

**PLANNING BOARD  
TOWN OF BETHLEHEM  
August 18, 2003**

A **regular meeting** of the Planning Board, Town of Bethlehem, Albany County, New York was held on Monday, August 18, 2003 at 8:00pm in the Town Hall, 445 Delaware Avenue, Delmar, NY. Chairman Douglas Hasbrouck presided and called the meeting to order at 8:00 pm.

Agenda Items:           Banahan Subdivision – 51 Old Quarry Rd.  
                              Meadows 2C – Subdivision – Bender Lane  
                              Price Chopper Plaza Ext. – Windsor Properties, New Scotland Rd.

Present:                 Douglas Hasbrouck, Planning Board Chairman  
                              Keith Silliman, Planning Board Counsel  
                              Howard Engel, Planning Board Member  
                              Daniel Odell, Planning Board Member  
                              Parker Mathusa, Planning Board Member  
                              Tom Rizzo, Hite offices  
                              Paul Hite, L.L.S., Delmar, NY  
                              Gregg Swift, builder  
                              John DeMis, L.L.S., 2280 Berne-Altamont Rd., Altamont  
                              Bill Banahan  
                              Tim Banahan  
                              Jeffery Lipnicky, Town Planner  
                              Janine Saatman, Deputy Town Planner  
                              Randall Passmann, PE, Department of Public Works

**BANAHAN SUBDIVISION** – Old Quarry Rd.

Mr. Hasbrouck stated that the purpose of having the Banahan Subdivision on the agenda was to set a public hearing date. There were no questions from the Board.

A motion was made by Mr. Engel, seconded by Mr. Mathusa and passed by all present, that an application having been filed with the Planning Board of the Town of Bethlehem, by William Banahan, for approval of a proposed 1 lot subdivision, located on Old Quarry Road, as shown on map entitled, “ Map of, BANAHAN SUBDIVISION No. 2, Town of Bethlehem, Albany County, State of New York,” dated June 25, 2003 and last revised on August 15, 2003, and prepared by John C. DeMis, P.E. & L.S., Altamont, N.Y., on file with the Planning Board, it is hereby ordered that a public hearing be held on Tuesday, September 16, 2003, at 7:30 p.m., for the purpose of hearing all persons interested in the matter; and it

is further ordered that a copy of the notice of public hearing be sent by regular mail to all property owners within 200 feet of the premises involved at least five (5) days prior to the date of this public hearing.

Mr. DeMis stated that he would supply the Planning Board with a copy of a letter from the Albany County Health Department with their findings of a perk test performed on the property in question.

#### **MEADOWS 2C – SUBDIVISION – Bender Lane**

Mr. Hasbrouck stated that conditional approval was given in May for this project. After that approval was given, the Planning Department noticed that there were inconsistencies in the maps pertaining to the grading. Mr. Hite believed that the misunderstanding occurred because during the public hearing people thought that certain trees would be left that are now marked for clearing. Ms. Saatman stated that indeed the map that was approved and displayed at the public hearing showed those trees as remaining after clearing. Mr. Hite stated that the adjacent lots are owned either by the applicant or by family members of the applicant. One neighbor had approached them about planting trees in a certain opening. They have since planted three trees in that area. The neighbor seemed to be satisfied. Mr. Hite didn't believe that they had given the impression that they were going to leave numerous trees. The sanitary sewer is supposed to come through the front of the site. It needs to go down 7 feet and that requires a width of 15 feet to be cleared. They didn't want to fill the ditch in the front, but they were required to do so. Mr. Hite stated that there are about 5 trees in the area and the majority of the cleared material is brush. Their concept is to save any trees that can be saved, but if they are within the easement or the fill area, they can't save them. The other lots that could be affected by the clearing have a large wooded area in the front that protects their view. Mr. Hite stated that they thought they sufficiently showed what needed to be cleared for the sewer, the driveway, the house, the rear and front yards and the filled ditch. Mr. Hasbrouck stated that it appeared from the most current map that there was a substantially larger area than shown previously that was now being cleared. It is on the agenda tonight to see if the Board has any objection to those changes. Mr. Hasbrouck made a point that possibly privacy of other people could be compromised. Gregg Swift stated that they originally had planned to clear more and now they are clearing less. It is a worse case scenario when they show a grading plan. It is to show the engineering department that the grading plan will work. If the client wants the area that was marked for clearing to remain, they will accommodate them. They will only clear what is necessary. Mr. Swift stated that they want a buffer between the lots on the circle and their two lots. He stated that developers don't want to take down trees if they don't have to because it is a large expense to them. They never meant to give the impression of anything else. Mr. Hasbrouck stated that he felt the Board needed to see the difference between the map that was displayed at the public hearing and the one that was submitted for stamping and to see if they had any issues with the changes. They understand that what happens in the field and what is on paper are not always the same. Mr. Mathusa asked a policy question about the approval of maps during conditional final approval

verses the recorded map. Mr. Hasbrouck clarified that the changes in the drainage were discussed before the conditional final approval. Even though they didn't show on the map the Board saw the night of the public hearing, it was a condition that they be included before the final approval could be given. The changes that the Board was reviewing resulted from some grading changes on the final plat in addition to the changes required by engineering. These changes resulted in some trees being removed that were thought to be staying. Mr. Swift stated that trees are of value to the developer. For this reason they try to keep the bigger better trees. Ms. Saatman stated that in the engineering memo, staff was recommending that if the Board had any reservations about the greater extent of clearing, it could be addressed in the site plan review which shows more of the specifics. Mr. Hite preferred to resolve any issues now. He wanted to make sure that when they come before the Board and ask for site plan approval, nothing would be outstanding. He believed that they are in compliance with everything staff wanted them to do, except for this tree issue. Mr. Hite asked that if the Board wants them to do something different about the trees he would like to meet with staff in the next month and work it out so they can continue with the site plan approval. Ms. Saatman stated that it was not something that needed to be worked out with the Planning Department. If the Board was comfortable with the way the map was now shown, they will be signed and filed. The Board decided to accept the map as is for signing and filing. If there are issues with landscaping and screening they would be addressed during the site plan process. Mr. Swift asked for approval to begin limited infrastructure work prior to site plan approval. Ms. Saatman stated that once the maps are signed and filed, the work they were requesting approval for could begin. Mr. Passmann stated that an engineering letter had been issued stating that their concerns had been addressed. Ms. Saatman stated that she had done the same. Mr. Hite asked again if once the maps were signed, could they begin limited site work. Mr. Lipnicky stated that any improvements shown on the map could begin at that point. Mr. Hite stated that they would be back at the earliest date possible, requesting site plan approval. No formal action was needed.

**PRICE CHOPPER PLAZA EXT.** – Windsor Properties, New Scotland Rd.

Mr. Hasbrouck asked if anyone from Price Chopper Plaza was in attendance. Mr. Lipnicky said no, he had spoken with Mr. Andress and a fax was sent to both Mr. Miller and Mr. Andress letting them know they were on the agenda. The reason that Mr. Lipnicky wanted them on the agenda was to discuss the materials distributed to the Board members concerning SEQR. He didn't feel that there were any overwhelming obstacles from moving forward with this project. Mr. Lipnicky wanted to know if there was anything beyond what was in his memo that the Board wanted to discuss. The primary issue is where does the Board want to go in terms of approval documents. Mr. Lipnicky would like input from the Board before the preparation of any documents, with the understanding that the applicant would respond to the SEQR items. Mr. Mathusa stated that in looking at the material, it appears that the applicant will be able to satisfy the SEQR requirements. There doesn't appear to be anything that couldn't be managed. His stated that he felt the larger issue before the Planning Board is how to respond back to the Town Board with a recommendation on the zoning change. What comments Mr. Mathusa

had read from the Town Board concerning this, points to their strong feelings that the 99,000 sq. ft zoning is the absolute maximum. Secondly, a number of people across the street from this project had approached the Town Board concerning zoning changes from residential to commercial. The Town Board's response to those people was that they wouldn't consider any zoning changes in that area until Rt.85 was complete. Even though this Board's question is limited to the one sent by the Town Board, how does the Planning Board recognize the other policy issues surrounding this question. Mr. Mathusa felt that any decision made should include a statement acknowledging prior statements made by the Town Board on this issue. Mr. Silliman stated that Mr. Mathusa is raising policy concerns that will be addressed by the Town Board. The question that is before the Planning Board is, do we need to issue a Positive Declaration or Negative Declaration concerning SEQR. The Town Board will have to weigh the other issues when they get the Planning Board's recommendation. The Planning Board needs to look solely at the SEQR issue. Mr. Lipnicky has laid out what the applicant needs to give the Board in order for the Board to make a comprehensive decision. Unless the Planning Board has additional SEQR issues that the Planning Department has not yet identified then the decision would lean towards a Negative Declaration similar to what had happened previously. Mr. Silliman further stated that the broader issues do not go away; the Town Board will have to deal with those when they make their decision. The Planning Board operates under the terms of a Memorandum of Understanding which sets forth the various duties between the Town Board and the Planning Board and for that reason the Planning Board has to deal with the more narrow question. Mr. Odell stated that he also was bringing into his consideration of the issue, the question of the square footage. He doesn't believe that there is any new information now, that wouldn't have been available at the time the original zoning, was approved, to justify the square footage increase. The limits were very clear in the first approval and to change them now would be setting a precedent. Mr. Lipnicky stated that the Planning Board is being asked by the Town Board for a recommendation on the zoning change. Mr. Odell stated that his recommendation would be to not approve the zoning change. Mr. Lipnicky's recollection was that the original recommendation for the limit to square footage came from the Planning Board. Mr. Odell agreed with that statement which is why he feels that there is not sufficient reason to change that decision. Mr. Mathusa stated that for a few years after the limitations were set there was a strong feeling from the Town Board against rezoning anything in that area. He felt that the Planning Board should be sensitive to that. Mr. Odell stated that the strong feelings of the residents in close proximity were a factor in the limits placed on the square footage. He does not believe that the issue needs to be revisited. Mr. Lipnicky stated that in lieu of the statements of two of the Board members, he would like the Board to table the issue until the applicant is present. Mr. Engel stated that there are currently other larger retail stores being constructed in the Town. He didn't feel that the changes that were being proposed would significantly change the site, only benefit the public. He knows people that live in the area that were originally opposed to the site and have since changed their opinion. Mr. Engel felt that to say that the prior decision should stand is not right, he felt that there were positive aspects to the expansion, namely; increasing the value of the property that would also increase the tax base which would be beneficial to the Town. Mr. Hasbrouck disagrees with Mr. Odell that the prior zoning decision shouldn't be looked at because after using the store

for five years, people in the Town might feel completely different. He stated that the Planning Board could recommend to the Town Board to proceed to the public hearing on the issue of amending the local law that set the 99,000 sq ft limitation to find out the sentiments of the public. The Town Board has the option of using that hearing as input to their decision. Mr. Silliman asked what his recommendation was. Mr. Hasbrouck stated that he didn't have a recommendation for or against, he recommends telling the Town Board to listen to the public before making a decision. Mr. Mathusa asked if he was suggesting separating the SEQR question from the local law process. Mr. Hasbrouck stated that a SEQR determination wasn't necessary for the Town Board to go forward with the public hearing. Mr. Lipnicky stated that SEQR isn't critical to the Town Board. They could issue a Negative Declaration and still deny the expansion of the store. Mr. Silliman stated that what the Town Board needs from the Planning Board is a recommendation on SEQR and they want to hear from the public on the amendment. Mr. Hasbrouck suggested that the Board could recommend issuing a Negative Declaration on the SEQR issue and in a separate letter state that until the public hearing the Planning Board doesn't have a recommendation on the amendment to the Building Project Approval. Mr. Odell stated that the Town Board is in the same position as the Zoning Board when a private homeowner wants to expand on a house that is at maximum limitations. The homeowner asks for a variance and the Zoning Board listens to the neighbors for impact. Mr. Silliman agreed that it was an excellent analogy. Mr. Silliman stated that his understanding at this point is that the Board is comfortable with recommending a Negative Declaration on SEQR but the Board is not in a position to take a stand on the zoning prior to the public hearing. Mr. Silliman stated if that was their intention; let Mr. Lipnicky proceed with the preparation of the necessary documents for future approval. Mr. Engel stated that he thinks the expansion would be good for the Town. He asked if there were any negatives other than upsetting some of the public. Mr. Odell stated that the longer he is on the Board, the more reluctant he is to plunge into zoning changes. The key issue originally was the zoning change, not the site plan. He stated that the zoning was changed because people in the Town wanted more supermarket shopping choices. If this project came in today, with the Hannaford and the other Price Chopper in Glenmont, he doubted that it would be approved, because it wouldn't be justified. Mr. Odell feels that the Board must be very careful in recommending zoning changes because it has consequences that effect many decisions of people in the future. Mr. Engel asked if it is within the scope of the Board to make these types of decisions. Mr. Silliman stated it is rare that the Planning Board be asked for their recommendation on zoning. Mr. Odell stated that it is during the Planned District applications that this occurs. Mr. Mathusa stated that he doesn't like giving back to the Town Board issues with a lot of footnotes attached. Mr. Hasbrouck stated that within the documents that are sent back to the Town Board should be an acknowledgment of the importance of the 99,000 sq ft limit set five years ago but until the public hearing, the Board won't know if it is still important to the Town. Mr. Mathusa stated that if there were a large public outcry in either direction, the Town Board would be able to take this into consideration.

A short discussion occurred pertaining to members' schedules for upcoming meetings. At the close of the discussion, there was a motion by Mr. Odell to cancel the meeting of September 2, 2003, seconded by Mr. Mathusa and passed by all present.

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For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955, extension 158.

All business concluded and a motion for adjournment was offered by Mr. Mathusa, seconded by Mr. Odell and passed by all present. Chairman Hasbrouck declared the meeting closed at approximately 9:15 p.m.