

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

MINUTES OF THE PLANNING BOARD MEETING HELD March 21, 2013

PRESENT were RUSSELL OSTER, CHAIRMAN, MICHAEL CZORNYJ, GORDON CHRISTIAN, FRANK ESSER, 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 Planning Board conducted a public hearing on the application by Farrell Homes, Inc. for a minor subdivision of the former Welch Farm property located between NY Route 2 and Pinewoods Avenue (Tax Map No. 102.-2-10.1). The Notice of Public Hearing was read into the record, noting that the public hearing notice was published in the Troy Record, placed on the Town Sign Board, placed on the Town website, and mailed to owners of all adjacent properties. Chairman Oster requested that the Applicant make a brief presentation of the proposed subdivision. Brian Holbritten, licensed land surveyor, was present for the Applicant. Mr. Holbritten gave a brief presentation of the proposed subdivision. The property totals approximately 42.5 acres, on which two existing homes are located, together with a series of barns and outbuildings. The Applicant is proposing to divide this property into four residential lots. Two of the lots, fronting on NY Route 2, will each include one of the existing homes. The first lot fronting on NY Route 2 will total approximately 1.5 acres, and will have one existing home. The second lot fronting on NY Route 2 will total approximately 18.5 acres, on which will be one existing home together with all of the barns and outbuildings. Each of the two lots

fronting on NY Route 2 will have a new well drilled for potable water supply, and have an existing septic system. The remaining land will be divided into two residential lots fronting on Pinewoods Avenue. Proposed Lot 3 totals approximately 9.1 acres, and proposed Lot 4 totals approximately 13.3 acres. Each of the two lots fronting on Pinewoods Avenue is proposed to be connected to public water, and have a private septic system. Chairman Oster inquired about the proposed waterline easement on the westerly border of the project site. Mr. Holbriiter confirmed that in coordination with the Brunswick Water Department, an easement will be granted in favor of the Town of Brunswick for purposes of future waterline installation. Mr. Holbriiter explained that in the event public water was extended in the easterly direction on Route 2, this waterline easement would allow the Town of Brunswick to connect the existing water line on Pinewoods Avenue with a potential future waterline on NY Route 2 to create a looped system. Chairman Oster then opened the floor for receipt of public comment. James Fishback, 4 Diana Place, stated that the northeast corner of the project site adjacent to NY Route 2 is wet, and contains cattails and reeds, and inquired whether the Applicant would be required to delineate any wetlands or place any restrictions on the project. Jim Tkacik, 387 Brunswick Road, had an inquiry concerning the size of the houses proposed to be built on the lots adjacent to Pinewoods Avenue. Charles Farrell, also present for the Applicant, stated that no homes are proposed currently, and the subdivision plat merely shows a potential house and driveway location at the request of the Planning Board, to insure that the lots were buildable. Mr. Tkacik also inquired as to the zoning district for the lots adjacent to NY Route 2. Mr. Kreiger confirmed that the zoning district for the lots adjacent to NY Route 2 is R-25. Mr. Tkacik questioned whether the landscaping/soil blending operation occurring on the property adjacent to NY Route 2 would be allowed to continue. Member Czornyj stated that the zoning district for the property will not be

changed as a result of any action on the subdivision, and that the zone will remain Residential R-25, and that any action by the Planning Board would not approve any commercial operation. Mr. Tkacik stated that this issue must be addressed, because he feels if the barns and outbuildings are not used, they will deteriorate, and that he has no problem with the current operation occurring on the property and would rather see that operation be allowed to continue in order to maintain the barns and outbuildings. Attorney Gilchrist advised that this matter needs to be addressed by the Town Building Department. Chairman Oster stated that this application sought residential subdivision only, and that the Planning Board would not be addressing any commercial use or zoning compliance issue. Mr. Tkacik reiterated that he did not have any complaint regarding the current operations, but simply wanted clarification and consideration of whether any restriction should be placed on the operation. Attorney Gilchrist again stated that this issue is one to be addressed by the Town Building Department. Mr. Tkacik also questioned whether the Applicant had communicated with National Grid about a potential gas line running from Pinewoods down to NY Route 2, and wondered whether the proposed waterline easement could be expanded to include a gas line. Mr. Holbriiter stated that the Applicant would be happy to sell an easement to National Grid for that purpose. George Bejian, 615 Pinewoods Avenue, had an inquiry regarding the house location on the lots adjacent to Pinewoods Avenue, but now understood that these lots may be sold as just building lots, and that the location shown on the subdivision plat is merely a potential house location. Mr. Farrell confirmed that he may be selling the land merely as a building lot, or he could be retained by a potential purchaser to construct the home as well. Mr. Holbriiter confirmed that the subdivision plat shows a proposed house and driveway location at the request of the Planning Board, but that the Applicant is initially looking to sell the building lots. Member Czornyj stated that in the event the purchaser of these lots wished to change the

proposed house location, that purchaser would still need to comply with all required setbacks and address the sight distance issue onto Pinewoods Avenue in terms of driveway location. Mr. Bejian inquired whether the lots adjacent to Pinewoods Avenue could be further subdivided by a potential purchaser. Mr. Kreiger stated that the zoning district for the lots adjacent to Pinewoods Avenue is R-25, requiring a minimum lot size of 25,000 square feet. The Planning Board confirmed that there would be adequate area on these lots for further subdivision, but that it would be subject to further review by the Planning Board. Mr. Farrell commented that, in his opinion, it would not be cost effective to further subdivide the lots adjacent to Pinewoods Avenue, and that if it were economically feasible to do so, his application would have included additional lots adjacent to Pinewoods Avenue. Chairman Oster inquired whether there were any further comments from the public. Hearing none, the Planning Board closed the public hearing on the minor subdivision by Farrell Homes, Inc. for the former Welch Farm property.

Thereupon, the Planning Board opened its regular business meeting.

The Planning Board reviewed the draft minutes of the March 7, 2013 meeting. Upon motion by Member Czornyj, seconded by Member Wetmiller, the minutes of the March 7, 2013 meeting were unanimously approved without amendment.

The first item of business on the agenda was the minor subdivision application by Farrell Homes, Inc. for the former Welch Farm property located between Pinewoods Avenue and NY Route 2. Chairman Oster reviewed the comments received during the public hearing. First, Chairman Oster noted the comment concerning the wet areas in the northeast corner of the project site. Mr. Holbriiter stated that any wetland area has not been delineated on the subdivision plat because no new construction is being proposed, no activities which would impact any wetland area are being proposed, and that for the part of the project site adjacent to

NY Route 2 the Applicant is merely seeking to add lot lines and create two residential lots, each one of which will include an existing home. Mr. Kestner stated that with regard to a prior major subdivision application for this property which had been previously submitted and initially reviewed by the Planning Board, additional residential lots were proposed for the northeast corner of the project site, and therefore a wetland delineation would have been required. However, on this application, Mr. Kestner confirmed that no additional lots are being proposed for the northeast corner of the project site, and that the Applicant is not proposing any activities that would change or alter the existing conditions in the northeast corner of the project site. The Planning Board confirmed that in the event any future subdivision of the property were proposed, then the Planning Board would require additional information concerning the wet conditions in the northeast corner of the project site, and further that if any structures were proposed for the northeast section of the project site, then the Building Department would need to further review the wet conditions and soil types during any building permit application review. Chairman Oster next addressed the comment concerning the existing landscaping and soil blending operation on the project site adjacent to NY Route 2. Attorney Gilchrist stated that further research should be performed on that issue, particularly with respect to the potential impact of any action by the Planning Board on the current operations and/or potential zoning compliance matters. Chairman Oster inquired of Mr. Farrell whether it was his understanding that the landscaping and soil blending operation would be moving, or whether the owner of that operation intended on remaining at that location. Mr. Farrell stated that the owner of that operation is currently renting the property, and may have an interest in purchasing the subdivided lot on which the operations are occurring. Attorney Gilchrist again stated that further research should be done on that issue prior to any Planning Board action. Chairman Oster next raised the

comment concerning the waterline easement running on the westerly boundary of the project site, and whether that could include a potential gas line. Mr. Kestner stated that the Town is seeking an easement for installation of a waterline only, and that the Town would be concerned about any additional utility lines that could potentially impact access to any waterline. There was general discussion about the width of the proposed waterline easement, and whether that width could be expanded to accommodate a gas line. Attorney Gilchrist stated that the gas line was not a public issue, but rather a private issue between private property owners and a private utility. Member Czornyj stated that Farrell Homes, Inc. and National Grid should communicate on the issue, but that it was not a Planning Board matter. Chairman Oster inquired whether there were any further questions or comments by the Planning Board members on the application. Hearing none, Chairman Oster stated that the matter will be placed on the April 4 agenda for further discussion.

The next item of business on the agenda was the application by Farrell Homes, Inc. on the Doubleday Estates major subdivision for property located between McChesney Avenue Extension and Town Office Road. The Planning Board reviewed a proposed resolution granting conditional final subdivision plat approval. Upon review and deliberation, the Planning Board granted conditional final subdivision plat approval on the Doubleday Estates major subdivision, subject to the following conditions:

- a. Final subdivision plat notes 7, 8, 9, 10, 11, and 12 are hereby incorporated by reference as conditions to final plat approval.
- b. The utility easement described in final subdivision plat note No. 9 shall also provide that such easement shall be extinguished in the event the existing utility pole line is relocated to the public road right-of-way.

- c. All stormwater management facilities for the Doubleday Estates major subdivision shall be constructed in compliance with the approved stormwater pollution prevention plan. 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. All stormwater management facilities shall be owned and maintained by a homeowners association which shall be prepared for the Doubleday Estates subdivision. This obligation shall be set forth in the homeowner association documents. The Town of Brunswick shall be granted an easement for access to such stormwater management facilities pursuant to the homeowner association documents. The form and content of the homeowner 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 Brunswick Town Board and Town Attorney. The homeowner 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 Brunswick Town Board and the Town Attorney. The formation of the homeowners association, and execution of the stormwater management facilities maintenance agreement, shall be completed prior to the issuance of any certificate of occupancy for any structure in the Doubleday Estates Subdivision.

- d. The Applicant shall execute a Bonding Security Agreement and Declaration of Easement and Road Maintenance Agreement in form and content acceptable to the Town of Brunswick. Pursuant to the terms of said Bonding Security Agreement, the Applicant must provide to the Town of Brunswick a performance bond or other acceptable financial undertaking for the construction of the proposed subdivision road and stormwater facilities. The form and content of such performance bond or other acceptable financial undertaking is subject to approval by the Brunswick Town Board, Town Attorney, Town Highway Superintendent, and Town consulting engineer as to form, content, and amount. Pursuant to the terms of said Bonding Security Agreement and Declaration of Easement and Road Maintenance Agreement, until the subdivision road is completed, offered for dedication and accepted by the Town of Brunswick, the Applicant shall be responsible for all subdivision road maintenance, including paving, repairing, and snow plowing, for the benefit of all homeowners within Doubleday Estates Subdivision, to insure that all roadways are open, passable, and accessible to such homeowners and emergency vehicles.

In addition, until such time as a subdivision road is offered for dedication and accepted by the Town of Brunswick, the Applicant shall be responsible for the maintenance of a sign at the entrance to the 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. The subdivision road in the Doubleday Estates Subdivision is designed to be a public roadway. Upon construction of this subdivision road in compliance with applicable specifications, the Applicant shall offer for dedication such subdivision road to the Town of Brunswick. The Applicant shall comply with all requirements of the Town of Brunswick with respect to dedication of such road.
- f. All project infrastructure is to be completed in one construction phase, with the vegetation proposed for the stormwater basin located in proximity to McChesney Avenue Extension and the property of Seddon is to be planted as part of such infrastructure phase. Commencement of construction activities will be subject to a pre-work conference with the Town of Brunswick.
- g. The Applicant is required to maintain the existing vegetation between the project site and the lands of Duncan and Tomaro.
- h. Approval by the Rensselaer County Department of Health for all water supply and septic facilities.
- i. All final comments of the Brunswick Building Department and consulting engineer on project plans.
- j. The driveways for each residential lot shall provide for a 2% negative pitch within the first 10 feet off the subdivision road or other public road, or other design acceptable to the Town Highway Superintendent, to prohibit stormwater flow onto the subdivision road or other public road.
- k. No work permits of any kind will be issued by the Town of Brunswick until all required fees, including consulting review fees, are paid by the Applicant as required by the Town of Brunswick.
- l. All site work and construction activities on the Doubleday Estates Subdivision site shall be limited to the following hours of operation: Monday-Friday 7:00 a.m. – 4:00 p.m.; Saturday 7:00 a.m. – 4:00 p.m.; no site work or construction activity shall be permitted on Sundays or legal holidays.

- m. No certificate of occupancy for any home will be issued by the Town of Brunswick until all infrastructure for this project has been completed to the satisfaction of the Town of Brunswick, including completion of road construction through binder course.
- n. All homes constructed in the Doubleday Estates Subdivision must, at a minimum, be in general conformance with the building elevations submitted by the Applicant to the Planning Board. Compliance with this condition shall be determined by the Brunswick Building Department.
- o. The Applicant shall pay the sum of \$500.00 per lot as a park and recreation fee. This amount shall be required to be paid by the Applicant on a \$500.00 per lot basis at such time as the Applicant applies for the issuance of a building permit for residential construction for such lot.
- p. The Applicant shall comply with all requirements for the Town of Brunswick with respect to inspections of all site construction activities, including all required fees for such inspections.

The third item of business on the agenda was the major subdivision application submitted by Bohler Engineering for the Berkshire Properties PDD major subdivision. Chris Boyer of Bohler Engineering was present on the application. Mr. Boyer stated that he had submitted a full environmental assessment form and stormwater pollution prevention plan to the Town and Mr. Kestner for review. Mr. Boyer reiterated that there were no major changes proposed for the project, and that the Applicant was seeking to renew prior approvals. Chairman Oster raised the issue of the septic plan for Lot 4 and what the Applicant was proposing to do with that lot. Mr. Boyer stated that the Applicant was proposing a condition that the Health Department approval for the septic plan must be obtained within one year, or that the property within that lot would be split and added to the two adjacent subdivided lots. Attorney Gilchrist stated that the Planning Board should consider the potential issue of approving Lot 4 as a subdivided building lot with the condition that Rensselaer County Health Department approval for the septic plan be obtained within one year, given that all conditions attached to final plat approval must be satisfied before the Planning Board can stamp and sign the subdivision plat for recording in the County Clerk's

Office. A condition attached to Lot 4 which may not be fulfilled for one year would not permit the Planning Board to stamp and sign that 10-lot subdivision plat until such time as the Health Department approves the septic plan for the single Lot 4. Attorney Gilchrist explained that in that case, no building permits could be issued for the other residential lots, since the final plat will not have been stamped, signed, and recorded in the County Clerk's Office to create the legal lots in the subdivision. Mr. Kestner also stated that the proposal that Lot 4 could be split one year into the future and added to the two adjoining lots raised practical issues, since the Applicant may have already transferred ownership to these two adjacent lots to third parties, and such third parties may not want to add that land to their lots after purchase. Member Wetmiller asked whether this project could be phased, so that nine lots could be included in Phase 1, for which there was not any issue with obtaining Health Department approval for septic, and the final Lot 4 could be subject to a second phase. In this way, the first phase subdivision plat which would include nine approved lots could be stamped and signed, and the remaining Lot 4 could be subject to the second phase plat. Attorney Gilchrist stated that he would research that issue. Member Tarbox inquired why the Applicant would wait one year for Rensselaer County Health Department approval for Lot 4, given that an under-drain could be installed on Lot 4 and approval could be obtained sooner than one year. Mr. Kestner stated that according to the Rensselaer County Health Department, the Health Department was requiring the under-drain to be in place through one "weather cycle", which may be interpreted as one full year, prior to Department approval for the proposed septic plan. The Planning Board entertained further discussion regarding options for Lot 4. It was determined that the Applicant will submit a written proposal concerning Lot 4 for the Planning Board's review. Chairman Oster inquired whether the Planning Board had any further questions or need for additional information on the

subdivision plat, or whether the Planning Board could move forward and schedule a public hearing. Hearing no objection, Chairman Oster stated this application will move forward to public hearing, to be held at 7:00 p.m. on April 4.

The next item of business on the agenda was the site plan and commercial subdivision application by Reiser Bros. for the proposed Brunswick Farms project located on NY Route 2 and NY Route 278. Scott Reese and Henry Reiser were present for the Applicant. Mr. Reese confirmed that this project had already obtained a negative declaration under SEQRA, issued by the Planning Board on August 16, 2012. Mr. Reese also reported that the Brunswick Zoning Board of Appeals had issued a special use permit for the “filling station” on Lot 1, having granted the special use permit on December 17, 2012. The Applicant was before the Planning Board at this point for action on the commercial subdivision, creating three (3) commercial lots, and the site plans proposed for Lots 1 and 2. Mr. Reese stated that Rensselaer County Health Department approval for septic remained pending. Mr. Reese also confirmed that all consulting review fees would be paid by the Applicant within one week. Member Czornyj asked whether the site plan had any changes since the last time the Applicant was in front of the Planning Board. Mr. Reese stated that there had been no changes to the site plan. Chairman Oster inquired whether Mr. Reiser had obtained any written authorization from the owners of lots within the Brook Hill Subdivision for construction of the berm, which in part goes on to third-party lot owners in the Brook Hill Subdivision. Mr. Reiser stated that there was only one lot within the Brook Hill Subdivision on which the proposed berm extended, and that he already had verbal authorization but would obtain written authorization from that lot owner for the record. Chairman Oster inquired as to the status of NYS DOT approval. Mr. Reese stated that NYS DOT had issued conceptual approval for the proposed entrances off NY Route 278 and NY

Route 2, and use of the State stormwater drainage system, but that formal work permits would be required. Mr. Kestner confirmed that NYS DOT had granted conceptual approval only. Mr. Reese also stated that he had sent the stormwater pollution prevention plan to NYS DOT, and that NYS DOT had no comments. Chairman Oster inquired whether NYS DOT had submitted anything in writing concerning its review of the stormwater pollution prevention plan. Mr. Reese stated that nothing had been received in writing, but that he would contact NYS DOT and obtain something in writing concerning NYS DOT's review of the stormwater pollution prevention plan. Member Tarbox asked whether the Applicant was limited to the proposed buildings for Lot 1 and for Lot 2 as submitted on the site plan, and that if any substantial changes were made, the Applicant must come back for amendment of the site plan. Attorney Gilchrist stated that if there were any substantial change to the building proposed on the site plans, then an application for amendment would be required. Member Tarbox also inquired as to the status of the shared driveway off NY Route 2 to both Lots 1 and 2. Mr. Reese confirmed that a shared driveway is proposed. Attorney Gilchrist stated that the Planning Board would require cross-easements for access, similar to past Planning Board practice as required in the CAP-COM/Honda and Burger King/Dunkin Donuts sites. The Planning Board generally discussed the berm and whether a bond for construction costs should be required. The Planning Board generally determined that the grading on the site had been significantly reduced, and that a bond for the berm would not be required, but that construction of the berm would be a condition on any action on the site plan. The Planning Board entertained further discussion on the berm, including its height. Mr. Reiser stated that the berm was 4-5 feet at its highest point, and that he planned to feather the berm into the back yard of the lot in the Brook Hill Subdivision on which the berm was located. Chairman Oster raised the issue of days and hours of operation for

construction on this project. Mr. Reiser stated that the hours discussed for the Doubleday Estates project were acceptable, which are Monday to Friday, 7:00 a.m. to 4:00 p.m., and Saturday, 7:00 a.m. to 4:00 p.m. as needed, with no work on Sunday or legal holidays. Chairman Oster confirmed that all consultant review fees must be paid to the Town before the Planning Board would act on the commercial subdivision and site plan applications. Attorney Gilchrist stated that he would like the opportunity to draft proposed conditions with Mr. Kestner for the Planning Board's review. Member Tarbox thought that in connection with the grading of the site, no material should be trucked into the Langmore neighborhood. Mr. Reiser had no objection to that condition. Mr. Kreiger stated that if the material was graded and transported to another site in Brunswick, then a permit from the Town would be required; however, if the material is transported from the project site to another site outside the Town, then no permit would be required. Mr. Reiser understood this requirement as well. This matter is placed on the April 4 agenda for further discussion.

One item of new business was discussed.

Bohler Engineering, on behalf of McDonalds USA, LLC has inquired whether a site plan application is required for proposed renovations for the existing McDonalds on Hoosick Road (780 NY Route 7), including a re-orientation of the drive-thru. Mr. Kreiger stated that he would review the prior Planning Board site plan approval for conditions, as it was his recollection that there may be a condition concerning the drive-thru. This matter is tentatively placed on the April 4 agenda.

Doug Eddy, Highway Superintendent, was present at the meeting, and discussed generally with the Planning Board the option of limiting any on-street parking during project review by the Planning Board. Mr. Eddy reported that on-street parking, particularly in areas

where dense development is permitted, becomes an issue during snowplowing and is potentially a safety issue as well.

The Planning Board noted that with respect to the site plan submittal by Oakwood Property Management, LLC for property located on Oakwood Avenue, Attorney Gilchrist stated that the Applicant had filed a motion with the New York Court of Appeals in the pending litigation, and suggested to the Planning Board that it defer any action on the site plan application until such time as the New York Court of Appeals renders a decision on such motion, as it could affect the Planning Board review of the current site plan submittal. Attorney Gilchrist opined that the New York Court of Appeals should render a decision on the Oakwood Property motion no later than mid-April, and that Attorney Gilchrist would update the Planning Board on this issue subsequent to the New York Court of Appeals decision.

The index for the March 21, 2013 meeting is as follows:

1. Farrell Homes, Inc. – Welch Farm minor subdivision – 4/4/13;
2. Farrell Homes, Inc. – Doubleday Estates major subdivision – final conditional subdivision approval;
3. Bohler Engineering – Berkshire Properties PDD major subdivision – 4/4/13 (public hearing to commence at 7:00 p.m.);
4. Reiser Bros. Inc. – Brunswick Farms commercial subdivision and site plan – 4/4/13;
5. Bohler Engineering (McDonalds USA, LLC) – site plan requirement to be researched – 4/4/13 (tentative).

The proposed agenda for the April 4, 2013 meeting currently is as follows:

1. Bohler Engineering – Berkshire Properties PDD major subdivision (public hearing to commence at 7:00 p.m.).
2. Farrell Homes, Inc. – Welch Farm minor subdivision.
3. Reiser Bros. Inc. – Brunswick Farms commercial subdivision and site plan.
4. Bohler Engineering (McDonalds USA, LLC) – site plan (tentative).