

**PLANNING BOARD
TOWN OF BETHLEHEM**

August 17, 2004

The Planning Board, Town of Bethlehem, Albany County, New York held a **Regular Meeting** on Tuesday August 17, 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 pm.

Present: Parker Mathusa, Planning Board Chairman
Keith Silliman, Planning Board Counsel
Howard Engel, Planning Board Member
Thomas Cotrofeld, Planning Board Member
Christine Motta, Planning Board Member
Daniel Odell, Planning Board Member

Jeffrey Lipnicky, Town Planner
Janine Saatman, Deputy Town Planner

Victor Gush
Michael Groeff
Steven Kinley
Peter Lynch, Esq.

Discussion of the Disposition of Funds from Letters of Credit

Chairman Mathusa called the Planning Board meeting to order at 7:30pm. He noted that a quorum was present. The first item on the agenda was a discussion of the disposition of funds available in Letters of Credit that have been earmarked for improvements to the intersection of Rt. 9W/ Feura Bush Road/ Glenmont Road intersection. The specific issue was the southbound right turn lane onto Feura Bush Road. During the redevelopment of the Town Squire Plaza, the Town required the developer to post an escrow in an amount necessary to upgrade the intersection in question. The issue now centered on using those funds to reimburse the developer of the Bethlehem Town Center for the completed construction of a south bound turn lane. Chairman Mathusa had asked the Planning Counsel, Mr. Silliman, to brief the Board on the language between the Town of Bethlehem and the developer of the Town Squire Plaza. Chairman Mathusa wanted the Planning Board to be able to offer an opinion to the Town Board as to the request to release the funds. The opinion could be in the form of a resolution or a letter to the Town Supervisor.

Mr. Silliman stated that there were two Letters of Credit pertaining to the Town Squire project. The first Letter of Credit in the amount of \$70,000 stems from the original

redevelopment of the Town Squire project in Glenmont. The SEQR Resolution states that the funds are to be used

“to mitigate traffic impacts at the intersection, the applicant has agreed to contribute \$70,000 to an escrow fund or letter of credit to be utilized for improvements at the intersection. These improvements may include, but are not limited to, the installation of a southbound right turn lane and signal adjustments at the intersection as indicated in the traffic study.”

Mr. Silliman stated that the Town had a letter of credit, not an escrow account. The letters of credit were reviewed by Mr. Silliman and the Town Board attorney and found to be sufficient. There were time limitations attached to the letters of credit. They could be drawn upon like a checking account by the Town. The language indicates that the funds should be used to mitigate traffic impacts, it does point to the turn lane but does not limit the improvements to the turn lane. During the Town Squire Phase II, the Town acquired a second Letter of Credit in the amount of \$20,000 to be added to the original sum. The approval document stated that the funds were

“to help mitigate the potential traffic impact of additional PM peak hours, the applicant has agreed to contribute an additional \$20,000 to the traffic mitigation fund”.

The SEQR document states that the funds can be used for traffic and/or pedestrian improvements in the general vicinity of Rt. 9W/ Feura Bush Road/ Glenmont Road. The available \$90,000 has not been drawn upon and the funds have not been committed to a particular project. The developers of the Bethlehem Town Center approached the Town about one year ago, seeking access to these funds to offset their costs of the improvements they had made to the Rt. 9W corridor. The former Chairman, Mr. Hasbrouck, had drafted a memo in which he recommended that some of the funds be given to the Nigro Companies. There had been a discussion of that memo at a Planning Board meeting and the matter was tabled. There had not been an approval given for the release of funds to Nigro Companies.

Mr. Silliman agreed with Chairman Mathusa’s approach to this issue by having the Planning Board vote on a recommendation to the Town Board.

Mr. Odell asked if the decision on how to use the funds rested solely with the Planning Board. Mr. Silliman believed it was a decision of the Town Board with them looking to the Planning Board for their recommendation. Mr. Odell wanted to know if there were particular projects that were associated with the intersection such as an extension of the sidewalks. Mr. Silliman stated that there was a renewed interest on the part of Nigro Companies seeking a portion of the funds. He thought that sufficient time had passed and there were new Board members since the last discussion. He felt it was time for the Planning Board to make a recommendation to the Town Board.

Chairman Mathusa stated that Mr. Nigro held the belief that he should be reimbursed for completing the right turn lane onto Feura Bush Road as required by DOT. The Planning Board in reviewing the Town Squire project had made a determination that a right turn lane onto Feura Bush Road was necessary. That had been one of the major justifications in asking for the \$70,000. The Bethlehem Town Center project during its development had run into a problem with one of their anchor stores pulling out. It took about six (6) months for them to secure Lowes to be the new anchor. During this period of uncertainty, the Planning Board decided, that as an insurance policy, to have Schuyler Company, if necessary, cover the cost of the construction improvements required at the intersection. The Bethlehem Town Center Project did proceed and it became unnecessary to use the escrow account established by Schuyler Company for that road construction work. Traffic studies did indicate that a right turn lane was required onto Feura Bush Road from 9W with regards to the Bethlehem Town Center project. The Town Board recognized this requirement and included a provision in the Building Project Approval document that Nigro Companies shall install the right turn lane.

For the larger good of the people of the Town, Chairman Mathusa thought the funds in question should be used for future improvements to the intersection as the Board saw the area develop. He felt an upgrade of the signalization was needed. Some of the traffic going south on Rt. 9W were using the right turn lane to go around cars waiting to make a left turn onto Glenmont Road and then proceeding south. A large truck making that move had tapped Chairman Mathusa's car. He would like to see arrowed signals used for south bound traffic turning onto Glenmont Road and north bound traffic onto Feura Bush Road as well as arrowed signals for people turning from Glenmont Road south onto Rt. 9W and Feura Bush Road north onto Rt. 9W. He also thought that the intersection might need some straightening out. He stated that the \$70,000 was only a portion of the funds that would be needed for all the improvements the intersection needed. But if the funds were released for past improvements, it would be harder for the Town Board and other Town Department to push other state or federal agencies to obtain funds to improve the intersection. Development in the area continues to increase, such as Bethlehem Town Center II and the traffic will continue to increase and the intersection would become more encumbered.

Mr. Odell agreed that the intersection could use improvements. He didn't have enough information to have specifics as what they should be. He understood that Mr. Nigro was trying to minimize the cost of the improvements he had made to Rt. 9W. Mr. Odell wondered why the cost of his improvements was being associated with the funds from Town Squire. He felt it would be better to hold onto the funds for the future rather than reimburse for improvements that have already been made.

Chairman Mathusa stated that he felt that Mr. Nigro was under the assumption that the Town Squire \$70,000 was strictly for the right turn lane and when his company constructed the lane, he felt he should be reimbursed for what he thought was a Town Squire responsibility. Chairman Mathusa stated that there was no prior agreement with Nigro Company that if they constructed the right turn lane that they would be compensated.

Mr. Odell thought that for the good of the public, the funds should be used for further improvements to the intersection.

Mr. Engel agreed that the intersection was still in need of many improvements. He thought that expanded signalization would help tremendously though he had no idea how much further improvements would cost or how the Board arrived at the \$70,000 amount.

Mr. Lipnicky stated that at the time Bethlehem Town Center was in the process of doing a DEIS and they had produced a preliminary traffic study which suggested that their project needed a right turn lane at the intersection in question. Town Squire then came in with their project. They were claiming that they wouldn't have any impact on the intersection. The premise of their argument was that they were only adding +/- 30,000 sq ft because the Grand Union was already there. The Board did not agree because the Grand Union had been vacant for a number of years. The traffic study that was done for Town Squire showed that the project would generate enough traffic to warrant a right turn lane independent of the Bethlehem Town Center project. Town Squire never agreed with that premise. They did agree to put up the \$70,000, that at the time was the estimated cost of the right turn lane, in order to contribute to traffic improvements at the intersection.

Mr. Silliman stated that the Board had required the letter of credit from the Town Squire project, so that if the Bethlehem Town Center project did not go forward, they would be able to construct the right turn lane. Bethlehem Town Center did go forward and they made those improvements, the Board now had the \$70,000 to make further improvements to that general area. The language in the SEQR document discussing the use of the funds was intentionally flexible to allow for other improvements.

Mr. Engel believed that the signalization of the intersection was extremely important to help the flow of traffic continue in a safe manner.

Ms. Motta stated that until the area was completely built out she felt it would be difficult to know all the potential problems the development could potentially cause. Considering the letters of credit had latitude in this area, she agreed with holding onto the funds for future improvements. She asked if any traffic studies had been done since the original ones for both Town Squire and Bethlehem Town Center. Mr. Silliman stated that follow-up traffic studies had not been done but any new development, such as the proposed Bethlehem Town Center II, would require a new study of that intersection.

Mr. Cotrofeld stated that though the release of the part of the funds would be a nice gesture, he could not agree to the release of any funds because he believed that signalization was definitely needed for the safety of the community. He thought that straightening the intersection would also help.

A motion for the Chairman to send a letter to the Supervisor that would reflect the sentiments of the Planning Board here tonight on the issue of releasing funds to Nigro

Company for the construction of the right turn lane on Rt. 9W, was offered by Mr. Odell, seconded by Mr. Engel and approved by all present.

Beacon Point Harbor

Chairman Mathusa turned the Board's attention to the next item on the agenda, Beacon Pointe Harbor. The item had been on the agenda on July 20, 2004 and at the meeting the applicant had withdrawn the Draft Scoping Document. The applicant has since re-filed a revised Draft Scoping Document for the Board's consideration. Chairman Mathusa asked Mr. Lipnicky to go over the Request for Qualifications that had been issued for a consulting service to assist the Town in the environmental review of the proposed zone change and the project development for Beacon Pointe Harbor. Also Chairman Mathusa asked Mr. Lipnicky to brief the Board on the revised Draft Scope Document that had been submitted by the applicant and the SEQR Resolution that accepts the Draft Scope, sets the date for a public scoping session and sets a time frame for a written comment period.

Mr. Lipnicky stated that an RFQ had been sent out to help with the environmental review of the project. It had been sent to twelve firms and eight of them had responded. He stated that himself, the Planning Board Counsel, the Chairman, and a member of the engineering division would be looking over those responses and three would be selected to come in for an interview. The time frame was to have someone on board within three weeks.

Mr. Lipnicky stated that the last time this project had been on the agenda, the Board had received a request to withdraw the Scope Document that had been previously submitted. After that, there was a meeting with himself, the Supervisor, the Commissioner of Public Works, the Town Attorney, the applicant and Mr. Lynch to discuss whether the project should be done as a DEIS or a GEIS and the level of detail that should be included. The Town Code required a certain level of detail on a plan set for a zone change application. It must be on the level of a preliminary plan without detailed engineering. At the meeting, the Town let the applicant know that the level of detail needed was enough to do an environmental analysis but not the detail needed for a final plan set. Staff had received a revised scope which changed the name from a Generic Environmental Impact Statement to a Draft Environmental Impact Statement and also changed some language that stated that plans would be submitted that would comply with Section 128.6 of the Town Code. Another item that was discussed was the proposed idea that a supplemental EIS would be prepared each time a particular site within the PCD was developed. Staff did not think that a determination of that kind should be proposed prior to knowing what would be submitted for a particular site. They felt it would be better to look at that issue on a case by case basis. Those were the main items that had been changed from the original submittal.

Mr. Lipnicky stated that under SEQR regulations the applicant first had to submit a Draft Scope Document, the document would then be circulated to other involved agencies, public input was also required and then a Final Scope Document needed to be produced

by the Board and delivered to the applicant. This Draft Scope Document was the first step in the process, not the final version. In order to set the process in motion, staff had prepared a draft Resolution that accepted the draft scope document, set a time frame for a written comment period and set a date for a public scoping session on September 21, 2004.

A motion to accept the draft SEQR Resolution as written was offered by Mr. Odell, seconded by Mr. Cotrofeld and approved by all Board members present.

Mr. Lynch and Mr. Gush both thanked Mr. Lipnicky for meeting with them and they stated that they were looking forward to a continued working relationship.

A motion to table was offered by Mr. Odell, seconded by Ms. Motta and approved by all Board members present.

A motion to approve the minutes of the public hearing on July 20, 2004 was offered by Ms. Motta, seconded by Mr. Engel and approved by all Board members present.

A motion to approve the minutes of the regular meeting of July 20, 2004 as amended was offered by Ms. Motta, seconded by Mr. Engel and approved by all Board members present.

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

The meeting adjourned at 9:15pm.