



SAVE Colonie

A Partnership for Planning

Neighbors and Neighborhoods First

DELIVERED VIA EMAIL

November 13, 2019

Dear Supervisor Mahan and Town Board Members:

Resolution Number 490 for 2019 was approved at the November 8th, 2019 Town Board meeting; it authorized the General Services Director to advertise for a Request for Qualifications for Town Designated Engineer Services.

Over the past several years, SAVE has expressed concerns about the Town's Designated Engineers. Originally, Colonie's TDE firms were not allowed to represent other clients before Colonie town bodies. Then, waivers were granted to TDE's "current clients," certain named clients whose projects could be completed, we were told. However, this waiver provision was violated through the years, as clients unnamed in the waiver were represented before the Town. Allowing current TDEs to represent clients *and to work for the Town* is a conflict, since working for the Town gives the TDEs insider knowledge they can use to benefit these other clients, possibly to the detriment of the Town.

We requested an opinion from the Town Ethics Board and were advised that town ethics standards do not apply to TDEs because TDEs are not town employees. This should be troubling to everyone.

We have recently become aware of the following additional ethical concerns.

In October, 2008, when it signed its TDE agreement, Clough Harbour Associates (CHA) failed to disclose to the TOC that it also represented the Van Buren Estates development. CHA's Stellato appeared before the Planning Board representing Van Buren for a 10/14/08 Concept Approval and a 2/1/11 Final Subdivision Approval, both appearances in violation of the town TDE agreement waiver provision.

We believe that CHA represented the Longhorn Steakhouse for a development proposal at 206-208 Wolf Road circa 2014. CHA subsequently served as the Town's TDE for the Longhorn Steakhouse restaurant project at 144 Wolf Road during the Planning Board review circa 2016-2018. If true, this is a clear conflict of interest and another violation of the Town /TDE agreement waiver provision.

CHA also prepared submissions for easements for the Van Buren Estates development requiring Town approvals after 2/1/11. In addition, pursuant to February 28, 2013, TB Resolution Number 166, the Town hired CHA for the engineering work for the Maxwell Road Extension. Inexplicably, CHA is now serving as the TDE for the Radtke PDD application, where this Maxwell Road connector is a prominent component. Another clear conflict.

The Town's decision to hire CHA and Barton & Loguidice to perform land use studies (ie Comp Plan Review Update, Airport Area GEIS Scoping, Boght Road GEIS, Lincoln Avenue Revitalization Study) — even though these firms have been involved with the review of development approvals connected with these land use studies — is also highly questionable.

Consider this: Big Bank is suing you to collect a debt. You hire attorney Bill to represent you. You give Bill personal information about your finances, but Bill also works for Big Bank. Bill says it doesn't matter; he can represent both you against Big Bank and Big Bank. Does Bill have an ethical problem here? Would you feel comfortable hiring Bill?

The Town's Request For Qualifications will provide an opportunity for the Town Board to review whether Clough Harbour and Barton & Loguidice should remain the ONLY two firms selected to be Town TDEs and whether the TDE services agreement should be revised to reflect the following:

1. Every Town Designated Engineering firm must be expressly prohibited from representing private clients who appear before the Town during the term of the agreement, as is the case with most other towns in our region;
2. The Town's Ethics Board should be empowered to review the activities of the Town Designated Engineering firms;
3. Town Designated Engineering firms must agree to provide, annually, a list of all clients to the Town Ethics Board, Planning Board Chair, and Director of Planning and Economic Development;
4. The Town Designated Engineering firms must be prohibited from providing any other professional services to Town of Colonie Departments while serving as Town Designated Engineers;
5. The TDE scope of services should be revised to limit those services to purely technical and non-discretionary opinion and review.
6. All TDE letters and reviews must be made available to the public prior to, and with sufficient time to allow review before, any public meetings where the Town Designated Engineering firm will provide its review and comment to a Town administrative body. This is in fact a requirement of the state's Open Meetings Law.
7. The Town/TDE agreements should be limited to one year, and be subject to renewal (consistent with practices of other municipalities in our area).

We believe that it is time for the Town Board to undertake a thorough review of the Town Designated Engineering policy and consider whether it is in the town residents' best interests to continue the current practices. Not only do current practices clearly violate normal ethical standards, they raise the appearance of impropriety and insider favoritism that reflects poorly upon our town and its administration.

Finally, during the November 7, 2019 Town Board agenda session, there was discussion surrounding a meeting town officials recently held with developers. One of the topics concerned TDE issues, including cost. Surprisingly, Board Member Carey suggested adding a developer

representative to the TDE RFQ committee. We think it to be more appropriate that a representative of a neighborhood group or association be included in these discussions, that the meeting dates be publicized, and that they be open to the public. These issues go to the heart of ethical governance and are concerning to many residents of Colonie.

Thank you for your attention to this important ethical matter. We are open to working with the Administration to review the town's use of TDEs, and look forward to the changes we need to make our town's development efforts more in line with best practices and transparency.

Sincerely,
SAVE Colonie: A Partnership for Planning