

**PLANNING BOARD
TOWN OF BETHLEHEM**

September 6, 2005

The Planning Board, Town of Bethlehem, Albany County, New York held a **Regular Meeting**, on September 6, 2005, at the Bethlehem Town Hall, 445 Delaware Avenue, Delmar, NY. Chairman Mathusa presided and called the meeting to order at 7:30 pm.

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

Janine Saatman, Deputy Town Planner
Michael Morelli, Deputy Director of Economic Development & Planning
Randall Passmann, Town Senior Engineer

Steve Powers, Nigro Companies, Bethlehem Town Center II
Peter Giovenco, Bergmann Associates, Bethlehem Town Center II
Robert Sweeney, Esq., Bethlehem Town Center II
Brian Spindler, Traditional Builders, Milltowne Plaza
Donald Zee, Esq., Milltowne Plaza
Joe Lucarelli, Traditional Builders, Milltowne Plaza
Claudia St. John, Milltowne Plaza
N. Monescacero, Milltowne Plaza
Steve Reutter, Traditional Builders, Milltowne Plaza
Katie Megahy, Milltowne Plaza
J. Anartasio, Milltowne Plaza
David Acosta, Milltowne Plaza

Agenda: Bethlehem Town Center II
Milltowne Plaza

Bethlehem Town Center II

Chairman Mathusa called the meeting to order and noted the presence of a quorum. The first item on the agenda was Bethlehem Town Center II, a project to be located on Rt. 9W adjacent to the existing Bethlehem Town Center. They were before the Board for possible action on the SEQR Resolution. Chairman Mathusa noted that Barton & Loguidice, the Town Designated Engineer for the project, had sent a letter stating that it agreed with the design concept of the Storm Water Management System and the over all design of the project. They stated that a Negative Declaration in regard to SEQR was appropriate.

Mr. Giovenco presented for the project. He stated that the design of the project had not changed since they were last before the Board. The last comments from staff had pertained to engineering issues. The applicant had shifted the storm water pond up to the top of the hill to reduce impact on the slope.

Chairman Mathusa asked what would be done with the land to the rear of the project. Mr. Giovenco stated that as part of the wetland mitigation they would be providing a conservation easement. The Mohawk Hudson Land Conservancy had shown an interest in taking ownership of approximately 35 acres of land that abuts the creek. That was in addition to the 15 acres that was dedicated during the Bethlehem Town Center project. Chairman Mathusa asked how that would impact the right of way for a possible future road on the north edge of the project. Mr. Giovenco said that language would be included in the conservation easement that would allow the Town to construct a road in the future if they deemed it necessary.

Mr. Giovenco stated that the system would be a “beat-the-peak” system. The other pond that was to be placed at the bottom of the hill and would have caused disruption to the whole hill. They redesigned the system using the Phase I computer model and by not detaining the storm water, it flowed quicker into the Normans Kill and beat the storm water from the rest of the tributary instead of adding to it. This practice is acceptable to NYSDEC as long as the Town accepts the concept. They would still be providing water quality. Mr. Odell wanted to know if the applicant was aware of the reports and concerns of the property owner downstream that had supplied engineering reports about a culvert. Mr. Giovenco said that they had looked at the area in question, and with the proposed method they did not increase the peak in that area.

Chairman Mathusa turned the Board’s attention to the draft SEQR Resolution that staff had prepared. He read the Resolution and asked the Board if they had any comments.

A motion to accept the SEQR Negative Declaration as written was offered by Ms. Motta, seconded by Mr. Cotrofeld and approved by all present.

Milltowne Plaza

Chairman Mathusa turned the Board’s attention to the next item on the agenda, Milltowne Plaza. They were before the Board to propose a modification in the Phasing portion of their project. The project had its Conditional Approval in 2002 but was delayed in the construction due to the new Storm Water regulations that were instituted by NYSDEC. A condition in the approval document stated that 50% of the CO’s for one Phase must be issued prior to building permits being issued for the next phase. Currently the project was divided into three (3) phases. Chairman Mathusa stated that the applicant had been working with the engineering division and the Town attorney to satisfy the new storm water regulations. The water lines, sewer lines and roads had already been installed for Phase I and the water and sewer had been installed for Phase II. The base course of blacktop had not been installed as a request from the Highway Superintendent. Mr. Sagendorph wanted the CDS units to be installed prior to paving.

The applicant had requested a modification to the approval document condition that required 50% of the CO’s be issued before building permits could be issued for the next phase.

Mr. Zee, the applicant's attorney, presented for the applicant. Traditional Builders had purchased the project about thirty- (30) days after the conditional final approval from the Planning Board. He showed a map that showed the three (3) Phases. After purchasing the project they had begun the site construction to install the approved storm water system. The storm water regulations changed and the project was shut down in August of 2003. The entire infrastructure had been put in for Phase I, water and sewer in Phase II, Amsterdam Avenue and the construction roadways had been constructed. Mr. Lucarelli had tried to do their due diligence since he had purchased the project. The applicant had worked with both NYSDEC and the Town Engineering Division on an acceptable Storm Water system. DEC had decided to accept a newer storm water system known as CDS units. The applicant had agreed to install all the CDS units prior to the issuance of any CO's. A letter of credit had been placed with the Town to guarantee that installation and a second letter of credit had been issued for the maintenance of the units for at least one year.

Mr. Zee stated that the Town had advised the applicant that they could proceed with building permit applications. He stated that the applicant had been unaware of the Phasing restrictions. They had started marketing and selling homes in Phase I and Phase II. Mr. Zee indicated on the phasing plan the lots that currently had contracts on them. Some of those had building permits issued and some with permit applications. There were six (6) in Phase II. The building department had issued permits within Phase II so the applicant had continued to market those lots until he had been notified that they would be rescinded because they had been issued in error.

Mr. Zee understood that the original phasing plan had been established to help minimize construction disturbance to the residents that would already be living in the development. Because the project had been delayed for about three (3) years, there was a great deal of interest to purchase within the community. Since the first of July they had sold sixteen (16) lots and had about five (5) other people who were interested. Mr. Zee stated that if they were permitted to merge Phase I and Phase II, they would have all those lots under contract within a year or less.

Mr. Morelli stated that phasing was not set up to penalize the developer. Phasing usually helped the developer because all of the infrastructure did not have to be installed at the beginning of the project which would be a large expense. It allowed them to phase their infrastructure. Another reason for phasing was to minimize the inconvenience of day-to-day living with construction for the individuals that moved into project first. Mr. Morelli agreed with Mr. Zee that there was a demand for housing in the area. Mr. Lucarelli had indicated that houses would not be built on spec but only if there was a contract on the lot. There was demand in both the RCS & BCS school districts.

Mr. Zee thought that if the Phasing remained as is, it would extend the construction time and that would be more disturbing to the residents. This would be due to the timeframes attached to the process of contract negotiation, mortgage approval and construction time. He thought that there was a good opportunity now to get a number of homes underway.

Chairman Mathusa wanted to know if the road was installed in Phase II. Mr. Zee stated that all but the blacktop was finished. They had been waiting to pave until they had installed the CDS units per a request from the Highway Superintendent. Mr. Engel wanted to know the timeframe attached to the CDS installation. Mr. Reutter stated it would take about seven (7) weeks. The

houses could be built at the same time the CDS units were being installed. The CO's could not be issued until all the CDS units were installed, including the ones in Phase III.

Mr. Engel said that if the potential homeowners understood that there would be ongoing construction, he did not object to the combination of Phase I & II. Mr. Odell said that the Board had different set of circumstances before during the original approval. He thought if the project was coming before the Board for the first time now as a two (2) phase project that it would be accepted as such. He said that as long as the Town staff was in agreement with the proposal, he did not object to the modification. He asked if the Town departments had accepted the proposal. Mr. Morelli stated that the Town Departments were aware of the proposal and in general agreement. The only concern was setting a precedent but Mr. Morelli said that their unique set of circumstances kept precedence from being set. He did not see a problem combining the two (2) phases. Ms. Saatman said that staff did not recommend eliminating all of the phasing. Staff had discussed placing some of the lots in Phase II into Phase I as another option.

The Board members said that the factors surrounding this project appeared to be unusual and if staff did not have any objections, they were in agreement that the combination of Phase I & II should be allowed.

Mr. Odell wanted to make sure that technically any documents that needed to be modified to accomplish the proposed goal were taken care of. Chairman Mathusa said that the Phasing sheet could be resubmitted with the modification and the approval document could remain the unchanged.

Mr. Morelli stated that the Town Engineer, Mr. Deyoe, concerns had been addressed. The infrastructure was in place and the letters of credit had been submitted. The Highway Superintendent had agreed to allow the base course of blacktop to be installed in Phase II prior to the installation of the CDS units.

A motion for the Planning Board to approve revised Phasing Plan sheet #6, which would combine current Phase I and current Phase II into new Phase I and changes the number on Phase III to Phase II, and additionally authorizes the Planning Board Chairman to sign the modified Phasing Plan after his review and approval, when submitted was offered by Mr. Odell, seconded by Mr. Engel and approved by all Board members present.

A motion to approve the minutes of August 16, 2005 as amended was offered by Mr. Odell, seconded by Mr. Engel and approved by all the Board members present.

A motion to adjourn the meeting was offered by Mr. Odell, seconded by Ms. McCarthy and approved by all Board members present.

The meeting adjourned at 8:40.