

**PLANNING BOARD
TOWN OF BETHLEHEM**

July 20, 2004

The Planning Board, Town of Bethlehem, Albany County, New York held a **Regular Meeting** on Tuesday July 20, 2004, at the Bethlehem Town Hall, 445 Delaware Avenue, Delmar, NY. Chairman Parker D. Mathusa presided and called the meeting to order at 7:45 pm.

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

Jeffrey Lipnicky, Town Planner
Janine Saatman, Deputy Town Planner
Randall Passmann, Senior Town Engineer

Paul Hite, LLS, 230 Delaware Avenue, Delmar, Feeney-Castronuovo Subdivision
Dr. William Feeney, 28B Collegeview Dr., Loudonville, NY 12211
Carole Nemore, 184 Rowland Ave., Delmar, Feeney-Castronuovo
Tracy Burton, Feeney-Castronuovo
Norman & Ann Drapeau, Orchard St., Delmar, Feeney-Castronuovo
Peter Lynch, Esq., 48 Columbia St., Albany, NY, Beacon Pointe Harbor
Mike Groff, Chas H. Sells, Inc. 7 Washington Sq., Albany, NY, Beacon Pointe Harbor
Steve Kinley, ACO Property Advisors, Beacon Pointe Harbor
Mark Bette, First Columbia
Rob Spiak, Bohler Engineering, Town Squire Phase II
Bruce Ginsburg, Schuyler Companies, Town Squire Phase II

Feeney-Castronuovo Subdivision No. 2

The public hearing for this project had just concluded. Mr. Lipnicky addressed the issue that had been brought up by Ms. Nemore during the public hearing. First he mentioned that Lot #2 of the proposed subdivision would in all likelihood be back for further division before the Board. He mentioned that under the Town's park set aside payment-in-lieu-of ordinance, the Board could require 1,500 square feet of land to be set-aside per lot. In order for a total of one acre of land to be set-aside, there needed to be 29 lots. The set-aside law does not require that the land be given to the Town, it requires a notation on the map that prohibits any other use besides park or recreation use. The Town thought developers would transfer the land to the Town because it would be of no use to them. The criteria attached to this Parkland Local Law, with some room for interpretation, was for active recreation, such as baseball fields, tennis courts, etc. Mr. Lipnicky wasn't sure if the land along the Phillipin Kill fit within the definitions that were within the Code. He could not make a

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strong argument for a third party, the Albany Land Conservancy, to get land along a stream on private property. Mr. Lipnicky's recommendation to the Board was to require the "fee-in-lieu-of".

Chairman Mathusa stated that if the applicant wanted to donate land to the Albany Land Conservancy, that could be done at a later time.

Mr. Hite stated that the Swift parcel of land that Ms. Nemore stated was given to the Conservancy, was not given, it was taken from the Swifts in lieu of mitigation for wetlands. It ended up costing the Swift's about \$20,000.00.

Mr. Hite requested that if the Board were to consider granting approval, that the approval be for a Conditional Final Approval.

Chairman Mathusa turned the Board's attention to the draft approval documents that had been prepared for their review in relation to the Feeney-Castronuovo Subdivision.

The first of the documents for consideration was the SEQR Resolution, Classification and Negative Declaration. Ms. Saatman stated that there were a few minor changes to the draft document.

A motion to approved the Draft SEQR Resolution as amended was offered by Mr. Collier, seconded by Ms. McCarthy and approved by all present.

Chairman Mathusa stated that the next document for consideration was the Draft Reservation of Parkland Resolution. Under this Resolution a fee would be required at the time an application for a building permit was submitted. This fee was only attached to the undeveloped parcel.

Mr. Odell stated that in the future he would like the Board to consider the fact that active recreation also included hiking, walking and bike trails. Due to the fact that some projects might include areas near the Hudson River, there could also be fishing opportunities available.

Mr. Lipnicky stated that the original intent was to make sure that the land that was offered by developers was not useless, hence the more traditional interpretation of "active recreation". That did not preclude land being used for the types of recreation mentioned by Mr. Odell. Mr. Lipnicky also noted that the Parks Department had limited resources to care for facilities. He did agree that in certain circumstances the Board could look at land for a variety of recreational purposes.

Chairman Mathusa agreed with Mr. Odell that each project should be looked at separately and carefully to see what interpretation of "parkland" would most benefit the residents. Mr. Engel stated that trails along streams needed to be able to be connected in order for them to be a viable resource. Ms. Saatman stated that there was a proposed subdivision for across the street that also ran along the Phippinkill. Ms. McCarthy wanted to know if the Town was responsible for the land if it was given to the Albany Land Conservancy. Mr. Lipnicky stated that they wouldn't be responsible, but then it also wouldn't satisfy their responsibility under the Parkland set-aside law. Mr. Collier stated that the first project submitted by Feeney-Castronuovo included a stream corridor as a separate lot and there had been some question as to the use of that land. Dr. Feeney stated that the Board had been hesitant to accept that as a lot, even though he had been willing to put something in the deed that prohibited building. Now they just needed to sell the land.

Ms. Saatman noted that the changes to the Draft Parkland Resolution included the addition of the address for Lot #2.

A motion to approved the Parkland Resolution as amended was offered by Ms. McCarthy, seconded by Mr. Collier and approved by all present.

Chairman Mathusa turned the Board's attention to the 2nd Draft Conditional Final Approval that included the Albany County Planning Board's recommendation and the inclusion of the address for Lot #2.

A motion to approve the 2nd Draft Conditional Final Approval as amended was offered by Mr. Cotrofeld, seconded by Mr. Odell and approved by all present.

Beacon Pointe Harbor Project

Chairman Mathusa turned the Board's attention to the next item on the agenda, the Beacon Pointe Harbor Project. They were on the agenda tonight for the Board to consider accepting their Draft Scoping Document, set the date for the public scoping session and set dates for the written comment period. Chairman Mathusa stated that the Board was interested in moving this large project along. Mr. Lipnicky stated that the Planning Department had received a revised Draft Scoping Document from Buckhurst, Fish and Jacquamart and it had been distributed to the Board. After reviewing the document, he felt it was a substantial improvement over the previously submitted document and was now adequate to circulate to the other involved agencies. He had attached a marked up copy to the packet sent to the Board that included factual changes to it such as a suggested date for a scoping session and the date through which written comment would be accepted along with a few other changes and additions. These changes had been sent to Thomas Yardley and he didn't have an issue with them. A Draft Resolution had also been submitted to the Board that would accept the Draft Scoping Document for circulation, set the date for the public scoping session and set the dates in which public comment would be accepted.

Mr. Lynch, the attorney for the developer, distributed a packet of information to the Board members. He stated that he hadn't finished the document until late in the afternoon. Mr. Lynch stated that the scoping document that had been submitted to the Board on June 10th by Micheal Groff of Charles Sells, Inc. had called for a GEIS. He understood that the document had been rejected. The document that had been submitted by Mr. Yardley last week that called for a site specific DEIS, was submitted in order to comply with comments given by the Planning Department. Mr. Lynch stated that the developer had not authorized the submission of that Scoping Document for a DEIS, therefore they were withdrawing that document.

Mr. Lynch stated that they did have a concept for a project that would need a zone change. If at the end of doing a site specific DEIS, the Town decided not to approve the zone change, it would have cost the applicant a significant amount of money for nothing. Even if the zone change was approved based on a site specific design, a tenant could change the design because most site designs were tenant driven. Mr. Lynch stated that they did not have tenants as yet. In a letter to Supervisor Egan, he said that the site specific Scoping Document that had been submitted last week could not be done. He believed the SEQR regulations gave the Board the methodology to deal with a project that would be preformed under a sequence of events. Just like the PDD ordinance, where the zone was first created and then the applicant comes back for specific site design approval. SEQR stated that under that circumstance, the initial review could be done under a GEIS with subsequent site specific

projects needing a supplemental EIS to be submitted. Mr. Lynch stated that the latest version of the scoping document had just been submitted to the Board. They had gone back to the GEIS format. He felt that the SEQR process and the ordinance process fit well together. He stated that at the present time, they were dealing with a concept not a site specific project. Ultimately, if the zone change went forward and they acquired tenants, they would have to come back with the Supplemental EIS. Mr. Lynch stated that this was not segmentation. He cited a few cases that had been before the Appellate Court that he believed substantiated his argument pertaining to SEQR. The applicant did not intend to do a GEIS and then come back expecting to only complete the process with an EAF.

Mr. Odell stated that in light of the fact that the Board had just received the letter and additional documents, he felt that the project should be tabled. Chairman Mathusa asked Mr. Odell for a few more minutes to listen to Mr. Lynch and then he would like to respond. Mr. Odell agreed.

Mr. Lynch stated that they wanted to follow SEQR in a methodology that actually parallels the Town's ordinance. That was their request. They were withdrawing the previous scope document. He didn't withdraw the project from the agenda because he had wanted to explain the reasoning behind their withdrawal. He did not expect an action from the Board this evening.

Chairman Mathusa stated that he was not pleased with the actions of the applicant. During previous presentations by Mr. Gush to the Town Board, he had stated that he was interested in moving the project along as quickly as possible. The Planning Board had been progressing in good faith that that statement was true. The Board was well aware of the many aspects the project contained and they were interested in having the project in the Town. They were ready to give it the time and effort it needed to progress the project along in a timely manner. The actions tonight spoke to a much different pace than previously conveyed. Each of the pieces now will take significantly more time. They have changed the timetable from the Board's perspective of "flank speed" to the applicant's "deliberate speed". Mr. Collier agreed that it appeared that the path the applicant wanted to take appeared to be a time delay.

Mr. Lynch stated that the applicant wanted the project to proceed quickly. If the Draft Scoping Document that had been submitted by Mr. Yardley was approved tonight and the scoping session set along with the comment period, the work would have to go forward to prepare the Draft Environmental Impact Statement. If that occurred, they would have a DEIS without a site specific site plans, because they don't have tenants. The DEIS and the scoping document would not match. That was the reason for the change in the scoping document. Mr. Lynch felt that using the GEIS would actually expedite the rezoning process. They would not get bogged down with tenant input for site specifics. He thought that the GEIS process would streamline the review. Mr. Lynch stated that Mr. Gush did not want to commit to a scoping document that was based on a DEIS because he knew he could not comply with it. Mr. Lynch had been asked to look at the SEQR regulations to see if there was a method that allowed the process that they wanted to use. Mr. Lynch stated that the applicant could not do a scoping document with site specific mandates.

Ms. McCarthy stated that the Board needed to be very thorough in their review of the project because anything less would not be fair to the Town.

Mr. Lipnicky read the part of the Town Code that dealt with the establishment of Planned Development Districts and the required submissions from an applicant. He stated that the Code requirements specifically point to a project that would be in the preliminary plan stage instead of a

concept plan. There needed to be a certain level of detail on the project plan before review by the Planning Board took place and a recommendation prepared for the Town Board.

Mr. Collier stated that the Code pointed more to a DEIS than a GEIS.

Mr. Lynch stated that conceptual plans would be submitted with the GEIS. He felt that the level of detail that had been requested by the Planning Department, reflected more of what would be needed during a Building Project Approval than a Zone Change. That was the reason that the applicant could not comply. If the applicant was required to come back to a site specific DEIS, like the one that was just withdrawn, then the project would be done.

Mr. Lipnicky stated that he did agree with Mr. Lynch in that a final site plan could not be done now and some flexibility was needed for the plan to be changed and modified as necessary. Up to this point, the practice of the Board when recommending a Planned Development District was to tie the development of the district to the concept plan that had been submitted at the time of the zone change. Given the wording of the Code, a concept was not sufficient information for a zone change, it should include preliminary planning detail.

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

First Columbia

Chairman Mathusa turned the Board's attention to the next item on the agenda and amendment to an approved building project on New Scotland Avenue. Mark Bette presented the project.

Mr. Bette stated that there was a new concept and a new design. It would be a three story, 45,000 sq. ft. medical/office building in place of the two buildings that had been previously approved. It would be adjacent to the existing medical building. They had combined the square footage into one structure because of the demand for that type of space. They currently have letters of interest from perspective tenants that would fill about 50% of the space. They were actively marketing the remaining space in the building. The site contained an existing pump station for the Town. Parking would be to the rear of the building with a new curb cut along New Scotland Avenue. There would be a connection in the rear to the existing parking lot. The building would be three stories on the parking lot side and two stories on the New Scotland side. It would be built into the grade. This building would be higher than the existing one. All the parking access would be from the main entry that faced the lot. There wouldn't be access to the new building from the existing parking lot. He stated that the existing building was fully occupied with St. Peter's as a major tenant.

Ms. Saatman stated that the Planning Department was just starting their review of the project. There didn't seem to be any major issues with the new configuration. The Planning Department had just received a letter from CDTA which raised the issue of pedestrian access and/or bus accommodations. Currently there were buses that came through the site now, but there wasn't an easy stop.

Mr. Bette stated that the shorter CDTA buses could come onto the site but the larger buses, coming from Albany, drop people off on the opposite side of New Scotland Avenue. They had asked CDTA to take a look at that, even four years ago when the first building was proposed. St. Peter's does have a large number of people that come on the bus to that location.

Chairman Mathusa asked if the new design could accommodate the buses. Mr. Bette stated that CDTA was looking for a stop on New Scotland Avenue with a possible structure. He stated that there was a large grade difference from the road and there was a question of a safe spot to put a stop.

Chairman Mathusa wanted to know where the flood plain extended to in relation to the new structure. Mr. Bette stated that there was a buffer area along the Normanskill. He didn't know of any regulation prohibiting parking lots from being in a flood plain. In the past four years, there hasn't been any problem with flooding in the area.

Mr. Passmann stated that the previous plan that had been submitted showed the hundred (100) year flood plain following along the lower edge of the parking lot. None of the buildings were within that plain.

Ms. McCarthy thought that if they had a clearly delineated walkway from one building to the other, it could benefit the patients that were in different physical states. She also mentioned the possibility of a sidewalk to New Scotland Avenue and the bus stop.

Ms. Saatman suggested revamping the internal circulation to accommodate a loop that a larger bus could negotiate now that there were two driveways. Mr. Bette stated that he was willing to work with CDTA because the tenants definitely wanted the bus to be available. Mr. Odell felt that having the bus come onto the site versus dropping them on New Scotland Avenue made sense.

Ms. Saatman wanted to know if the tenants would be strictly medical or a mixture. Mr. Bette stated that they would prefer just medical but if the tenants weren't there, they would also have other commercial tenants. He mentioned that the existing medical building was doing well. When the question of the building orientation came up, Mr. Bette stated that even though the front of the building faced the parking lot, the side facing New Scotland would look very similar minus the prominent entry.

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

Town Squire Phase II

Chairman Mathusa turned the Board's attention to the next item on the agenda, the Town Squire Phase II project. They were here tonight to request an approval of Amendment C that dealt with the changes to the approved sand filter system and the retaining wall.

Mr. Passmann stated that the applicant was proposing a change to the approved plans based on subsurface geotechnical data that they observed during construction. The subsurface conditions were found to be better than they had anticipated. They had requested a change to the structural design for the sand filter bed area and the retaining walls around it. The Town had retained an independent geotechnical engineer to take a look at the project and issue comments, which had been addressed by the applicant. As a result of that process, the applicant had prepared a five-sheet set that was to replace the corresponding sheets in the original approval. They showed the changes to the filter bed and retaining walls. One of the comments that Gregg Gifford, the independent geotechnical engineer, had made was in regard to the need to have the back fill for the retaining walls observed during construction. The applicant was ready to comply with that requirement.

A motion to approve the draft SEQR Resolution and Negative Declaration was offered by Mr. Collier, seconded by Mr. Odell and approved by all present.

A motion to approve the draft 3rd Amendment to SPA-113 was offered by Mr. Cotrofeld, seconded by Mr. Collier and approved by all present.

Mr. Collier stated the Planning Department and the Planning Board needed to get together and come up with parameters and guidelines for the storm water requirements. He stated that the solution on this project was not especially aesthetically pleasing though technically correct. In the future he would like to see if there were other options. Chairman Mathusa stated that this was an area that was evolving all the time.

A motion to approve the minutes of the public hearing of July 6, 2004 was offered by Ms. McCarthy, seconded by Mr. Engel and approved by all present.

A motion to approve the minutes of July 6, 2004 as amended was offered by Ms. McCarthy, seconded by Ms. Motta and approved by all present.

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

The meeting adjourned at 9:10 pm.