



**MINUTES OF A PUBLIC HEARING OF THE PLANNING BOARD OF THE
TOWN OF NEW LEBANON HELD ON JUNE 20, 2018 ON A REQUEST MADE BY
STEWART'S SHOPS CORP. (19.2-1-48)
FOR SITE PLAN REVIEW TO ERECT A NEW STEWART'S SHOP
ON THE SITE OF THE EXISTING MINI-MART**

Present: Ray Herrmann, Chairman
Michael Blatt, Planning Board Member
Elizabeth Brutsch, Planning Board Member
Greg Hanna, Planning Board Member
Josh Schuster, Planning Board Member
Bob Smith, Planning Board Member

Absent: Wes Powell, Planning Board Member

Others Present: Cissy Hernandez, CEO; Jeff Hattat, Deputy CEO; Daniel J. Tuczinski, Esq., Town Attorney; Thomas Light, Certified Document Security; Chris Potter, Stewart's Shops Corp.; Michael Darcy; Ryan Darcy; Phyllis Hulbert

CALL TO ORDER:

The public hearing was called to order at 7:38 pm by Chairman Herrmann.

PROOF OF PUBLICATION AND POSTING:

Proof of publication was provided as follows:

**LEGAL NOTICE
PUBLIC HEARING
PLANNING BOARD
TOWN OF NEW LEBANON
COLUMBIA COUNTY**

NOTICE IS HEREBY GIVEN that the Town of New Lebanon Planning Board will be holding a Public Hearing on behalf of Stewart's Shops Corp., which intends to purchase the existing E-Z Mart, demolish same, and construct a new Stewart's Shop. The property is located at 492 U.S. Route 20 in the Town of New Lebanon.

The Public Hearing will take place on Wednesday, May 16, 2018, at 7:30 P.M. at the New Lebanon Town Hall; 14755 State Route 22 North; New Lebanon, NY. More information is available by contacting the Planning/Zoning Clerk during her normal business hours.

PUBLIC COMMENT:

Chris Potter appeared on behalf of the Applicant which is proposing to redevelop the existing Mini Mart. Mr. Potter previously provided this Clerk with certified mailing receipts confirming the abutters had received notice of the Public Hearing, which was originally opened at the meeting of May 16, 2018, and which has remained open pending resolution of various issues.

Chairman Herrmann reopened the Public Hearing and asked if anyone was in the audience who had come to speak on this matter. Attorney Dan Tuczinski had sent an email regarding the SEQRA issue. He said the Applicant has submitted a thoughtful application saying they believe this is a Type II action, which means the Applicant doesn't have to go through a SEQRA process since there will be no significant impact on the environment.

The Columbia County Planning Department conducted a review of the plans, finding this proposal has no significant county-wide or intercommunity impacts associated with it. The Town Planning Board may take final action with a simple majority vote. The County believes there should be an EAF, which is typical in a situation such as this.

Attorney Tuczinski said certain elements in the Application give the Board discretion to require an EAF. The Board won't be wrong whichever way they decide. If they think it is a Type II action, the Board can ask for a short form EAF giving a little more information about the situation. Given the specifics of the project, the apparent demolition involved, the installation of fuel tanks and pumps, and the project location, Attorney Tuczinski doesn't feel this project falls squarely within the Type II criteria. As such, the Planning Board can require an EAF as suggested by the County Planning Board. Requiring an EAF should not result in undue delay or hardship to the Applicant and will result in a more complete record upon which the Planning Board will make its determination. However, the Town Planning Board ultimately has the discretion to agree with the Applicant that this is a Type II action, same being a matter of interpretation. The Board will have the opportunity to obtain additional information concerning environmental considerations during the permit review process. The Applicant may want to have an unconditional coordinated review with the DOT since the DOT has been an issue. It is Attorney Tuczinski's opinion that the Board would not be making a mistake either way – if it accepts it as a Type II, but requires an EAF. This Application doesn't fall neatly into one category.

Chairman Herrmann asked if the Board had any questions. Member Smith said we have all the information we need. We are beating this Application around to death. You have an existing building and tanks. There's no water, no stream. Chairman Herrmann said there's a stream in the back. Mr. Potter said the only stream is across the street on Route 20. Chairman Herrmann asked Mr. Potter if he has talked to the DOT. Mr. Potter said they have received minor comments from the DOT. They just received a traffic improvement study and will resubmit to the DOT addressing their concerns. He expects they'll receive a permit from the DOT within the month.

The Department of Health sent a letter this week containing a small amount of minor comments, such as septic and well location. Chairman Herrmann said the letter received from the County said they wanted to see a SEQRA. Mr. Potter said they already received variances that approved the Application without SEQRA, but they asked the Planning Board to take lead agency. Chairman Herrmann said the Planning Board will take Lead Agency. Mr. Potter said we want to proceed as a Type II. If the

Board fails to make a determination will impact whether the Applicant will be able to build this year. If they do not receive a conditional approval tonight and are required to return in July, there is the possibility that they will be unable to begin construction this year. Mr. Potter then asked if the Planning Board would be willing to hold a special meeting this month in order to allow the Applicant to submit SEQRA and so they are not forced to wait another month.

Chairman Herrmann asked if there were any concerns over environmental issues. Member Hanna said there is going to be something like ten times the amount of traffic and septic going out of there, and he'd like to see the plan in one piece instead of piecemeal. Mr. Potter said according to the traffic impact study done, there were 17 AM trips and 16 PM trips per day, which is just a minor increase over existing traffic. Member Smith said traffic is immaterial. A store already exists at the proposed location and there's a Stewart's across the street.

Member Brutsch said she has no problem with doing the SEQRA. Member Schuster said it's probably safer to do the SEQRA.

Chairman Herrmann asked the Board how they felt about holding a special meeting.

Phyllis Hulbert said she used to work at that store when they had 40-50 cars there at one time. There was a swimming pool in back that was filled in and had a water line. Mr. Potter said they are aware of that. Mrs. Hulbert said she is in favor of the project.

Chairman Herrmann said the Planning Board will hold a Special Meeting in one week, on Wednesday, June 27, 2018, at 7:30 p.m. He instructed this Clerk to advise the newspaper and to hang notice of the meeting in the Town Hall.

Attorney Tuczinski said given the fact that Chris Potter is providing more information, he suggested the Public Hearing be adjourned to the date of the meeting, June 27th, and the Board can make a determination that night. It will be hard for anyone to challenge the record. There will be a continuation of the Public Hearing; it will be open until next week.

Mr. Potter said at the last meeting there was conversation about some additional trees and parking. The Applicant has added some evergreens to the back of the property to fill in the space. They also removed four spaces which they had been counting under the canopy, and added three and one to still meet the 30 space requirement; however, now there are only two spaces under the canopy.

Chairman Herrmann said they had a concern with the complete plan, like parking in front of the building and the number of spaces. The Planning Board is concerned that they don't set a precedent for future applicants. Chairman Herrmann then asked Attorney Tuczinski to assist them with the wording to grant this application. Attorney Tuczinski asked if the Applicant asked for an area variance to comply with the parking issue because if you make filings in conjunction with a variance, it doesn't

become precedent. To allow the Applicant to access parking alongside the line, you control precedent by making it an area variance. Mr. Potter said the code states 'parking where practical'. The code requires all parking be in the rear of the building; however, the septic, well and deliveries are located there. The Board is agreeable with Stewart's having parking in the front of the building; they just don't want to set a precedent. Attorney Tuczinski said when you are dealing with a project of this nature, you fold in some language as to why you are permitting this. This is more practical solution.

Member Brutsch asked if Stewart's owned the parcel, and Mr. Potter said they do not. The Applicant is under contract, pending receipt of the necessary approvals. He anticipates construction would take 12-13 weeks from start to finish. They have already filed with the Columbia County DOH and DOT, both of whom had minor comments. Larabee Fuel does have a well but it is located far enough away from this site. All areas that are not paved will be landscaped. Lighting gets run by both a photocell and a timer and are set to automatically come on an hour before opening and go off an hour after closing. As for the truck routing plan, their fuel tanker will be the largest truck – other trucks, such as delivery trucks, will be smaller. Deliveries will take place at the rear of the building, which is another reason why no parking can take place behind the building.

Chairman Herrmann asked Mr. Potter if he would have those answers from the DOH and DOT next week; then the Planning Board could give them a conditional approval, but Mr. Potter doesn't think he will hear from them that quickly. CEO Hernandez asked Mr. Potter if he submitted a construction timetable, and he said no. The existing tanks will be removed, cleaned and sent to a landfill if they're fiberglass and recycled if they're steel. Member Smith said they are fairly new tanks in there, and Mr. Potter said he thinks they'll find the tanks are fiberglass. CEO Hernandez said when the town issues a demolition permit, they need removal receipts to be sure it is handled property. Mr. Potter said there will be an asbestos survey prepared which will close out the report.

Attorney Tuczinski said we have two pieces to this – the demolition and the construction. There has been a situation where people have relocated and not resolved a vacant parcel. The applicant should provide some guidance. The Town wants the old site restored within a certain time period. Mr. Potter said once they open the new store, they will be getting the permit to demolish and remove the gas tanks and canopy from the existing site. The building will remain, similar to the situation in Nassau. The tank area will be paved over. Mr. Potter said he will provide a demo plan.

Chairman Herrmann asked if anyone had any additional questions. No one did, so Chairman Herrmann said they will continue to talk about this matter at the Special Meeting. The Public Hearing will remain open until next week's Special Meeting..

Respectfully submitted,

Donna M. Gedeon
Planning/Zoning Clerk