

Planning Board
TOWN OF BRUNSWICK
336 Town Office Road
Troy, New York 12180

MINUTES OF THE PLANNING BOARD MEETING HELD March 17, 2011

PRESENT were CHAIRMAN RUSSELL OSTER, MICHAEL CZORNYJ, FRANK ESSER, GORDON CHRISTIAN, DAVID TARBOX and VINCE WETMILLER.

ABSENT was KEVIN MAINELLO.

ALSO PRESENT were JOHN KREIGER, Code Enforcement Officer, and MARK KESTNER, Consulting Engineer to the Planning Board.

The public hearing was opened on the site plan application by Sphere STP, II, LLC, which proposes to construct a Tractor Supply Store on approximately 4 acres of property located at 864 Route 7, at the intersection of NYS Route 7 and McChesney Avenue (Tax Map No. 91.00-2-18). The Notice of Public Hearing was read into the record, with such notice having been posted on the Town website and sign board, published in the Troy Record, and mailed to all adjacent property owners. Chairman Oster reviewed the Planning Board rules for conduct of public hearing. Chairman Oster then requested the Applicant to make a presentation of the site plan proposal. Tom Cooney of Sphere STP, II, LLC and the company's consultant, Neil Simsmeier were present for the Applicant. Mr. Cooney generally reviewed the site plan proposal, which proposes a 19,000 square foot Tractor Supply building, with adjacent 15,000 square foot outdoor display area. The primary customer access to the parking lot is off Route 7 opposite Betts Road, with tractor trailer access off McChesney Avenue. Mr. Cooney noted that the Applicant is proposing to add a hidden driveway sign on McChesney Avenue. Mr. Cooney noted that a total of 72 parking spaces are proposed, which is compliant with Town requirements. The

proposal also complies with all applicable setback requirements. Mr. Cooney noted that a proposed elevation and rendering of the Tractor Supply Store along Route 7 has been made available, to address concerns regarding the aesthetics of the building along the Route 7 corridor. Mr. Cooney generally reviewed the grading plan proposal for the site. Finally, Mr. Cooney generally reviewed the incorporation of new stormwater requirements pursuant to State Regulation. Chairman Oster then opened the floor for receipt of public comment. David Minkler, 195 McChesney Avenue, stated he owns the property directly to the rear of the proposed Tractor Supply site. Mr. Minkler had concerns regarding the grading plan and final topographic level of the building site, with concern that there would be a significant slope or cliff off of his property line. Mr. Cooney stated that the grading plan in the area of Mr. Minkler's property, which is where the proposed Tractor Supply building would be located, will be maintained at its approximate topographic level and will remain approximately 14 feet above Route 7. Mr. Minkler also had concern regarding the proximity of the Tractor Supply Store to his property line. Mr. Cooney stated that the Minkler property line is approximately 45 feet from the outer edge of the outdoor sales area, which will be adjacent to the Tractor Supply building. Mr. Cooney explained that the Tractor Supply building has been located as close as possible to Route 7 while still maintaining the 30 foot setback requirement, and further that the outdoor sales area has been made more narrow than the standard Tractor Supply layout. Mr. Minkler also had concerns regarding lighting, since the outdoor display area would only be 45 feet from his property line. Mr. Cooney generally reviewed the lighting plan, which shows there will be no spillage off the rear property line, which will be at 0 foot candles at that rear property line. Mr. Cooney also generally reviewed the location of proposed pole lights and building light locations, and highlighted the fact that the lights in the outdoor display area are shielded to eliminate any

light spillage. Mr. Minkler also had concern regarding potential blasting to remove rock at the site, particularly since his drinking water well is located nearby. Mr. Cooney stated that there are no plans to blast at the site, and that test pits indicate that the rock should be capable of being ripped for removal. Mr. Minkler also inquired about a vegetative or tree line at the real property line between the store and his property. Mr. Cooney stated that the plan is to maintain the existing tree line, including pines. Mr. Minkler asked about the final slope between his property line and the final grade level. Mr. Cooney stated that the proposed slope would be no worse than existing, and further that a split rail fence would be installed for safety purposes. Mr. Minkler asked whether a traffic light would be installed at the Route 7/McChesney Avenue intersection. Mr. Cooney stated that NYS DOT had approved the truck entrance/exit without the need for any traffic light at that intersection. Jim Tachik, 387 Brunswick Road, raised concern regarding the intersection of Betts Road and Route 7, since this is the location of the proposed access driveway for customers. Mr. Tachik stated that with the proposed Berkshire Properties PDD, and the existing Hudson Hills PDD project, the Route 7/Betts Road intersection will already have significant traffic, and that this needs to be taken into account when acting on an additional driveway entrance for the Tractor Supply Store. Mr. Kestner stated that these issues are under the jurisdiction of NYSDOT, but that the Planning Board will coordinate with NYSDOT to make sure that all proposed projects are being examined in connection with that intersection. Frank Brennanstuhl, 27 Dusenberry Lane, stated that he feels the project site should be further lowered and closer to the grade of Route 7; that a turn lane should be considered along Route 7, both for the customer access driveway and the McChesney Avenue intersection; that truck traffic off McChesney Avenue may present a problem; that the access driveway for customers off Route 7 will be at a grade which could become a problem in the winter time; that there should be a plan

now for disposition of the material to be removed from the site as part of the grading plan; and that he generally is not in opposition to the Tractor Supply application, but doesn't want it to stick out given its proposed topography, and at the same time doesn't want to significantly impact Mr. Minkler in terms of reducing the topography which may cause a significant drop off from the Minkler parcel. Chairman Oster inquired whether there were any further public comments. Hearing none, Chairman Oster closed the public hearing on the Sphere STP, II, LLC site plan.

The Planning Board then opened a public hearing concerning the A&S Diesel site plan, proposing to install a 10,000 gallon above ground diesel fuel tank at the existing A&S Diesel facility located at 850 Hoosick Road for use by the public. The Notice of Public Hearing was read into the record, noting that such public hearing was posted on the Town website and sign board, published in the Troy Record, and mailed to all adjacent property owners. Chairman Oster again reviewed the rules concerning public hearings, and requested that the Applicant make a presentation of the proposed site plan. Gary Joy of A&S Diesel presented the site plan, indicating that this was a joint venture between A&S Diesel and John Ray & Sons Fuels. Mr. Joy generally described the site plan, which proposes the above ground fuel storage tank for highway fuel only, to be operated on a credit card basis. The facility would be open 24 hours per day, and monitored by John Ray Fuels. The storage tank and fuel area would be on a concrete pad, with ballards installed for safety, and fire extinguishers present. A proposed truck route is outlined on the site plan, and Mr. Joy stated that the facility does fit into the overall site plan operations. Chairman Oster then opened the floor for receipt of public comment. No one wished to present comment to the Board on this site plan application. Hearing no public comment, Chairman Oster then closed the public hearing.

The Planning Board then opened its public meeting.

The draft minutes of the March 3, 2011 meeting were reviewed. One correction was noted at page 7, noting that the reference to “The Crossings” must be replaced by “The Crossways”. Subject to that correction, Member Czornyj made a motion to approve the minutes of the March 3 meeting, which motion was seconded by Member Christian. The motion was approved 6/0, and the March 3 minutes approved subject to the noted correction.

The first item of business on the agenda was the site plan application by Sphere STP, II, LLC for the proposed Tractor Supply Store at 864 Route 7. Chairman Oster inquired whether the Tractor Supply consultants had met with A&S Diesel regarding location of the proposed stormwater basin. Chairman Oster noted that the prior plan placed a significant portion of a proposed detention basin on the A&S Diesel property. Mr. Cooney noted that the prior proposal proved to have too many issues to resolve, and therefore a change in the proposed stormwater detention basin location had been made. Specifically, Mr. Cooney stated that the Tractor Supply proposal was now incorporating the new DEC “green” stormwater practices, and the proposal now includes installation of pervious asphalt pavement in the parking area, and installation of storm planters to retain stormwater. As a result of the improved stormwater facilities, a smaller stormwater detention basin is required, and the proposal now has the entire stormwater detention basin located on the Tractor Supply parcel. Tractor Supply will continue to work with A&S Diesel on trying to have a mutually agreeable grading plan to reduce the knob of material between the parcels. Mr. Cooney also reminded the Board of the addition of the hidden driveway sign to McChesney Avenue. Also, Mr. Cooney noted that there would only be two tractor trailer deliveries to the Tractor Supply Store per week, that tractor trailer use will be very limited, and that this has been documented in the application materials. As to the proposed final grade for the

store, Mr. Cooney stated that if the final elevation was reduced to the level of Route 7, there would result a very large drop off from the rear property owner, approaching a 30 foot drop. Also, there would need to be significant additional cut on the site to reduce the grade on Route 7. Mr. Cooney stated that the elevation of the proposed store would be approximately the same elevation of the existing house and apartment currently on the site. Mr. Cooney felt that the proposed elevation was a balance between the Route 7 elevation and the rear property owner, and presented the best grading plan for this particular site. Mr. Cooney noted that NYSDOT did initially review the proposed entrance driveway to the parking lot at a different location, but when the plan changed, NYSDOT encouraged the location of the access driveway to the parking lot to be opposite Betts Road. Mr. Cooney did note that NYSDOT approval for the curb cut for the entrance driveway is still required. Member Czornyj asked about the specific hidden driveway sign for McChesney Avenue. Mr. Cooney stated that the Applicant will put the sign wherever the Town requires, and that the company will coordinate with the Town Highway Superintendent. Member Wetmiller inquired as to whether the use of pervious pavement over existing bedrock will result in a water runoff problem. Mr. Cooney noted that the engineering study for the site indicated that there are Class C soils present, and that there is proposed to be 1 foot of stone below the porous pavement, which meets the current NYSDEC Specification for the porous pavement. Mr. Cooney stated that a detail sheet has been provided in the application plans. Chairman Oster inquired whether the public hearing needs to be reopened due to the changes of the stormwater plan and relocation of the stormwater detention basin. Attorney Gilchrist stated that the legal standard to be applied by the Planning Board was whether the change in the stormwater plan was deemed significant, or in the nature of an engineering modification. On this issue, the Applicant noted that there were no public comments received

concerning stormwater issues during the public hearing. Upon consideration, the Planning Board did not consider the changes to the stormwater plan to be significant, and determined that reopening of the public hearing was not required on this record. Chairman Oster commented that he felt the issue of the elevation for the final grade of the proposed store had been adequately addressed, taking into account the concerns of the property owner to the rear and proximity to Route 7, and thought that an appropriate balance had been reached. Chairman Oster also considered the comments concerning lighting and blasting to be adequately addressed. Mr. Kestner noted that the application states that blasting will not be undertaken on the site, and if during the rock removal it is determined that blasting will be required, the Applicant will be required to return to the Planning Board for an amendment to the site plan, at which time a specific blasting plan will be required and reviewed. The Planning Board discussed a vegetative barrier at the rear of the property, and determined that the existing pine tree line should be maintained, and any gaps in that existing tree line must be filled with additional trees. The Applicant was agreeable with this approach. The Planning Board noted as to all access issues off Route 7, NYSDOT has primary jurisdiction. Mr. Kestner did note that NYSDOT requested the widening of the entrance to McChesney Avenue, to allow for easier access for tractor trailer deliveries. It was noted that referral of this application to the Rensselaer County Department of Economic Development and Planning will be required. This matter has been placed on the April 7 agenda for further discussion.

The next item of business on the agenda was a site plan application by A&S Diesel for installation of a 10,000 gallon above ground diesel fuel tank at the existing facility located at 850 Hoosick Road for use by the public. Gary Joy of A&S Diesel was present. The Planning Board noted that no public comments were received during the public hearing on the application. Mr.

Joy noted that all issues raised by the Planning Board had been addressed, and that there were no changes to the final site plan after the Planning Board's review at the March 3 meeting. Mr. Joy reported that he was satisfied with the new stormwater plan for the proposed Tractor Supply detention basin, and that he will work with a Tractor Supply consultant concerning any appropriate grading between the two sites. Mr. Joy wanted it noted for the record that with respect to any grading done between the properties, any water generated on the Tractor Supply side of the property boundary would need to be shed toward the Tractor Supply detention basin. Mr. Joy confirmed that when a final grading solution has been reached between the Tractor Supply proposal and A&S Diesel, he will submit a final site plan of the A&S Diesel site in the nature of an as-built drawing for review by the Planning Board. Mr. Joy noted that he appreciated the Planning Board's cooperation with him on the submission of the final site plan. Mr. Kestner stated that a condition of the final action on this application should require compliance with petroleum bulk storage regulations of NYSDEC. Mr. Kreiger noted that a response had been received from the Rensselaer County Department of Economic Development and Planning, which provided that local consideration shall prevail. Chairman Oster inquired whether there would any further questions or comments. Hearing none, Member Czornyj made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Wetmiller. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, Member Czornyj made a motion to approve the A&S Diesel site plan subject to the following conditions:

1. Compliance with all applicable petroleum bulk storage regulations of the NYSDEC; and

2. Submission of a final site plan in the nature of an as-built drawing following any final grading between the A&S Diesel site and the proposed Tractor Supply facility.

Member Christian seconded the motion subject to the stated conditions. The motion was approved 6/0, and the A&S Diesel site plan approved subject to the stated conditions.

The next item of business on the agenda was the waiver of subdivision application by Diamond/Sullo/Rooney, for property located at 14 The Crossways and 16 The Crossways. No one was present on the application. This matter has been adjourned until the April 7 meeting.

The next item of business on the agenda was the site plan application by Tamarac Auto Sales, LLC for a proposed used car dealership at the Tamarac Plaza located on Route 2. Kenneth Bruno of Tamarac Auto Sales, LLC was present on the application. An initial zoning compliance issue had been raised on this application, specifically whether the addition of a used car auto dealership was compliant with the B-15 zoning district. The Planning Board had requested Attorney Gilchrist to research that issue. Attorney Gilchrist reported that while he had completed research on this issue, this zoning compliance issue is initially one which must be issued by the Town Building Department/Zoning Code Enforcement Officer, Mr. Kreiger, who has the primary jurisdiction on that issue. Attorney Gilchrist reported that he had reviewed his research with Mr. Kreiger, but noted that Mr. Kreiger should make an independent analysis of the zoning issue, seeking other counsel if he deems necessary. Attorney Gilchrist also noted that upon further consideration, he is formally recusing himself from any further involvement of this application, given a prior attorney-client relationship with the Applicant. Thereupon, Mr. Kreiger stated that in his opinion, the current site application for addition of a used car dealership as a tenant at the Tamarac Plaza is in compliance with the Brunswick Zoning Code, that the Brunswick Zoning Code does not specifically prohibit this use at the retail plaza, and that there

are additional tenants at the Tamarac Plaza which are listed as specific principal permitted uses under the Town Zoning Code but operate at the Tamarac Plaza as a retail tenant. Accordingly, the Planning Board will continue its review of the current site plan application. Member Czornyj inquired as to what entity obtained the license from NYSDMV for the used car dealership. Mr. Bruno stated that the license is in the name of Tamarac Auto Sales, LLC. Mr. Bruno provided a copy of the letter from NYSDMV approving this site for a used car dealership. Mr. Bruno then explained that in response to initial concerns raised by the Planning Board, he had prepared a revised site plan moving the location of the used cars to the grass area between the entrance driveway and the Brunswick soccer fields. The revised plan proposes to locate the used cars for sale in an area that is currently grass, and add crusher run or stone off the parking lot/entrance driveway area as the used car location. Member Czornyj noted that the revised plan showed a small office to be located in that area as well. Mr. Bruno stated that this was merely a proposal, but that the office could be limited to his existing law office as well. The members of the Planning Board had general concern regarding pedestrian health and safety with used cars being located adjacent to the soccer fields and the office for the auto sales being located at the other end of the retail plaza. Mr. Bruno suggested that patrons could walk along the grassy area to the end tenant (pizza shop) and proceed around the walkway in front of the retail stores, but conceded that patrons were likely not to follow that route. The Planning Board then generally discussed alternate locations for the used car area, including both additional grass areas as well as a corner location on the existing parking lot. Member Tarbox had a concern regarding storage of used cars on gravel or crusher run given the existence of the aquifer in that area. After further discussion, the Planning Board determined that the preference would be to have used cars located on a paved surface in one corner of the existing parking lot, with appropriate barricades

and designated pedestrian walking area to the sales office located in Mr. Bruno's law office. The Planning Board directed Mr. Bruno to prepare a revised site plan depicting the area for used car display, proposed barricades, as well as proposed striped pedestrian walk area. Chairman Oster inquired whether there is any proposed separate signage for the used car dealership. Mr. Bruno stated that there would only be a sign added to the existing sign board, and that no free standing sign pole is being proposed. Mr. Kestner asked whether there is any additional lighting being proposed. Mr. Bruno said that no additional lighting is proposed, and that the preferred location for the used car display is near the existing street light on Route 2, which provides adequate lighting. Member Czornyj inquired of Mr. Kreiger whether a shed would be allowed as a separate office. Mr. Kreiger stated that a shed could be allowed if it meets appropriate setbacks, and should be shown on the site plan if Mr. Bruno intends to include it in the proposal. The Applicant will need to submit the requested revised site plan, which will then be forwarded to the Rensselaer County Department of Economic Development and Planning for review and recommendation. This matter will be placed on the April 7 agenda for further discussion, at which time the Planning Board will determine whether the application is complete and ready to schedule a public hearing.

The next item of business on the agenda was a waiver of subdivision application submitted by Oakwood Property Management, LLC, seeking approval to transfer approximately 3.19± acres of land from Tax Map Nos. 90-1-12.2 and 90-1-13.1, located off Oakwood Avenue, to an adjacent owner, John Murray. Sean Gallivan and Brendan Gallivan of Oakwood Property Management, LLC were present on the application, along with Attorney Todd Mathes and Scott Reese, RLA. Mr. Reese reviewed the proposed waiver map, which identifies the 3.19± parcel sought to be divided from the existing Oakwood Property Management property and transferred

in title to the adjoining property owner, Mr. Murray. Mr. Reese explained that this transaction is to provide an additional barrier for the Murray parcels. It was also noted that this transfer of land would go forward regardless of whether the pending site plan and rezone applications of Oakwood Property Management were approved or not. The Planning Board generally discussed the location of the proposed lot line adjustment, including the irregular shape of the parcel. The Planning Board inquired of Mr. Kreiger whether there was any prohibition on the irregular shape of the parcel, including a 10 foot border along the rear of adjacent lots not owned by Mr. Murray. Mr. Kreiger stated that there was no prohibition under the Brunswick Code concerning the proposed lot line adjustment. It was noted that this 3.19± acre piece does not have any road frontage, is not being proposed as a building lot, and is being transferred to Murray for purposes of an additional buffer area. The Planning Board determined that if approved, the 3.19± acre parcel would be required to be legally merged into the remaining lands of Murray. Mr. Reese also explained that as part of the agreement of Oakwood Property Management and Murray, Oakwood Property Management would construct a 30 foot high berm, part of which would be on the parcel to be transferred to Murray, with the remaining part of the berm located on retained lands of Oakwood Property Management. Specifically, the peak of the 30 foot high proposed berm would become the property boundary between the retained Oakwood Property Management property and the Murray property, with half of the berm located on Murray and half of the berm located on Oakwood Property Management. It is noted that while the berm construction is being proposed in connection with the pending site plan application by Oakwood Property Management, LLC for industrial operations located on Oakwood Avenue (Tax Map Nos. 90-1-14 and 90-1-15), the proposed transfer to Murray would go forward regardless of whether the site plan is approved or not. Attorney Gilchrist noted for the record that pursuant to

the Memorandum of Agreement between the Town of Brunswick and Oakwood Property Management, LLC concerning such site plan application, and the related petition to rezone parcels 90-1-12.2 and 90-1-13.1, a coordinated SEQRA review on those specific actions would be undertaken, with the Brunswick Town Board serving as SEQRA lead agency. The current application for waiver of subdivision is not included within that coordinated SEQRA review under the Memorandum of Agreement, and therefore the Planning Board will need to make a determination under SEQRA with respect to the waiver application. It is noted for the record that the SEQRA determination on the waiver application will be limited to only those potential adverse environmental impacts associated with the current waiver application, in the nature of a lot line adjustment between Oakwood Property Management and Murray. Such a determination is not to be construed as any predetermination concerning SEQRA review on the underlying site plan or petition to rezone applications, nor any predetermination concerning action on such pending applications. Further, the Planning Board had earlier inquired as to whether Oakwood Property Management had retained the legal right to enter the property to be transferred to Murray for purposes of berm construction. Attorney Gilchrist stated that he had been provided a written agreement between Oakwood Property Management and Murray, whereby Oakwood Property Management retained the legal right to enter the lands to be transferred to Murray for purposes of the berm construction. Attorney Gilchrist handed up a copy of that agreement to the Planning Board members, which becomes part of the record on this application. Attorney Gilchrist did note that such agreement provided access only for purposes of constructing the currently proposed 30 foot high berm, and that any further mitigation measures, if any, required by the Town of Brunswick in connection with the pending site application and/or petition to rezone would need to be complied by Oakwood Property Management on its retained land.

Attorney Mathes concurred that in the event any additional mitigation measures beyond the proposed 30 foot high berm are required by the Town of Brunswick in connection with the pending site plan and/or petition to rezone, Oakwood Property Management would need to be able to comply with such conditions and/or mitigation measures on its retained land, and further that any SEQRA determination and/or approval of the waiver of subdivision application by the Planning Board did not act as any predetermination concerning the coordinated SEQRA review on such pending site plan and/or petition to rezone actions, nor any predetermination on the pending actions themselves, and that the Town of Brunswick Town Board and Town of Brunswick Planning Board retain all discretion with respect to such pending applications consistent with the Memorandum of Agreement. With this understanding, and given the limitations as described and discussed at this meeting, Chairman Oster concurred that this application can proceed and be entertained by the Planning Board at this time. Thereupon, Member Czornyj made a motion to adopt a negative declaration under SEQRA with respect only to the waiver of subdivision application in the nature of lot line adjustment between Oakwood Property Management and Murray, which motion was seconded by Member Tarbox. The motion was approved 6/0, and a negative declaration adopted, with the express understanding and provision that the Town of Brunswick Town Board retain all discretion and authority pursuant to the coordinated SEQRA review on the pending site plan and petition to rezone actions. Thereupon, Member Czornyj made a motion to approve the waiver of subdivision application subject to the condition that the transferred property be legally merged into the remaining lands of Murray, with express understanding that Oakwood Property Management retains the legal right to enter onto the transferred lands to Murray for purposes of constructing a proposed berm. Member Christian seconded the motion, subject to the stated conditions. The motion was

approved 6/0, and the waiver of subdivision application approved subject to the stated conditions, understandings, and stipulations on the record.

Attorney William Doyle was present, and updated the Planning Board on the current status of the Berkshire Properties PDD plan. The Planning Board agreed to place the Berkshire Properties application on the agenda for its April 7 meeting.

Chairman Oster noted on the record that he had been contacted by Andrew Ross of Ross Valve, Inc. concerning runoff issues from the Oakwood Avenue area onto the Ross Valve property, located at the former Garden Way manufacturing site and currently known as the Ross Tech Park. Chairman Oster noted that he had visited the site with Mr. Ross, and that stormwater comes down off the Oakwood Avenue area down the hill into what appears to be a concrete detention area, then into a 24 inch pipe to discharge to the river. Mr. Ross reports that at times this area gets blocked and floods, impacting the Ross Tech Park. Mr. Ross was concerned regarding pending residential projects as well as the Oakwood Property Management facility located on Oakwood Avenue, and wanted to insure that stormwater compliance issues were being addressed. This information will be considered in conjunction with the pending site plan application by Oakwood Property Management, LLC.

The **index** for the March 17, 2011 meeting is as follows:

1. Sphere STP II, LLC – site plan – 4/7/11;
2. A&S Diesel – site plan – approved subject to conditions;
3. Diamond/Sullo/Rooney – waiver of subdivision – 4/7/11;
4. Tamarac Auto Sales, LLC – site plan – 4/7/11;
5. Oakwood Property Management, LLC – waiver of subdivision – approved subject to stated conditions;

6. Berkshire Properties, LLC – Planned Development District – 4/7/11.

The **proposed agenda** for the April 7, 2011 meeting currently is as follows:

1. Sphere STP II, LLC – site plan;
2. Diamond/Sullo/Rooney – waiver of subdivision;
3. Tamarac Auto Sales – site plan;
4. Berkshire Properties, LLC – Planned Development District.