

TOWN OF SCHODACK

COUNTY OF RENSSELAER

PLANNING BOARD

PROPOSED STEWART'S SHOP

1540 - 1538 COLUMBIA TURNPIKE

THE STENOGRAPHIC MINUTES of the above entitled matter
by NANCY L. STRANG, a Shorthand Reporter commencing on
November 4, 2019 at 7:28 p.m. at 265 Schuuman Road,
Castleton-on-Hudson, New York

PRESENT:

BOARD MEMBERS:

Denise Mayrer, Chairperson

Wayne Johnson

John LaVoie

James Shaughnessy

Lawrence D'Angelo

Andrew Aubin

ALSO PRESENT:

Nadine Fuda, Director of Planning and Zoning

Craig Crist, Esq., Counsel to the Planning Board

Richard Laberge, PE

William Hennessey, PE, Precision Engineering

Charles Marshall, Stewart's Shops

Steven Phelps

1 CHAIRPERSON MAYRER: Okay, Stewart's.

2 MR. MARSHALL: Although I feel that I need no
3 introduction, I'm Chuck Marshall from Stewart's.

4 With me tonight is Scott Kitchner. Mr.
5 Kitchner is a licensed engineer in the State of New
6 York and the engineer of record for Stewart's.

7 Also with us tonight is William Hennessey and
8 Steve Phelps.

9 Mr. Phelps is a professional geologist
10 licensed in the State of New York and employed with
11 Precision Engineering.

12 Mr. Hennessey is a licensed engineer in the
13 State of New York, also employed by Precision
14 Engineering. I guess in a way they are subcontracted
15 through Hennessey.

16 In our October 22nd submission we provided an
17 updated set of plans. The changes include proposed
18 site plan. The canopy has been extended to cover the
19 concrete area. The slot drain has been position on the
20 eastern side of the canopy to prevent any run-off from
21 entering the concrete area. Those additions are then
22 carried out through the remainder of the plans.

23 As discussed at the September meeting which
24 was our last appearance, the inverts which were being
25 questioned have been rectified for all structures -

1 catch basins and then the outlet structures and
2 stormwater handling.

3 On the 23rd we then submitted a letter from
4 Precision. They are here and expect to answer any
5 questions that the Board may have.

6 Ultimately, one of the things that we feel is
7 most telling of our submission is that we submitted a
8 FOIL request to the Town for our existing facility at
9 3516 US Route 20 which is the facility that we did
10 three or four years ago at New Road and Route 20 in
11 the Town of Schodack. No notice of violations have
12 been issued. Again, that is in a separate aquifer than
13 the site that is being considered tonight, but it is
14 nonetheless part of the Town's Water Quality Control
15 Act and subject to the Town's Zoning Ordinance.

16 So, with those changes myself and others are
17 prepared to answer any questions the Board may have.

18 CHAIRPERSON MAYRER: Okay, members, questions
19 for the applicant or their engineers?

20 MR. LABERGE: Yes, we did receive the plan
21 SWPPP and the decision letter. You have our letter of
22 October 31st with 14 comments - mostly small detail
23 issues. There are some other things to be done in terms
24 of extension of the Heath Department, approvals
25 etcetera. So, there are some other minor details to get

1 through.

2 In terms of SEQRA, there has been a lot of
3 information - over a years' worth almost to the day -
4 and a lot of discussion here at meetings. We have
5 spent a lot of time in terms of the information
6 submitted and we are recommending a negative
7 declaration under SEQRA and have assisted in the
8 preparation of a determination of significance for
9 your review.

10 Furthermore, with the idea of the geological
11 configuration of the site and Water Quality Control
12 Act variance that the applicant is seeking, we are
13 able to recommend to this Board that you can recommend
14 a favorable recommendation to the Zoning Board.

15 So, that's really in a nutshell, our October
16 31st letter - well, there is a lot of detail.

17 If there are any specific questions from the
18 Board, I can entertain those. The applicant's
19 professionals are here, as well, if there are things
20 that weren't clear in their presentation.

21 MR. MARSHALL: If you would like us to go
22 through the October 31st letter, we are prepared to do
23 so.

24 As you look at them, the sewer district
25 extension by the Town Board - that Public hearing has

1 already been held. I think that action is contingent
2 upon a SEQRA determination by the Town Board.

3 The Rensselaer County Health Department
4 approval is required. There were no comments from the
5 Rensselaer County Department regarding a water
6 district because it's already in the district and we
7 anticipated using the existing tap. The sewer district
8 would be again contingent upon SEQRA determination and
9 Town Board approval.

10 New York State DEC has already issued their
11 highway work permit. However, that will need to be
12 extended because it expires on December 31 of this
13 year.

14 We do show the adequate number of monitoring
15 wells which under your zoning you are permitted to
16 request. We agree to that.

17 The parcels have been combined, although the
18 SBL has not been issued. We have a copy of the
19 maintenance manual, if you need it, although it has
20 been previously submitted.

21 So, if there is anything else, we would be
22 glad to answer any questions the Board may have.

23 MR. SHAUGHNESSY: I think that it may be
24 helpful to have the gentleman come up from Precision and
25 just have a brief summary of their report, if that's

1 acceptable.

2 MR. HENNESSEY: Thank you, Madam Chairperson
3 and members of the Board. My name is Bill Hennessey. I'm
4 a consulting engineer in New Scotland. I have been a
5 practicing engineer since approximately 1995 and started
6 in 1984. I have been working in the environmental field
7 for over 20 years.

8 Our task here was to look at some of the
9 questions that had arisen in this project regarding
10 potential leakage or drippage from the gasoline pumps.

11 So, we did research on the matter and since
12 we are a testing and an analytical firm, we actually
13 did field testing to try to quantify and qualify those
14 concerns. We were able to measure the actually
15 potential drippage from typical use of a gasoline
16 pump. We also measured potential evaporation
17 capability. The drippage does a bit of what we call
18 absorption. It's in the surface of the concrete and it
19 also literally evaporates into the air. We were able
20 to quantify both of those elements.

21 We estimated in that worst case scenario of
22 potential drippage from gasoline pumps to be 0.44
23 micrograms per liter, potentially dissolving into
24 stormwater. Benzene is not very soluble in water, but
25 we still, just for potential worse case scenario,

1 assumed all of that would dissolve in the stormwater.
2 It's not very likely because that stormwater would
3 probably take less than one minute to reach the
4 stormwater detention area. If it all dissolved in the
5 water, it still is less than what the New York State
6 Groundwater Regulations allow which is 1.0 micrograms
7 per liter. Right away we are less than the New York
8 State standards for the groundwater.

9 Beyond that, what we did was to look at
10 actual examples of other Stewart's Shops. We were able
11 to utilize current Stewart's sales and current uses to
12 identify how much gasoline we are dealing with. Also,
13 we were able to test existing stores to see if any of
14 this potential leakage occurred into the stormwater
15 systems. Two stores chosen that were very similar to
16 the proposed Schodack store - one is in Queensbury and
17 one is up the street in Nassau that were chosen
18 because they have a similar number of gasoline pumps
19 and similar stormwater grading. That store, I
20 particularly liked because there is a catch basin
21 right on the edge of the canopy that would collect the
22 stormwater right off the surface of the canopy.

23 Samples from those catch basins - not just
24 the one canopy, but all of the others that have been
25 taken - were less than what the laboratory can detect.

1 The laboratory can detect 0.18 micrograms per liter.
2 The standard is one in our theoretical value at 0.44.
3 So, the actual real-world data stated that it was less
4 than 0.18.

5 Again, we are very comfortable and very
6 confident that there is no impact based on this
7 potential concern of the gasoline from the dispenser
8 pump.

9 MR. LABERGE: Can I ask you also to describe
10 the part of your letter that talks about the subsurface
11 geological conditions on that site?

12 MR. HENNESSEY: I would rather have a
13 professional geologist do that.

14 MR. PHELPS: I am Steven Phelps and I am a
15 professional geologist in New York State and have been
16 practicing environmental geology for approximately 19
17 years.

18 Prior to Stewart's purchasing the parcel, we
19 went out and did some upfront assessment work to help
20 them ascertain where the bedrock is, soil and where
21 groundwater is. In doing so, we installed a dozen
22 borings across the property.

23 The depth of rock ranged from 4 to 5 feet
24 down to about 16 feet on the northern end of the
25 parcel. The soils we encountered were a standing

1 gravel type material.

2 Once we got down to where bedrock was, there
3 was a denser type of mixture and the bedrock.

4 MR. LABERGE: In your letter you describe the
5 effect of that denser till and bedrock acting as - you
6 actually use the word aquatard. Can you describe that a
7 little bit, as well?

8 MR. PHELPS: Yes. An aquatard is a term used to
9 define a geological horizon that prevents water from
10 migrating further down vertically through it. Till is
11 defined as generally impermeable type of material that
12 will not promote liquids and waters flowing through it
13 vertically.

14 MR. LABERGE: Generally, what happens to the
15 water that enters that upper layer above the aquatard?

16 MR. PHELPS: It will naturally evaporate as
17 part of the hydrological cycle.

18 MR. LABERGE: Does any of that permeate into
19 below the aquatard?

20 MR. PHELPS: It could - yes, it could.

21 MR. LABERGE: I know that in talking about the
22 moderate wells, we actually said we wanted to keep them
23 in the overburden layer above that.

24 MR. PHELPS: Yes and I think that makes sense
25 in this instance.

1 MR. LABERGE: Okay, thank you.

2 CHAIRPERSON MAYRER: Okay, members?

3 MR. AUBIN: Just as a matter of information for
4 some of the public, it was brought up that your analysis
5 was pretty focused on day to day trips and what have you
6 and sort of in response to opposition experts talking
7 about benzene - it was very focused and understandable.
8 There was a proposition brought up about - strips are
9 one thing, but 150 gallons or whatever of reportable
10 spills - - describe a little bit what happens when a
11 spill of that nature happens and what kind of response
12 occurs?

13 MR. PHELPS: Something like a reportable spill
14 to the DEC is, I think, over five gallons or more. So,
15 if five gallons or more were to spill, typically it's at
16 the surface level and it would immediately try to be
17 contained by anybody who sees the spill or Stewart's
18 employees.

19 MR. AUBIN: And they are trained to deploy
20 measures?

21 MR. PHELPS: I would assume so.

22 MR. KITCHNER: All the partners in our stores
23 to receive training and they are all classified Type C
24 operators.

25 MR. HENNESSEY: Typically in New York State

1 things such as positive limiting barriers are not
2 required. The oil stop valve - I'm not sure that's
3 required, but it is requested and is being implemented
4 here. Positive limiting barriers are frankly something
5 that I have never known about because it's not dealt
6 with the New York State, but there are grooves
7 surrounding the canopy and it is designed to hold a
8 spill of, I believe, 3.27 - I believe what was in there.
9 So, if there was a spill that could not escape the
10 canopy, supposedly it would fill in to these grooves so
11 that it could be cleaned up. If there was a catastrophic
12 spill that went into the stormwater system, the oil stop
13 valve would close and not allow it to discharge into the
14 system because of the way it works with gravity. It
15 would shut down any flow of any horizon gasoline down
16 the pipe. So, on top of that, the monitoring wells
17 provide another level of comfort and understanding of
18 what could be down the road.

19 MR. AUBIN: Once the spill is reported, what is
20 typically done?

21 MR. PHELPS: So, whoever has knowledge of the
22 spill is obligated to report it to New York State DEC
23 and DEC, depending upon the severity of the spill,
24 reacts in kind. So, if it was a significant spill, they
25 would deploy a response contractor who they have on

1 standby to be there as quickly as they can get there.
2 They are obligated to respond in 24 hours. They are
3 response contractors. That would be outside of Stewarts'
4 availability to hire their own contractors to try to get
5 their equipment, too. They would deploy back-in trucks
6 and response measures to retain and capture and collect
7 as much spilled fuel as possible. It's not uncommon to
8 have a follow-up subsequent investigation to confirm
9 that all is properly dealt with.

10 MR. AUBIN: Thank you.

11 MR. PHELPS: You're welcome.

12 MR. JOHNSON: Since you're talking about the
13 soils, the monitoring wells that I just heard are only
14 going down to the aquatard. Will they reach the
15 groundwater? Are they going to be monitoring just what
16 gets into the area above the groundwater? I don't
17 understand.

18 MR. PHELPS: I think the wells that are
19 proposed now would be in the overburden which would
20 monitor overburdened soils and purse water that could
21 get in there from precipitation events and things of
22 that nature. So, if there were a catastrophic spill in
23 our storage tank that caused a release, it could be
24 picked up by the same monitoring wells. It's not very
25 common to have wells placed where there's not

1 groundwater, but it is just a preventative measure.
2 Typically it would not penetrate an aquatard for the
3 bedrock unless you actually needed to.

4 MR. JOHNSON: Do we know that there is no
5 pollution in the ground water below the Aquatard? Has
6 that been tested?

7 MR. PHELPS: Right now presently? We did pull a
8 sample from the existing well at the existing garage
9 there. We didn't find any VOCs in that.

10 MR. MARSHALL: Going back to Mr. Phelps'
11 comment about the responsibility or the mandatory
12 reporting: If Precision, during their sampling, had
13 identified any levels that would have passed the
14 threshold for generating a spill with New York State
15 DEC, they would have been required to report it. That
16 was the case. I know that there was an existing concern
17 about Broughton but not only were subsurface samples
18 taken around the Broughton property, but their existing
19 well was sampled along with the well to the property to
20 the north that Mr. Broughton sold in 2018. So, if those
21 samples were found to have limits requiring the
22 generation of a spill file, that would have been done
23 and it wasn't.

24 MR. JOHNSON: Okay, I have a question for you.
25 There was a mention of a number of spills at Stewarts'

1 facilities. You have 300 and some odd facilities -

2 MR. MARSHALL: If you were to take 272
3 locations with gas and you operate on 365 days a year
4 and then you take that over the nine-year period, that's
5 a 30% chance of having a spill at any one of our
6 facilities. That doesn't take into account the number of
7 customers that fill those facilities on a daily basis.
8 So, you're into the nano percentile for spills generated
9 at a Stewart's shop.

10 MR. JOHNSON: And how many spills that were
11 reported were not reported on a timely basis or were
12 they all addressed immediately?

13 MR. MARSHALL: To my knowledge we do not have -
14 an open consent order with DEC regarding any of our
15 spills. Again, some of the spills don't even hit the
16 threshold for mandatory reporting. We would report any
17 spills that occur.

18 MR. JOHNSON: Okay, I just wanted to get that
19 on the record.

20 I have a question for the engineer about the
21 Hydro Downstream Defender.

22 On the manhole coating above that you show
23 the invert out of the pipe in 363.14 and then at the
24 Hydro Defender the invert and that unit is 363.11.

25 MR. KITCHNER: The invert out of the Downstream

1 Defender is actually by design, one foot higher than the
2 invert in. There is an internal backflow - that's
3 actually how the unit functions to trap any floating
4 debris or oils or anything of that nature in that
5 structure. The oil will float on top and can be removed.
6 It thereby can be removed by absorbent materials or
7 vacuum truck, any sediments or sands or other grits
8 settle in the sump of the structure - they can be
9 vacuumed out as well.

10 MR. JOHNSON: So, it's going to be water in the
11 pipe that's coming out of the manhole too.

12 MR. LABERGE: Wayne and I diagrammed that. It
13 is designed correctly as per the manufacturer's
14 specifications. I can show you that.

15 MR. JOHNSON: I didn't get that earlier.

16 MR. LABERGE: I apologize. We didn't share that
17 with the Board, but you may need to have me walk you
18 through it at some point.

19 MR. JOHNSON: The inverts on this unit have
20 been really difficult to understand. Maybe they have it
21 correct now, but I think they had it wrong before and I
22 would like to -

23 MR. KITCHNER: Previously the invert out was
24 higher than the high flow invert to the subsurface
25 storage facility. So, what it was in fact doing and Mr.

1 Laberge pointed out to me - it was preventing any water
2 from actually getting through the Downstream Defender
3 into the bioretention filter. That since has been
4 corrected.

5 MR. JOHNSON: All right, I will take your word
6 for it.

7 MR. LABERGE: I will be happy to explain it. I
8 think what the Stewart's engineer pointed out was they
9 actually lowered the bioretention a little bit to be
10 able to get that.

11 MR. KITCHNER: We lowered the bottom elevation
12 of the bioretention filter which actually increase the
13 surface area. What that did was it reduced the ponding
14 depth which actually have less standing water in the
15 system at any given time and it also allows for
16 additional storage within the filter for back-to-back
17 storm events.

18 MR. JOHNSON: Thank you.

19 CHAIRPERSON MAYRER: Members, anything else?

20 (There was no response.)

21 So, tonight - we already are lead agency. The
22 first motion is to waive the reading of the
23 Resolution, but I'm going to read it anyway, just to
24 get in on the record.

25 Whereas Stewart's shops Corp. is the

1 applicant and proposes to construct approximately
2 3,696 square foot retail convenience store and gas
3 station called the project at a site located at 1538
4 and 1540 Columbia Turnpike on three adjacent parcels
5 of real property tax map numbers 178 - 45 - 5, 178 -
6 14 - 6 and 178 - 14 - 7. And whereas the project is an
7 unlisted action within the meaning of the State
8 Environmental Quality Review Act and whereas based on
9 its consideration of the proposed project, it's review
10 of the environmental assessment form and all of the
11 supporting information submitted in connection with
12 the proposed project in the criteria set forth in
13 NYCRR617.7, the planning board as lead agency has
14 identified analyzed relevant areas of environmental
15 concern to determine whether the proposed action may
16 have significant adverse impacts on the environment.

17 Now therefore it is resolved that the
18 Planning Board hereby finds that it is determined that
19 the proposed project will not have any significant
20 adverse impacts on the environment and therefore
21 issues a negative declaration of environmental
22 significance pursuant to SEQRA for the reasons set
23 forth in the accompanying determination of
24 significance which is incorporated herein by
25 reference.

1 This is a motion for negative declaration. Do
2 I have that motion?

3 MR. LAVOIE: So moved.

4 MR. AUBIN: Second.

5 CHAIRPERSON MAYRER: All in favor?

6 (Ayes were recited.)

7 Opposed?

8 (There were none opposed.)

9 The next part of this is: I will read this
10 whole thing and then we will talk about what your
11 options are.

12 MR. CRIST: Just so that it's clear, the
13 negative declaration you just adopted is the negative
14 declaration that you all have reviewed tonight.

15 CHAIRPERSON MAYRER: Right.

16 So, the next is a part of the recommendation
17 to the ZBA.

18 Just so you know, the actions that you have -
19 you can issue a favorable recommendation which is the
20 whereas I am about to read. You can issue an
21 unfavorable recommendation, or you can issue no
22 recommendation. Those are your options. I just want
23 you to know what's available to you before we move
24 forward.

25 Whereas the applicant Stewart's Shops Corp.

1 has applied to the Zoning Board of Appeals, the ZBA,
2 requesting that it be granted a variance under Chapter
3 223 of the Town code of the Town of Schodack Water
4 Quality Control with respect to the applicant's
5 proposed construction of a convenience store with
6 underground fuel tanks for the storage of gasoline to
7 be sold on site with respect to property located at
8 1538, 1542 Columbia Turnpike, tax map number 178 - 14
9 - 6 and 178 - 14 - 7; and whereas Section 223 - 9 of
10 the Water Quality Control provides that variances may
11 be granted by the ZBA after a review and
12 recommendation by the Planning Board; and whereas the
13 Planning Board has reviewed the proposed project to
14 determine whether the health and safety of the public
15 would be protected and the NYS Department of
16 Environmental Conservation Water Quality Control
17 Standards would not be violated by any variance. *.

18 Ow therefore it is resolved that the Planning
19 Board finds that the health and safety of the public
20 will be protected under the New York State DEC Water
21 Quality Standards and the standards will not be
22 violated by the requested variance based on the
23 following circumstances:

24 1. That the project incorporates a variety of
25 design features intended to protect the release or

1 spillage of fuel including a modern double-walled ie.
2 tank within a tank, fiberglass reinforced plastic
3 "FRP" design secondary containment system, full-time
4 electronic monitoring, leak detection systems,
5 overfill protections, spill prevention and remote
6 alarm reporting.

7 2. That the project incorporates a series of
8 design and operational features that address hotspots,
9 stormwater run-off which might be generated by
10 rainwater coming into contact with incidental amounts
11 of fuel products which may be inadvertently spilled by
12 customers during the fueling process including an
13 oversized fixed canopy over the pumps, a concrete pad
14 under the canopy and surrounding the pumps design to
15 groove around the perimeter to physically contain
16 spills locally.

17 3. Stormwater management system has been
18 designed in accordance with New York State DEC
19 Stormwater Design Manual which requires redundant
20 pretreatment of the water quality volume for hotspots.

21 4. The project incorporates the use of both
22 hydrodynamic separated in a live bioretention filter
23 bin.

24 5. Prior to stormwater entering the
25 stormwater facility from the hotspot areas, stormwater

1 will be directed to the catch basin with installed oil
2 and debris hoods and an oil stop valve will be
3 installed to stop the flow of storm water should
4 significant amounts of petroleum products enter the
5 stormwater collection system.

6 6. Professional analysis was submitted by the
7 applicant which concluded that much of the volume of
8 any minor releases of fuel by customers incidental
9 vehicle fueling never enter the stormwater system and
10 therefore would not enter groundwater; that any minute
11 amounts that might enter the groundwater would not
12 exceed water quality standards and that the geologists
13 study of the site include a layer of dense till and/or
14 rock which acts as a barrier to further migration of
15 any of the groundwater which might contain minute or
16 trace amounts of spilled fuel incidental to customer
17 fueling.

18 It is further resolved that the Planning
19 Board hereby a favorable recommendation to the ZBA on
20 the requested variance under Chapter 223 of the Water
21 Quality Control.

22 That is a favorable motion.

23 Again, you have your options.

24 MR. CRIST: There is one thing that I want to
25 clarify. This is pursuant to the Water Quality Control

1 Act and it says that various chapters may be granted by
2 the Zoning Board of Appeals after review and
3 recommendation by the Planning Board. So, I believe that
4 what the Board is going to be doing is either a
5 favorable recommendation or an unfavorable
6 recommendation. I think that's what the Chairperson
7 meant. Thank you.

8 MR. MARSHALL: I also request that the
9 Resolution be amended to add the SBL ending in number 5
10 because that is incorporated in the site plan and the
11 Code Enforcement Officer has allowed the activity on
12 that parcel to be included in the overall site plan. So,
13 I would ask that be included.

14 I would also ask that the addresses be 1538
15 and 1540 because I would not want to see someone
16 challenge on an incorrect number.

17 CHAIRPERSON MAYRER: Okay.

18 MR. LAVOIE: I would like to move for favorable
19 recommendation to the Zoning Board of Appeals.

20 CHAIRPERSON MAYRER: Do I have a second?

21 MR. D'ANGELO: Second.

22 CHAIRPERSON MAYRER: All in favor?

23 (Ayes were recited.)

24 Opposed?

25 (There were none opposed.)

1 You have it.

2 (Whereas the above entitled proceeding was
3 concluded at 7:51 p.m.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I, NANCY L. STRANG, Shorthand Reporter and
Notary Public in and for the State of New York, hereby
CERTIFY that the record taken by me at the time and
place noted in the heading hereof is a true and
accurate transcript of same, to the best of my ability
and belief.

Dated: _____

NANCY L. STRANG

LEGAL TRANSCRIPTION

2420 TROY SCHENECTADY RD.

NISKAYUNA, NY 12309