I. Call to Order

A Regular Meeting of the Planning Board of the Town of Bethlehem was held on the above date at the Town Hall Auditorium, 445 Delaware Avenue, Delmar, NY. The Meeting was called to order at 6:00 PM.

<table>
<thead>
<tr>
<th>Attendee Name</th>
<th>Title</th>
<th>Status</th>
<th>Arrived</th>
</tr>
</thead>
<tbody>
<tr>
<td>George Leveille</td>
<td>Board Member/Chairman</td>
<td>Present</td>
<td>Present</td>
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<tr>
<td>Nicholas Behuniak</td>
<td>Board Member</td>
<td>Present</td>
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<tr>
<td>Thomas Coffey</td>
<td>Board Member</td>
<td>Present</td>
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<td>Kate Powers</td>
<td>Board Member</td>
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<td>Stephen Rice</td>
<td>Board Member</td>
<td>Present</td>
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<td>John Smolinsky</td>
<td>Board Member/Deputy Supervisor</td>
<td>Present</td>
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<tr>
<td>Michael Moore</td>
<td>Planning/Zoning Board Counsel</td>
<td>Present</td>
<td>Present</td>
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<tr>
<td>Deborah Kitchen</td>
<td>Assistant to the Planning Board</td>
<td>Present</td>
<td>Present</td>
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<tr>
<td>Michael Morelli</td>
<td>Director of Economic Development and Planning</td>
<td>Present</td>
<td>Present</td>
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<tr>
<td>Jeff Lipnicky</td>
<td>Town Planner</td>
<td>Present</td>
<td>Present</td>
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<tr>
<td>Robert Leslie</td>
<td>Deputy Town Planner</td>
<td>Excused</td>
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<tr>
<td>Terrence Ritz</td>
<td>Assistant Engineer/Land Surveyor</td>
<td>Excused</td>
<td></td>
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II. Public Hearings

A. 380 Feura Bush Road / Glenmont Plaza - Public Hearing Presentation

The Chairman opened the Public Hearing. The Members voted to forgo the reading of the public hearing notice and indent the notice into the meeting record.

PUBLIC HEARING NOTICE, TOWN OF BETHLEHEM, ALBANY COUNTY, NY. Notice is hereby given that the Planning Board, in accordance with § 128.69(L) of the Zoning Code, will conduct a Public Hearing as part of its regularly scheduled meeting on Tuesday, May 21, 2013 at 6:00 p.m., at the Town Offices, 445 Delaware Ave., Delmar, NY regarding a Site Plan / Special Use Permit Application, submitted by Benderson Development Co, LLC, to construct a 5,600 sq. ft. free-standing building, with a drive thru window, at 380 Feura Bush Road, at the north end of Glenmont Plaza, closer to Feura Bush Road. A restaurant with a drive thru window requires a Special Use Permit and is, therefore, subject to a Public Hearing. Documentation related to the application can be viewed in the Planning Dept. at Town Hall, M-F, 8:30 a.m.- 4:30 p.m. Notice of Public Hearing was mailed to
property owners within 200’ of the subject property. All interested persons are invited to attend and be heard.

James Baglioli, was present on behalf of the applicant, Benderson Development, to provide information and answer questions. Mr. Baglioli described the project as follows:

- Project located on Route 9W and Feurabush Road with 3 entrances on Feura Bush Rd and 2 entrances on -Route 9W - no changes proposed to ingress / egress
- The project is located in an existing, L Shapped, shopping center occupied by various tenants
- New free-standing 5,600 sf building would accommodate 3 new tenants (2,600 sf Moe's, 1,600 sf -Menchies Frozen Yogurt, 1,390 sf cafe / prospective tenant may be looking for 2,000 sf)
- Patio will be provided for outdoor dining
- Project consistent with Hamlet zoning guidelines
- Drive thru with escape lane
- Parking spaces reduced by 100 spaces
- Green Space increased
- Pedestrian cross-walk moved closer to the end of the patio
- Bike rack added
- Directional signage added to improve internal circulation
- Redeveloping an existing site that contains infrastructure & tenant constraints
- NYS DOT has reviewed traffic flow / stop bars, stop signs were added

Mr. Morelli noted that the project is a permitted use in the Commercial Hamlet Zoning District. Restaurants that have a drive thru component require a Special Use Permit. Special Use Permits are subject to a public hearing.

RESULT: CLOSED [UNANIMOUS]
MOVER: Kate Powers, Board Member
SECONDER: John Smolinsky, Board Member/Deputy Supervisor
AYES: Leveille, Behuniak, Coffey, Powers, Rice, Smolinsky

B. Public Comment Regarding 380 Feura Bush Road

Tracy Marshman, Feura Bush Road, Glenmont
- has lived across the street from the shopping center for past 22 years
- was originally told the entrance to McDonald's was going to be temporary
- has had to deal with 24 hour traffic, noise, garbage from McDonald's
- can take between 10-15 minutes to get out of her driveway because of traffic
- questions why the Town would allow another restaurant with drive thru
-noted that there are two vacant store fronts in the shopping center at the present time
-two new buildings would impact the tax payers across the street
-surrounding development is driving her out of her home
-can't sell a house on that Road because no one wants it
-children can't play in front yard because of traffic
-disturbed by parking lot maintenance at 3:00 a.m.
-disturbed by people using drive thru at 3:00 a.m. / revving engines, boom boxes blaring
-disturbed by headlight glare from automobiles / landscaping on Feura Bush no longer exists
-no respect for people who built this Town
-husband was raised in their home and they feel they are being forced out
-not profitable for residents / homeowners to own homes on Feura Bush Road

III. Public Comment on Regular Agenda Items - 10 Minutes

None

IV. Minutes Approval

A. Tuesday, May 07, 2013

RESULT: ACCEPTED [UNANIMOUS]
MOVER: Thomas Coffey, Board Member
SECONDER: John Smolinsky, Board Member/Deputy Supervisor
AYES: Leveille, Behuniak, Coffey, Powers, Rice, Smolinsky

V. Action Items

A. 380 Feura Bush Road / Glenmont Plaza - Possible Action on Special Use Permit Resolution - SUP 20

Staff comments were provided by Mr. Morelli.

Mr. Morelli acknowledged Ms. Marshman's concerns related to the drawbacks of living near a commercial property. He noted that the site was identified as a priority for improvement in the comprehensive plan. The owner purchased the property and has made several improvements such as repaving the parking lot, landscaping, facade improvements, occupancy. The project was reviewed by the NYS Department of Transportation, Town of Bethlehem Zoning Board of Appeals, and Planning Board.

Mr. Baglioli, attorney for Benderson Development, stated that the existing landscaping remains consistent with what was previously approved. Mr. Morelli indicated that the existing landscaping consists of mature oak trees along Feura Bush Road and he would be willing to work with the applicant to prepare a landscaping plan to provide a buffer for the residents along Feura Bush Road. The landscaping plan can be shared with the neighbors. It was noted that the typical hours of operation for Moe's is 10:00 a.m. to 10:00 p.m. - not 24 hours.
WHEREAS, an application has been filed with the Planning Board of the Town of Bethlehem, Albany County, New York by the Benderson Development Group, LLC to redevelop the existing Glenmont Plaza site located at the southwest corner of NYS Route 9W and Feura Bush Road (NYS Route 910A). The applicant is proposing to construct a new 5,600 sq. ft. free-standing building to be built on the north end of the site, closer to Feura Bush Road. The proposed building would contain several tenants, one of which would include a drive-thru component to a restaurant operation. A restaurant located in a Commercial Hamlet zoning district (CH) that includes a drive-thru component requires a Special Use Permit.

WHEREAS, the Planning Board, acting on said application, duly advertised in the Spotlight, held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on May 21, 2013 at 6:00 PM; and,

WHEREAS, Members of the Board are familiar with the area of the proposed project and the specific site of same; and,

WHEREAS, all those who desired to be heard had the opportunity to be heard at the above hearing; now therefore,

BE IT RESOLVED, that the Planning Board makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

Benderson Development Company, LLC, are Owners of property located at the southwest corner of NYS Rt. 9W and Feura Bush Road (NYS Route 910A) in the Town of Bethlehem and seek a Special Use Permit under Town of Bethlehem Code Chapter 128, Article VII.

1. The site of the proposed action is located in a Commercial Hamlet Zoning District where restaurants are a permitted use subject to site plan approval and where restaurants with a
drive-thru component are allowed, subject to a special use permit.

2. The building elevations, as referenced in the site plan approval document, are consistent with the design guidelines found in the Town of Bethlehem’s Zoning Law for projects within the Commercial Hamlets and includes an outdoor patio area in the front (east side) of the building. In addition, the drive-thru window will be located on the south side of the building.

3. The building elevations include architectural features that help to screen the roof top mechanical equipment.

4. The site is served by existing public water and sanitary sewer services. The in-fill development of the site will not place any significant additional demands on these facilities. Additionally, the water service to the building will connect to an existing meter which is equipped with a back flow prevention device to prevent possible contamination of the municipal water service.

5. Ingress and egress to the site are from both Feura Bush Road (NYS Route 910A) and NYS Rt. 9W. Although no new curb cuts are proposed on either road, the project was referred to the New York State Department of Transportation (NYS DOT). In correspondence dated May 10, 2012 NYS DOT responded that the overall queues and turning movements on Feura Bush Road appear to be acceptable and that while the existing two way left hand turn lane is narrow, it appears to operate adequately. NYS DOT recommended that consideration be given to internal stop signs and/or do not block driveway signs within the site which the applicant has incorporated into the site plan.

6. The site contains approximately 129,497 sq. ft. of mixed retail use. Currently, the site contains 581 parking spaces where 518 spaces are required under the Town Code. With the two (2) proposed free standing buildings, the total number of spaces required is 559 where 494 spaces would be provided. The applicant submitted a shared parking study prepared by Erdman Anthony, dated January 13, 2012. This study evaluated current on-site parking conditions as well as a peak parking lot usage of shared parking for the site. The conclusion of the study found that based on both the manual parking counts, as well as the Institution of Traffic Engineers (ITE) Parking Generation (3rd Edition), the total number of parking spaces identified on the proposed site plan for the Glenmont Shopping Plaza will support the existing development and the newly proposed retail and restaurant parking demand. In August of 2012, the applicant obtained a variance to the parking requirements from the Zoning Board of Appeals.

7. The interior circulation system is adequate to provide safe accessibility to the off-street parking and provides for the convenience and safety of vehicular, pedestrian, and bicycle movements within the site and in relation to adjacent roads. The site will be improved with traffic signs, directional signage, a sidewalk from Feura Bush Road, a bike rack, as well as an
outdoor patio as noted above.

8. The in-fill development of the site, as an alternative to development of a “greenfield” site, is a stated goal of the Town of Bethlehem’s Comprehensive Plan.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that permitting the proposal to construct a new 5,600 sq. ft. free-standing building for several commercial tenants, one of which is a restaurant with a drive-thru component to be known as 380 Feura Bush Road will be in compliance with the standards as set forth in Section 128-69 of the Zoning Law.

Accordingly, the Planning Board hereby grants the Applicant’s request for a Special Use Permit.

On a motion by Mr. Rice, seconded by Mr. Smolinsky, and by a vote of six (6) for, zero (0) against, zero (0) abstained, and zero (0) absent, this RESOLUTION was adopted on May 21, 2013.

BY ORDER OF THE PLANNING BOARD
George Leveille
Chairman

The foregoing Resolution was filed with the Clerk of the Town of Bethlehem, Albany County, New York, on May 22, 2013.

RESULT: APPROVED [UNANIMOUS]
MOVER: John Smolinsky, Board Member/Deputy Supervisor
SECONDER: Kate Powers, Board Member
AYES: Leveille, Behuniak, Coffey, Powers, Rice, Smolinsky

B. 380 Feura Bush Road / Glenmont Plaza - Possible Action on Site Plan Amendment - SPA 60-A14

The Site Plan Approval document was amended to include a condition (Item 5.5) related to landscaping enhancements along Feura Bush Road - with the understanding that there will be some interaction with the neighbors.

PLANNING BOARD
TOWN OF BETHLEHEM
ALBANY COUNTY, NEW YORK
AMENDMENT TO
CERTIFICATE OF SITE PLAN APPROVAL

GLENMONT SHOPPING PLAZA
380 FEURA BUSH ROAD

CERTIFICATE NO. S.P.A. 60-A14
DATE:
May 21, 2013

1. TYPE OF APPROVAL: Amendment to Glenmont Plaza Site Plan Approval (SPA No. 60-A14)

NAME OF PROPOSAL: Glenmont Plaza - New free-standing 5,600 sq. ft. building.

DESCRIPTION OF PROPOSAL: Construction of a 5,600 sq. ft. free-standing building to be built on the north end of the site, closer to Feura Bush Road. The proposed building would contain several tenants, one of which would include a restaurant with a drive-thru component to a restaurant operation.

LOCATION OF SITE: Glenmont Plaza Shopping Center. Southwest corner of the intersection of U.S. Route 9W and Feura Bush Road (NYS Route 910A) Glenmont, New York.

TITLE OF DRAWINGS:
C1 Title Sheet, dated Feb. 2013, last revised 3/12/13.
C3.1 Disturbance Plan, dated Feb. 2013, last revised 5/16/2013
C4 Site Layout Plan, dated Feb. 2013, last revised 5/16/13.
C4.1 Site Details, dated Feb. 2013, last revised 3/12/13.
C4.2 Site Details, dated Feb. 2013, last revised 5/13/13.
2. THIS WILL CERTIFY that the PLANNING BOARD of the Town of Bethlehem, Albany County, New York, at a regular meeting held May 21, 2013 AMENDED a previous Site Plan Approval by APPROVING the construction of a new 5,600 sq. ft. free-standing building to be known as 380 Feura Bush Road, such approval being contingent upon compliance with the MODIFICATIONS (Item 5) that follows.

3. Prior to the granting of this Site Plan Approval, the Board considered:
   a. The potential environmental impact of the plans indicated in Item 1 above and declared the proposal an Unlisted action and issued a Negative Declaration for compliance with SEQRA on June 19, 2012.
   b. The project was referred to the Albany County Planning Board (ACPB) pursuant to Section 239-m of the General Municipal Law. In a letter to the Zoning Board, dated February 16, 2012, the ACPB stated, “Defer to local consideration -
      1. This board has found that the proposed action will have no significant countywide or intermunicipal impact”. The ACPB also included an Advisory note stating that “Based on the applicant’s parking study the number of spaces may be adequate for the proposed expansion. However, the layout of the proposed restaurant within the parking lot at the entrance from Feura Bush Road that lacks a left turn lane may be problematic to traffic flow on the roadway. The Town should consult with NYS DOT for the need for the left turn lane. A change to the access may or may not change the need for the variance from number of parking spaces and the location of the proposed building within the parking lot. (Moving the building closer to the signalized intersection may be another option).”

4. This Amendment modifies the original Site Plan Approval granted by the Planning Board on November 6, 1989 and documented in Certificate of Site Plan Approval No. S.P.A. 60 (dated November 30, 1989) as amended.

5. This Approval is granted subject to the following MODIFICATIONS:

   1) Change the title of the plan set to read: Glenmont Plaza - 380 Feura Bush Road. Proposed Pad Site.
   2) Add the cut sheet detail for the building mounted lighting to sheet A2.0.
   3) Add the internal directional sign detail to Sheet C4.2.
   4) Add the following language to Sheets C1, C4, C5, C6, and C7 “384 Feura Bush Road is Not Part of This Approval - Requires Separate Approval from the Town of Bethlehem Planning Board.”
5) The applicant shall submit a landscaping plan to be approved by Planning Board staff providing screening/buffering enhancements along Feura Bush Road.

6) All those modifications as contained in the hereto attached May 16, 2013, memo from Terrence Ritz, Assistant Engineer - Land Surveyor to Michael Morelli, Director ED&P.

6. This Amendment is granted subject to all provisions, requirements, and conditions of the original Site Plan Approval and its subsequent amendments, which shall remain in full force and effect except as modified by this Amendment.

BY ORDER OF THE PLANNING BOARD

George Leveille
Chairman, Planning Board

RESULT: APPROVED AS AMENDED [UNANIMOUS]

MOVER: Stephen Rice, Board Member
SECONDER: John Smolinsky, Board Member/Deputy Supervisor
AYES: Leveille, Behuniak, Coffey, Powers, Rice, Smolinsky

VI. Discussion/Information Items

A. The Grove Subdivision - Project Update

Joseph B. Carr, Esq. Of Rowlands & LeBrou, PLLC, and Chris Longo of Ingalls and Associates were present on behalf of the applicant, TP Builders (Thomas & Laura Paonessa), to provide information and answer questions. Staff comments were provided by Mr. Lipnicky. The project was last discussed at the November 1, 2011 Planning Board meeting.

Mr. Lipnicky noted that the circumstances for this subdivision are uncommon. The project area includes paper streets shown in a subdivision plan (3 Hills Terrace) which dates back to 1913. The streets involved in the project area include Bower Court, Norfolk Street, Flint Street, and Grove Streets. The original proposal called for improvements to the paper streets. The current plan calls for building footprints within the paper streets. The project is partially located in the Town of Guilderland. Several items were taken into consideration by both municipalities. It was noted that it is standard practice for the Town of Bethlehem to require an applicant to submit a deed to the property along with their application. The paper streets were identified on the tax maps. TP Builders owns both sides of the paper street known as Flint Street. Issues concerning paper streets, site distance, orientation, and variances will need to be addressed.

Mr. Moore noted that several of the lots approved in the 1913 subdivision were previously developed and some of the lots convey rights of use over non-existent paper streets. The common law of the State of NY provides that where the streets have not been fully developed and dedicated to the municipality, the property owners retain ownership to the center line of the paper streets either by Title and/or Right of Use. The prospect of eminent
domain /condemnation was discussed with Town Supervisor, John Clarkson and Town Attorney, James Potter, but that was not an action the Town was willing to take. Mr. Moore noted that page 2 of his letter to Mr. Carr, dated 03/14/2013, contained a list of items that needed to be addressed before the project could move forward. He believes that the paper streets are anecdotally no different than other physical limitations such as steep slopes, streambed, etc. An alternative would be for the applicant to commence legal action against the existing property owners and ask a court to determine what rights, if any, the neighboring property owners have in and over the paper streets, and asking that those rights, if any, be extinguished. The deeds that have been filed since the property was first subdivided in 1913 prevent the Board from amending the original subdivision.

Mr. Carr stated that one of the four property owners on Norfolk Street was willing to relinquish ownership of the paper street to TP Builders. TP Builders was also able to obtain title insurance from Sneeringer Monahan Provost Redgrave Title Agency, Inc. The title insurance document contains a sentence "no exception for rights of other parties in these paper streets except for easement rights granted to Niagara Mohawk Power Corp were included in the policies". He noted that a paper street runs thru a home that was recently sold at 33 Norfolk Street and the purchaser was able to obtain title insurance. The title insurance company cannot provide indemnification to the Town because it does not have any ownership and is not an insurable party. The project is not economically feasible if the applicant is unable to build on two of the lots which contain paper streets. The applicant is ok with the other disclaimer language included in Mr. Moore's letter. Mr. Carr noted that easements are only extended to portions of the paper streets which are necessary for property owners to access public streets. He noted that in August 2011, the applicant submitted the title policies. Mr. Carr submitted a letter from the Sneeringer Title Agency and a dissertation from Warren's Weed: New York Real Property, which is recognized by the courts and market as the authoritative treatise on New York real property, regarding the applicant's rights. He noted that TP Builders would be willing to provide indemnification to the Town of Bethlehem. Mr. Moore stated that the Town is a municipal body. The Planning Board oversees certain provisions of the Town's Zoning Code and is happy to exercise the authority it has under the NYS State Law and the Town Code to review and approve / disapprove Town projects. It is not in the title insurance business.

Mr. Leveille asked why the applicant had not pursued a condemnation approach. Mr. Carr stated that if the Town were to condemn half of Norfolk street the applicant could go back to the original plan. Mr. Lipnicky stated that if the Town were to condemn Norfolk Street in order to widen it, the cul-de-sac would not be needed and the lots would be able to front on Norfolk Street. It was recommended that the plans be approved subject to a condition that construction would remain outside the paper streets until such time that rights to the paper streets are extinguished. Mr. Lipnicky noted that eminent domain is usually justified if it has a public purpose. He noted that there could be justification for condemnation on Norfolk street but does not know if there would be a public benefit on Flint Street.

Further discussion of the project was tabled.
B. Acknowledge Resignation of Board Member, Stephen Rice - Effective June 1, 2013

**PLANNING BOARD RESOLUTION**

*In Recognition & Appreciation for Distinguished Service by*

**Stephen Rice**

**WHEREAS**, Stephen Rice has faithfully served as a dedicated and capable Member of the Town of Bethlehem Planning Board, and

**WHEREAS**, his work, as a representative of the residents of the Town of Bethlehem, has always been performed in a most professional and ethical manner, and

**WHEREAS**, he has faithfully demonstrated a strong commitment to thoroughness, a perceptive outlook toward development, an unbiased respect for the rights of property owners, and a sincere desire to provide and preserve a desirable quality of life in the Town of Bethlehem,

**NOW, THEREFORE**, in recognition of his very dedicated service, as an appointed Member of the Town of Bethlehem Planning Board from January 27, 2010 through June 1, 2013,

**BE IT HEREBY RESOLVED**, that the undersigned Members of the Planning Board and staff, who have had the pleasure of serving with Stephen Rice, hereby express their gratitude to their distinguished colleague and wish him much success in the years ahead, and

**BE IT FURTHER RESOLVED**, that the sentiments of the Board Members and staff shall be entered and preserved with the official records of the Town of Bethlehem Planning Board, and
BE IT FURTHER RESOLVED, that a copy of this Resolution shall be presented to Stephen Rice, to serve as a lasting personal memento, in recognition of his loyal and able service to the citizens of the Town of Bethlehem.

Planning Board Members

George Leveille, Chairman
Nicholas Behuniak
Thomas Coffey
Kate Powers
John Smolinsky

DEDP / Town Staff

Michael Morelli, Director
Jeffrey Lipnicky, Town Planner
Robert Leslie, Deputy Town Planner
Deborah Kitchen, Assistant
Michael Moore, Planning Board Counsel

June 1, 2013

VII. Adjournment

Motion To: Adjourn at 7:25 p.m.

RESULT: ADJOURN [UNANIMOUS]
MOVER: George Leveille, Board Member/Chairman
SECONDER: John Smolinsky, Board Member/Deputy Supervisor
AYES: Leveille, Behuniak, Coffey, Powers, Rice, Smolinsky