

**PLANNING BOARD  
TOWN OF BETHLEHEM  
June 17, 2003**

The Planning Board, Town of Bethlehem, Albany County, New York, held a **Regular Meeting** on Tuesday, June 17, 2003, at the Bethlehem Town Hall, 445 Delaware Avenue, Delmar, NY. Chairman Douglas C. Hasbrouck presided and called the meeting to order at 7:30 p.m.

**Agenda :** Amsler - Subdivision  
Devonshire Hills - Lot Line Revision  
The Grove - Subdivision - Bower Avenue & Grove Place  
RDA Associates - Subdivision - 536 Russell Road

**Present :** Douglas Hasbrouck, Planning Board Chairman  
Brian Collier, Planning Board Member  
Parker Mathusa, Planning Board Member  
Katherine McCarthy, Planning Board Member  
Keith Silliman, Planning Board Counsel  
Daniel Odell, Planning Board Member  
Howard Engel, Planning Board Member  
Deborah M. Kitchen, Acting Secretary to the Board  
Jeffrey Lipnicky, Town Planner  
Randall Passmann, PE, Department of Public Works

Duane E. Amsler, Sr., Slingerlands, NY (Applicant - Amsler)  
Dawn Amsler-Nunziato, (Amsler)  
Charles Rosenstein, Rohan, Rosenstein, Burgess, Albany, NY (Devonshire Hills)  
David Quinn, Slingerlands, NY (Devonshire Hills)  
Paul E. Hite, Paul Hite L.L.S., Delmar, NY (The Grove)  
Thomas Rizzo, Paul Hite L.L.S., Delmar, NY (The Grove)  
Thomas Paonessa, Jr., (The Grove)  
Antonio Califano, Niskayuna, NY (RDA Associates)  
Joseph Califano, Niskayuna, NY (RDA Associates)  
Cynthia Hill, 132 Salisbury Road, Delmar, NY  
Marie Capone, 440 Delaware Avenue, Delmar. NY

**AMSLER - SUBDIVISION - 1 lot - Mosall Drive**

Chairman Hasbrouck stated that it was his hope to be able to schedule a date for a public hearing for this project. Chairman Hasbrouck asked Mr. Lipnicky if he had any comments and referred to a memo Mr. Lipnicky had written, dated June 11, 2003,

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indicating that everything appeared to be in order. Mr. Lipnicky stated that he had conducted a review of the revised plans, dated June 10, 2003, and the comments he had made in his May 14, 2003 memo had been addressed. He stated that in so far as the Planning Department was concerned the map "is sufficient to set a public hearing". He also stated that the map would need to include some minor revisions when the time comes to submit it for final approval.

Chairman Hasbrouck asked Mr. Passmann if he had any comments. Mr. Passmann stated that the Engineering Division reviewed the drawings and he saw no reason why a public hearing could not be scheduled. Chairman Hasbrouck asked the Board members if they had any questions. He also asked the applicant if he had any further comments. Mr. Amsler stated that he had no comments to make and he offered to answer questions. The Board had no questions. The Chairman asked for a motion to schedule a public hearing.

A motion was made by Mr. Collier, seconded by Mr. Mathusa and passed by a unanimous vote of those members present, that an application having been filed with the Planning Board of the Town of Bethlehem by Duane E. Amsler, Sr., 80 Blessing Road, Slingerlands, NY 12159 to be known as "AMSLER SUBDIVISION" located at 12 Mosall Drive, Town of Bethlehem, Albany County, NY as shown on map entitled, "AMSLER SUBDIVISION", Town of Bethlehem, Albany County, NY, dated March 27, 2003, revised June 6, 2003, and made by G.R. Thibault, LLS, Albany, NY., on file with the Planning Board, it is hereby ordered that a public hearing be held on Tuesday, July 1, 2003, at 7:30pm, for the purpose of hearing all persons interested in the matter; and it is further ordered that copies of the notice of public hearing be sent by regular mail to all property owners within two hundred (200) feet of the premises involved at least five (5) days prior to the date of this public hearing.

Mr. Amsler thanked the Board.

### **DEVONSHIRE HILLS - Lot Line Revision - 71 & 77 Devonshire Drive**

Chairman Hasbrouck referred to the draft approval documents and asked Mr. Lipnicky if he had anything in particular that he wanted to point out to the Board. Mr. Lipnicky said that he had been in contact with the applicant's representative to address some outstanding issues regarding the deed description and all of his concerns had been addressed. He added that copies of the 3rd Draft of the Devonshire Hills Approval document had been distributed to the Board and the Board would need to classify it as a Type II Action. Mr. Lipnicky also stated that he wanted to draw the Board's attention to item 8A - which required the applicant to file the map in the Albany County Clerk's Office because the map contained a Town Easement and a notation concerning responsibility for repair of private improvements within the right-of-way. The Approval Document also stated that the applicant had 30 days to file the map and the applicant felt that 30 days was a sufficient amount of time to meet that requirement. Mr. Hasbrouck

stated that a Type II Action under SEQR meant that there wasn't a SEQR review involved.

A motion to classify the action as a Type II action for SEQR was made by Mr. Odell, seconded by Ms. McCarthy and approved by all present.

A motion to approve the 3<sup>rd</sup> Draft Approval Document as written was made by Mr. Odell, seconded by Mr. Engel and approved by all present.

### **THE GROVE – Subdivision – Bower Avenue & Grove Place**

Mr. Hasbrouck turned the Board's attention to the subdivision The Grove. Mr. Hite presented an update to the Board. He stated that Mr. Fenzel had suggested that Grove Place be extended into a cul-de-sac and develop the lot on the cul-de-sac. The subdivision was first originated a while ago. The lots within the subdivision were 25 and 30-foot wide lots. The entire subdivision was developed with people buying more than one lot. The majority of the streets were not built to current Town standards at the time; they were extensions of the existing streets. The last street up to those standards was built by the Town itself. Each deed for the lots, gave the holder of the deed title to the streets. The question was did Mr. Paoenessa have the right to extend Grove Place and make it like the other streets, which was a right-of-way by use. After consulting attorneys and Town staff, the applicant put in the street to Town standards. It was being used by one of the residents of the area. The proposal was to develop Grove Place into the cul-de-sac using the 40-foot street that was shown on all the maps of record. Mr. Fenzel decided that a 50-foot right-of-way was needed for a portion of Bower. That cannot be accomplished without putting houses in violation. The applicant proposes to give an easement on both sides of approximately 5 feet. They had met with Town staff and it was agreed that those easements would satisfy the standards of the Town. The sanitary sewer and storm sewer would be constructed within the confines of the proposed right-of-way and through an existing ditch. Mr. Hasbrouck stated that the key legal piece would be the rights that were given to the original lot owners. Mr. Silliman stated that the lot owners would have to concur before any of the paper streets could be used for private development other than streets. They would have to formally waive their rights. Ms. Saatman stated that when Lot 17 was sold a portion of the right-of-way on Bower was included in the language of the deed for the lot; Mr. Paoenessa kept an easement to himself. A quit claim deed had been filed in order for streets in the subdivision to be constructed. That language was not shown on the plans for the subdivision. Mr. Hite stated that though the language was not exact, a reference to the conveyance was made on the maps. Ms. Saatman stated that the Town code states that the streets need to be 50 feet wide. A waiver from that had to be granted from the Town Board. The waiver had to precede a final plat approval. By her measurements, the house on lot 8 does not fit the Code setback for corner lot depth. The corner lot depth should be the greater of the required setbacks from the highway centerline and the property line. By granting the additional width of right-of-way, the house lots would then be under the minimum lot area required by the Code. There was still a question concerning the amount of federal wetlands shown on the map. She asked

who had done the wetland delineation. There weren't any flags on the project site. The project fell within the archeological sensitive area according to SHPO mapping. The project would also be sent to the Albany County Planning Board. Mr. Hite stated that after meeting with Mr. Cirillo and the highway superintendent, it was determined that the 5-foot easement he spoke of would be sufficient and would allow the houses to remain in compliance with the Code. The applicant would go before the Town Board, if required, but he questioned the necessity of that action. Mr. Hite stated that he was the person who had delineated the federal wetlands. It was his understanding that if they were incorrect, it would be the applicant that would have to answer to the federal government. Mr. Silliman stated that he did not feel that Mr. Hite was qualified to delineate federal wetlands. Mr. Hite disagreed but if the Board wanted he would hire Bagdon to delineate the wetlands. Mr. Collier stated that if there was a letter or certification on who was qualified to delineate wetlands and Mr. Hite fit those, why should the Board question it. It would only add additional cost and time for the applicant. Mr. Hasbrouck stated that it was unknown whether there were specific qualifications needed to delineate wetlands. He stated that it was the Board's responsibility to make sure that an approved lot was a buildable lot. Mr. Lipnicky agreed that it was not the Board's responsibility to enforce the federal wetland regulations but there were SEQR questions that were associated with wetlands. There had been projects in the past in which after many hours of review they were found to have federal wetlands, and the project was significantly changed, putting it back into the review process. Mr. Mathusa felt that Mr. Hite should hire Bagdon to do the delineation. Mr. Hasbrouck asked Mr. Hite if there had been any communication with the other property owners concerning the paper streets. Mr. Hite stated that Mr. Paoenessa's deed stated that he owned Grove Street. In the past it was understood that he had the ability to do on his property, on either side of the street, what he wanted. This was the first time that it had come into question. Mr. Silliman stated that the use of the land for a street was acceptable. The problem was that there were paper streets that had been part of the old subdivision and there was a map that had been filed showing those streets. All of the deeds for the houses in the subdivision had language conveying to them the right to those streets in common with all the other lot owners. They had the right to make customary use of all the paper streets. In looking at the law, he felt that permission was needed from the owners of those lots to get the right to use the land for other than street purposes. Mr. Silliman suggested that the applicant could have the documents reviewed by someone else. He stated that there wasn't much case law about this matter. Mr. Hite stated that he had brought up this issue with the Board previously and they decided to use the area in question as part of the lots and put in a cul-de-sac. Mr. Hite had not wanted to do that. The Board had told him it was the best way to develop the property. Mr. Hasbrouck agreed that the Board had made that recommendation but only if it could have been worked out with the paper streets. Ms. Saatman felt that it had been left at the last meeting that the cul-de-sac and paper street issues were still to be worked out. Mr. Hite wanted them to go back to the minutes of that meeting because he had been left with the impression that as long as there was a public hearing outlining the intention of the applicant it would have been acceptable. The applicant owned all the property in question. Ms. Saatman still pointed to the fact that the language in the deeds called for another course of action. Mr. Silliman stated that the public hearing would not be sufficient. He still felt that a transfer of rights was still necessary for clear title. Mr. Hite

stated that they would reconfigure the lots to not include the paper street section in question for anything other than a street. Ms. Saatman stated that in other projects that had a paper street, in the approval was a condition that no structures would be built within the boundaries of the paper street. Mr. Hite stated the Town now claims by virtue of usury a section of the road. When the sewer and water was installed they notified the residents to obtain the easement. Mr. Hite stated that he would revise the plans to show the paper street undisturbed and the lot configuration would change, as would the number of lots. Mr. Hite stated that the street area would be graded and trees would be removed. Mr. Hite asked if the Board had any issue with him putting in the 3 lots where he indicated. He stated that the drainage would come out through a pipe into an existing ditch along Pine Street through the undeveloped portion of it. He felt that because other people used the same ditch for runoff that they could do the same thing. He asked for the Board's approval for the use of the ditch. He stated that the Town itself used the same ditch. If the applicant needed to obtain an easement, then everyone who used the ditch should be required to do the same. Mr. Passmann stated that some of the drainage to the existing drainage ditch that Mr. Hite spoke of was redirected by the Town to a culvert that passed under the Thruway. This showed that the Town had done improvement of the drainage in that area, which reduced the amount of drainage into the ditch. The Engineering Division wanted to see the drainage ditch channelized. Mr. Hite did not think that the ditch was deep enough. Mr. Passmann felt that reworking the drainage ditch would be sufficient. Mr. Hite stated that to build the cul-de-sac would be a tremendous cost and putting the cost of reworking the drainage would put additional cost on the applicant, when in fact the ditch had been used for the past thirty years. Mr. Passmann felt that it would be less disturbance for them to reconstruct the drainage ditch than to run a pipe system. Mr. Hite stated that they had figures that more than supported the fact that the ditch would support the small amount of drainage that they proposed. Mr. Mathusa felt that Mr. Hite's statement was reasonable. Mr. Hite pointed out to Mr. Collier the part of the street that the Town currently owned. Mr. Hite disagreed that the he needed to meet the fifty foot right-of-way because of the way his applicant was subdividing; this was what had been told to him by Mr. Fenzel. That was how the 5-foot easement came to be. Mr. Lipnicky asked if Mr. Paoenessa had any interest in the portion of street that would be deeded to the Town. Mr. Hite stated that he could only quit claim his right, title and interest to the Town, he could not give the Town a Warranty Deed. Mr. Lipnicky stated that it would be beneficial to the Board to investigate how the transfer needed to occur to remain within the Code standards. The Highway Department had stated that the 5-foot easement would be acceptable. Mr. Silliman stated that the problem in general was that they were trying to make development of land fit into today's standards in an area that doesn't meet today's standards. He felt that the Board was trying to make it work. The easements would not be used for utilities because they were already present.

A motion to table was made by Mr. Collier, seconded by Mr. Odell and approved by all present.

Mr. Hite stated that a major issue that had not been discussed was SHPO.

A motion to remove the motion to table was made by Mr. Mathusa seconded by Mr. Collier and approved by all present.

Mr. Hite stated that all around the subdivision there hadn't been archeological studies done during the construction of other subdivisions. The piece of the property was very small with existing houses surrounding it, so they did not have an archeological study done. Mr. Hite stated that the subdivision would now consist of 7 lots, 5 buildable and 2 existing. Ms. Saatman stated that in the past only one-lot subdivisions that were located in archeological sensitive areas weren't required to do a study. Mr. Silliman stated that the area was a well-founded parcel on all sides and the archeological concerns were different than the wetland concern. He asked the Board if they would require an archeological study unless they were legally required to do so. The Board agreed that unless legally required, they would not require the study.

A motion to table was made by Mr. Collier, seconded by Mr. Odell and approved by all present.

### **RDA ASSOCIATES – Subdivision – 536 Russell Road**

Mr. Hasbrouck turned the Board's attention to RDA Associates. Mr. Califano stated that there had been significant changes to the map that had been required by Mr. Lipnicky. A deed still needed to be filed with the County to transfer the ownership of the land to RDA Associates. The current owner of the property was deceased and the deed preparation was in the hands of the attorney. He stated that Mr. Della Rocca and Mr. Silliman were in the process of working out the sequence of the land transfers. Mr. Silliman stated it was imperative for the owners of record to be present at the public hearing and the deed that showed Mr. Califano as the owner needed to be filed in order for the project to move forward. The letter Mr. Califano submitted showed intent but also highlighted the problem that the deed was not recorded. Mr. Califano stated that the cousin that was heir to the property had passed away and legal papers had to be filed to give his wife the power to sign on his behalf. That had recently been done and he felt that the filing of the deeds would now be able to take place. This was an all-family transfer. Mr. Lipnicky stated that there were two items needed on the map that had not been supplied. The owner of record needed to be identified on the map and also the zoning information needed to be added to the map. He wanted to schedule the public hearing contingent on the revised map being submitted within 2 or 3 days. The other issue was the federal wetland question. A letter was needed from North Country Ecological, the wetland consultant, whether this parcel contained state wetlands. The letter that had been received stated that the wetlands were not mapped, that was already known. Mr. Kim had told Mr. Lipnicky that there were five (5) wetlands on the site and they did not reach the acreage threshold level for state wetlands. Mr. Lipnicky requested copies of the map showing the wetland areas mentioned. Mr. Califano stated that one of the major contributors of the wetlands was storm water runoff. He wanted to make sure that there wasn't any illegal storm water dumping to the larger project property. Concerning the archeological question, Mr. Califano stated that he obtained the photos of the property from 1940 and 1960. It had been a sawmill and day camp. They had regularly dug up areas to bury

sawdust and chips. He had asked for a waiver from the Parks Department for the archeological study because it had been disturbed. He had received a letter stating that there weren't any historical buildings in the area. Mr. Lipnicky stated that SHPO would want documentation of significant ground disturbance.

A motion was made by Mr. Collier, seconded by Mr. Mathusa, and passed by a unanimous vote of those members present, that an application having been filed with the Planning Board of the Town of Bethlehem by Mr. Anthony Califano, for approval of a proposed subdivision, to be know as RDA Associates located on Russell Road, Albany County as shown on map entitled, "SUBDIVISION MAP FOR LANDS OF RDA ASSOCIATES, INC., CONCEPT PLAN, Town of Bethlehem, Albany County, N.Y., dated May 20, 2003, last revised June 18, 2003, made by S.Y. Kim Land Surveyor, P.C., 592 New Loudon Road, Latham, N.Y. 12110, on file with the Planning Board, it is hereby ordered that a public hearing be held on Tuesday, July 1, 2003 at 7:45pm, for the purpose of hearing all persons interested in the matter; and it is further ordered that copies of the notice of public hearing be sent by regular mail to all property owners within two hundred (200) feet of the premises involved at least five (5) days prior to the date of this public hearing.

A motion to adjourn at 9:14pm was made by Mr. Odell and approved by all present.

Respectfully submitted,

Nanci Moquin