

**TOWN OF SOUTHEAST
PLANNING BOARD MINUTES
January 11, 2016**

Present: Chairman Tom LaPerch; Boardmembers Paul Jonke, Phil Wissel, David Rush, Eric Cyprus, Michael Hecht and Dan Armstrong; Town Planner Ashley Ley; Town Attorney Willis Stephens; Secretary Victoria Desidero.

PUBLIC HEARINGS:

- 1. BREWSTER FORD, 1024 Route 22** – This was a continued Public Hearing to review an application for a Site Plan Amendment. The motion to open the Public Hearing was introduced by Chairman LaPerch, seconded by Boardmember Wissel and passed all in favor. Jamie LoGuidice of Insite Engineering appeared before the Board. Chairman LaPerch said I know you got the memo from (Town Engineer) Tom Fenton late so you can comment now or come back. Ms. LoGuidice said we will come back to address the comments but can we show the elevations? Chairman LaPerch said of course. Ms. LoGuidice used photos to show the sides of the building that will be altered and the new parking areas. Boardmember Armstrong said at the last meeting, I mentioned that the 1998 approved site plans indicated 10 spaces for employees being at the Fish Market. Are you now proposing another 10 spaces at another site? Ms. LoGuidice said they are no longer parking at the fish market because it is Dunkin Donuts now. Boardmember Armstrong said I know that. She said I am not sure of the number of spaces but the employees are now parking at Folchetti's. Boardmember Armstrong said with all of these things going on, I really feel like this applicant is practicing 'selective compliance' and I think we should do something about it... He said I would really like to understand how many parking spaces are being proposed in total. Ms. LoGuidice said 163 spaces... The motion to Continue the Public Hearing to February 8, 2016 was introduced by Chairman LaPerch, seconded by Boardmember Armstrong and passed all in favor.

REGULAR SESSION:

- 1. DURANTE RENTALS, 11 Fields Lane** – This was a review of an Application for a Site Plan Amendment. Attorney Richard O'Rourke of Keane & Beane, Architect Rob Dellasandro and Owner John Durante appeared before the Board. Mr. O'Rourke said this is our first appearance on this application but there is a lot of information and files on this property with the Town including a subdivision that was done by Mr. Pasquantonio. He said no additional structures are proposed. Mr. Durante is using the existing barn and availing himself of the ability to have outside storage under the new Zoning, he said. Mr. O'Rourke said he will do some screening and add Norway Spruce from Alfredo's and put them on the portion that is in the R-160 Zone. Chairman LaPerch said you will need to have demarcation of the outside storage area. Mr. O'Rourke said we are thinking post and rail fence. Town Planner Ashley Ley said it needs to be shown on the plan and reviewed by the Architectural Review Board. Boardmember Cyprus said did you say you were adding a structure? Mr. O'Rourke said none except the post and rail fence. Boardmember Armstrong said I haven't been out there: are there any residences nearby? Mr. Durante used the plans to show what the adjoining parcels are used for and said he owns the residential parcel that is next door. Mr. O'Rourke talked about the screening along the road. Boardmember Armstrong asked what the purpose of the screening is and Mr. Durante said to block the view when you come around the corner. He talked about the trees and how they will be positioned on the site. Ms. Ley said we just need to see it on the

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plans and the ARB will review it. Mr. O'Rourke said the ingress/egress stays the same and Mr. Durante said the natural landscaping of the land is screening as well. Ms. Ley said it needs to be clear on the plans and to the Building Inspector where the delineation of the outside storage area is. Boardmember Armstrong said this is for your own use? Mr. Durante said yes, we rent construction equipment. Boardmember Armstrong said so do you need visibility from the road? Mr. Durante said yes. Boardmember Rush said you are not going to change any of the lighting? Mr. Durante said no. The motion to Classify this application as a Type II Action under SEQRA was introduced by Chairman LaPerch, seconded by Boardmember Hecht and passed by a roll call vote of 7 to 0. The motion to Classify this as a Minor Project was introduced by Chairman LaPerch, seconded by Boardmember Cyprus and passed all in favor. Chairman LaPerch asked the Board for their thoughts on whether or not there should be a Public Hearing. Boardmember Wissel said I think there are some residences around there and we should have a hearing. The motion to Set the Public Hearing for February 8, 2016 was introduced by Chairman LaPerch, seconded by Boardmember Rush and passed all in favor. Ms. Ley said this application can also be referred to the ARB. The motion to refer the application to the ARB was introduced by Chairman LaPerch, seconded by Boardmember Armstrong and passed all in favor. The applicant was reminded to send their Wetland delineation report to (Wetland Inspector) Steve Coleman and to put up a sign on the property about Planning Board review of the project.

2. DISCUSSION OF DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC) QUESTIONS ABOUT LEAD AGENCY FOR BARRETT HILL APPLICATION

– This was a Board discussion of recent developments in the appeal to the DEC that the Planning Board made regarding the Town Board's Declaration of Lead Agency under SEQRA for the Barrett Hill application. Chairman LaPerch said this is a discussion of a conference call that I had with the Department of Environmental Conservation's attorney, Mr. Stephens and Mr. Cullen on the phone about our letter challenging Lead Agency status. Chairman LaPerch said Will (Stephens), can I put you on the spot to summarize the conversation with the attorney from the DEC? Mr. Stephens said the conversation was more about the manner in which they wished that we could figure out some way to resolve the issue in-house rather than to have the Commissioner make a determination. He said we discussed some facts and I think some of the misconception, and it was clarified in that conversation, that the action that is before the Town is really an action to amend the Zoning Code and if there was a no application before the Planning Board for any amendment to Site Plan, or anything like that, so what's actually somewhat news to me was that, in this instance, the Planning Board is not an involved agency, therefore not eligible to be a Lead Agent. I think it's a matter of course, any time we do a circulation, we have a list of involved agencies and it was assumed that under the circulation standards that we have that the Planning Board is always listed as an involved agency, he said. Mr. Stephens continued: the DEC Commissioner or Assistant Commissioner or Deputy Commissioner asked if we could get a clarification from the applicant which is Barrett Hill Associates, their attorney again is Charles Martebano, as to whether or not there was an active Site Plan amendment pending and he did finally respond and said that there was no active Site Plan pending before the Town. That information was provided to the Commissioner or Deputy Commissioner, he said, and I guess the last

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communication we got from the Deputy Commissioner was that the matter would be now turned over to the Commissioner for some sort of a decision. Chairman LaPerch said after I got off the phone, I updated Ashley (Ley), Graham (Trelstad) and Peter (Feroe) just to let them know what was going on and there was a little bit of a disconnect maybe when I was telling them about the story. He said they think there's a statute in our Code that any application or petition for even Zoning triggers us, the Planning Board, as a Lead Agency. Ms. Ley said let me clarify that. The threshold for an application requiring Site Plan approval is fairly low, she said, so any time there's a change of use, according to section 138.45(B), it requires Site Plan approval for a change of use or for an amendment to an existing Site Plan and in their project description, as part of the EAF (Environmental Assessment Form) they did say that they were going to be seeking amendments to their existing Site Plan and the layout that was provided in the EAF is not the same as the layout that was approved by the Planning Board years ago for the senior housing. She said based on that, the Planning Board would be an involved agency. Mr. Stephens said well, I'm just telling you what the attorney for the applicant said. Chairman LaPerch said they did say it, they did say it. Ms. Ley said yeah, I wasn't part of that conversation. Mr. Stephens said the reality is the action that's before the Town Board is an amendment to the Zoning Code: that's the petition. He said the petition is to amend the Code to allow for non-age-restricted housing in OP Zones. Ms. Ley said right and as part of SEQRA, you are supposed to look at the reasonably foreseeable future actions that would be required as part of the larger application. Mr. Stephens said I'm just telling you what the Commissioner of the DEC said: that if this was an application purely to amend Zoning Code then technically the Planning Board would not be an involved agency. I'm just regurgitating what was stated by the DEC, he said. You want to debate it with them, go right ahead, Mr. Stephens said. Chairman LaPerch asked the Board if they had any questions. Boardmember Armstrong said would we normally get a referral on a Zoning amendment? Mr. Stephens said you get referrals but the statute... Boardmember Armstrong said yes I understand that. Mr. Stephens said and the way the statute reads is that the Planning Board would then provide a report and recommendation with regard to the application, whether you consider it appropriate or inappropriate or whatever. Boardmember Armstrong said so that would be after the fact of the determination of Lead Agency? Mr. Stephens said it could very well be. Ms. Ley said as a referral agency you would definitely be considered an interested agency. Boardmember Armstrong said would the referral be made after or before the determination or the negotiation or whatever it's going to be, someone is going to play Solomon and cut the baby in half, when does the issue of Lead Agency become moot and we go procedural? Mr. Stephens said the Lead Agency... when would it become moot? Boardmember Armstrong said yes in other words, that's the whole issue here isn't it? Ms. Ley said they run on separate courses: the one is a Southeast referral and the other is SEQRA so the Town Board can't make a determination of significance if they are to be named Lead Agency on the project until the Lead Agency issue is resolved but that wouldn't necessarily preclude the Planning Board from making a recommendation on the Zoning. Boardmember Wissel said so the Zoning is a separate issue from the Lead Agency? Mr. Stephens said well the Zoning is an action. He said the petition to amend the Zoning and the determination by the Town Board on that legislative issue is an action which is subject to SEQRA review. Chairman LaPerch said Will, can I just refresh my memory about it, during this conversation I think the trigger point of no action to us was

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that he kept asking 'was there any change in the Site Plan,' correct? We kept hitting on that point and then you were asked to reach out to the applicant to make sure, he asked. Mr. Stephens said which I did. Chairman LaPerch said yes right you did. He said I guess what Ashley and Graham are trying to tell me is that based on their submission there are changes so that's where my gray area has come up again, that if their application is in conflict with what... Mr. Stephens interjected: if you refer back to one of my e-mails to (inaudible) that it could very well be that because of a change in circumstances and whatever and that's when he said 'okay we're going to submit to the... Chairman LaPerch said you did mention that in your email that if it was that we'd ultimately get it. Ashley said right, which makes you an involved agency. Mr. Stephens said the reason why I was just restating the facts is that they very well may have to come back even though they have said in their email that they do not have a Site Plan pending currently but because of what they're proposing to do and because of the change in watershed regulations and whatever else has happened since Barrett Hill got their original approval, it's very likely that they're going to have to come back to the Planning Board at some point in time and that's when his response was 'We'll turn it over to the Commissioner for a decision.' Mr. Stephens continued: so theoretically, I guess we're sitting in limbo waiting for the Commissioner to make a decision as to which agency should be Lead Agent in the review of the proposal or petition to amend the Zoning Code to allow non-age-restricted housing in OP Zones under a Special Permit provided those zones have central water and sewer. Chairman LaPerch said absolutely and one final issue that I had that I still don't clearly understand is that if we are going from age-restricted to non-age-restricted is there a SEQRA issue regarding school impacts? Mr. Stephens said absolutely... Chairman LaPerch said so there is a review at some level regarding that? Ms. Ley said right, so if the Town Board is Lead Agency they will review it and if the Planning Board is Lead Agency they will review it. Mr. Stephens said they've already done a number of studies because of the height of concern that had been identified by our Planning professionals, as well as members of the Town Board, and before any Determination of Significance is issued and whether or not a more involved environmental impact statement would be required, he said. I am sure it is the intention, if this body was the Lead Agency or the Town Board was the Lead Agency, those issues are going to be studied. It's just a matter of where the action resides I think, he said. Chairman LaPerch said ok to clear the matter up here, if it is just a Zoning application that would be the purview of the Town Board. There would be no discussion here, he said. Mr. Stephens said you're right and just because of the fact that this is a Zoning amendment application, if they were to determine that, let's expand the discussion a little bit more. He said as I see it, if the Town Board is the Lead Agent for SEQRA purposes they're not just going to identify and study and analyze this one site. They have to study and analyze, certainly with the help of our Planning professionals and all other consultants that we may have to employ at some point in time, what impact this is going to have on all Zones that it would affect. I can think of, off the top of my head, two, he said. That site that has the Barrett Hill project and that area that is currently undeveloped, which I think there's an approval for a single family... Chairman LaPerch said but in the RC Zone is what you are saying? Mr. Stephens said no, not in RC, in the OP zone. Chairman LaPerch said okay whatever zone. Mr. Stephens said the OP zone has central water and sewer. Ms. Ley said right and, as far as the EAF, they did provide a list of those properties. She said we had some comments on that section and that is why it wasn't submitted in its entirety when the Town Board

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circulated for Lead Agency. Chairman LaPerch said okay well that clears that up. Boardmember Wissel said if the Town Board acts as Lead Agent for the Zoning amendment only and I guess it's reviewed and passed and then the applicant wants amendments to the Site Plan, which judging by his submission he is definitely going to do or need, does that automatically mean the Town Board would be the Lead Agent for that or could the Planning Board be the Lead Agency? Ms. Ley said that's an interesting question because if the applicant's position is that the Planning Board is not an involved agency then they would not be included under the SEQRA review and we would end up having to do a second SEQRA review possibly. Boardmember Wissel said so that would sort of be like splitting the baby type thing because then the applicant would be subject to two reviews. Ms. Ley said possibly, but the whole point of doing a coordinated review is that you reach out to all the potential involved and interested agencies and you include them in the SEQRA process. Mr. Stephens said one point that I think is important for us to focus on, if they have to come back for some sort of Site Plan application it's not going to be the Town Board that's going to be used, that's still the purview and it will always be the purview of this Board. He said I think there was a concern because of the way the Crossroads project was prosecuted. He continued: now keep in mind the reason why the Crossroads project was prosecuted by the Town Board was because that was part of the petition that was presented to the Town and part of the entire planning because of the new zone that they were trying to create or something. He said I don't recall the language of the petition, they invoked a process by which the Town Board would in fact act as a Planning Board, and that's why the Town Board had it from soup to nuts. That is not the case in this instance, he said. Boardmember Wissel said what's the harm then, we've run down this road pretty far: what's the matter with rolling the dice and having the Commissioner make a decision? Chairman LaPerch said he is. Ms. Ley said he is making the decision. Boardmember Wissel said so what are we discussing then? Chairman LaPerch said I just wanted to bring the Board up to speed because I had a conversation with the Town Attorney and I didn't want to hear rumors out there, I just wanted there to be full disclosure here. Boardmember Wissel said it is what it is. Chairman LaPerch said yes, it is what it is. He said it was a very straightforward conversation and here's where we are. Boardmember Cyprus said can I just ask a weird question? He said let's say they rule that it's Planning Board and there are no Site Plan changes, what are we doing? Mr. Stephens said if there are not Site Plan changes you aren't doing anything but as Ashley said because there is a change in use, I'm not familiar with the specific language that you're referring to, that there would be a Site Plan review triggered regardless. Mr. Stephens said there may be a cursory review, I mean if you were to look at it from the Site Plan perspective and said 'well guess what, you've got to do this, this and this' then the role of this Board is going to be significant. He continued: if it's just looking at what was there and guess what, now they don't have any people that are age-restricted anymore and they can have everybody, their brother and their cousin and there's no need to change the actual physical attributes of the site then your work was done back when Barrett Hill was originally approved. Boardmember Wissel said my concern is just, and I don't have any specifics, but I just seem to recall that there were certain accommodations made because it was senior housing in terms of parking, there were traffic concerns and things like that. My concern, he said, is that somehow they get this amendment and things suddenly change without us getting a shot at it to make sure there's now adequate parking for what might be five or six people in a unit as opposed to

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two elderly people in the unit. Mr. Stephens said I think that's probably a good point and it is a point that is going to have to be analyzed at whatever level and if it turns out that because of the demographics, I don't know that our (inaudible) Code. He said it will be interesting to look back at the original application. Ms. Ley said there are different parking requirements for age-restricted. Mr. Stephens said so if it's not age restricted then they will definitely have to re-analyze their parking needs. Boardmember Wissel said my concern is just from our standpoint that's what the Planning Board does and that type of thing I think should be here, that's my concern. Mr. Stephens said that will be here regardless of who acts as the Lead Agent for SEQRA purposes. Boardmember Armstrong said wasn't one of the selling points, I mean I think we have to look at the whole story. He said one of the selling points of the drastic Zone change with this site was this was going to be a very economically upscale group and my recollection is that the buildings were going to have parking in the basement so the target group here was a different target than is now being considered. He continued: the other point I would like to make is that it seems to me, and I don't know the nuances of the applicable law, but if there is a proposed Zoning amendment, that right off the bat says that the configuration, the design, the layout of the site is subject to change because the Zone change is going to set in motion a change in the Site Plan. Mr. Stephens said that's implied, that's what it's all about. Boardmember Armstrong said so the Site Plan is not irrelevant. Mr. Stephens said no one said it was. Boardmember Armstrong said okay, we're talking about jurisdiction so what I'm saying is that is there is going to be a Site Plan change and I don't know whether that's enough to make the Planning Board's argument viable. Mr. Stephens said we'll wait until the DEC makes a ruling. Chairman LaPerch said now the other side of this issue besides the Planning Board, I believe there's a still a hold up with the review by the County. Mr. Stephens said yes, well there's a disconnect if you will with regard to the 239m referral, which as you all know under the General Municipal Law there is a provision that says that any time you have a project that is located within a certain distance from the Town line or State highway or County highway it has to be referred to the County Planning Division for a report and recommendation if you will and we do it all the time. He said we do it on many different projects. In this case, he said, the referral was made just before Ashley (Ley) went on maternity leave, is that correct? Ms. Ley said yes. Mr. Stephens continued: it went out as a matter of course under I think the Town Clerk's signature and then some time in September there was a determination on a standard form that the Planning Division sent out recommending a denial of the proposed amendment to the Zoning code and the significance of that recommendation of denial is not so much that it kills the project but that it requires a Super Majority of the Town Board to pass the Zoning Code amendment. Well, he said, that sort of raised a bunch of eyebrows because we thought it was somewhat unusual for the Planning Division to recommend a denial. He said I can think of only maybe one or two times in the past that it's happened in the 20 some-odd years that I have been doing legal work for the Town. Somewhat later there was a letter that came from the Acting Director of the Division of Planning, John Tully, saying that they wanted to do it over and he made certain allegations that Mr. Hay had somehow wrongfully influenced the decision of the planner, Mr. Stephens said, which I happened to be sitting in the room when Mr. Hay got this letter and he was visibly upset about the allegation because he didn't even know who the person was that sent the letter until after he got the letter that recommended denial. That triggered a lot of gnashing of teeth and wringing of hands, he said, and I

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believe there have been some meetings that have taken place between members of the Town Board and the attorneys for the applicant and members of the County Legislature or the County Executive: I can't remember exactly. He said they took the position that we had not, this is their current position, provided the full amount of information required by the statute 239m of the General Municipal Code to enable the Planning Division to make an appropriate determination. I don't know that we've actually responded to that, he said, other than to say that you've got everything that we had and I know that when we do these things they are done pretty much, I don't want to say cookie-cutter but you get this, you get this, you get this, you get this. He said Ashley correct me if I'm wrong but I believe the statute says they have got to get the materials that are necessary for a SEQRA determination, whatever SEQRA documents are sent and whatever the proposal is and I believe that's what they got. Chairman LaPerch said not from us? Ms. Ley said from the Clerk's office. Mr. Stephens said from (Town Clerk) Michele (Stancati). I mean, I think Ashley put the packet together, he said. Ms. Ley said I had to put it together. She said they did not get part two and part three of the EAF because the 239m referral went along with the Lead Agency Declaration and that only requires part one of the EAF and, at the time, the applicant had received a very substantive kind of letter from myself and the other consultants and we were waiting for the revised EAF that addressed those comments before that part of the document got forwarded to the County. Mr. Stephens said so they might have an argument. He said when I last spoke with Charlie Martebano (Attorney for Barrett Hill) he was telling me that he was going to provide a clarification as to whether or not there was a Site Plan application pending, he indicated to me that he had a plan but what that plan was he didn't share with me but he was working on it and as we were speaking he was working on some sort of a proposal or plan to figure out a way to unbreak whatever log jam is perceived. As it stands now, he said, there's a decision from the Division of Planning recommending denial, that triggers the Super Majority requirement which I think would be problematic for this particular applicant given the current sentiments of the Town Board. Boardmember Wissel said four out of five? Mr. Stephens said he would need four out of five, correct. Chairman LaPerch said if the County reverses their opinion does the Super Majority go away? Mr. Stephens said that's a good question. He said I'm not clear as to whether they have the power to reverse their decision. I have been trying to research it, he said, but haven't come up with any case law at this point but my gut sense is that once they make a determination it's a hard and fast rule but I could be wrong: I don't know. Chairman LaPerch said this thing is far from over. Mr. Stephens said I don't like litigation, I don't like to see a Town embroiled in wasteful processes that could be otherwise resolved but my knee-jerk on this one was well if you think that someone did something wrong, maybe you ought to go to court with it. He continued: of course there are other people who say I don't like the way this is all looking to me right now and I'm going to go to the FBI. Chairman LaPerch said all right, let's close on that note but thank you for the update and I was on the phone with Will and everything he said was what I heard.

The motion to approve the Meeting Minutes as written for December 14, 2015 was introduced by Chairman LaPerch, seconded by Boardmember Jonke and passed all in favor.

**January 22, 2016/VAD
Amended February 3, 2016/VAD**

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