after consultation with the village as I
3 understand it, two additional retaining walls
4 were requested and were constructed at the
5 east, northeastern portion of the site. Those
6 were inspected by the village but they were
7 not covered under the county bond because,
8 again, they were initiated post subdivision
9 approval by the county.

10 LEGISLATOR FORD: So, the way
11 then it's designed is if the house is up
12 higher than an adjacent property that's been
13 there, a home that's been there, it doesn't
14 necessarily require a retaining wall?

15 MR. SALLIE: In this case it's
16 actually flipped. The existing homes on the
17 north are upgradient of the proposed
18 subdivision and the homes that are being built
19 directly to the south. So the retaining wall
20 is holding back that slope between the newly
21 created homes and the existing homes that are
22 at a higher elevation.

23 LEGISLATOR FORD: So, the
24 existing homes are higher elevation. Are
25 there retaining walls for all of the houses

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2 surrounding? Because what keeps you from
3 having erosion and flooding going in from a
4 higher house to a lower house?

5 MR. SALLIE: The retaining walls
6 there are three. They cover five of the six
7 homes on the north side and where that hill
8 is. What it basically does is it creates like
9 a stepping configuration so that the upper
10 level is essentially graded flat if you will
11 and there's the wall and then there's the new
12 property. All of that storm water that would
13 fall on the upgraded would need to be
14 maintained within that area.

15 LEGISLATOR FORD: But who put the
16 retaining wall in?

17 MR. SALLIE: The developer. The
18 retaining walls are on the new properties.

19 LEGISLATOR FORD: Then all the
20 fencing has been installed that is required?

21 MR. SALLIE: At the time of the
22 planning commission meeting -- there's an
23 estate fence that was promised by the
24 developer after discussing it with the
25 neighbors to the north. An estate fence to be

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2 constructed along the top of the retaining
3 wall.

4 At the time of the planning
5 commission release in November, the eastern
6 most section of that fence had yet to be
7 completed. My understanding, we spoke to the
8 developer last week, that that has been
9 completed and the estate fence that is within
10 or on top of the retaining wall. That was not
11 bonded as part of the county bond because it
12 was not discussed or designed during. The
13 county did bond a PVC fence that was installed
14 at the western side of the property. That was
15 more of an esthetic buffering.

16 LEGISLATOR FORD: So, all the
17 construction fencing is down? There's no
18 construction fencing anywhere?

19 MR. SALLIE: My understanding is
20 the northeast property, so, lot one, is under
21 construction. There's a foundation there
22 now. The developer did tell me and my staff
23 that the proper construction fencing had been
24 erected. And if it has not been that is a
25 town or in this case a village building

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2 jurisdiction. My understanding is they have
3 inspectors that drive by the site routinely
4 and if the property construction security and
5 safety measures are not being complied with
6 that there are remedies for that.

7 LEGISLATOR FORD: Considering
8 that Legislator Schaefer had asked about were
9 there any complaints from residents, I guess
10 people that live close to this or next to
11 this, and you said that there have been some
12 complaints from some of the neighbors who do
13 live adjacent. Has the construction company
14 met with these residents and satisfied all of
15 their complaints?

16 MR. SALLIE: From the testimony
17 that -- because this question was asked at the
18 planning commission meeting, and the testimony
19 reads yes, the developer did meet with the
20 neighbors during the construction -- I'm
21 sorry -- the subdivision design phase.
22 Because in this case the village also had to
23 approve the subdivision. It's one of these
24 cases where there's double subdivision map
25 jurisdiction.

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2 And then during the construction
3 there had been back and forth between the
4 neighbors, the developer, the village, and I
5 can't say that everybody's happy with how it's
6 been going but we didn't hear anything from
7 the village or our construction inspector that
8 the commission, the county planning commission
9 felt would warrant holding off on recommending
10 the bond release. I think things that are
11 typical of construction nuisances. That sort
12 of thing.

13 LEGISLATOR FORD: Let me just ask
14 what happens if we release the bond and then
15 we find out that there were neighbors with
16 legitimate concerns as to what happened? And
17 like trees were taken down or fences? Like
18 the fence maybe wasn't maybe put in proper or
19 whatever and we already released this bond.
20 How do we get this Toretta to go back and fix
21 everything?

22 MR. SALLIE: Unfortunately, that
23 happens in many of these cases. If trees were
24 cut down that shouldn't have been cut down, or
25 trees were destabilized or roots were cut and

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2 compromised the tree, unfortunately, it's not
3 a county planning commission public
4 improvement jurisdiction issue. It's really,
5 in this case, the Town of Oyster Bay and the
6 Village of Farmingdale. That's really the
7 remedy.

8 The retaining wall that's covered
9 by the county bond, if that was installed and
10 it was not structurally sound that would be
11 the county's jurisdiction to ensure that -- or
12 to not release the monies until that situation
13 was addressed. But in this case, again, if
14 there were trees that were cut down that maybe
15 shouldn't have been that would be the local
16 building jurisdiction.

17 LEGISLATOR FORD: Does the town
18 or the village do they have any surety bonds?
19 Are they holding anything at all or are we
20 just the ones holding any money?

21 MR. SALLIE: I don't know if they
22 hold bonds for like single-family housing
23 permit applications. I'm not sure.

24 LEGISLATOR FORD: Thank you.

25 LEGISLATOR SCHAEFER: Legislator

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2 Drucker.

3 LEGISLATOR DRUCKER: Thank you
4 madam chair. Hi Sean. How are you? I guess
5 we've all been presented with these photos.
6 Have you seen them?

7 MR. SALLIE: I have, yes.

8 LEGISLATOR DRUCKER: You keep
9 mentioning about a lot of the complaints were
10 of an esthetic nature. Do these photos look
11 like things that are of an esthetic nature?

12 MR. SALLIE: I think if there
13 are -- I see there were trees that looked to
14 be compromised or cut or limbs, because that's
15 not covered under -- the county planning
16 commission and its staff, its construction
17 inspectors do not oversee all aspects of a
18 subdivision application. The county is just
19 concerned with the public improvements covered
20 under the bond. Things of that nature would
21 really be the responsibility of local building
22 jurisdiction.

23 LEGISLATOR DRUCKER: I agree. I
24 understand that. You stated that the
25 potential for run-off erosion, instability

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2 affects five of the ten single-family homes.

3 Is that what you stated?

4 MR. SALLIE: The retaining walls
5 that were constructed cover five of the ten.

6 LEGISLATOR DRUCKER: So, then by
7 definition, Sean, does that not impact or is
8 relevant to the public improvement bond?
9 Because it's the public. It's five houses.
10 It does in a way affect the public that the
11 bond would cover. I just want to make sure
12 we're on the same wave length.

13 MR. SALLIE: Public improvement
14 we're talking physical improvements. Physical
15 infrastructure related improvements. In this
16 case, the designer at the time of engineering
17 the site found that in order to stabilize the
18 slope a retaining wall needed to be
19 constructed to hold back the hill to the north
20 and to allow for adequate storm water
21 management. That design was signed off by the
22 project engineer. Was signed off by the
23 department, by the village, by the town.

24 And so the infrastructure that was
25 put in place pursuant to the approved plans

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2 was done so, again, in accordance with the
3 design. That was signed off by the village,
4 the town and then the county. The type of
5 ground cover that they're planting whether
6 it's gravel, grass, patios, things of that
7 nature, that's not under the county.

8 LEGISLATOR DRUCKER: The pictures
9 that we're presented are a little disturbing.
10 Based on these photographs, I think my
11 colleagues on this committee will attest, it
12 looks more than esthetic.

13 My question though is, as far as
14 the bond, the county bond, are the only
15 requirements to fulfill the release of the
16 bond that you've conducted the public hearing
17 and you scheduled the inspection and you've
18 attended or remediated some of the concerns by
19 some of the homeowners, is that all that's
20 required? I'm just curious of what the
21 actually terms of the escrow agreement are
22 that would warrant the release of the bond?

23 MR. SALLIE: Again, in Nassau
24 we're sort of a unique county in New York
25 State. We're the local jurisdiction. The

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2 county has subdivision jurisdiction in this
3 case. The locals have the building
4 jurisdiction. So that the bonding -- the
5 escrow is actually just a percentage. I'm
6 sorry. If the public improvements total let's
7 say \$10,000, just a small portion of that is
8 held in cash escrow and the remainder in
9 bonds. That's the difference between the two
10 securities.

11 LEGISLATOR DRUCKER: I'm
12 concerned about the release of it though.
13 What are the requirements of the release of
14 it?

15 MR. SALLIE: In this case, a
16 retaining or a pavement or sidewalks or
17 drainage or sewer, the bond and the escrow is
18 to ensure that those infrastructure elements
19 are installed according to the plans,
20 according to the engineering plans, done so
21 correctly. In that case a positive
22 recommendation can be issued.

23 In a case where a developer may not
24 put in the pipe correctly or the asphalt
25 doesn't meet the specs, walks off the job,

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2 hey, I'm done, that cash escrow and bond is
3 met for the county to be able to go out and
4 procure a construction contractor to do the
5 job right. Thankfully that hasn't had to
6 occur in my tenure here. That's really the
7 purpose.

8 LEGISLATOR DRUCKER: I get you
9 can confidently say based on a September 17,
10 2021 final inspection Nassau County DPW is
11 satisfied with the existing situation there;
12 is that correct?

13 MR. SALLIE: Yes. And there was
14 actually a follow-up inspection by the same
15 county inspector on November 3rd. Or the
16 report was dated November 3rd. That
17 inspection took place after the planning
18 commission hearing on October 27th I believe
19 it was. Where the issues were discussed. The
20 commission asked our construction inspector to
21 go back out to the site. View based on the
22 photos we received. And he followed up with a
23 second report that again found that he did not
24 find any issues that would -- where he would
25 not recommend that the commission accept the

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2 release.

3 LEGISLATOR DRUCKER: I think we
4 have attorney Whelan is going to speak to us
5 and maybe after she speaks we might have more
6 follow-up questions Sean.

7 LEGISLATOR SCHAEFER: Let me ask
8 first before Ms. Whelan steps up, are there
9 any other legislators that have questions?
10 Legislator Bynoe you want to wait? Public
11 comment.

12 MS. WHELAN: I appreciate the
13 time that you're taking to listen to me, it's
14 my client's concern, and I have nothing but
15 respect for Mr. Sallie who I've worked with
16 for very many years.

17 My name is Janice Whelan. I'm an
18 attorney. My office is at 23 Green Street
19 Suite 302 in Huntington. I represent the
20 Lapidus family who resides immediately
21 abutting the subdivision. Here we have
22 Toretta lots one through six and our common
23 property line is about a 537 foot common
24 boundary. We sit below lot one. But the
25 topography sharply shifts to where we're

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2 almost 45 feet above Toretta lot six.

3 I respectfully disagree that the
4 retaining walls are retaining anything of
5 consequence. They are grossly insufficient.
6 Some of the pictures that I show you today
7 show estate fencing between -- that sits maybe
8 a little bit below our berm, where you can see
9 our property is coming over the base of the
10 estate fencing. So, we don't have a potential
11 for erosion we have actually ongoing erosion.

12 Our property has over 500 feet of
13 berm and there were 100 year old mature
14 trees. I submitted to you 21 photographs that
15 show trees leaning into the Toretta property.
16 I'm an applicant's attorney. I don't
17 generally oppose applications. I'm on the
18 development side. But here, when this client
19 asked me to come take a look at his property,
20 I'm not an engineer, but I could see to the
21 naked eye that the retaining walls are not
22 retaining anything of consequence. There's
23 not a potential for runoff there is runoff.
24 We don't have an esthetic issue.

25 We could live with what's happening

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2 with construction, but if everything's done
3 and everyone's going to walk away, we're
4 losing property and the constituents who are
5 living in lots or going to be living in lots
6 one through six are going to be receiving our
7 property.

8 Mr. Lapidus would be appearing with
9 me today because he's lived with this for
10 three years. Unfortunately, he lost his
11 father early this morning. I told him that I
12 would advocate for him.

13 It's a common sense land
14 development principle that many off-site
15 improvements shouldn't destabilize the
16 property of an adjoining property owner. The
17 right of lateral support is a common law and
18 common sense land planning principle embodying
19 the principle that a property owner has the
20 right to their soil in its natural condition
21 without being caused to fall away by
22 excavation and improvement of an abutting
23 property owner.

24 And if a property owner, here my
25 client's land, that adjacent property owner

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2 who did the excavation should be strictly
3 liable to put that property back in
4 condition. Listen, trees were removed.
5 They're gone. But what we're concerned about
6 is the further erosion of our property. I
7 showed you pictures where you could look
8 straight down.

9 I think engineers tell me that a
10 three on one pitch is something that should
11 be, you know, looked for. I can't find any
12 pitch requirements either in the Village of
13 Farmingdale or the Town of Oyster Bay.

14 Now, I know what I'm asking you to
15 do is look at the larger picture. And I
16 understand that Mr. Sallie said everything
17 that was done was done and it was inspected.
18 But the practical effect is that we've got my
19 client's property and trees leaning towards
20 the Toretta property. It's just not right.
21 Everybody should drain on their own property.
22 Everybody should stabilize their own
23 property. None of this happened before the
24 excavation and all of it has happened since
25 the excavation.

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2 I grew up in the area. I didn't
3 know that there was such steeply sloped
4 properties in Farmingdale. But you can see, I
5 believe it's my first picture, the excavation
6 it's over 25 feet. And what we've been left
7 with is something that we're just begging that
8 somebody take a look at this and not say it's
9 not us, it's not us. It's somebody.

10 We're going to have constituents
11 that are very unhappy. Not the least of which
12 is my client because he's losing trees and
13 property.

14 I understand that this board has
15 limited jurisdiction. I understand that
16 you're just looking at was this installed and
17 was it signed off on. I think the pictures
18 show a lot. I would welcome an inspection
19 where we could -- we want to work with the
20 developer. We want to be good neighbors. But
21 we don't want to have our property and our
22 trees slide into a beautiful subdivision.
23 Nobody is going to be happy about it.

24 Again, I welcome the opportunity to
25 meet with the legislators, any committee

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2 members and the developer. Thank you.

3 LEGISLATOR SCHAEFER: Thank you.

4 I have a question before you go Mr. Sallie.

5 There were four retaining walls; is that
6 correct?

7 MR. SALLIE: Three.

8 LEGISLATOR SCHAEFER: Is the one
9 that's impacting the property that Ms. Whelan
10 here is representing is that covered under the
11 bond?

12 MR. SALLIE: I believe it is.

13 MS. WHELAN: It's not one Toretta
14 lot, it's six Toretta lots. Again, the first
15 lot in our corner, the furthest away from
16 Merritts Road, actually sits at a higher grade
17 than us. Then all of a sudden it shifts where
18 we're 45 feet above them. We got the first
19 lot right by Merritts Road. The only thing
20 preventing somebody from falling off that
21 precipice is an orange construction fence. A
22 guardrail is not going to retain earth. I
23 just think that -- I understand that your time
24 is very precious and limited but this worth a
25 look.

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2 LEGISLATOR SCHAEFER: Legislator
3 Bynoe, did you have questions first? And then
4 Legislator Drucker.

5 LEGISLATOR BYNOE: I have
6 questions for you Mr. Sallie. Forgive me if
7 I'm having you restate something but the
8 intended purpose of the retaining wall was
9 exactly what? It wasn't esthetics. It wasn't
10 for the benefit of noise barrier. What was
11 the intended?

12 MR. SALLIE: Because the land
13 slopes generally north to south, in order to
14 create a lot suitable for building, in this
15 case to create a level lot, they needed to
16 essentially cut into the slope and hold that
17 slope back by way of a retaining wall.

18 LEGISLATOR BYNOE: What test
19 would the county undertake to ensure that that
20 retaining wall was actually living out the
21 purpose?

22 MR. SALLIE: In most cases it's a
23 visual inspection. Are there cracks? Are
24 there other visual issues with the wall that
25 would indicate that it wasn't built properly?

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2 It's subject to failure.

3 Also, in this case, the wall was
4 permitted by the town and village building
5 departments as part of their building
6 jurisdiction. So, the local inspectors were
7 also on the site, as I understand, inspecting
8 against that permit.

9 I'm not sure if they do more of a
10 deeper dive in terms of the inspection.
11 Whether they take core samples. Inspect while
12 the soil is being excavated and prior to the
13 wall being put in place. I don't know how the
14 village inspects this type of thing. The
15 county would not issue a permit for this type
16 of improvement. It's out of our jurisdiction.

17 LEGISLATOR BYNOE: But it is
18 considered a public improvement, am I
19 correct?

20 MR. SALLIE: It is. Because the
21 way the subdivision law is the towns would not
22 bond the public improvement. So, if anything
23 happened to go wrong the county would be the
24 one to come in and save the day in terms of
25 paying for the, in this case, the retaining

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2 wall to be built correctly.

3 The call to say in this case this
4 wall was not constructed properly, it's got
5 issues, would really be the local building
6 department. Both of these lots were CO'd and
7 are sold and are occupied. So, you know.

8 LEGISLATOR BYNOE: Would it make
9 sense, given the fact that they are the entity
10 that would be charged with making those
11 determinations but we're, in fact, then, you
12 know, we would actually, what's the word I
13 want to say, we would actually have to, as a
14 guarantor so to speak, we would have to then
15 be responsible for any remedying in the event
16 that it wasn't. Shouldn't we at least have
17 copies of those reports given the magnitude of
18 these allegations or assertions?

19 MR. SALLIE: We do have copies of
20 the COs. We can certainly ask the village for
21 copies of their inspection reports. However
22 they do their inspection documentation.

23 LEGISLATOR BYNOE: I think given
24 the level of these assertions and some of the
25 pictures, the illustrations we have, that

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2 really kind of has us asking, having more
3 questions than answers. I think the benefit
4 of us having reviewed those things would
5 really put my heart and mind at rest. At
6 least that we have some firm belief and some
7 assertions from the local municipality that
8 they did everything that is required to be
9 able to tell us, provide some record to this
10 body that they did the necessary inspections.
11 I think that's warranted at this time.

12 MR. SALLIE: We can certainly
13 reach out.

14 LEGISLATOR BYNOE: I would
15 consider asking this body to consider tabling
16 until we at least have those reports.

17 LEGISLATOR DRUCKER: Can I ask
18 Ms. Whelan a question? So, I think you have
19 really presented a very clear and convincing
20 case on behalf of the Lapiduses as to damages
21 and causes of action for various violations of
22 either code or construction, really with
23 consequential damages to your client. But our
24 jurisdiction is limited to determining whether
25 or not the complaints, the allegations made

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2 relate to the bond. The public bond which is
3 held for insuring that the public improvement
4 is done directly.

5 So, your claim, and you've done it
6 very well, really supports a very clear case
7 on behalf of the Lapiduses. But how does it
8 present a clear and convincing case for the
9 public at large?

10 MS. WHELAN: I would submit that
11 the public improvement encompasses the
12 grading. The grading has not been done in any
13 meaningful manner. The grading is actually
14 grading down towards the Toretta properties.
15 So if grading wasn't done sufficiently, and
16 you can see in the pictures that the earth is
17 moving down, the trees are tilting down, then
18 it is part of the public improvement.

19 LEGISLATOR DRUCKER: But we're
20 not seeing complaints from anyone else except
21 Lapidus.

22 MS. WHELAN: I disagree. I don't
23 represent anybody else on that Merritts Road
24 flag lot but I believe that those people have
25 in fact complained and Mr. Alex Lapidus is the

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2 most significantly affected because his
3 property goes for that whole 537 feet.

4 LEGISLATOR DRUCKER: I understand
5 that. But if five of the ten lots are
6 impacted by this faulty construction and
7 development it would give us more of a basis
8 to withhold our consent to the release of the
9 bond if we heard from them echoing the same
10 complaint rather than just one homeowner.

11 MS. WHELAN: I would submit to
12 you that every piece of property is
13 different. Lapiduses own this whole strip.
14 These homeowners have a road abutting between
15 their property and the berm that we own. So,
16 they're not losing property. We are not
17 similarly situated to them. We don't have the
18 benefit of a buffer road in between. Maybe at
19 some point that road is going to start
20 eroding. But right now we are the most
21 significantly impacted.

22 LEGISLATOR DRUCKER: But again,
23 you're losing property, so you have cause of
24 action and a claim on behalf of Lapidus.
25 Clearly you should bring your case to court

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2 and recover damages.

3 MS. WHELAN: Unfortunately, the
4 case law is not that simple. The case law --
5 and we've already researched that -- indicates
6 that you already have to have suffer the loss
7 of your property before you have a viable
8 cause of action.

9 How can we continue to like give
10 certificates, give approvals when -- it just
11 goes against any theory of lateral support.

12 LEGISLATOR DRUCKER: I don't
13 disagree. But again, as Mr. Sallie said,
14 that's the Town of Oyster Bay and the Village
15 of Farmingdale. They're the ones who issued
16 the COs and the permits.

17 MS. WHELAN: I come to you
18 because Mr. Lapidus is a constituent. These
19 homeowners are constituents. These are
20 constituents. I would respectfully request
21 that the release of this bond be tabled until
22 I have an opportunity to meet with the
23 legislators in this area so they can take a
24 look at it. I'm not the greatest photographer
25 in the world but I think those photographs

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2 show some pretty damning proof.

3 LEGISLATOR DRUCKER: The
4 photographs are dated 2019.

5 MS. WHELAN: Some of them are. I
6 took many of them in late 2021. I would also
7 submit that when I appeared before the Nassau
8 County Planning Commission on Zoom they did
9 not see all my pictures. They saw maybe one
10 or two.

11 So, I'm here begging that somebody
12 not to say it's somebody else. Because if
13 somebody gets hurt or one of these 100 year
14 old trees fall into these beautiful new homes
15 everyone's going to say why was this just
16 pushed along? Why was it just moved down?
17 It's not us. It's somebody.

18 We had support. We never had
19 erosion or destabilization. Now we do. The
20 only thing that's changed is the excavation
21 that took place.

22 LEGISLATOR DRUCKER: One other
23 thing I was going to say is that -- I forgot
24 what I was going to say.

25 LEGISLATOR SCHAEFER: Thanks.

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2 Legislator Giuffre do you have a question?

3 LEGISLATOR GIUFFRE: Thank you
4 chairwoman and legislators. Mr. Sallie, did I
5 hear you right if there's a problem with the
6 retaining wall the county's got to pay to fix
7 it?

8 MR. SALLIE: Not necessarily.
9 Let's give an example. The wall goes for sign
10 off by the local building department. It
11 fails sign off and the developer walks. I did
12 it correctly. I'm out. The county can then
13 come in, pull the bond and pay to have the
14 wall, you know, redone and redone correctly.

15 LEGISLATOR GIUFFRE: And they can
16 claim on the bond and collect the money; is
17 that right?

18 MR. SALLIE: Yes. But also have
19 it rebuilt correctly. Address the remedy.

20 LEGISLATOR GIUFFRE: Ms. Whelan,
21 is it your contention that the retaining wall
22 was not built correctly?

23 MS. WHELAN: It couldn't have
24 been. If it were built correctly I wouldn't
25 be standing here. We can see photographic

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2 proof of estate fencing where there is land
3 above the base. So it's obviously the
4 retaining wall is not doing it's job. I want
5 to be very clear. There's not a retaining
6 wall that goes for 537 feet. There's some
7 retaining walls hither and yon. But it's not
8 the whole length. That's why I think a visual
9 inspection would probably give you a better
10 idea than my words.

11 LEGISLATOR GIUFFRE: What was the
12 developer's response to your complaint? What
13 you just said to me now and you pointed that
14 out to the developer what was the response?

15 MS. WHELAN: I never received an
16 answer.

17 LEGISLATOR GIUFFRE: I think you
18 got your answer.

19 LEGISLATOR DRUCKER: Madam Chair,
20 just one quick question.

21 LEGISLATOR SCHAEFER: Legislator
22 Drucker.

23 LEGISLATOR DRUCKER: Based on all
24 of the testimony here, perhaps we would all be
25 better served with an opinion from our county

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2 attorney on whether or not the allegations
3 made do impact on the public improvement bond
4 for the purpose that it's being held. Maybe
5 we need some opinion on whether or not it
6 rises to that level or is it an individual
7 grievance or is it something that really
8 impacts the public safety, the public good.
9 Which we, as legislators, have to approve the
10 release of the bond. Maybe we should get an
11 opinion.

12 LEGISLATOR SCHAEFER: Okay. It's
13 an idea. Legislator Ford.

14 LEGISLATOR FORD: Sean, I just
15 have a question. Who determined the height of
16 the retaining wall and the length of the
17 retaining wall? Was that done by the county
18 or was that done by the village?

19 MR. SALLIE: No, actually the
20 designer, the engineer of record for the
21 developer during the design of the subdivision
22 while it was going through the approvals
23 process.

24 LEGISLATOR FORD: So, it was up
25 to the developer to determine the height of

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2 the retaining wall and our sole purpose then
3 would be to say that it was a sound retaining
4 wall. We ourselves don't look at the possible
5 impact if you have a retaining wall that would
6 be six feet high but yet the property extends
7 above it by eight feet?

8 MR. SALLIE: We would look at
9 it -- so, when the subdivision was going
10 through the approval process the wall was
11 proposed. The engineer of record looked at
12 the property and said in order to make this
13 work we're going to need a retaining wall.
14 The county, particularly the Department of
15 Public Works, would look at it through the
16 lens of will this prevent storm water from
17 running off this site? Will it do the job of
18 keeping the run-off at bay?

19 The town and the village building
20 departments would review it for structural
21 integrity. Just like they would review the
22 building or the home for structural purposes.
23 The county would not necessarily, because it's
24 within the two private property lots, we would
25 not necessarily do a full engineering review

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2 on whether or not it's structurally sound
3 design. That would be the responsibility of
4 the building Department. The local building
5 department.

6 LEGISLATOR FORD: It would be the
7 jurisdiction of like either the village or the
8 town, I don't know who has the building
9 department that gives -- so, then who then,
10 because I know that Legislator Drucker brings
11 up an important point because we're releasing
12 this for the benefit of the public, the public
13 plan. But I don't remember like if the public
14 is determined as 100 people or it's just one
15 person. And it seems to me that the one
16 public person that has a property adjacent to
17 this has some serious issues. And I think
18 that myself, I would like to see this resolved
19 before we allow the release of any monies
20 because I am concerned.

21 Only because if the land went off
22 or even if the trees, like if they're leaning
23 over, I think that we have to allow some time
24 for those who would like to go take a look at
25 this, I think it's only fair. You do a great

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2 job. We're not questioning you. But I think
3 that this has raised some concerns. I know
4 for me it has. But thank you.

5 MR. SALLIE: Understood. Just to
6 even make a point about the photos, if they
7 were taken prior to the wall being erected or
8 during the wall being constructed, the
9 construction activity, unfortunately trees are
10 felled or taken down, that is different than
11 the wall being fully constructed, you taking a
12 picture and the land slumping even with the
13 retaining wall in place. That's two different
14 issues there.

15 I would imagine that the building
16 departments take this very seriously because
17 it's not only preserving or maintaining the
18 upland property but God forbid that slope were
19 to fail it's going to take out properties to
20 the south. So it's not only the Lapidus's
21 property but also the newly constructed lots.

22 LEGISLATOR FORD: If seems like
23 it slopes somehow or another -- I'm jealous, I
24 live in a beach community. I don't know
25 anything about hills. But the way you

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2 describe it is like I guess the family has the
3 higher one side and down on the other. It is
4 a concern. I think that some people would
5 like to take a look at this. Not that we're
6 engineers.

7 MS. WHELAN: I want to draw a
8 distinction between -- I'm sure that
9 Mr. Sallie's office inspected and it's
10 structurally sound. But structurally sound is
11 distinct from doing its job. It's not just
12 the soundness of the wall. I'm sure the wall
13 is fine. It's just not retaining the earth
14 it's supposed to.

15 I consulted with a civil engineer.
16 He said he couldn't find anything in the
17 Village of Farmingdale or Town of Oyster Bay
18 zoning code that talked about pitch. We
19 should know what the allowable pitch is.
20 Because at some point pitch is not going to be
21 able to be retained by a wall no matter how
22 structurally sound it is.

23 I would, just to confirm, with the
24 exception of the first photograph, all of the
25 pictures I submitted were taken right before

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2 the planning commission hearing. Obviously
3 the excavation photograph was taken years
4 ago. But all of the others were conditions
5 that existed at the time that I was making my
6 pitch to the Nassau County Planning
7 Commission.

8 LEGISLATOR GIUFFRE: When was
9 that?

10 MS. WHELAN: I believe just in
11 the fall of last year. In November.

12 LEGISLATOR GIUFFRE: Thank you.

13 MS. WHELAN: I will be in touch
14 with Ms. Walker's office and I thank you very
15 much for listening to me today.

16 LEGISLATOR SCHAEFER: Mr. Sallie,
17 I just have a quick question and then we are,
18 I think, we are going to move to table this.
19 You mentioned before we know the local
20 jurisdictions would have to be the ones to
21 sign off on it. This was not yet signed off
22 on by them or it was?

23 MR. SALLIE: This was. The wall
24 yes. The road was signed off by the village
25 and the town and then the road is actually to

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2 be dedicated to the village. They have, the
3 village and the developer, have an agreement.
4 It has not yet been formally dedicated but the
5 village indicated to the planning commission
6 that it did not object to the road being -- or
7 the bond being released as the road will be
8 dedicated to the village.

9 LEGISLATOR SCHAEFER: Okay. I'd
10 like to get those inspection reports that we
11 talked about earlier and if anybody,
12 Legislator Drucker, wants to see the county
13 attorney's opinion go right ahead and do that
14 and anything else anybody else has we'll make
15 a request to you.

16 I know there are discrepancies
17 between what's signed off on and what it means
18 to sign off on the wall being structurally
19 sound. But there's just a lot of questions
20 here and obviously it's potentially a public
21 safety issue. So, I think we're going to move
22 to table. Can I have a motion to table?
23 Legislator Giuffre. Seconded by Legislator
24 Drucker. All in favor signify by saying aye.

25 Thank you Mr. Sallie.

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2 There's no other business before
3 this committee. Can I have a motion to
4 adjourn? So moved by Legislator Drucker.
5 Seconded by Legislator Ford. Planning
6 Development and the Environment is now
7 adjourned. The next committee is Public
8 Works.

9 (Committee adjourned at 3:11 p.m.)

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CERTIFICATION

I, FRANK GRAY, a Notary
Public in and for the State of New
York, do hereby certify:

THAT the foregoing is a true and
accurate transcript of my stenographic
notes.

IN WITNESS WHEREOF, I have
hereunto set my hand this tenth day of
February 2022.

FRANK GRAY