

**PLANNING BOARD
TOWN OF BETHLEHEM
March 2, 2004**

The Planning Board, Town of Bethlehem, Albany County, New York held a meeting, on Tuesday, March 2, 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: Troubador Subdivision
 Town Squire Phase II

Present: Parker Mathusa, Chairman of the Planning Board
 Daniel Odell, Planning Board Member
 Thomas Cotrofeld, Planning Board Member
 Howard Engel, Planning Board Member
 Christine Motta, Planning Board Member
 Brian Collier, Planning Board Member
 Katherine McCarthy, Planning Board Member

 Jeffrey Lipnicky, Town Planner
 Randall Passmann, Senior Town Engineer

 Bernice Ott, Troubador Subdivision
 John Dawes, C.T. Male, Troubador Subdivision

 Bruce Ginsburg, Schuyler Companies, Town Squire Phase II
 Steve Nerenberg, Schuyler Companies, Town Squire Phase II
 Rob Spiak, Bohler Engineering, Town Squire Phase II

Troubador Subdivision

Chairman Mathusa called the meeting to order at 7:30 pm. The first item on the agenda was the proposed 12 lot subdivision of Bernice Ott's on Rt. 9W at Church Road called Troubador Subdivision. It was on the agenda to update the Board on the minor changes that have occurred to the plans and to see if the project had reached the point where a public hearing could be scheduled. The Engineering Division and the Planning Department had offered comments to the applicant since the last time they were on the agenda which was February 3, 2004. The updated plans reflected adjustments that were made to comply with those comments. There was still work to be done, the project was in the Preliminary Plat stage. The Albany County Planning Board had recommended disapproval without prejudice on the grounds that the large parcel to the rear of the project, which had been lot #5 had not been addressed in the SEQR review.

The applicant was then asked to update the Board on the changes that had occurred during the past month. John Dawes of C. T. Male Associates represented the applicant for this project and did the presentation. One of the main issues was the land formerly know as Lot #5. That parcel had been reduced to a 36, 823 sq. ft. lot for Ms. Ott to build her personal house. The remaining acreage would now be known as remaining lands. This means that if at such time the applicant wants to develop that parcel, she would have to return to the Planning Board for approval. It was now rendered a non-buildable lot. The remaining lands was deeded the road frontage necessary along the cul-de-sac within the proposed subdivision to keep it in compliance with the Zoning Code. The parcel that would now be know as remaining lands had not been surveyed in metes and bounds.

Mr. Lipnicky stated that one of the comments to the previous map was to show the bearings and distances, which had not been supplied, of the parcel then know as Lot #5. After a discussion between the applicant and staff it was determined that to survey that section of the property would have had a substantial cost associated with it. The applicant had been open to alternative ways of dealing with this comment. Staff had suggested showing the remaining lands as a separate lot. But not as one approved for development. The applicant then changed the configuration to comply with the zoning codes to provide access and it then became a flag lot. Mr. Lipnicky stated that a condition that might be placed on the lot as it approaches conditional final approval would be to require that future development of the parcel would be contingent on gaining access from Jericho Road. The applicant does not have access to Jericho Road at this time, only an easement. She would need to purchase additional property. Mr. Odell asked if at a later time someone wanted to build on the land, would the person then have to have the property surveyed. Mr. Lipnicky stated that first it had to be approved as a building lot by the Planning Board and at that time it would need to be surveyed. Mr. Odell stated that the topography of the remaining lands did not seem to lend itself to much development, and if that development occurred it would be minimal and needed access from Jericho Road. Mr. Lipnicky concurred. Chairman Mathusa asked if that development occurred would they continue to need the easement along the cul-de-sac. Mr. Lipnicky stated that in order for them to meet the zoning requirements, they needed 28 feet of road frontage on a public street. In the future if they purchased land on Jericho Road that road frontage requirement could be satisfied from there. But the plans of the applicant does not include development of that parcel. Mr. Dawes stated that the other comment from Mr. Passmann concerned the Storm Water Basin. They were in the progress of redesigning the system. One of the ideas being considered was to pipe it through the sanitary easement and down to the creek. Mr. Passmann stated that the Engineering Division was working with the applicant on a new approach to the system. One of the comments to the applicant was for them to hard pipe their discharge from the Storm Water Basin to the lower elevation of the Dowers Kill. This would eliminate the possibility of an erosion condition. That was the design that the applicant was exploring. Chairman Mathusa asked if there were other drainage conditions around the cul-de-sac or on the roadway. Mr. Passmann stated that they were still being worked out by the applicant. Mr. Dawes stated that there were some issues with the grading between some of the houses for the drainage and they were also working on those. Mr. Engel asked where the overflow from the pond would discharge. Mr. Lipnicky stated that it would discharge to the easement

along the back of the lots to the detention basin. Mr. Collier wondered if the limits of disturbance would exceed the 5 acre limitation. Mr. Dawes stated that the disturbance was right at the threshold now with 4.99 acres. If they change the design to eliminate the storm water basin they would gain acreage that would not be disturbed to put them significantly under the 5 acre limit.

Mr. Engel asked if the mature trees that were in the location of the present house were still able to be saved with the new design of the road. Ms. Ott responded that the road would eliminate those trees. Mr. Engel agreed that the present location of the road was much better than the previous design. Mr. Collier asked Mr. Lipnicky his opinion of the Albany County Planning Board's recommendation to disapprove the project without prejudice. Mr. Lipnicky felt that the ACPB was recommending an analysis be done on the impacts of developing all of Ms. Ott's land in terms of the SEQR review. In his opinion, the developable portion of the remaining lands was small. He didn't feel that the number of lots, if ever developed, would have a significant impact. Chairman Mathusa said that a letter from the applicant's representative, Frank Fazio, on February 26th stated that if there was development, it would not be more than three (3) or four (4) lots and their access would be from Jericho Road. Mr. Lipnicky offered to give a written evaluation for the potential of future development on the property to the Board. Mr. Odell felt that it wasn't an issue until the Board needed to take action on the project. Mr. Lipnicky stated that when a person has ownership of a large parcel of land and seeks to develop only part of that land, some agencies interpret SEQR to include all the land holdings of the applicant in its review. Historically the approach of the Board had been that if there was not an application or a realistic expectation that the additional land would be developed, it had not been included in the SEQR review. This particular parcel was not one that would lend itself easily to development because of the topography. When LUMAC was being mapped the land of Ms. Ott's was recommended for conservation land because of its topography and other factors, it did not have a high development potential. Mr. Lipnicky stated that if and when the Board decides to override the recommendation of the Albany County Planning Board, they would need to state their reasons for that override. Chairman Mathusa felt if development did occur it would be off Jericho Road and in terms of traffic impact it would be practically non-existent. That's why he had asked if the easement would remain if there was future development. The assumption would be that the development would be self-contained off Jericho Road. Ms. Ott agreed that was her intention. She needed to buy frontage on Jericho Road before any development could happen. She felt that a maximum of four houses could be placed on the land. The land that was between the current proposal and future development on Jericho Road would remain forever green because of the topography. Mr. Lipnicky stated that at the present time, Ms. Ott could not build on the remaining lands parcel because per the Zoning Code it would require frontage on a public street. She would have to go before the Zoning Board for a variance to even build one house.

A motion to set the date for the public hearing on March 16, 2004 at 7:30 was offered by Mr. Odell, seconded by Mr. Collier and approved by all present.

A motion to table the project was offered by Mr. Odell, seconded by Mr. Engel and approved by all present.

Town Squire Phase II

Chairman Mathusa turned the Board's attention to the Town Squire Phase II project. He started with a background time line of what had occurred with the project up until this point. On December 22, 2003 the Site Plan was approved with numerous conditions to be met prior to the signing of the Plan. One condition had to do with submittal of the elevations of the Hollywood Video. Those elevations were approved through an amendment to the Site Plan on January 20, 2004. Also on January 20, 2004, the Engineering Division sent out three pages of comments on the plans as submitted. On January 23, 2004, Engineering sent out four more pages of comments. On February 2, 2004, a letter was sent to Mr. Ginsburg from Mr. Silliman concerning the letter of credit that was still due. On February 18, 2004, Engineering sent a fax to the applicant with more comments. On February 20, 2004 the applicant sent a letter requesting permission to begin tree removal, but no stumping. On February 25, 2004, the Planning Department sent a letter to the applicant outlining the conditions that had been met and the conditions that remained outstanding. On February 27, 2004, the Engineering Division sent out another four pages of comments on a variety of issues. Chairman Mathusa stated that the Board wanted to know what progress the applicant had made with the remaining conditions with the possibility of approval for some tree removal. The last time the applicant had been in front of the Board, Chairman Mathusa had stated that the burden of moving forward with the project was it was up to the applicant. If the conditions of the approval were satisfied, the plans would be signed and the necessary permits issued. He was sensitive to the time constraints of the applicant, but the conditions needed to be satisfied. Chairman Mathusa opened the floor to the applicant to try and convince the Board that tree removal should be approved.

Mr. Ginsburg apologized to the Board for the necessity of staff to generate that amount of memos. He stated that the last time they had been before the Board, the list of conditions that were still outstanding had been discussed. As the developer, he had not been aware that they were still unsatisfied. He felt it was a matter of clarification and his office had since been in many conversations with Bohler Engineering trying to resolve these matters. Mr. Ginsburg stated that he wanted to list the conditions that he felt had been satisfied. First was the letters of credit for both the \$70,000 amount and the \$20,000 amount that he produced for the first time, and passed along for review by the Planning Board Counsel. Next was a question of easement language that remained outstanding. Mr. Ginsburg stated that Todd from ABD Engineers had been submitting language to Mr. Cirillo for additional changes. He felt that the final revision of the easements had been submitted to the Engineering Division within the past two (2) days. He had met with Victoria Stanton, Counsel for Farm Family Insurance Company, concerning the buffer area between the two properties. He had faxed a letter to the Town staff that showed they would allow them to go into the area for clearing but they reserved the right to OK the landscape design. They preferred larger vegetation then what was presently there to be planted. Mr. Kleinke would revise a plan for the area that would be acceptable to them.

Mr. Ginsburg felt that these issues were the ones that were under their control at this time. He understood that Bohler Engineering was still working on some issues with Mr. Passmann. Though they still had not submitted everything that the Engineering Division had requested, he felt they were close.

Mr. Odell stated he was not pleased with the way this had been presented. He felt that the applicant was not close to complying with the conditions. The documents had been given to the Board that evening. That had not given the Board a chance to review the materials submitted or staff's comments on those submittals. He felt that this should have been placed on the agenda at the next meeting. He felt it was mandatory to have the opportunity to review the material, the analysis of the Staff, Planning Counsel and the Engineering Division. Mr. Odell told the applicant that his statement alone that he had complied with the conditions was not acceptable.

Mr. Ginsburg stated that he thought they had complied with the conditions. He referred to the letter from Farm Family that had just been given to the Board and the language of the easements. Mr. Odell stated that the information should have been submitted to the Board in a timely manner for the benefit of review.

Mr. Ginsburg stated that he was not looking for a stamp of final approval that all conditions had been satisfied. Because of time constraints and the weather, they were requesting to start some work on the site. He felt that they had been trying to work diligently to put closure on as many of the conditions as possible. He referred to the issues that he had previously mentioned that he considered completed.

Chairman Mathusa stated that the reason that he had placed the project on the agenda was that in December, when the approval had been granted, there had been many conditions attached to that approval. He wanted the applicant to update the Board on the progress that had been made on those conditions. They had submitted a letter requesting they be allowed to begin some tree trimming and the Board needed to make a decision as to whether they felt they had made enough progress on their conditions to allow the request.

Mr. Ginsburg told Mr. Odell that much of the material had been submitted to the Town offices within the past forty-eight (48) hours. Chairman Mathusa stated that they were not asking the Board to approve those documents, only to assess their progress. Mr. Collier stated that the final sign off was up to Chairman Mathusa, he felt that the Board's only role now was to consider their request for tree clearing. He stated that the intrusion by the applicant into the buffer area needed to be approved by Farm Family. The letter that had been submitted stated that "once they receive a landscaping plan that is acceptable to Farm Family, they would issue a letter granting permission". He felt that until Farm Family had seen the plan and signed off on the plan, the applicant did not have permission to enter that area.

Mr. Ginsburg felt that Farm Family didn't care if they went into the buffer area, only that they have the final approval as what was planted there. Mr. Nerenberg stated that conceptually they had approved of the applicant's plan but because the applicant could

not attach a plan to the request letter to Farm Family, they had placed that paragraph at the end of their letter. Mr. Kleinke had assured Mr. Nerenberg that the plan would be finished by Thursday. Mr. Collier again stated that the applicant does not have permission until Farm Family signed off on the plan. Mr. Ginsburg asked if they could begin clearing around the buffer until Farm Family presented the Board with an approval letter. He said there was enough other work that could be done. Mr. Collier asked how much time this early approval for tree cutting would give them. Mr. Nerenberg then stated that he had additional requests that he was bringing to the Board but they had nothing to do with the permanent site work. They were temporary things that needed to be done for the storm water. One of the things that need to be done was the installation of a silt fence. He mentioned that there were a few penalty fines that they were incurring because of their inability to turn over the sites to the companies on the contractual dates. The ability to begin this work would help in this turn over. He pointed out the area on the map where the silt fence would be installed. He also pointed to an area in which they wanted to install temporary sedimentation basins so that when the earth work was being done, the soil and water would go into these facilities and then go into the storm water management. It goes into the pond until it builds to a certain point, it then goes thru a stone dam inside the basin which cleans the water and then it runs over into another check dam which treats the water. It cleans the water during the construction phase. Mr. Nerenberg then pointed to another area where they wanted to construct a temporary roadway made of crushed stone that would clean the tires of the trucks before going onto the Town roadways. Another area that he pointed to was the 48-inch pipe that was an existing pipe in the ravine that needed to be relocated. This pipe needed to be moved prior to them building the dams within the temporary basins. He also wanted to do the stumping of the trees. He felt that the comments that had been received from Mr. Passmann didn't have any effect on the work that he was requesting.

Mr. Nerenberg stated that he was requesting the additional work to help his timeline by about two weeks. Mr. Lipnicky stated that he had not known that they would be requesting these additional items. Mr. Passmann stated that he had reservations concerning the work on the municipal storm sewer which includes the relocation of the 48-inch storm pipe and the installation of the gabion gaskets without having approved plans. The Town inspectors need approved plans in order to do an inspection on behalf of the Town. Mr. Nerenberg said they could change their request to not include the pipe or gabion work. Mr. Passmann said that would be less intrusive, but he had looked at the plans in terms of the request letter that was specific to the removal of trees without the stumping and earth work.

Ms. McCarthy asked if this was the first time Mr. Passmann had seen the plans for the additional work. He stated that it had been discussed with Mr. Ginsburg. Ms. McCarthy wanted to know how many of the conditions from the approval document still needed to be satisfied. Mr. Lipnicky stated that there were still a number of items that remained before the site plan could be signed. Out of fourteen items, five had been satisfied. Ms. McCarthy stated that she agreed with Mr. Odell. The document that had been approved in December was heavily conditioned. She was not pleased with the fact that so much of the information was submitted at the last minute without the benefit of review from staff and

counsel. Ms. McCarthy was also concerned with the approval of pieces without more of the conditions satisfied. She felt that the Board might end up with a package they were not satisfied with if they took that approach. Chairman Mathusa wanted to know if the request would be easier to approve if it was limited to tree cutting, not within the buffer area, and no stumping. They could then come back in two weeks to relay their progress. Ms. McCarthy was still concerned that the material to substantiate their claims would come in at the last minute. Chairman Mathusa just wanted the Board to have the opportunity to examine what had been submitted within the past few days.

Mr. Ginsburg stated that they were trying to turn the information around as quickly as possible. He felt they were aggressively working to satisfy the conditions in the December approval document since the last time they had been in front of the Board and it had been pointed out to them the extent of the outstanding issues. Ms. McCarthy stated that everyone on the Board was also working diligently to ensure the project moved ahead.

Mr. Collier wanted to know if they had fully addressed the substantial number of issues that were stated in Mr. Passmann's memo concerning the Storm Water Management. Mr. Spiak stated that the Storm Water Practices were very new and they were still learning. Mr. Passmann had clarified some of the comments to Mr. Spiak in a phone conversation.

Mr. Collier felt that he heard enough to approve tree clearing and some grading. Mr. Odell felt that the conversation should be tabled until a later date. Mr. Cotrofeld stated he would support tree cutting but not within the buffer area of Farm Family. He viewed the letter from Farm Family as a letter of intent, not as an approval to proceed. He would also be open to putting in the gravel road. Mr. Engel stated that the approval given in December had many conditions attached to it. He felt that this project has dragged on way beyond reasonable. He didn't feel that some tree clearing would make much difference at this point, as long as it did not occur within the buffer area. He did feel that all the parties were trying to work together to bring this to a close. Ms. Motta stated that she would support the tree clearing and some gravel but she wanted to withhold other approvals until counsel, staff and all Board members had the opportunity to review the materials submitted.

Chairman Mathusa stated that the agreement with Farm Family needed to be reviewed by staff and counsel. If it comes in within the next week, he would place this on the agenda to approve the request of the applicant to remove trees within the buffer area. He wanted to continue to move the project ahead. At the end a memo would go to the Board prior to signing outlining what the requirements had been and what the applicant's responses had been, so the Board would have a complete understanding how the project evolved to the final state.

Chairman Mathusa offered a motion to allow the applicant to begin tree clearing, no stumping, without encroaching onto Farm Family property, also the installation of the silt fence and the gravel roadway for the trucks. Mr. Collier seconded the motion. Three

members approved the motion. Ms. McCarthy and Mr. Odell were opposed. The motion passed.

Mr. Lipnicky asked Mr. Spiak to explain to the Board the change on the plans that concerned the use of hydro seeding instead of the installation of sod that had been proposed. Mr. Nerenberg stated that on the original site plan, the engineers had included sod on the plans. In this particular case with the grading issues, what they proposed to do in lieu of sod was the grading then hydro-seeding and then put down encromat, which was a stabilization material, that would hold everything in place. The grass grows through it. This would be a change from the original submission. The applicant had discussed it with Mr. Lipnicky.

Chairman Mathusa asked if the cost was the same. Mr. Nerenberg stated that the cost would be less, but with no sprinklers on site, the sod would be difficult to maintain. Mr. Lipnicky said staff did not have an objection to the hydro-seed, but he did not feel that it was appropriate for staff to approve it as a field change. He stated that it did a good job minimizing soil erosion and it was quickly germinated. Mr. Engel thought that it was better than sod. Mr. Passmann stated that it made sense to use the product on the bank areas. Chairman Mathusa asked Mr. Lipnicky to prepare a memo for the Board to review, they would then take up the issue at the next meeting.

Chairman Mathusa stated that the approved minutes of the Planning Board would now be available on the Town web site.

The minutes of February 17, 2004 were amended. A motion to approve the minutes as amended was offered by Ms. McCarthy, seconded by Mr. Cotrofeld and approved by all present.

Chairman Mathusa stated that he had received memos and phone calls regarding the escrow amount of \$70,000 that Mr. Nigro was interested in securing for the work his company did at the intersection of Feura Bush Rd. and Rt. 9W. His recommendation to the supervisor was to defer any potential settlement for approximately six (6) to eight (8) weeks. The Board would have to make a determination at that time. He had spoken with the Supervisor and it was agreed that light system at the intersection in question would not be sufficient to handle the traffic. He felt that a left hand turn signal from Rt. 9W to Glenmont Road would be beneficial. He had been clipped by an eighteen (18) wheeler while waiting at that intersection and felt it was unsafe. He also felt that additional signalization might be needed to accommodate a left handed turn from Glenmont Road going south onto Rt. 9W. Mr. Collier agreed that further investigation of the intersection would be necessary. Chairman Mathusa asked Mr. Lipnicky to draft a response letter for the Supervisor's signature to a Dr. George Bailie and Dr. Margaret Malone, who had expressed a desire for the Town to reconsider the policies for traffic flow on Bender Lane. There had been public hearings on the issue and he didn't feel that the Doctor's suggestions could be implemented. He felt that there would be more letters concerning decisions that had been made and their impact on residents. Mr. Lipnicky suggested instead drafting a memo to the Supervisor explaining the reasons why Bender had been

converted to a one way. If the Supervisor then wishes, he would draft a cover letter. Mr. Odell felt it was reasonable for people to ask why a road that they had used had a different traffic pattern. Mr. Collier agreed that having a letter on file that explained the logic behind certain decisions was a good idea.

Mr. Engel felt that the practice of allowing materials to be submitted at the last minute without having the opportunity to review them ahead of time should be changed. Applicants should not expect an answer to requests that the Board had not had adequate time to review all the documentation. Other Board members agreed.

A motion to adjourn was offered by Mr. Engel, seconded by Mr. Cotrofeld and approved by all present.

The meeting concluded at 9:00PM.

Respectfully submitted,

Nanci Moquin