

**PLANNING BOARD  
TOWN OF BETHLEHEM  
February 3, 2004**

The Planning Board, Town of Bethlehem, Albany County, New York held a **regular meeting**, on Tuesday, February 3, 2004, at the Bethlehem Town Hall, 445 Delaware Avenue, Delmar, NY. Chairman Parker D. Mathusa presided and called the meeting to order at 7:30 p.m.

Agenda Items:           Troubador Subdivision  
                              Elm Avenue East Subdivision

Present:                 Parker D. Mathusa, Planning Board Chairman  
                              Keith Silliman, Counsel to the Planning Board  
                              Howard Engel, Planning Board Member  
                              Christine Motta, Planning Board Member  
                              Thomas Cotrofeld, Planning Board Member  
                              Katherine McCarthy, Planning Board Member  
                              Daniel Odell, Planning Board Member

Jeffrey Lipnicky, Town Planner

Frank Fazio, C.T. Male Assoc., Troubador Estates  
Bernice Ott, Troubador Estates  
Joseph Lanaro, Chazen Eng. & L.S. Co., P.C., Elm Ave. East Sub.  
George Amedore, Jr., Elm Avenue East Subdivision

**Troubador Subdivision**

Chairman Mathusa turned the Board's attention to the proposed eleven (11) lot subdivision known as Troubador Subdivision. The project had been in the review and concept stage since May of 2002. The applicant was here tonight to present a new layout that had been recently submitted to the Board. Frank Fazio from C.T. Male presented the project for the applicant.

Mr. Fazio displayed a copy of the previous layout along side the new layout of the subdivision. One of the changes was that the number of lots had been reduced to eleven (11) lots from twelve (12). One of the concerns the Board had with the previous plan was the lots that backed up to Rt. 9W. They had taken that into consideration when designing the new layout. They had relocated the entrance to the subdivision to the present entrance from Rt. 9W that lead to the old house. There was now only one road that ended in a cul-de-sac. The advantages to this design were that there was less disturbance to the pond, it was easier to come in because of the steep slope on the property and there were now only two lots that were on Rt. 9W. The property was about sixty (60) acres and it extended almost to Jericho Road. A large section of that acreage would be kept with lot # 5, which would be retained by the applicant Ms. Ott. The pond would remain as a non-buildable lot and it would be enhanced with benches to make the area more attractive. There would be a Home Owners Association to maintain certain areas of the subdivision. Mr. Fazio stated that they hoped to attract empty nesters and seniors but not exclusively. The living space

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would be all on one floor. Mr. Fazio stated that it would cater to older people that went to Florida in the winter and needed care of their properties in their absence. The road would be a Town road with the utilities not changing much from the previous design. There was a trunk sewer line in the back of the property and the waterline would be connected to the pipe on the opposite side of Rt. 9W. Some of the storm water would be collected into the pond and the remaining water would be collected along the road through a collection system and directed to a detention area in the back before being discharged to a feeder creek. Mr. Fazio stated that the Home Owners Association could be responsible for the maintenance of the detention pond if the Town did not want the responsibility. They were looking at a less than five (5) acre disturbance, which doesn't require the storm water quality portion. If the Town didn't want a detention pond they might come up with something different but Mr. Fazio felt it was needed to prevent erosion.

Mr. Fazio pointed out the area of wetlands on the site that would be disturbed. He stated that the Army Corp. of Engineers had been to the site and a jurisdictional determination had been done. The mitigation of the disturbed area was being worked on with them. Another issue was with SHIPO concerning an area around the old house. Half of the house had been removed and would be reconstructed in a new location. The concerns with the barn had been dealt with by relocating it to a different site. The Bethlehem Historical Association had disturbed some area around the house gathering some artifacts. The applicant had hired an archeologist to come in and complete a report and also do some excavation. That report would be forwarded on to SHIPO. The report showed that the area was not significant due to the disturbance, but they would recommend that an archeologist be onsite during the preliminary grading.

Chairman Mathusa asked for questions from the Board and staff. Mr. Odell felt that the new proposal encompassed comments that had been made by the Board. Mr. Lipnicky agreed with that assessment. He pointed out that a few things needed to be taken care of, namely the agencies that were involved in the coordinated review with the old plans should receive an update of the new plans and a copy of the new sight distance evaluation for the intersection that had been done for DOT was needed for the file. DEC's comment letter about what was then lot #4, now lot #5, brought up the issue of segmentation. DEC felt that the future use of the lot should be considered in the review of the proposed subdivision or there could be a potential segmentation issue. Mr. Lipnicky felt that the applicant's intentions for that lot should be put in writing for the record. He requested that the applicant provide five (5) more copies of Sheet 1 thru 3 of the plan set for distribution. The project would also be sent to the Albany County Planning Board. Mr. Lipnicky asked the applicant to update staff with copies of any recent correspondence with SHIPO and copies of the Phase I archeological study were needed before making a determination of significance.

Chairman Mathusa stated that the file showed a prior interest in trying to get a second exit onto Jericho Road. If two exits were available to the lot it allowed the possibility for expansion of the proposed subdivision. If there were other plans for the portion the applicant had decided to keep, it should be documented for the file to answer the question of segmentation. Mr. Fazio stated that Ms. Ott did have an ingress/egress easement in the rear of the lot but there wasn't frontage to put in a Town road. Because of ravines in that area, there wasn't much room for development. If anything happened in the future, it would be off Jericho Road and no more than two (2) or three (3) lots. There would not be an expansion from the current proposed subdivision. Chairman Mathusa asked to have that in writing for the file. He told the applicant that comments would be

coming shortly and the project would move forward as quickly as possible. Mr. Lipnicky confirmed that the circulation of the new plans to the involved agencies was informational only. He felt that the current plans might meet the standards for preliminary plat approval and a public hearing. They were waiting on comments from the Engineering Division. Mr. Lipnicky stated that he would forward the new plans to DOT. Ms. Ott asked if her project would be affected by the moratorium. Mr. Silliman replied that the specifics of the moratorium were not known, so he could not answer that question. Anything said would be speculation. At this time the Planning Board was proceeding with projects under business-as-usual.

There being no further discussion a motion to table was offered by Ms. McCarthy, seconded by Mr. Cotrofeld and approved by all present.

### **Elm Avenue East Subdivision**

Chairman Mathusa introduced the next item on the agenda, a proposed subdivision known as Elm Avenue East Subdivision. This project consisted of eighty-seven (87) single-family homes and thirteen (13) buildings with 4 units each located on Elm Avenue East. The project had first been submitted in October 2002, and had recently been on the agenda in October 2003. The presentation tonight would be an update to the new Board members with comments from staff. Mr. Lipnicky stated that the Planning Department had issues that needed to be addressed and in the absence of Mr. Passmann he would address the Engineering Division's as well.

Mr. Lanaro from Chazen Companies presented for the applicant, Amedore Homes. He gave a brief overview of the project as recently submitted. The project covered an area of approximately 128 acres of land. They proposed to construct 87 single-family homes and a multi-family area, both of which were consistent with the zoning in the area. The multi-family area had changed from a condominium use to an apartment use. Mr. Lanaro stated that they had submitted two (2) applications, one for the subdivision of the single-family area and a site plan application for the multi-family use area. He stated that they had contracted with a consulting archeologist who would be providing a Phase I study for the project and a copy would be forwarded to address all the environmental issues pertaining to this project. The project was partially within the Town's sewer district and an extension would be required. Their intention was connect with the existing sanitary sewer in two locations, Elm Ave. and the Dowers Kill. Under existing conditions, it appeared it was sufficient to handle the wastewater from this project. With regards to water supply, the property was partially within the water district and an extension of the district would be required. They believed there were plans to improve the operating capacity of the New Salem Water Treatment Plant. That fact in, addition with other improvements, lead them to assume that an adequate water supply would exist. Mr. Lanaro stated that the water usage for this project according to Code could be met with the proposed connections. A preliminary design for the Storm Water Management Plan had been developed but they were in the process of modifying and reviewing some of the conditions. They were interested in using an area near a ravine that tied into the Dowers Kill for their Storm Water Management. They had conducted significant geotechnical analysis in the area pertaining to the slope stability. They were in the process of evaluating a number of issues, such as wetland and slope stability, and the effect their plan would have on them. They understood that the setback line at the top of the slope had been commented upon in a draft letter from Mr. Passmann. He had not finished his review of the project but wanted to let them know it was an issue.

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Creighton Manning had been consulted concerning the traffic at five different intersections. Their conclusions were that morning trips generation had a peak of 99 vehicles and the afternoon peak was 142 entering and existing. The design year was 2008. They concluded that no intersection improvements would be needed in the study area. They had recommended stop signs at the entrance points of the project onto Elm Avenue and those would be provided. The sight distance analysis found that one sight distance in one direction was less than desired but not considered critically limited. Some clearing of vegetation on the south side of Elm Avenue East was recommended as well as a pre-warning sign of driveways in one area.

Mr. Lanaro stated that the geotechnical report supported the fact that the soil was mainly a brown sandy silt material about 10 to 12 feet in depth with a gray clay below it. The sandy soil about half way through becomes wet as does the gray clay. Those soil parameters would be taken into consideration when finalizing the design of the roadways. Based on the final road profiles, it was discovered that there was a need to include under-drains for sub-base protection. Slope stability along the ravine would be finalized once they merged the best management practice for storm water with the sensitivity of the stream corridor and wetlands.

Mr. Lanaro realized that they were at the preliminary stage in the review process even though they had done a substantial amount of work up to this point. He then passed around renderings of the types of houses and buildings that the proposed project would have.

Mr. Odell asked about the use, maintenance and continued ownership of the lots in the project that would be considered unbuildable. Mr. Lanaro stated that there weren't any lots that were unbuildable, though there were areas that were wetlands but they would be incorporated into one of the buildable lots. The areas that were separated out contained the detention pond areas and those would be conveyed to the Town in fee with a right-of-way to that area. Mr. Lanaro stated that all of the roads would be Town roads except the apartment complex roads which would be maintained privately. There would be an easement to the Town in the complex so they would have access to the water and sewer lines.

The question of slopes and the 1 on 5 setback pertaining to slopes was brought up by Mr. Odell. Mr. Lanaro stated that the comments on grading from the Board and staff would be addressed completely when all the review of the soil, wetlands impact, slope stability and requirements of Storm Water Management had been completed. What they would like to do was to channelize and fill some of the ravine area but they needed to weigh the impact on the stream first. They were trying to avoid individual permit requirements under the Federal Programs.

Mr. Odell questioned the access of the lots. Mr. Lanaro stated that one lot, Lot #52, would have direct access from Elm Avenue East. Ms. McCarthy asked if there were any sidewalks proposed for the development. She felt they added a measure of safety and attractiveness to a project. Mr. Lanaro stated that none were proposed, except within the multifamily area. The Town typical road cross section was referenced and sidewalks were not included. Mr. Lanaro stated that the roadways between this proposed project and Carriage Hill were to be connected. The possibility of sidewalks still existed.

Mr. Lipnicky stated that he would like to address the SEQR status of the project. The Board should be aware of the fact that at the present time this project would be listed as an unlisted action under SEQR. However, the status would be changing in the near future. A seven (7) to eight (8) acre parcel of land in the Dowers Kill Village located across Elm Avenue East from this project would be deeded to the Town for use as a park per an agreement. Under the SEQR regulation any land that was contiguous with a public parkland area significantly reduced the Type I threshold, therefore this would become a Type I project. For this reason he believed that the SEQR should be instituted as a coordinated review from the beginning. The other agencies that would potentially be involved would be the Albany County Health Department pertaining to sewer and water, the Town Board for the extension of the water and sewer districts, DEC for water quality certification and for Phase II Water Permitting and the Army Corp of Engineers for the wetlands.

The next issue Mr. Lipnicky addressed was one of zoning. At present there were two roads that came from the single family area into the multifamily area. Both crossed the NIMO right-of-way were being proposed as Town streets. He had interpreted the map to read that the Town streets would end at the property line and then be picked up as private streets within the multifamily area. Section 128-40 of the Zoning Code stated that when there was more than one residential building on a lot there needed to be 28 feet of public highway frontage per building, which would translate into three hundred and sixty-four (364) feet of frontage for this configuration. As proposed, the configuration does not work per the zoning code.

Mr. Lanaro wanted to clarify the intent. He stated that the Town part of the road would end before the NIMO right-of-way and the Town would be granted multiple easements for access to water and sewer.

Mr. Lipnicky stated that even done that way, the configuration still didn't work. The Zoning Code stated that the access needed to be in fee simple and because the road crosses NIMO property, the access was no longer in fee simple. Town Law Section 280A also spoke to access on a public street. Mr. Lipnicky felt that the entire road system needed to be a Town road. Based on the arrangement within the multifamily area, it could not be accepted as a Town road because of the ninety degree parking along the road and the curve going into the cul-de-sac doesn't meet the 250 foot minimum radius. He suggested reworking that area. He stated that there needed to be conversations with the Highway Department and the Engineering Division pertaining to the long stretches of proposed roadway and whether they want to be responsible for the maintenance of one or both of the proposed roads. Also in terms of zoning, there were lots along Street E and Street D that didn't meet the 100 foot lot width requirement. He felt that the shifting of lot lines could cure that problem. He reminded the applicant that the lot width requirement was from the building line not the road.

Mr. Lipnicky felt the intersection points of the roadways looked reasonable and noticed that the applicant had responded to earlier comments by offsetting the intersections to discourage cut thru from one subdivision to another. The Town needed to verify the sight distances at the intersections. The street alignment needed to be reworked in the vicinity of the cul-de-sacs on Street B and D which did not meet the 250 foot minimum radius.

Mr. Lipnicky suggested that the applicant contact NIMO as soon as possible because the Town would be looking for feedback on the issue of the crossings. He wanted to know if the crossings would be acceptable to NIMO.

Mr. Lipnicky told the applicant to keep in mind that if the multi-family area streets do become Town streets, they would be looking for turnarounds at the end of the streets and a 35 foot setback requirement which was 35 feet from right-of-way or 60 feet from center line whichever is greater. He stated that the driveways in the area should not be backing out into the intersection and should intersect the road at a 90 degree angle, also the parking would have to be moved into a separate lot.

Mr. Lipnicky mentioned that pedestrian circulation should be addressed because of the future park within the Dowers Kill Village. The Dowers Kill Subdivision had a sidewalk system that linked them with Haswell Farms that also continued up to Murray Road. The Dowers Kill Village had given the Town an easement along the entire frontage of their property for a future sidewalk. He felt that this proposed subdivision would have children that would be using the park across the street. The Town felt that a sidewalk along Elm Avenue on the north side where the park would be located was better because it would limit the crossings to the intersections of the proposed roads and Elm Avenue East. Ms. McCarthy questioned having a sidewalk on both sides of the road. Mr. Lipnicky pointed out that having sidewalks on both sides would encourage crossing the street at many different locations and that would not be as safe as the controlled intersection crossings. Sidewalks on both sides of the street, increases the maintenance and the problem of obtaining easements from property owners. It would be different if the road was a high volume traffic area such as Delaware Avenue. Mr. Odell brought up the idea of an internal sidewalk system that would allow residents safe travel through the subdivision to the future park. Mr. Lipnicky stated that Carriage Hill would also generate pedestrian traffic through the subdivision. They had a sidewalk system that ideally could be connected with one through the proposed subdivision to the park. Chairman Mathusa questioned the extent and which direction the sidewalks would travel. It was clarified that the sidewalks from Carriage Hill would continue through this subdivision and also connect with the sidewalks in Dowers Kill Village. The Highway Superintendent also agreed that the sidewalks on Elm Avenue East should be on the north side.

Mr. Lipnicky turned the Board's attention to the wetlands on the proposed site. There was a large area identified, approximately 39 acres of wetlands. There had been instances in the past on other projects, where Federal Wetlands were present that the State had decided to assert jurisdiction. They needed to know if this could occur here because there were buildings in the multifamily area that were close to the wetland area, 15 to 20 feet. There was also a storm water detention area that was adjacent to the wetland. If the state asserts jurisdiction, the buffer area would 50 to 100 feet. This could significantly impact the design of the multifamily area. A determination should be made as soon as possible on this question. It was not a mapped wetland by DEC at this time.

Mr. Lanaro stated that they had only defined a boundary line but did not go into great details in the back area. It didn't make sense to continue with delineation beyond this boundary because it would be cost prohibitive to build beyond that point. They would have a formal determination in the Spring.

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Mr. Lipnicky stated that even though there might not be State Wetlands, the ACOE had taken a stand before to not accept the assertion that the wetlands would not be impacted when buildings were as close to the wetlands as two of theirs. The applicant should be aware of that this could occur with their project. The map showed a 0.4 acre wetland disturbance but the area of mitigation had not been shown on the map. Mr. Lanaro stated that they usually waited until the ACOE had confirmed the delineation before the impact would be addressed and mitigation areas defined.

The next issue Mr. Lipnicky addressed was the slopes. There were two ravines in the area, one along the Dowers Kill about 40 to 50 feet deep and the other one along its tributary which ranged between 8 to 40 feet deep. Both of the slopes were in the range of 25 to 35 degree slopes. The soil survey stated they were Hudson silt loams that are susceptible to land slides, creep and other types of land movement. One of the maps showed a slope setback line that was really a top of slope line. There were a number of lots that ring around the top of the ravine that if developed as proposed would have a rear of the home to top of the slope distance of 50 feet or less. This distance was a concern of staff. Human nature being as such, when a person doesn't have a large enough yard for their use they would look to expand it. This sometimes was accomplished by cutting down trees and various other measures that would compromise the stability of the slope. In other developments, the applicant had been asked to have the geotechnical analysis address the stability of the house area as well as the long-term stability of the rear yard area and various measures to insure that people don't compromise that stability. The report that had been submitted so far put off most of that analysis for a future date. Considering the nature of the slopes in the area, Mr. Lipnicky felt that a more detailed report should be done now. Both the Engineering Division and the Planning Department had plotted out the assumed safe setback line which was one foot vertical to five foot horizontal measured from the toe of the slope. When this was done there were approximately eleven (11) lots in which the line ended up either in the middle of the structure or on the wrong side of the structure. In the area of Street G there was a horseshoe of four (4) lots, three (3) of those lots were part of the eleven (11). Mr. Lipnicky felt that the horseshoe section of the street should be eliminated leaving three (3) good lots having structures that would fall within the setback lines. Shifting Street B to the south would also pull another grouping of lots away from the slopes.

Mr. Lipnicky stated that this would be a test project for the Town concerning policy on storm water management. There were four (4) detention basins proposed within this project, three (3) of which were proposed at the tops of slopes. The Town needed to consider whether they were ready to accept four (4) detention areas in one subdivision which could lead to a few hundred of these when the Town was built out or was the consolidation of these ponds more advantageous. The Engineering Division was currently looking at the possibility of treatment facilities to handle storm water, plus other alternatives. What direction the Town would chose and ultimately how they would be maintained was yet to be decided.

Mr. Lipnicky stated that if the detention pond area was kept at the top of the slope, the Town would hire their own geotechnical engineer to evaluate this and make recommendations. One of the ponds has a high wall almost like a dam and some were sitting at the top of 45 foot high slopes. The funds for the consultant would come from review fees that would be charged to the developer. The other question attached to these detention basins was how to keep the children

that would be living in these developments away from the pond areas. Chain link fencing was being proposed for the perimeter of the ponds. A consideration was the aesthetics of that fencing.

Mr. Lipnicky moved on to the visual consideration of the project. Personally, Mr. Lipnicky did not like buildings turning their backs to the main roadways in Town. He felt that it was important to either keep good vegetation or landscape along Elm Avenue East to enhance the rear yards. He also suggested trying to get as much depth to the yards as possible.

Chairman Mathusa brought up the issue of the Dowers Kill Trail area. Mr. Lipnicky told the applicant that developments along the Dowers Kill Creek have contributed to a greenway along the Creek. The Town would be looking for the same type of contribution from this applicant. Mr. Lanaro stated that they were open to that concept. Chairman Mathusa stated that the sidewalks could then tie into the greenway path and possibly parking would be available in the future park on the Dowers Kill Village site.

Mr. Lanaro stated that pertaining to the SEQR issue, they encouraged a coordinated review and agreed with the Type I classification. The issues that arose with zoning would be re-reviewed. He agreed that the wetland delineation might affect their current proposal for the multi-family area. He would be working with the applicant's attorney with the NIMO crossings. He stated that they would also work with the Board concerning pedestrian circulation. Mr. Lanaro felt that the slopes, the drainage and the wetland issues all needed to be addressed concurrently. That was why the preliminary reports stopped where they had. They were trying to avoid the individual permit process and they would mitigate impacts as needed under the nation wide permit program. Once the delineation had been completed in the spring they would be in a better position to address those items. He was not sure that the combining of the storm water management areas on this site could be done. There were a few distinct areas on the site that needed attention. They would look at different types of controls. They would reserve vegetation along Elm Ave. East where they could to minimize the visual impact of the project. He stated that they would work with the Town concerning the greenway along the Dowers Kill. Chairman Mathusa thanked Mr. Lipnicky for his input on the project.

There being no further comment, a motion to table was offered by Mr. Odell, seconded by Ms. McCarthy and approved by all present.

The minutes of January 20, 2004 were amended and an offer to approve the minutes as amended was offered by Mr. Odell, seconded by Mr. Cotrofeld and approved by all present.

A motion to adjourn at 9:15 was offered by Mr. Odell , seconded by Ms. McCarthy and approved by all present.

Respectfully submitted,

Nanci Moquin