

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

MINUTES OF THE PLANNING BOARD MEETING HELD May 19, 2011

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

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

The Planning Board reviewed the draft minutes of the May 5, 2011 Planning Board meeting. Two corrections were noted. At Page 4, the name "Ontkeen" is corrected to "Hakeem". At Page 15, the term "bonds" is corrected to "barn". Member Czornyj made a motion to approve the draft minutes as corrected, which motion was seconded by Member Christian. The motion was unanimously approved, and the minutes approved as corrected.

The first item of business on the agenda was the Berkshire Properties PDD major subdivision application. Attorney William Doyle was present for the Applicant. Mr. Doyle stated that all submissions had been made regarding the final plat consideration. Mr. Kestner confirmed that he had received the revised final subdivision plat, and that the future right-of-way for the end of Betts Road within one of the residential lots had been addressed per the Planning Board comments, and that the topography and home elevations for the lots had been supplied. Chairman Oster inquired whether there were any further issues to address on the application. Hearing none, Chairman Oster noted that application was ready for consideration of final plat approval. Attorney Gilchrist stated that SEQRA had been completed on this application pursuant

to coordinated environmental review undertaken by the Town Board, and that the Planning Board was in the position to proceed to action on the final plat. Attorney Gilchrist and Mr. Kestner then reviewed proposed conditions to be attached to final subdivision plat approval for the Planning Board's consideration. Upon discussion, the Planning Board concurred that conditions were appropriate. Thereupon, Member Czornyj made a motion to approve the Berkshire Properties PDD major subdivision final plat subject to the following conditions:

- a.** With respect to the residential subdivision portion of the Berkshire Properties PDD, a bonding security agreement for the proposed subdivision road in form and content acceptable to the Town Board and Town Attorney must be executed by the Applicant.
- b.** With respect to the residential subdivision portion of the Berkshire Properties PDD, the Applicant must provide to the Town of Brunswick a performance bond or other acceptable financial undertaking for the construction of the proposed subdivision roadway. The form and content of such performance bond or other acceptable financial undertaking is subject to approval by the Town Board, Town Attorney, and Town Consulting Engineer as to form, content, and amount.
- c.** With respect to the residential subdivision portion of the Berkshire Properties PDD, a declaration of easement and road maintenance agreement in form and content acceptable to the Town Board and Town Attorney must be executed by the Applicant and recorded in the Office of the Rensselaer County Clerk at the expense of the Applicant. Proof of such filing at the Office of the Rensselaer County Clerk must be provided to the Town of Brunswick by the Applicant.
- d.** With respect to the residential subdivision portion of the Berkshire Properties PDD, until the subdivision roadway is completed, offered for dedication and accepted by the Town Board, the Applicant shall be responsible for all subdivision roadway maintenance, including paving, repairing, and snow plowing, for the benefit of all homeowners within the Berkshire Properties residential subdivision, to insure that all roadways are open, passable, and accessible to Betts Road, and further that all such roadways are open, passable, and accessible to and by emergency vehicles. In addition, until such time as the subdivision roadway is offered for dedication and accepted by the

Town Board, the Applicant shall be responsible for the maintenance of a sign at the entrance to the residential subdivision, providing the following: “NOTICE: this subdivision road is being maintained by the developer. Upon completion and final inspection, this roadway will be taken over by the Town of Brunswick”.

- e. With respect to the residential subdivision portion of the Berkshire Properties PDD, the subdivision roadway is designed to be a public roadway. Upon construction of this subdivision roadway in compliance with applicable specifications, the Applicant shall offer for dedication such subdivision roadway to the Town of Brunswick.
- f. Approval by the Rensselaer County Health Department with respect to private water and private septic facilities.
- g. The Applicant shall pay the sum of \$5,000 as a park and recreation fee. This amount shall be required to be paid by the Applicant on a \$500 per lot basis at such time as the Applicant applies for issuance of a building permit for residential construction on the residential subdivision portion of the Berkshire Properties PDD.
- h. The Applicant must comply with all New York State Department of Environmental Conservation (NYSDEC) Stormwater Regulations and Town of Brunswick Local Laws concerning stormwater compliance. In addition to any mandatory notice of intent to commence construction activities, the Applicant must complete a full Erosion and Sediment Control Plan (ESCP) and Stormwater Pollution Prevention Plan (SWPPP) in compliance with NYSDEC Stormwater Regulations. The Applicant shall supply a complete copy of the ESCP and SWPPP to the Town of Brunswick, and shall not commence any grading or construction activities on the Berkshire Properties PDD site until such time as the Town has executed the NYSDEC Notice of Intent to commence construction activities in its capacity as a MS-4 community.
- i. All stormwater management facilities for the Berkshire Properties PDD action shall be constructed in compliance with the approved SWPPP. The Town of Brunswick shall not own or otherwise be responsible for future operation or maintenance of such stormwater management facilities. The Town of Brunswick shall have no responsibility or liability with respect to such stormwater management facilities. The stormwater management facilities proposed for the residential subdivision and commercial portions of the Berkshire Properties PDD shall be as follows:
 - (i) Residential Subdivision: All stormwater management facilities shall be owned and maintained by a homeowners association for this

residential subdivision. This obligation shall be set forth in homeowner association documents. The Town of Brunswick shall be granted an easement for access to such stormwater management facilities pursuant to homeowner association documents. The form and content of the homeowners association documents as to stormwater management facility ownership, operation, maintenance, insurance and access, including the easement granted in favor of the Town of Brunswick for access as described herein, shall be subject to review by the Town Board and Town Attorney. The homeowners association must further execute a Stormwater Management Facilities Maintenance Agreement with the Town of Brunswick. The form and content of the Stormwater Management Facilities Maintenance Agreement shall be subject to approval by the Town Board and Town Attorney.

- j.** The Applicant must comply with all requirements of the United States Army Corps of Engineers and New York State Department of Environmental Conservation concerning wetlands, wetlands buffers, and restrictions on the project site.
- k.** All site work and construction activities on the Berkshire Properties PDD site, both with respect to the residential subdivision and commercial lots, shall be limited to the following hours of operation: Monday – Friday, 7:00 a.m. – 7:00 p.m.; Saturday, 7:00 a.m. – 5:00 p.m.; no site work or construction activity shall be permitted on Sundays or legal holidays.
- l.** The following note shall be placed on all plans and specifications for the Berkshire Properties PDD project:

The undersigned Applicant for the property and undersigned owner of the property state that they are familiar with all conditions of the Town Board of the Town of Brunswick on the Berkshire Properties Planned Development District, and consent to all said conditions.

Applicant

Date

Owner

Date

- m.** The Applicant shall provide the Town of Brunswick GIS data, including but not limited to property boundary area, roads, utilities, control points, and drainage elements.

- n.** The Applicant shall pay all consulting review fees incurred by the Town Board in connection with the review of the Berkshire Properties PDD application. A final accounting for all such fees shall be made, and all such fees shall be paid by the Applicant within 30 days of notification of such a final accounting.
- o.** The Applicant shall be required to establish at the Town of Brunswick an engineering review escrow account in an amount to be determined by the Town Board upon review with its consulting engineer. The Applicant must submit an estimate for projected infrastructure costs, including subdivision roads, public water, public sewer, and stormwater facilities; and further, the Applicant must submit an estimated construction schedule. This information will be used by the Town in considering an appropriate engineering review amount, which amount is anticipated to be five (5) percent of the total estimated infrastructure construction costs. The Town Board shall retain an engineer for the purpose of providing engineering review and oversight on all construction plans and site construction activities related to the Berkshire Properties PDD project infrastructure. In addition, such consulting engineer shall assist the Town Building Department, as necessary, in all mandatory inspections pursuant to all applicable codes. All fees for engineering oversight shall be the responsibility of the Applicant, and shall be paid out of the escrow account established pursuant to this paragraph. The amount of such escrow account shall be subject to review from time to time by the Town Board during construction activities on the Berkshire Properties project. At no time shall such account be in an amount less than \$5,000. In the event the Applicant fails to maintain such escrow account in a minimum balance of \$5,000, a Stop Work Order shall be issued by the Town of Brunswick Building Department on all construction activities at the site. The Applicant shall be entitled to an accounting of all invoices of engineering review fees. At the conclusion of construction and completion of engineering oversight activities, and upon a final accounting of all engineering fees, all funds remaining in such escrow account shall be returned to the Applicant.
- p.** All final engineering review comments of Brunswick Building Department and consulting engineer on final plat and project plans.
- q.** Subdivision road plan shall include the Town's standard wing gutter specification and eliminate the use of "Miami curb".

Member Mainello seconded the conditions subject to the stated conditions. There was some discussion concerning the potential future installation of public utilities near Lot #1. It was determined that this issue would be addressed through the proposed condition subjecting the approval to final engineering comments. Hearing no further discussion on the motion to approve

the final plat subject to the stated conditions, the motion was unanimously approved, and conditional final subdivision plat approval granted for the Berkshire Properties PDD major subdivision.

The next item of business on the agenda was the application by Wal-Mart Real Estate Business Trust for amendment to the Brunswick Square PDD. The matter has been referred to the Planning Board from the Town Board for recommendation on the PDD application. Mary Elizabeth Slevin, Esq. and Adam Fishel, P.E. were present for the Applicant. Attorney Slevin briefly overviewed the PDD application, seeking a 30,000± building expansion to the existing Wal-Mart Store plus a geographic expansion to the PDD site to include the former DiGiovanni parcel for the purpose of stormwater facilities and wetland enhancement. Mr. Fishel generally reviewed the proposed site plan layout, discussing store entrances, truck access, parking, greenspace, wetland enhancement, stormwater facilities, and proposed upgrades to McChesney Avenue. Chairman Oster raised concern regarding the proposed parking spaces along Route 7 and the elimination of existing greenspace, that he was not in favor of parking cars right along Route 7 in that location, and that the Planning Board has been promoting greenspace for commercial uses along the Route 7 corridor. Chairman Oster noted that he had also received a letter from Jim Murray, who owns property on McChesney Avenue, which included comments concerning greenspace on this application. Chairman Oster also noted that the Town has continued to address the automobile dealerships on Route 7 and maintenance of greenspace which remains an important issue for the Town. Member Czornyj concurred that greenspace was an important issue, and also commented that the proposed revisions to the main entrance to the Wal-Mart Store off Route 7 may create a hazard, particularly proposing crosswalks and travel ways. Mr. Fishel responded regarding total percentage of greenspace on the project, which Mr.

Fishel reports is at 34% greenspace on the existing Wal-Mart site under the proposal, not including the green area of the DiGiovanni parcel. Also, Mr. Fishel made a point of stating that the prior application by Wal-Mart to construct a supercenter store on property along Betts Road would have resulted in the elimination of a significant green area of the Town and that this proposal limits greenspace impacts and still meets greenspace requirements for the project. Member Czornyj asked whether the prior application on Betts Road was withdrawn because of wetland impacts. Attorney Slevin stated that the wetland impact issue was not the reason the prior application was withdrawn; rather, the prior application was withdrawn based on community opposition and Wal-Mart's response to public comments that the public would rather see the existing store site expanded. The Planning Board Members, Mr. Kestner, and Mr. Fishel then held extended discussion regarding the greenspace area along Route 7, and various options to maintain greenspace along Route 7 while still maintaining proposed parking areas. Issues discussed included the elimination of half of the proposed parking spots along Route 7, and particularly those adjacent to the Route 7 right-of-way; agreement with Johnston Associates for sharing of parking spaces in the parking lot for the entire Brunswick Plaza; maintaining a limited lawn with some trees in the proposed parking lot area; and keeping the greenspace on the Wal-Mart parking area along Route 7 aligned with the greenspace of the parking area along the Johnston Associates parking area to maintain a consistent green corridor along the Route 7 right-of-way. Greenspace and lighting impacts on the south side of the parking lot adjacent to McChesney Avenue opposite the Murray property was also discussed, including the maintenance of an existing berm to the maximum extent practicable, potential installation of a board-on-board fence, additional vegetative buffer, and adjustment to poll lights to reduce any light spillage from the Wal-Mart site. The Planning Board also commented on the proposed free standing poll sign

for Wal-Mart, and the comments of the ZBA regarding the proposed height of the sign and the total sign area. The Planning Board questioned the proposed public bus route and pick up areas on the site. Mr. Fishel stated that Wal-Mart was still coordinating with CDTA and that the bus route had not yet been finalized. The Planning Board raised comments concerning the proposed box culvert under McChesney Avenue, and the proposed work in raising the elevation of McChesney Avenue. Mr. Fishel stated that he was still in discussion with the Rensselaer County Highway Department. Mr. Kestner noted that the location of waterline and sewer line in that location must also be taken into account. Member Czornyj raised the issue of extending public sidewalk along McChesney Avenue to connect with the sidewalk areas that will be constructed in connection with the Duncan Meadows PDD project. Mr. Fishel stated that he had discussed this issue with the Rensselaer County Highway Department, and that the County Highway Department is in agreement with the same sidewalk detail approved for the Duncan Meadows project, and that Wal-Mart will work on incorporating the sidewalk into the project plan. After further general discussion, the Planning Board Members concurred that an overall positive recommendation on the application should be forwarded to the Planning Board, subject to conditions as discussed at this meeting. Attorney Gilchrist was directed to draft a proposed recommendation document to be further reviewed at the June 2 meeting.

The next item of business on the agenda was the application by Boswell Engineering for the Stoneledge Terrace site plan. Dominic Arico of Boswell Engineering was present for the Applicant. Chairman Oster noted that he had received a written communication from the Chief of the Center Brunswick Fire Company, noting that the area of the proposed access road off Oakwood Avenue will be in the Center Brunswick Fire District, and that the Center Brunswick Fire Department will be required to respond to all emergencies in this area. The Center

Brunswick Fire Department would like the Planning Board to consider this potential impact to fire services by this new intersection, including responding to any automobile accidents or other emergencies. Also, the Center Brunswick Fire Department noted that this section of Oakwood Avenue does not have any access to water or fire hydrants, and suggested that the Planning Board investigate the provision of a fire hydrant in relation to this project in this section of Oakwood Avenue. An email dated May 19, 2011 from Larry Funk, Chief of the Center Brunswick Fire Company, to the Planning Board was noted for the record. Mr. Arico stated that he would coordinate with both the Center Brunswick Fire Department and the City of Troy on that issue, but providing a fire hydrant in this general area would not be a problem. Mr. Arico handed up a specific layout and landscaping plan for that portion of the project road located within the Town of Brunswick. Mr. Arico also stated that he had given a revised set of plans to Mr. Kestner, provided Mr. Kestner with a full copy of the stormwater pollution prevention plan, as well as the Draft Environmental Impact Statement and Traffic Study for the project. Mr. Kestner stated that he has received the SWPPP, and is in the process of reviewing that plan. Mr. Kestner did discuss drainage from the Brunswick portion of this site, which will discharge under Oakwood Avenue and then drain on the easterly side of Oakwood Avenue in a southern direction, then crossing Oakwood Avenue again and discharging through the Oakwood Cemetery and ponds, ultimately discharging to the area of Ross Valve. Mr. Kestner wanted the opportunity to review the SWPPP in detail. Member Esser inquired as to the specifications for this proposed road, and whether this will be a public road. Mr. Arico stated that this will not be a public road, and therefore the public road specifications are not applicable. Mr. Arico also stated that there were no utilities planned for the access road in Brunswick, except for the stormwater detention facilities noted on the plan. Attorney Gilchrist stated that the Town of Brunswick, as a MS-4

community, must review the SWPPP in detail, as the Town has certain responsibilities under the stormwater regulations for stormwater facilities within the Town. Further, the Planning Board would need complete information as to the ownership entity for this Stoneledge project, in light of the fact that the Town of Brunswick will not own, maintain, repair, or otherwise be responsible for the stormwater detention basins located on the Brunswick portion of this project, and that the Town will require a stormwater management facility maintenance agreement with the legal entity that will own and operate these stormwater facilities. Attorney Gilchrist also requested further information from the Applicant as to the final SEQRA determination by the City of Troy Planning Board on this action. Mr. Kestner also inquired whether the Rensselaer County Highway Department had granted an approval for this road location. Mr. Arico said that conceptual approval had been issued, but a specific permit had not yet been applied for. The Planning Board noted that there was also an initial zoning issue which remained with the Building Department for determination. This matter is placed on the June 2 agenda for further discussion.

The next item of business on the agenda was the waiver of subdivision application by Hernick for property located at 421 Bonesteel Lane. Mr. Hernick was present on the application. The Applicant seeks to divide an existing 4.9± parcel into two lots, one lot being 2.9± acres in size on which the existing house is located, and a 2.0± acre parcel with existing barn and outbuildings proposed to be used for residential construction. The Planning Board generally discussed this application, and determined that based on this application, it is appropriate to grant the waiver approval subject to the condition that a Building Permit for the construction of a new house on the 2.0± acre lot be applied for within 30 days from subdivision approval, and that the house construction must be completed within 12 months from the date of the issuance of the

Building Permit. The Planning Board determined that if these conditions were not met, then the removal of the barn and outbuildings must occur on the 2.0± acre lot. The Planning Board generally concurred that this approach was appropriate on this application. Thereupon, Member Czornyj made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Tarbox. The motion was unanimously approved, and a negative declaration adopted. Member Czornyj then made a motion to approve this waiver of subdivision application subject to the following conditions:

1. The Building Permit for house construction on the 2.0± acre lot must be submitted to the Brunswick Building Department within 30 days of the date of subdivision approval;
2. House construction on the 2.0± acre parcel must be completed within 12 months from the date of the issuance of the subject Building Permit;
3. If the house construction is not completed within the 12 month period on the 2.0± acre lot, then the existing barn and outbuildings must be removed from that lot;
4. Rensselaer County Health Department approval for septic on the 2.0± acre lot.

Member Wetmiller seconded the motion subject to the stated conditions. The motion was unanimously approved, and the waiver of subdivision application approved subject to the stated conditions.

The next item of business on the agenda was the site plan application by Snyder for the operation of a dog kennel at 1802 NY Route 7. No one was present on the application. The Planning Board directed Mr. Kreiger to follow up with Snyder, review the issue of the steepness of the driveway for use in connection with a commercial operation, require additional topographic information for review by the Planning Board on that issue, and inform Snyder that this matter is tentatively placed on the June 2 agenda.

The next item of business on the agenda was the referral by the Brunswick Town Board of the application by Oakwood Property Management, LLC to rezone two parcels of property on Oakwood Avenue, Tax Map Parcels 90-1-12.2 and 90-1-13.1. Terresa Bakner, Esq. and Scott Reese were present for the Applicant, Oakwood Property Management, LLC. Also in attendance were Sean Gallivan and Brendan Gallivan of Oakwood Property Management, LLC. Attorney Bakner generally reviewed the proposal to rezone these two parcels to Brunswick Zoning District B-6, and that the property owner does not have any particular project being proposed in connection with the rezoning. Chairman Oster inquired whether the existing Memorandum of Agreement in this matter included the exclusion of a filling station as a B-6 use for these two parcels. Attorney Bakner stated that that provision was not included in that Memorandum of Agreement, but rather came up during subsequent discussions with the property owners in the North Forty Subdivision and Town officials. Attorney Bakner stated that Oakwood Property Management, LLC takes no position on that issue, and that will be a decision that will be made by the Town Board. Attorney Bakner noted that following the public hearing, which included both the application to rezone these two parcels as well as the pending site plan application before the Planning Board, Oakwood Property Management, LLC has retained Dr. Henry Scarton to assist Oakwood Property Management, LLC in consideration of mitigation measures to address potential noise impacts. Chairman Oster noted for the record that the discussion at this meeting would be limited to consideration of a recommendation of the Town Board on the proposed rezoning of these two parcels from current zoning designations to B-6, and that this Planning Board meeting would not include discussion on the proposed site plan. The Planning Board generally reviewed the Brunswick Zoning Code, and specifically all of the primary permitted uses as well as the special permit uses within the B-6 Zone under the Brunswick

Zoning Code. The Planning Board generally discussed the current zoning designations for these parcels, as well as the uses that would be allowed in the B-6 Zone at this location. Attorney Gilchrist noted for the record that the consideration by the Planning Board for its recommendation to the Town Board on the rezoning application should specifically address the Planning Board's consideration of whether those two parcels are appropriate for Zoning District B-6 uses, given its location as well as existing surrounding land uses. Attorney Gilchrist noted that the determination by the Planning Board should not be viewed as a "resolution" of issues surrounding the present operations on these two parcels, but must focus on the Planning Board's determination from a planning perspective as to whether those parcels would be appropriate for the allowable uses within the B-6 Zoning District. Upon further discussion, the Planning Board Members generally concurred that the B-6 uses allowed under the Brunswick Zoning Code would be appropriate uses for this parcel, and generally did not have any opposition to the rezoning of these two parcels to the B-6 zoning designation. However, the Planning Board Members did want to explore the issue of eliminating the "filling station" use as one of the allowable B-6 uses on these two parcels in light of comment by the owners within the North Forty Subdivision. Attorney Gilchrist was directed to research that issue. Attorney Gilchrist was also directed to draft a recommendation to the Town Board on the rezoning applications, subject to review and discussion by the Planning Board at its June 2 meeting. This matter is placed on the June 2 agenda for consideration of the written recommendation to the Town Board on the rezone applications, and also for purposes of discussing the pending site plan applications for Tax Map Parcels 90-1-14 and 90-1-15.

One item of old business was discussed.

Chairman Oster noted that he was in receipt of communication from Larry Funk, Chief of the Center Brunswick Fire Department, concerning the proposed Farrell major subdivision located at McChesney Avenue Extension and Town Office Road. The fire department noted that this location does not have any municipal water service, and that the fire department recommends that as part of the construction of stormwater detention basins, a design for a firefighting water holding area with a dry hydrant be considered.

Mr. Kreiger reported that a site plan application would be submitted shortly by Brunswick Associates of Albany, L.P. in conjunction with the Brunswick Woods Apartment construction that is currently underway. Mr. Kreiger understands that the owner is seeking to upgrade the existing clubhouse at the apartment complex, which would also convert an existing maintenance garage to additional clubhouse space, and there would be a proposal to construct a new maintenance garage facility at the apartment complex. This will require an amendment to the approved site plan, an application for which should be submitted shortly. The matter will be considered upon receipt of a complete application.

The **index** for the May 19, 2011 meeting is as follows:

1. Berkshire Properties PDD – major subdivision – conditional final plat approval;
2. Wal-Mart Real Estate Business Trust – Brunswick Square PDD amendment referral and recommendation – 6/2/11;
3. Boswell Engineering - Stoneledge Terrace site plan – 6/2/11;
4. Hernick – waiver of subdivision – conditional final approval;
5. Snyder – site plan – 6/2/11;
6. Oakwood Property Management, LLC – Town Board referral of Petition to Rezone Tax Map Parcels 90-1-12.2 and 90-1-13.1 for recommendation – 6/2/11.

The **proposed agenda** for the June 2, 2011 meeting currently is as follows:

1. Charles Farrell – major subdivision;
2. Wal-Mart Real Estate Business Trust – Brunswick Square PDD amendment – referral and recommendation;
3. Boswell Engineering - Stoneledge Terrace site plan;
4. Snyder – site plan;
5. Oakwood Property Management, LLC – recommendation on rezone petition for Tax Map Parcels 90-1-12.2 and 90-1-13.1, and site plan review for Tax Map Parcels 90-1-14 and 90-1-15.