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6 NASSAU COUNTY LEGISLATURE

7

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 April 11, 2022

24 4:20 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 ROSE WALKER

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9     LEGISLATOR JOHN GIUFFRE

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11    LEGISLATOR DENISE FORD

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13    LEGISLATOR CARRIE SOLAGES

14                     Ranking member

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16    LEGISLATOR ARNOLD DRUCKER

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18    LEGISLATOR SEILA BYNOE

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2 LEGISLATOR WALKER: I'd like to  
3 call the Planning, Development and  
4 Environmental Committee to order and ask the  
5 clerk to please take the roll.

6 MR. PULITZER: Thank you madam.  
7 Planning, Development and Environment roll  
8 call. Legislator Arnold Drucker.

9 LEGISLATOR DRUCKER: Here.

10 MR. PULITZER: Legislator Siela  
11 Bynoe.

12 LEGISLATOR BYNOE: Here.

13 MR. PULITZER: Ranking member  
14 Carrie Solages.

15 LEGISLATOR SOLAGES: Here.

16 MR. PULITZER: Legislator Denise  
17 Ford.

18 LEGISLATOR FORD: Here.

19 MR. PULITZER: Legislator John  
20 Giuffre.

21 LEGISLATOR GIUFFRE: Here.

22 MR. PULITZER: Substituting for  
23 Thomas McKeivitt and the temporary chair Ms.  
24 Rose Walker.

25 LEGISLATOR WALKER: Here.

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2 MR. PULITZER: And Laura  
3 Schaefer.

4 LEGISLATOR SCHAEFER: Here.

5 MR. PULITZER: Thank you. We  
6 have a quorum.

7 LEGISLATOR WALKER: Thank you. I  
8 need a motion. May I have a motion to untable  
9 this item. By Legislator Ford. Seconded by  
10 Legislator Drucker. All in favor of untabling  
11 signify by saying aye. Any nays? It's  
12 untabled.

13 There is one item on the agenda  
14 today. It is a resolution. It's clerk item  
15 11-22. A resolution to authorize the release  
16 of the surety bond and escrow deposit covering  
17 the improvements on the map of Toretta Estates  
18 situated in Farmingdale, Town of Oyster Bay,  
19 county of Nassau, New York. This item is  
20 before us. And I'm not sure who is --

21 MR. SALLIE: Thank you  
22 legislator. Sean Sallie, Nassau County  
23 Department of Public Works. Sean Sallie,  
24 Nassau County Department of Public Works.

25 Since the initial meeting on this

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2     matter we did perform a site visit at the  
3     development. The neighbor participated along  
4     with his counsel. We had the developer. We  
5     had a representative from the Town of Oyster  
6     Bay building department, myself and some of my  
7     staff from public works, planning. We did a  
8     walk-through. We walked along the neighbor's  
9     property line. We walked within the  
10    development, and we had a very thorough  
11    conversation about the issues and whether or  
12    not the proposed retaining wall in particular  
13    was constructed in compliance with all  
14    applicable engineering standards.

15                   The concern that the neighbor  
16    brought up during the site visit was at the  
17    edge of his property, which abuts the  
18    neighboring subdivision, there's a grade. The  
19    Town of Oyster Bay building department  
20    representative confirmed that that grade or  
21    that slope conformed to the plans and to  
22    acceptable engineering standards.

23                   The neighbor asked the developer if  
24    he could seed the slope. The developer  
25    responded back via email several days later

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2       that he did not have a problem with that  
3       because the gentleman's property or, I'm  
4       sorry, the developer's fence there's some  
5       space between the fence and the neighbor's  
6       property. So, essentially the neighbor would  
7       be encroaching onto the developer's property  
8       to seed, to grass. Again, the developer did  
9       not have an issue with that. Put that in  
10      writing via email.

11                  Again, the Town of Oyster Bay  
12      building department representative was adamant  
13      that, again, multiple inspections had taken  
14      place during the construction and a  
15      certificate of completion was issued for the  
16      portion of the wall and the wall that's within  
17      the Town of Oyster Bay.

18                  Now, there's a portion of the wall  
19      that's in the Incorporated Village of  
20      Farmingdale. We had several conversations  
21      with the village afterwards. The village said  
22      they are just awaiting punchlist items to be  
23      completed by the developer. Those punchlist  
24      items are minor and they pertain to grass  
25      seeding around the retaining wall and some

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2   minor grading, final grades.

3                   The developer did supply us, the  
4   department, with a letter from Ravco  
5   Engineering that basically certified that the  
6   wall was constructed in accordance with all  
7   specifications. We provided that to the  
8   village that -- the letter was actually  
9   addressed to the village but we wanted to make  
10   sure and confer with the village directly to  
11   see if they accepted that finding. They  
12   responded via email that they do and that,  
13   again, they are holding the certificate of  
14   completion pending the completion of the  
15   seeding. Which will happen very shortly of  
16   course now that we're in the spring months.

17                  So, again, I think we're confident  
18   now that we have the certificate of completion  
19   from the town. The engineering report  
20   addressed to the village for Farmingdale and,  
21   again, the testimony of the discussion that we  
22   had during the site visit particularly by the  
23   Oyster Bay building department.

24                  That's basically a summary of what  
25   transpired since our initial legislative

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2 hearing, meeting and the planning commission  
3 stands by its recommendation to release the  
4 bond in escrow.

5 LEGISLATOR WALKER: I don't know  
6 if Legislator Schaefer wants to say anything.  
7 I know Legislator Schaefer also did attend  
8 that walk-through with you. Did you want to  
9 add anything Legislator Schaefer?

10 LEGISLATOR SCHAEFER: No. I'm  
11 happy to hear that they have, the village has  
12 signed off and everything. To my knowledge,  
13 the neighbor, the issues that were raised have  
14 been satisfied.

15 LEGISLATOR WALKER: And although  
16 I -- actually today I'm subbing on this  
17 committee for Legislator McKeivitt -- but since  
18 this does lie in my district I also went over  
19 and I spoke to Mr. Sallie about it to reassure  
20 that I did go look at the site. I know they  
21 also spoke about possibly maybe some shrubs or  
22 whatever. Are those going to be planted or  
23 just the grass?

24 MR. SALLIE: Yes. My  
25 understanding is it's some minor landscaping



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2 treatment along with the grass seeding.

3 LEGISLATOR WALKER: Which  
4 obviously couldn't take place at that time  
5 because it was too cold and you wouldn't be  
6 planting at that time.

7 Legislator Drucker.

8 LEGISLATOR DRUCKER: Thank you  
9 madam chair. Sean, thank you. My question  
10 is, what has changed since we were here a  
11 couple of months back and the neighbor, the  
12 homeowner, was here, their attorney was here  
13 voicing substantial objections to the  
14 situation? Since nothing has changed what has  
15 assuaged them to be satisfied now?

16 MR. SALLIE: I think the site  
17 visit helped. Having the professionals,  
18 engineering professionals at that meeting. I  
19 think the neighbor felt a little bit more  
20 comfortable. I think his concern was that his  
21 rear yard would slump into the development.  
22 And I think having in particular the Town of  
23 Oyster Bay building department representative  
24 state the way that the grading tapers from his  
25 property line into the development it's

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2 acceptable and that it's sufficient with the  
3 wall to hold his property back. Which is what  
4 the wall is intended to do.

5 So, I think he's always going to  
6 have some concerns and I understand. He's a  
7 neighbor of a ten lot subdivision that has  
8 undergone some change. But since the initial  
9 legislative meeting we received a letter or a  
10 certificate of completion from the town and  
11 then the letter from the engineering firm to  
12 the village. So, I think having that  
13 information in hand, again, we feel even more  
14 confident that the requirements that were  
15 pursuant to the bond were met.

16 LEGISLATOR DRUCKER: I have  
17 absolutely no reason to dispute or doubt what  
18 the Town of Oyster Bay is saying and what your  
19 office is saying. I really don't. But I'm  
20 just surprised. I mean, this homeowner had  
21 her attorney here threatening litigation and  
22 it seemed like it was a problem that was going  
23 to require some substantial alterations to  
24 satisfy that grading concern. But if they're  
25 satisfied now and you're representing that the

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2 neighbor is satisfied I'm okay with it. I'm  
3 just curious as to what changed over the past  
4 few months and I guess people saw the light in  
5 some ways or recognized that things are  
6 satisfactory.

7 MR. SALLIE: Legislator, I did  
8 have a conversation with the neighbor's  
9 attorney on Friday just letting her know that  
10 the matter may be untabled today so she was  
11 free to come down.

12 LEGISLATOR WALKER: And actually  
13 I do have Mr. Lapidus. Yes, the resident is  
14 here. I also just wanted to add my concern  
15 too certainly was with his property, with  
16 Mr. Lapidus' property but I also thought new  
17 homeowners aren't going to want to have dirt  
18 falling into their new property either. Do  
19 any of the other legislators have anything to  
20 add?

21 LEGISLATOR DRUCKER: I would just  
22 like to ask if Mr. Lapidus wants to say a few  
23 words.

24 LEGISLATOR WALKER: I have a  
25 slip. I was just waiting for the other

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2 legislators. Anyone else have anything to  
3 say? Then we do have one speaker and that is  
4 the homeowner, Mr. Lapidus.

5 MR. LAPIDUS: Thank you so much  
6 for hearing me. When I was here February 28th  
7 I gave you seven pictures. One picture  
8 depicted land destruction. Second picture  
9 depicted land destruction and land  
10 construction. The third picture that I did  
11 not mention the construction company was  
12 required to install a shearing wall along the  
13 property line to prevent off site  
14 disturbance. Which was never done. Which is  
15 part of their plans.

16 I received today from my lawyer  
17 that Mr. Sean sent a report from Ravco  
18 Engineering from June 2021 and it does not  
19 address any of my concerns which is land  
20 stabilization and land erosion. They don't  
21 even address the second tier retaining wall  
22 that is there. If you look at the engineering  
23 report it only mentions the original retaining  
24 wall which I fought for for them to put up a  
25 second wall because my land is eroding.

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2 They also installed an estate fence  
3 less than nine months ago. If you look at it  
4 now the estate fence 40 feet wide and over a  
5 foot deep has been covered with landslide.  
6 It's no longer visible and it's coming off my  
7 property. I've asked the same thing I asked  
8 from August, to separate me -- oh, yes, and  
9 another thing was never addressed, land  
10 stabilization. My land being stable after  
11 this major construction and the water runoff.  
12 This engineer report does not address the  
13 second tier wall, land stabilization and water  
14 runoff.

15 On top of that, Jim Whelan from  
16 Town of Oyster Bay code enforcement told me  
17 that the Town of Oyster Bay is planning to  
18 file violations against my property for water  
19 runoff and land erosion from my property onto  
20 the adjacent property, Toretta Estate.

21 Just to show you that I'm telling  
22 you the truth, Town of Oyster Bay took me to  
23 court for over 26 months. Sued me for illegal  
24 construction, water runoff, regrading, so on  
25 and so forth. Just to have the case dismissed

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2 with prejudice. And that was done only  
3 because they told me stop complaining about  
4 the construction or we will file charges.  
5 Which they did.

6 And on the inspection date of  
7 February 14th Jim Whelan also attended, took  
8 me off to the side of the property and told me  
9 we're going to file charges against you for  
10 water runoff and land.

11 So, the only thing I'm asking is, I  
12 have now six new neighbors and my property has  
13 been regraded, dug up. This is I think like a  
14 \$9 million property. I cannot afford to be in  
15 this position that the Town of Oyster Bay  
16 building department code enforcement, I mean,  
17 all I want is a piece of letter that says  
18 Alex, your water flow is fine. Your land is  
19 stable. But I cannot get this letter. All I  
20 get from the Town of Oyster Bay from the  
21 highest people, from the commissioner on down,  
22 from the prosecutor's office has shaken me  
23 down, has sued me, has threatened me. Don't  
24 take my word for it. I had two different  
25 counsels representing me and they quit on me.

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2 They said Alex we can't help you. He's very  
3 well connected. You're on your own. I fired  
4 another lawyer, Jim Whelan, who was here the  
5 first time.

6 The only thing I want is my land to  
7 be stable. I don't want no water runoff into  
8 the adjacent property. I don't want no  
9 landslide. As far as I can see, if you go to  
10 the property there's water runoff everywhere.  
11 It was never there. I have been there for 22  
12 years.

13 And that's all I ask for. Alex,  
14 your property is in good shape. You don't  
15 have to worry about it again from Town of  
16 Oyster Bay suing you. Taking you to court.

17 I mean, it's obvious to me, I'm not  
18 an engineer, but I see the water runoff.  
19 Estate fence is now covered with the landslide  
20 and I have no defense. It's there. I can see  
21 the landslide. I can see it. But it was  
22 never there until the pictures. I have over  
23 400 pictures. I filed over three dozen  
24 complaints. That's just Town of Oyster Bay.  
25 I also filed the same thing with the Village

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2   of Farmingdale. Village of Farmingdale told  
3   me go get a lawyer.

4                   This has been going on for four  
5   years and I still cannot get a piece of paper  
6   that says Alex, your land was not disturbed.  
7   It was not regraded. It's fine. Go live your  
8   business.

9                   I do a lot of yard work. For the  
10   last four years I couldn't do it. Just to  
11   show what's going on. That's all I want. I  
12   want my land to be stable. I want to be  
13   separated from my neighbors. They have been  
14   nothing but a headache to me. Don't take my  
15   word for it. Five of my neighbors were  
16   flooded. All of my neighbor's had their  
17   estate fence washed away.

18                  To this date, none of the  
19   complaints that my neighbors made have been  
20   met. But I'm here now for myself. But I'd be  
21   more than happy to get my neighbors here. All  
22   I want is a piece of paper that there's no  
23   land erosion. Your land is stable. And the  
24   report. Thank you for the time.

25                  And the report from engineering,



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2 Ravco Engineering, doesn't address any of  
3 those things. They don't even address the  
4 second tier retaining wall that is there.  
5 They're just addressing the bottom retaining  
6 wall. I fought for the second retaining  
7 wall. Which I asked specifically to be along  
8 the property line to separate me. What did  
9 they do? They put it halfway. That didn't  
10 solve anything.

11 So, now I got Town of Oyster Bay,  
12 Jim Whelan, town of Oyster Bay code  
13 enforcement, telling me they're going to file  
14 more charges against me. How am I going to  
15 defend that if -- how? It's there. It's  
16 visible. The land is sliding. It's not a  
17 question if it's now.

18 This engineering report from 2021  
19 doesn't even address any of my concerns.

20 So, I cannot see how you can  
21 release the bond and leaving me and 23 of my  
22 neighbors in a bind. Because I'm trying for  
23 four years.

24 MR. PULITZER: Sir, your time has  
25 expired.

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2                   MR. LAPIDUS:     Thank you.   And I  
3     still haven't gotten a letter regarding the  
4     site planning.   I mean, the site scene when  
5     they came there.   Just one more question.

6                   When they came to see the  
7     construction site it snowed the day before.  
8     They couldn't even see the land erosion.  
9     Whatever they saw is verbally.   I went around  
10    with Legislator Schaefer.   I spoke to her.   I  
11    didn't realize who she was because I'm new to  
12    this.   If I would have known I would have took  
13    her to -- and particularly it was the  
14    developer in the Town of Oyster Bay lot one  
15    and two.   That's what they sued me for.

16                  Don't take my word for it.   You can  
17    ask my lawyers that they threatened me, they  
18    prosecuted me and it continues to this day.  
19    But I'm not going to give up.   All I want is a  
20    piece of paper and I want no water runoff.   I  
21    want no landslides.   You can go see the estate  
22    fence.   In less than nine months, it's 40 foot  
23    wide and over a foot covered in dirt and it  
24    will continue.   Thank you.   And for that, that  
25    should not be released until this matter is

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2 addressed. That's all I want. Thank you.

3 LEGISLATOR DRUCKER: Can we hear  
4 from Sean Sallie? Can you come up and  
5 respond? I'd just like to hear your response  
6 to everything that Mr. Lapidus just said which  
7 seems to be in direct contravention to  
8 everything you just said.

9 MR. SALLIE: I really don't know  
10 where to start. We were at the same meeting.  
11 I thought the Town of Oyster Bay's, the  
12 discussion with the Town of Oyster Bay  
13 building department representative was very  
14 clear. I thought we were all in agreement  
15 that every aspect of the wall within the town  
16 was constructed in accordance with all  
17 requirements.

18 I think the fact that it snowed the  
19 day before, the night before, again, that  
20 didn't come up during the meeting as an  
21 issue. We were able to see the grade. We  
22 were able to see the area that had yet to be  
23 landscaped. The Town of Oyster Bay  
24 representative did go through. He stood right  
25 at the top of that hill and described the

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2       slope. What the runoff water is supposed to  
3       do according to the grading plan. There is a  
4       change in grade. That water has to go  
5       somewhere and it's designed to accommodate  
6       that overland flow.

7                   Again, I did not hear from the town  
8       or our inspector, our DPW inspector who was  
9       also at the meeting, that there were any  
10      concerns. Or anything that would result in a  
11      potential something having to be done to  
12      remediate the situation that would require,  
13      you know, calling in a bond or utilizing the  
14      resources of the bond or the county or even  
15      the developer.

16                  I understand the town or the  
17      village is not signing off until the final  
18      plantings and landscaping have been  
19      completed. That's their leverage, right, to  
20      make sure the job is completed. I understand  
21      that. And our bond is our leverage to make  
22      sure that everything that's covered under the  
23      bond is constructed in accordance with all  
24      specifications. We have all of that  
25      documentation in hand.

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2                   Our construction inspector is  
3       extremely experienced. He knows what he's  
4       doing. The town, same thing on their end.  
5       They see this day in and day out. From what I  
6       understand, they've been at the site. They  
7       were at the site multiple times throughout the  
8       duration of the construction.

9                   I understand the good neighbor has  
10       concerns. There's some disruption with  
11       construction. All of these homes on the north  
12       side that have frontage along these retainage  
13       walls with the exception of one have been  
14       sold. Certificate of completion for the wall  
15       and certificate of occupancies have been  
16       issued for the homes. We did not hear one  
17       complaint from those residents in those new  
18       homes. I have to think that they're happy  
19       with what they got. I would think if soil, if  
20       earth was sliding down over the retaining wall  
21       the first thing I would think moving into a  
22       new home like that is I got a waterfall of  
23       sediment and water careening over a retaining  
24       wall. That doesn't sound good.

25                   LEGISLATOR DRUCKER:       Mr. Lapidus,

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2     one of the things that I take away from his  
3     comments is he's talking about the stability  
4     of his land. And if the stability of his land  
5     is compromised or hasn't been secured does  
6     that fall within the county's bond? And those  
7     concerns. I would think those concerns fall  
8     within the county bond. We're not just  
9     talking about landscaping. We're not talking  
10    about planting bushes or seeding or things  
11    like that. Stability of his land is really  
12    critical. That may fall within the bond's  
13    parameters.

14                   MR. SALLIE:     The design of the  
15    subdivision given the slope, to hold that  
16    slope back the retaining wall is the measure  
17    to do that. That was designed by professional  
18    engineers. Signed off by the Department of  
19    Public Works and then signed off by the town.  
20    The design was actually signed off by the town  
21    as well because it's within the building lot.  
22    They had to issue a building permit for that  
23    design. So we know it was designed properly.  
24    Was it constructed properly? Well, we have a  
25    certificate of completion from the town side

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2     and we have an indication from the village  
3     that they're just some remaining punchlist  
4     items. So that indicates to me that the wall  
5     that's meant to hold back the neighbor's  
6     property was designed and constructed  
7     properly.

8                   I would think the village and the  
9     town would withhold or have serious concerns  
10    if that wall was not constructed properly  
11    because that would then create that potential  
12    for the neighbor's property to slump and  
13    create a real issue. So, I put my faith in  
14    the approvals and the certificates that the  
15    various agencies that are responsible for this  
16    construction.

17                  LEGISLATOR DRUCKER:     All I can  
18    say is something was lost in translation at  
19    that meeting, and I don't know where the lost  
20    in translation occurred. But between all the  
21    people that you're talking about who were at  
22    the meeting and Mr. Lapidus' understanding and  
23    interpretation of it, something didn't get  
24    translated.

25                  LEGISLATOR BYNOE:     Thank you.

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2 Mr. Sallie, Mr. Lapidus' statement here on the  
3 record indicates that you came out during the  
4 time that there was snow on the ground. Is  
5 that accurate?

6 MR. SALLIE: We had to corral  
7 folks from different agencies. So we had  
8 established Monday, the 14th of the February,  
9 at ten a.m. for a site visit. I believe that  
10 was the night before, Friday, had snowed a  
11 little bit. It was about an inch, an inch and  
12 a half. So we did. And it was cold. But we  
13 did do the site visit. It was merely an  
14 inch. The portion of the site that we needed  
15 to view faced south. So that to sun,  
16 mid-February sun burned off the snow on that  
17 hill. So, we were able to see the dirt. The  
18 area that we were looking was not snow  
19 covered. We were able to see the pebbles, the  
20 dirt, the actual slope.

21 LEGISLATOR BYNOE: Can we agree  
22 that if it snowed, you said it was very cold  
23 out, that potentially the ground was frozen?

24 MR. SALLIE: Definitely the  
25 ground was frozen.



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2 LEGISLATOR BYNOE: So, the  
3 conditions weren't optimal. The concern is,  
4 if I'm understanding this correctly, the term  
5 was used runoff. Are we talking about water  
6 runoff Mr. Lapidus? You can just shake your  
7 head yes.

8 Well, he won't like that.

9 Were we talking about water runoff  
10 and it would then take the soil and the sand  
11 and the like with it?

12 MR. LAPIDUS: That's correct.

13 LEGISLATOR BYNOE: It wouldn't be  
14 the optimal conditions to really investigate  
15 or be able to observe the conditions there.  
16 Wouldn't it be in the rain?

17 MR. SALLIE: Yes. I think that  
18 would show you exactly what's happening.

19 LEGISLATOR BYNOE: Then I think  
20 that's what should happen. I think we should  
21 go back and we should look at it under the  
22 conditions to which we would be able to really  
23 observe what's been described to us as a body  
24 to determine whether this is really occurring  
25 or not. I think doing it on day when the

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2 ground could be frozen solid and in some areas  
3 impacted by the snow condition I don't think  
4 that that was the optimal condition. But.

5 MR. SALLIE: We can certainly  
6 schedule it.

7 LEGISLATOR BYNOE: To me, that  
8 would be the right way.

9 I have another question. And  
10 Mr. Lapidus maybe you should come to the mic  
11 please. You're then indicating through your  
12 testimony here today that you're concerned  
13 about the height of another one of the  
14 retaining walls?

15 MR. LAPIDUS: They installed a  
16 second retaining wall. I guess to stabilize  
17 my land. But Mr. Sallie has not addressed  
18 that the retaining wall -- I have no question  
19 the retaining wall was done properly. I'm not  
20 questioning the retaining wall. I'm  
21 questioning the purpose of the retaining  
22 wall. If that wall is there to design to  
23 stabilize my property, well, it's 25 feet away  
24 from my property line on a slope. What's the  
25 point of the second retaining wall?

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2                   Not only that, 26 of my neighbors  
3   fought for a plan that has three retaining  
4   walls. When the new administration came in  
5   they said Alex, we will honor your previous  
6   plans. This construction site when it came in  
7   there were over two dozen amendments. No  
8   public hearings. And when we found out that  
9   we saw that the buildings were wrong we  
10   negotiated for a flat roof. We have a pitched  
11   roof. We had in mind that those buildings do  
12   not overwhelm the neighborhood because we're  
13   small homes. I'm fortunate. On top it's a  
14   little bigger. But the surrounding homes are  
15   minute and these towers are leaning over  
16   them. Now they're going to put more towers in  
17   there. We fought for that.

18                  But because of the developer, who  
19   is employed for the Town of Oyster Bay,  
20   commissioner in sanitation department and  
21   other places he works on, that's why my  
22   lawyers told me Alex, I cannot help you.

23                  All I want is a piece of paper that  
24   says Alex your land is -- and if you go there  
25   now you will see at least half a dozen water

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2 marks. You can actually see a hole in the  
3 ground where the water is running off. When  
4 they came in there they couldn't move the  
5 snow. There's no pictures. Did he take any  
6 pictures? No pictures. I got over 400  
7 pictures. Pictures speak louder than words.  
8 So, if that would have been fine I'm sure  
9 somebody like the code enforcement from Town  
10 of Oyster Bay Jim Whelan took those pictures.  
11 Because he took over three dozen pictures and  
12 sent them to me when he was suing me.

13 So where's the pictures? Talk is  
14 cheap. Go take a look. You have rows and  
15 rows of water running. Streams.

16 LEGISLATOR BYNOE: I established  
17 for the record and for this body that the  
18 conditions probably weren't optimal for that  
19 day. So can I move on to yet another  
20 question? You said that you advocated for  
21 three retaining walls?

22 MR. LAPIDUS: When this site was  
23 developed yes.

24 LEGISLATOR BYNOE: You only  
25 received two; is that correct?

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2 MR. LAPIDUS: No. I forced the  
3 second one.

4 LEGISLATOR BYNOE: You didn't get  
5 the three that you agreed upon?

6 MR. LAPIDUS: No. And there were  
7 no discussion of community input. We fought,  
8 26 of my neighbors. I'll get them all down  
9 here. They all signed off. We fought for the  
10 height. Everything's been changed. No public  
11 hearings.

12 LEGISLATOR BYNOE: Then I wanted  
13 to go back to something you just said to my  
14 answer in my previous question which is, we  
15 were talking and you referenced that you  
16 believe that some of the -- the developer is  
17 actually a town employee?

18 MR. LAPIDUS: The owner on the  
19 developer's side is a town employee. Hold  
20 on. Sure. One sec. Absolutely. No question  
21 about it. Here's his history.

22 LEGISLATOR BYNOE: He's a  
23 previous town employee?

24 MR. LAPIDUS: The owner of  
25 Toretta Estate, the developer of Toretta

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2 Estate, he is a town employer. James Whelan.  
3 Not the way he described himself to my lawyer  
4 as Jim. It's not Jim it's James. Big  
5 difference. He's a commissioner of Town of  
6 Oyster Bay sanitation district one. He is a  
7 chairman of Nassau County Bridge and  
8 Authority. This man -- he was also -- there's  
9 an article about him. God, I did more  
10 research on him than on my mother-in-law.  
11 Maybe I should have done that too. There's an  
12 article about him praising the man. Not  
13 just -- hold on a second.

14 LEGISLATOR BYNOE: That's okay.

15 MR. LAPIDUS: It's important.

16 This is a man that knows construction. He  
17 knows what it is. Here. Long Island Herald,  
18 December 20 something 2017. Jim Whelan is the  
19 Nassau County Herald person of the year. This  
20 is the developer. And this is the way he  
21 treats the property. When I came over to  
22 speak to him he told me get the F off my  
23 land. Then his construction crew threatened  
24 me in front of him.

25 LEGISLATOR BYNOE: So at some

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2 point you said you were prosecuted. Can you  
3 clear that up for me?

4 MR. LAPIDUS: Absolutely. Jim  
5 Whelan, who is the Town of Oyster Bay code  
6 enforcement, prosecuted me for two years of  
7 illegal construction on my property. Illegal  
8 regrading of my property and water runoff onto  
9 my neighbors. For two years three lawyers I  
10 went through. Then they dismissed the case  
11 with prejudice. I was threatened that if I  
12 continue to file complaint they will continue  
13 to press more charges. And guess what? On  
14 February 14th when Jim Whelan was there he  
15 took me to the side to the lots one and two,  
16 which is in Town of Oyster Bay, and he told me  
17 you see that slide? You see this water? You  
18 see this land erosion? We're going to file  
19 charges against you. That's why I'm here for  
20 all this time. I've been prosecuted. You can  
21 see 28 months. Three different attorneys. I  
22 wasn't going to give up.

23 My attorney told me put in a dry  
24 well. Put in this. Give up. Forget about  
25 it. Move on. I said I did nothing wrong. He

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2       said I can't represent you. I said good-bye  
3       and here I am.

4                   The problems that I came with  
5       before are still here. I can show you a map.  
6       I can show you a drawing that was done by H2M,  
7       which is a reputable construction company who  
8       oversaw the original plans. Three tier  
9       retaining wall, estate fence on top.  
10      Beautiful landscaping bifurcation. Land  
11      specifically, planned specifically design to  
12      prevent land erosion. All of these things  
13      were done by me and my neighbors.

14                  LEGISLATOR BYNOE:     Thank you Mr.  
15      Lapidus. I appreciate all that you shared  
16      today. Some of it I think needs to be  
17      unpacked further, and I also believe that  
18      there should be a site visit when there's  
19      optimal conditions. I don't think that we  
20      went there under optimal conditions.

21                  MR. LAPIDUS:     With all due  
22      respect, there should have been a report  
23      regarding land stabilization. That it's  
24      stable. It's not sliding off. And water  
25      runoff. Because like I said, a 40 feet --



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2     this fence has been there less than nine  
3     months, 40 foot of that fence is already  
4     buried underground and it's only nine months.  
5     It will continue on until the whole land  
6     collapses.

7                   LEGISLATOR BYNOE:       Thank you Mr.  
8     Lapidus.

9                   LEGISLATOR WALKER:       I know  
10    Legislator Ford has something to say and so  
11    does Legislator Schaefer. I actually went  
12    there on Sunday and I just could tell you and  
13    I'm certainly not going to argue over the  
14    facts, but it hadn't snowed. It wasn't like I  
15    saw dirt piled up or water. Again, it's  
16    winter. So, I mean, the ground is harder.  
17    But I would think if -- we've had a lot of  
18    rain. So I would have thought I would have  
19    seen piles or at least mud markings or dirt  
20    markings. Legislator Ford you want to go  
21    ahead?

22                  LEGISLATOR FORD:       Mr. Lapidus, am  
23    I saying it right? Alex. With these  
24    retaining walls. Is the retaining wall at the  
25    border of his property?

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2 MR. SALLIE: The answer is no.  
3 It's offset from his property line. It's to  
4 the south of his property line. So, the  
5 topography from his property line going south  
6 is slope, retaining wall. In some cases  
7 there's another minor slope and then second  
8 retaining wall. Almost like a terrace.

9 But just to point out too, the  
10 retaining wall and the slope is a system of  
11 slope retention. You don't look at the wall  
12 in isolation. It's what it's holding back and  
13 then the other pieces that go, you know, that  
14 are, you know, essentially attached to the  
15 wall. So that's how the inspectors would also  
16 view it. If there's careening soil from the  
17 top of the wall they're not going to sign off  
18 on a wall that has that condition because it's  
19 integral to the slope stabilization feature.

20 LEGISLATOR FORD: So, I guess  
21 it's his property that the soil is running off  
22 from going over the retaining wall? Is that  
23 how it is? He's higher than the retaining  
24 wall, correct?

25 MR. SALLIE: Yes.

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2 LEGISLATOR FORD: So it's not  
3 that he and his neighbors aren't going to get  
4 the soil in their yard, it's just that their  
5 yard eventually, according to him, will  
6 disappear. That's what he's maintaining? I'm  
7 not asking you.

8 MR. SALLIE: Yes.

9 LEGISLATOR FORD: Then I guess  
10 the problems that he's had with these  
11 allegations about being prosecuted, being told  
12 that his runoff and his water I'm going to  
13 guess that it's because -- why would he -- I'm  
14 having trouble now trying to understand. If  
15 the retaining walls are working according to  
16 plan, if we're saying that the shrubbery and  
17 everything it's helped not to have soil  
18 erosion, I don't understand then how he's  
19 getting ticketed or fined or brought to court  
20 for soil and water runoff. Where is that  
21 coming from?

22 MR. SALLIE: Town codes require  
23 that properties maintain their storm water  
24 runoff so that it does not free flow overland  
25 onto neighboring properties. If the town, and

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2 I did not hear that but if that's the case,  
3 the town is probably citing that portion of  
4 their code that requires that storm water be  
5 maintained on-site within the property  
6 boundaries. If the neighbor's property is  
7 sloping without any catchment or drain or  
8 anything and that water is running off onto  
9 neighboring properties that could be a  
10 violation of the town code.

11 LEGISLATOR FORD: So, beforehand,  
12 before this development took place, did he  
13 slope down into a valley or was there  
14 something and we excavated the land?

15 MR. SALLIE: I believe it sloped  
16 down naturally. So the development basically  
17 cut into the slope to hold it back.

18 LEGISLATOR FORD: They cut into  
19 the slope. Did you have shrubbery to hold the  
20 water and the soil back?

21 MR. LAPIDUS: Absolutely.

22 MR. SALLIE: But that shrubbery  
23 was likely on the developer's side of the  
24 property.

25 LEGISLATOR FORD: So, that being

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2 said, so the developer actually then needs to  
3 plant all of that stuff immediately because he  
4 did not create the condition. He lived there  
5 unaware that maybe at that time soil and  
6 water, the runoff was occurring because  
7 nothing lived there, right? It was vacant  
8 property.

9 MR. SALLIE: The property owner  
10 may be enjoying that condition where storm  
11 water from that neighbor's property free  
12 flowed onto other property, didn't cause a  
13 nuisance or an issue so it was just --

14 LEGISLATOR FORD: But now it is  
15 and that's a problem.

16 MR. SALLIE: But I think it's the  
17 responsibility of the neighbor to contain, to  
18 now contain storm water on his or her own  
19 property.

20 LEGISLATOR FORD: But it also, I  
21 would have to that, I would think that it's  
22 also the responsibility of the developer  
23 knowing that there was a condition. That  
24 there was something there that held back some  
25 of the soil, some of the water. It wasn't

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2       really much of a nuance. Now, as a result of  
3       the action of the developer, it now is a  
4       nuisance.

5                   I would prefer not to have him get  
6       fined again. If the town of Oyster Bay is  
7       going to go after him in regard to this I  
8       think that we need to work with him to come up  
9       with a solution. Maybe do like a storm drain,  
10      a dry well, whatever you want to call it.  
11      Maybe come up with something to secure his  
12      property and to prevent it because he never  
13      got ticketed before until after this  
14      development came in.

15                  MR. SALLIE:     Legislator, we're  
16      happy to discuss that with the developer. But  
17      I just want to be clear that those potential  
18      amenities would not be covered or are not  
19      covered under the county bond and out of the  
20      jurisdiction of the county planning  
21      commission. We can convene the group again  
22      and see what facilitates a solution. But it's  
23      not secured by -- it would not be secured by  
24      the county bond.

25                  LEGISLATOR WALKER:     Legislator

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2 Schaefer.

3 LEGISLATOR SCHAEFER: Yes, I'm  
4 sorry. Some of my questions were answered. I  
5 guess I was also wondering from Mr. Sallie,  
6 the bond covers, does it cover the entire  
7 retaining wall matter or is it -- I thought  
8 there was a discussion previously where it  
9 only applied to certain portions of the  
10 retaining wall throughout the project.

11 MR. SALLIE: Right. So, during  
12 the subdivision design and review process one  
13 retaining wall was proposed and was part of  
14 the approved plans. So that retaining wall  
15 was bonded. I'm just looking at the bond  
16 schedule here now just to see how -- what  
17 exactly was bonded. One second here if you  
18 don't mind.

19 Retaining wall precast block 800  
20 square feet. That was bonded. Post  
21 subdivision approval, a second retaining wall  
22 was designed and added to the plans. That was  
23 done at the -- I don't know if at the request  
24 of the village but that wall has also been  
25 constructed but it is not covered under the

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2 county bond.

3 LEGISLATOR SCHAEFER: The second  
4 wall is not covered under the county bond?

5 MR. SALLIE: Right. The wall to  
6 the east when you're looking north.

7 LEGISLATOR SCHAEFER: Okay. And  
8 what wall are we referring to specifically  
9 with regard to Mr. Lapidus' property?

10 MR. SALLIE: I believe it's both  
11 because his property spans three frontages  
12 along almost the entirety northern limit of  
13 the subdivision property.

14 LEGISLATOR SCHAEFER: Okay. I  
15 think I have everything I need. Thank you.

16 LEGISLATOR WALKER: Mr. Sallie,  
17 can I just ask a question? I'm not an  
18 engineer either or whatever. I don't know. I  
19 guess in my mind if you have a retaining wall,  
20 say I'm using this desk as an example, this  
21 dais, but here's his property, why wouldn't  
22 the retaining wall go like above so that it  
23 doesn't, nothing would fall down? Again, I'm  
24 not a -- like, if I didn't want something to  
25 fall down I wouldn't have a wall that ended



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2       down there so all this could flop off. I'm  
3       not a developer and I'm not an engineer or  
4       something but.

5                   MR. SALLIE:       Right. We didn't  
6       engineer the site either. There's a trade-off  
7       there. I would think if the wall is built at  
8       the property boundary because where that slope  
9       the wall would have had to have been higher.  
10      So that's more material cost. That could have  
11      been a consideration. But you get a larger  
12      backyard, right? If now you have, you know,  
13      if that wall is against the property line. I  
14      don't know why that decision, that design  
15      decision was made. But, you know, the way it  
16      was designed was acceptable.

17                  LEGISLATOR WALKER:    Is some of  
18      the property near the back of that which is  
19      closer to the wall is that not Mr. Lapidus'  
20      property?

21                  MR. SALLIE:       Right.

22                  LEGISLATOR WALKER:    Does his  
23      property go to that very edge or does his  
24      property end and he has -- like over in my  
25      area people live on Levittown Parkway. They

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2 kind of planted trees way back further. So  
3 suddenly they have a bigger backyard. And  
4 some of them were told they have to take those  
5 bushes and plants and stuff down because that  
6 wasn't their property. They made their  
7 property kind of bigger because there was  
8 space, they could do it. Is that the case  
9 here? I don't know. I guess I just don't  
10 understand that whole retaining wall.

11 MR. SALLIE: The tricky thing  
12 here is there's an estate fence that the  
13 developer erected at the top of the wall but a  
14 little bit offset between the property line  
15 and top of the retaining wall there's an  
16 estate fence. That was also not on the bond.  
17 It was not on the subdivision plan. It was  
18 conceptualized and requested afterwards. That  
19 sort of breaks up the slope.

20 With the naked eye you would think  
21 the fence is the property line, the new estate  
22 fence. But it's not. It's a little bit north  
23 of the new fence.

24 But again, if you look at it you  
25 just see the property sort of roll over now

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2 towards down grading it towards the retaining  
3 wall. You really don't know where the  
4 property line is without a survey or a  
5 marker.

6 LEGISLATOR WALKER: Legislator  
7 Drucker.

8 LEGISLATOR DRUCKER: Thank you.  
9 So seems like the more we peel back the onion  
10 here the more questions we have. So, you keep  
11 talking, Sean, about the bond covers this or  
12 doesn't cover that. Can you just articulate  
13 for me and for us what specific improvements  
14 with respect to this subdivision development  
15 is covered by the bond?

16 MR. SALLIE: So, again, in Nassau  
17 with the fact that the county has subdivision  
18 jurisdiction but obviously not zoning  
19 jurisdiction. We're the only county in the  
20 New York State with that configuration. The  
21 county planning commission bonds public  
22 improvements. And there are nuances to that  
23 depending on whether it's a single family  
24 subdivision or a condo. But in this case the  
25 county would bond the cul de sac, any paving,

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2     the curbing, the sidewalk, any perimeter  
3     fencing that spanned multiple lots.

4                   In this case there are retaining  
5     walls that span multiple lots. Let's say, for  
6     instance, those retaining walls were fully  
7     within a building lot. That would never have  
8     been -- it would not be bonded by the county.  
9     The reason why they're bonded in this case is  
10    because they span multiple properties. So  
11    that was a public improvement.

12                  We also bond the sediment erosion  
13    control measure during construction. Hay  
14    bails, silt fence, that sort of thing. Street  
15    lighting we bond even though that street  
16    lighting gets turned over to the municipality  
17    in most cases. And drainage. But drainage  
18    for the public roadway. Catch basins, piping,  
19    dry wells etcetera. In a nutshell, that's  
20    what we typically bond in this case.

21                  LEGISLATOR DRUCKER:     What about  
22    land stability due to runoff?

23                  MR. SALLIE:     We don't bond that.  
24    The grading of the lots, right, is designed  
25    during the subdivision review process. The

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2 county is looking at t and the municipalities  
3 are looking at it simultaneously. The county  
4 does not approve the subdivision plan until  
5 the municipalities sign off that they accept  
6 the grading. That then gets filed at the  
7 county clerk. Then they pull the applicant or  
8 the developer pull a building permit from the  
9 town. The town is reviewing everything within  
10 the confines of the lot. The house footprint  
11 and the grading.

12 LEGISLATOR DRUCKER: Does it  
13 concern you at all that Mr. Lapidus indicates  
14 that the Town of Oyster Bay sign-off is coming  
15 from someone who is employed by the town and  
16 who's also affiliated with the developer?

17 MR. SALLIE: I just need to  
18 clarify. The developer of this property is  
19 James Velardi not James Whelan. I don't know  
20 where that came from. He is not the  
21 developer. I think it was represented as  
22 such. James Velardi is the developer. But  
23 not of the Town of Oyster Bay.

24 LEGISLATOR FORD: I know him. He  
25 is not an employee of any government agency.

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2 Not Town of Oyster Bay. Anywhere. He is on  
3 the Nassau County Bridge Authority but that's  
4 something completely different.

5 MR. SALLIE: I'm a little  
6 concerned that we're throwing this around as  
7 if it's --

8 LEGISLATOR FORD: Exactly.

9 LEGISLATOR DRUCKER: Sean, what  
10 about land stability due to insufficient  
11 number of retaining walls? Mr. Lapidus said  
12 that the site plan had called for three  
13 retaining walls. They only built two. And  
14 would the land stability or instability due to  
15 an insufficient number of retaining walls fall  
16 within the bond?

17 MR. SALLIE: No. Because the way  
18 that the subdivision was designed one  
19 retaining wall was provided. Was approved.  
20 The area where the second retaining wall was  
21 designed after the fact was graded to allow  
22 for a natural slope grade. It did not require  
23 a retaining wall to maintain that grade. That  
24 was signed off, again, by the county and by  
25 the town.

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2 I'm not exactly sure at what point  
3 the second retaining wall was requested but it  
4 may have been by the neighbor. It's not a bad  
5 deal for the new subdivision lots because  
6 those two lots get larger backyards. Rear  
7 yards. So it's a win-win.

8 But I think from a design point of  
9 view that slope was able to be manipulated  
10 without needing a retaining wall to prevent  
11 erosion.

12 LEGISLATOR DRUCKER: I think,  
13 Legislator Walker, we have a lot of questions  
14 that still need to be answered here.  
15 Certainly at the very least another inspection  
16 of the property needs to be conducted. I  
17 suggest that we table it.

18 LEGISLATOR WALKER: Legislator  
19 Drucker, what if we pass this through and in  
20 the next two weeks we take a look out there?  
21 The weather is much warmer. We've certainly  
22 had enough rain and I'm sure we're going to  
23 get more rain to go. I mean, I just think  
24 that, you know, again, I'm not an engineer.  
25 But listening to Mr. Sallie, everything that

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2 falls under the bond has been signed off on.  
3 Me looking at that wall is not going to change  
4 what an engineer is saying about that wall.

5 I mean, the gentleman lives in my  
6 district. So, if I find that there's constant  
7 issues over there I will be back and forth  
8 with the village and the Town of Oyster Bay  
9 until they're sick of listening to me too.

10 LEGISLATOR DRUCKER: It's just I  
11 don't think there's any urgency here. What if  
12 the weather conditions aren't optimal in the  
13 next two weeks and then we're rushing it?  
14 This is not like some other issues that we  
15 have where there's a sense of urgency of  
16 teeing something up for the full leg. I don't  
17 see the urgency here if we just table this  
18 one. We did it in February. We can do it  
19 again. We revisit it. It's just a bond.  
20 It's sitting in an escrow account anyway.

21 LEGISLATOR SOLAGES: I also have  
22 something to say please. A quick question.

23 LEGISLATOR WALKER: Sorry  
24 Legislator Solages. I didn't realize that you  
25 wanted to speak.



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2 LEGISLATOR SOLAGES: I  
3 understand. People's names are being thrown  
4 around and people's reputations now are being  
5 damaged here. You have a situation where you  
6 have certificate of occupancies. These were  
7 approved. You have a process by which no  
8 cheating occurred and to now have people's  
9 names being thrown around like this, and the  
10 perception of impropriety without any facts  
11 being established we're on shaky ground here.  
12 No pun intended. I just caution we shouldn't  
13 just be mentioning people's names like this.  
14 That's all. Thank you.

15 LEGISLATOR WALKER: Thank you  
16 Legislator Solages. Legislator Giuffre did  
17 you have anything you wanted to add?

18 LEGISLATOR GIUFFRE: No  
19 chairwoman. I'm fine.

20 LEGISLATOR SOLAGES: All the work  
21 was signed off on by county engineers. It's  
22 not like that didn't occur.

23 LEGISLATOR WALKER: That is  
24 personally my feeling. That part of it has  
25 been signed off by our engineers. By the

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2 people that are, again, can we still visit the  
3 site in the next two weeks?

4 LEGISLATOR SOLAGES: There should  
5 be no reason for the delay.

6 LEGISLATOR WALKER: My personal  
7 opinion would be to pass it through and then  
8 try to get over there. It's not that far away  
9 to look at.

10 LEGISLATOR DRUCKER: Put it up  
11 for a vote. I'm going to abstain. I don't  
12 think there's enough information yet. I don't  
13 think it's responsible for us to tee it up at  
14 this point in time. I don't see the urgency  
15 in it. I really don't.

16 LEGISLATOR BYNOE: I would vote  
17 to abstain too because it was conceded to on  
18 the record that it was not the optimal  
19 conditions. Until I find that that has  
20 occurred during a rain condition to either  
21 substantiate or refute those claims about the  
22 runoff then I'm going to abstain. I know you  
23 didn't call the vote yet.

24 LEGISLATOR WALKER: Legislator  
25 Drucker made the motion to table. I will

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2 second that motion. All in favor of tabling  
3 signify by saying aye. Any opposed? So it  
4 will be tabled. One nay? Two nays. Five in  
5 favor of tabling. Two nays.

6 But let's try to get out there in  
7 the very near future to see this property.  
8 It's right off Merritts Road. Legislator  
9 Bynoe, if we need to go together I'd be happy  
10 to take a ride. Do a field trip. There's a  
11 lot of great restaurants in Farmingdale. You  
12 can just make it a field trip.

13 So, that is the only item on the  
14 agenda. Mr. Sallie thank you so very, very  
15 much. And Mr. Lapidus, we're going to take  
16 another look. It's tabled. Will you be  
17 notified when we might be coming by? If you  
18 give us the information. I have your phone  
19 number here. Thank you.

20 There are no other items before  
21 us. Legislator Giuffre votes to close the  
22 meeting and seconded by Legislator Drucker.  
23 All in favor? Any opposed? We are adjourned.

24 (Committee adjourned at 5:17 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 21st day of  
April 2022.

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FRANK GRAY