

## **Salt Pond Plaza Project:**

In response to recent emails and concerns regarding the Salt Pond Plaza (SPP) Project, the Board of Directors is providing a 2-year update and summary to the community.

In 2007 and 2008, the Salt Pond Board of Directors approved a particular approach and strategy in dealing with the Salt Pond Plaza Project, and we have worked that strategy ever since. State and county agencies were consulted, and numerous community members and experts, including legal counsel and engineering firms, were involved in assessing this situation and drafting a plan of action. That strategy has satisfied us to date.

We became aware very early that there are no legal requirements that the owner/developer or his tenant work with us. In creating a strategy for dealing with the inevitable development of this commercial parcel, the Board gave serious consideration to the needs of homeowners, as well as potential "worse case" situations which might occur if the developer refused to participate in discussions. However, the developer eventually met and we came to agreement on many issues the Board deemed critical to the community as a whole (see Page 3, Section 3 under Chronology of Events).

Presently, it is not accurate to state that the developer or Harris Teeter (HT) has wronged us or that Salt Pond has accepted something less than it was entitled to with respect to development of this neighboring property. Neither the Board nor the Salt Pond community has legal rights to demand changes to the project underway, since the property and the retail store are owned by others and their design and construction are in full compliance with County code. We have achieved agreement and cooperation on all issues that were negotiable, based on the developer's need to access our property. We have also had to accept the fact that some issues were simply not up for discussion.

Currently, no agreement has been breached; we have a fragile, but positive relationship with the owner/developer and a positive relationship with Harris Teeter. At this stage, there is no basis for treating either party as unfriendly; and we must think carefully about the tone of any communications to the developer and Harris Teeter.

From the beginning, the Board has sought and requested community input and legal and expert advice. In late 2007, a committee was formed and community members joined to be part of this undertaking. In July 2008, when negotiations with the developer began in earnest, a condensed work group continued the undertaking. All along, via monthly committee reports to the Board, the quarterly SPHA newsletter, and timely updates on the SPHA website, homeowners have been advised of the plans and given the opportunity to see the plans and have their questions answered individually. Michael Zimmerman (the owner and developer), and Harris Teeter believe we are communicating the results of these meetings to fellow homeowners, and we have assured them of that fact. We have never categorized either as inconsiderate or disregarding the interests of the community.

At present, the Board does not agree with recommendations that marginalize these relationships or that emphasize an emotional or inaccurate impression of the current status. Recently, the owner/developer and Harris Teeter seemed surprised by a communication from a homeowner. The communication seemed to them to be inconsistent in style and spirit from the business relationship we have established with them and demonstrated to them some lack of understanding of the current status of the project. The communication also gave the owner/developer and Harris Teeter the impression that information is not being shared. Both were assured that information is freely available and shared regularly, and that the correspondence did not represent the SPHA Board.

Most recently, members of the SPP Committee again met last week with the project engineer. As a next step in this process, HT was asked to assign its project manager or another representative to meet with the Salt Pond Plaza Committee to discuss the visual identity of the store and some of its exterior features as well as operational issues (see SPP Concerns and Questions, June 16, 2009 Handout).

As a re-cap, the Board is providing a summary of the chronology of this project. It may help explain why, at this time, the Board feels that there is no basis for asserting that agreements have been broken, or for escalating concerns, or for writing letters to the tenant or developer.

In closing, the Board plans to continue its direction and strategy in working with Michael Zimmerman/BBC Properties and Harris Teeter. At this stage, we do not encourage mass letter-writing or other activities because such actions could interfere with previous and on-going negotiations with the developer and Harris Teeter.

SPHA Board of Directors  
June 19, 2009

### **Salt Pond Plaza Project Summary - Chronology of Events:**

1. The Salt Pond Plaza Project was begun in 2007 and was approved by the Sussex County Planning & Zoning Commission based on drawings and other documentation that were consistent with current county code and the then current zoning of the property. No opportunity was given (and none is yet provided) in the county approval process for input by neighbors, communities, homeowners associations, or others with respect to aesthetics, design standards, visual or sound barriers, etc. Our community did quickly rally and oppose automatic approval of the plan based on concerns about traffic, stormwater management, and safety issues. Quick communication with the county Planning Commission bought us a few weeks time while we consulted with our legal counsel and researched the issues and options.

2. The property owner and developer is not Harris Teeter, it is Michael Zimmerman/ BBC Properties, Inc. The property owner has no legal obligation to coordinate or work with neighbors with respect to use or development of his property. The owner/developer did so, but only after obtaining county approval for the project and only when he recognized his need to use our private roads (via an easement that was granted by the previous owner, Salt Pond Associates) and the need to discharge stormwater into our private golf and residential community.

3. Our strategy and points of negotiation with the owner/developer were discussed and worked out with legal counsel, expert advice, and community input. After extensive and complex negotiations, the Board achieved what we believed to be the maximum benefit to the homeowners and community, resulting in two lengthy easement agreements reflecting the work of engineers, lawyers and others. The long-term benefits include: improving the cost/share formula for maintenance of the Bethany Loop section surrounding the commercial parcel; adding SPHA as an additional insured on SPP's insurance policy; getting a top-coat paving on that section of road after the construction is completed; getting major stormwater drainage work performed on golf course property to avoid potential flood damage to homes throughout the community and including improvement of the existing ponds; obtaining mitigating landscaping on both sides of the road to minimize the effect of the new commercial site; and causing the developer to absorb all of our attorneys and engineer's costs. It is important to know that although these are standard considerations in major construction projects elsewhere, that is not the case in this area.

4. The Board achieved adjustment in the lighting scheme based on an agreement reached with the owner/developer on December 20, 2008. The developer replaced the originally-specified fixtures with fixtures with interior shields and a different lens, and personally guaranteed that if additional, exterior shields are required, he will install them after the lighting is powered on and we have had an opportunity to evaluate it. The Harris Teeter project manager independently confirmed the plan for the developer to install exterior shields after-market if needed. The Board has been assured by engineers that the height (35') of the light pole is not the only factor by which to measure the lighting effect. We asked for engineering studies and they were performed and provided to us. Based on those reports and actual on-site light meter readings, we have indicated acceptance of the lighting plan, conditioned on the final, installed, and illuminated project meeting the engineer's representation about minimal (or no) increase in light levels on the residential side of Bethany Loop after fixtures are operational.

5. Harris Teeter assured us more than once that development of the property is the responsibility of the landlord (Zimmerman), that HT would construct its own building according to its typical plans, and that it would be consistent with other regional HT buildings in quality and finish. Zimmerman's engineer advised that it will be similar to the one on Route 24 when it is finished. It was not realistic then, and it is not realistic now, to expect that we can mandate the appearance of the store or that Harris Teeter should have cleared it with us. Sussex County has no such requirement, so no law was broken. Harris Teeter has many store styles and we do not know the precise facade for

this one. It is plausible that the store will be a relatively simple version compared to others, due to our rural setting and potentially low-volume market. We will learn more about the exterior design soon and can discuss decorative details with Harris Teeter. Even as we work with HT, it would be unrealistic to think we can cause them to change the design to suit our preferences.

6. Harris Teeter previously assured us that as we near the date of operations and opening, it will work with us on details, including hours of operation. We have relied on those statements, the experiences of experts in the grocery/retail business, and some Salt Pond residents who have worked with HT in other locales, who assured us that those details would be worked out in a "neighbor friendly" fashion when the time was right. Since HT will not open for operations until 2010, these meetings have not been held just yet.

7. The water containment tank has been drawn on the design plans almost since the start. The water tank was not considered to be an issue because it is, simply put, part of the necessary infrastructure of the commercial property, along with a small pump house which is yet to be built. It is necessary because Bethany Beach cannot provide adequate water flow for the fire suppression (sprinkler) system in event of a fire in the store. The tank will be insulated and painted to match the building. Removal of this tank seems to be a no-starter for safety and other issues related to construction in Sussex County.