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Meeting Date: June 9, 2004

**PLANNING BOARD  
TOWN OF SOMERS, WESTCHESTER COUNTY, NEW YORK**

Resolution No. 2004-12

Rescinding Final Subdivision Approval  
for

**Granite Pointe Subdivision**

Town Tax Number: Section 27.05, Block 3, Lots 2 and 5

**WHEREAS**, on or about July 24, 2002, the Planning Board granted conditional final subdivision approval to the Granite Pointe Subdivision, a 23 lot subdivision to be located on 28.9 acres of land, situated proximate to New York City's Amawalk Reservoir, on the easterly side of Tomahawk Street opposite Granite Springs Road, in the Town of Somers, and

**WHEREAS**, pursuant to the State Environmental Quality Review Act, Draft and Final Environmental Impact Statements were prepared and SEQR findings dated February 25, 1998 were issued, prior to the approval of the Granite Pointe Subdivision, and

**WHEREAS**, after the Granite Pointe Subdivision received conditional final approval, serious concerns were brought to the Board's attention, in particular, that the property may be contaminated with petroleum and lead, which are public health concerns, and

**WHEREAS**, a Granite Pointe test well sample taken during 1999 indicated the presence of naphthalene, methylene chloride, and tetrahydrofuran, and new information was brought to the Board's attention indicating that lead contaminated soil may be present on account of a prior use as a trap and/or skeet shooting range, and

**WHEREAS**, the Planning Board required the applicant to address the contamination issues, and the applicant submitted a report dated December 19, 2003, prepared by Groundwater Environmental Services Inc., addressing petroleum and lead contamination, and

**WHEREAS**, on or about April 5, 2004, the applicant submitted a supplemental site assessment report dated March 5, 2004, prepared by Groundwater and Environmental Services Inc., which included the results of additional testing areas for lead, and which

found lead contamination at 16 of 48 additional sampling locations at levels which exceeded the residential action level established by the Environmental Protection Agency, with the elevated lead concentrations corresponding to proposed lots 11, 12 and 13, and

**WHEREAS**, the Environmental Protection Agency in a January 2001 publication entitled "Best Management Practices for Lead at Outdoor Shooting Ranges" states at page 1-4: "Lead poisoning is a serious health risk. At higher concentrations, it is dangerous to people of all ages, leading to convulsions, coma and even death. At even very low concentrations, it is dangerous to infants and young children, damaging the developing brain and resulting in both learning and behavioral problems", and

**WHEREAS**, the SEQR Regulations at 6 NYCRR 617.9(7) provide as follows:

(7) Supplemental EIS.

(i) The lead agency may require a supplemental EIS, limited to the specific adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from:

- (a) changes proposed for the project; or
- (b) newly discovered information; or
- (c) a change in circumstances related to the project.

(ii) The decision to require preparation of a supplemental EIS, in the case of newly discovered information, must be based upon the following criteria:

- (a) the importance and relevance of the information; and
- (b) the present state of information in the EIS.

(iii) If a supplement is required, it will be subject to the full procedures of this Part, and

**WHEREAS**, the preparation of an SEIS for the Granite Pointe Subdivision has been recommended by the New York City Department of Environmental Protection in a letter dated February 11, 2004, the Office of the New York State Attorney General in a letter dated March 9, 2004, the Somers Town Board in a Resolution dated March 11, 2004, the Somers Conservation Board in a memorandum dated February 11, 2004, by the Town Engineer in a memorandum dated December 10, 2003, and by the Town Planning

Consultant, Frederick P. Clark Associates, in a memorandum dated April 9, 2004, as well as by numerous conservation, planning and environmental organizations, and

**WHEREAS**, the Town Planning Consultant, Frederick P. Clark Associates, in an 8 page memorandum dated April 9, 2004, reviewed the recent history of the Granite Pointe Subdivision, the new information brought to the Board's attention, the impacts of lead on human health and the environment, the provisions of CERCLA, the additional input received by the Planning Board from interested and involved agencies, SEQR provisions, and recommended the preparation of a Supplemental Environmental Impact Statement (SEIS) addressing lead contamination and groundwater issues, and

**WHEREAS**, the applicant requested a postponement of this SEIS decision until the Planning Board's April 28, 2004 meeting to enable the applicant a further opportunity to review and respond to the Frederick P. Clark Associates memorandum, and

**WHEREAS**, on or about April 23, 2004, the applicant made an application to the Planning Board for an amended final subdivision approval for the Granite Pointe Subdivision proposing the addition of a condition in the approval Resolution limiting the issuance of building permits and performance of site work until a site remediation plan for lead contamination had been approved by the County Health Department , and

**WHEREAS**, the applicant's letter dated April 23, 2004 also acquiesced in the preparation of an SEIS, but expressed the concern that a supplemental environmental review process could not be completed within the time permitted under Town Law § 276 and Town Subdivision Regulations Section 150-13(M), and

**WHEREAS**, by memorandum dated April 28, 2004 the Town Engineer reviewed the substance of the applicant's proposed amendment, and objected thereto, because the language of the amendment would limit the supplemental environmental review to 3 lots, though the contamination limits had not been finally determined, eliminate a Planning Board role in substantively addressing the contamination, and pre-determines the result of the SEIS review, including the consideration of alternatives, and

**WHEREAS**, at its meeting on April 28, 2004, the Planning Board determined that a Supplemental Environmental Impact Statement was required under the SEQR Regulations and, after extensive discussion with the applicant's representative, called for a public hearing to be held on May 26, 2004 on the question whether the Granite Pointe Subdivision final subdivision approval should be rescinded, and the subdivision shall revert to the preliminary approval stage, based upon newly discovered facts, information and evidence which are material and/or changes in circumstances, and extended the

subdivision approval to July 2, 2004 to accommodate this public hearing process, and

**WHEREAS**, the case law indicates that: "Once it gives final approval a town planning board generally does not have statutory authority to reconsider its determination (see Town Law §§ 276, 277). Despite the lack of statutory authority, a planning board may reconsider a determination if there has been a material change of circumstances since its initial approval of the plat or new evidence is presented." Matter of 1066 Land Corporation v Planning Board of the Town of Austerlitz, 218 A.D.2d 887, 630 N.Y.S.2d 389 (3d Dept. 1995). See also Matter of Marx v Planning Board of Mill Neck, 185 A.D.2d 348, 586 N.Y.S.2d 807 (2d Dept. 1992), and

**WHEREAS**, the case law further indicates that a notice and a hearing are also required where a final approval will be reconsidered which may result in rescission: Connecticut River Estates Inc. v Luchsinger, 52 Misc.2d 620, 276 N.Y.S.2d 389 (SC Suffolk Co. 1967), and

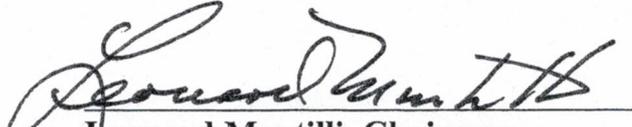
**WHEREAS**, by letter dated May 26, 2004, Kurt Rieke, First Deputy Director, New York City Department of Environmental Protection (NYCDEP) advised that the NYCDEP will suspend its approval of the Stormwater Pollution Prevention Plan (SPPP) for the Granite Pointe Subdivision under its regulations and, upon completion of the SEIS, will evaluate whether SEQR has been complied with, review the SPPP in light of any new information presented, and will make a determination whether to reinstate, modify or revoke the approval of the SPPP; and

**WHEREAS**, on May 26, 2004, the Planning Board conducted a public hearing upon due notice, on whether the final subdivision should be reconsidered and rescinded and afforded the applicant a full opportunity to heard thereon, following which the Planning Board determined on a motion unanimously carried by those voting to rescind the final subdivision approval and return the Granite Pointe Subdivision to preliminary subdivision approval upon reconsideration.

**NOW, THEREFORE, BE IT**

**RESOLVED**, that, upon reconsideration, the final subdivision approval granted the Granite Pointe Subdivision is rescinded, and the subdivision shall revert to the preliminary subdivision approval, based upon newly discovered facts, information and evidence and/or changes of circumstances, including, but not limited to the impacts of lead contamination on the property and the determination that a Supplemental Environmental Impact Statement must be prepared.

**BY ORDER OF THE PLANNING BOARD  
OF THE TOWN OF SOMERS**

  
Leonard Montilli, Chairman

Dated:

**Certification**

I hereby certify that the foregoing is a true and accurate copy of the Resolution adopted by the Town of Somers Planning Board for the Granite Pointe Subdivision at its regular meeting held on

6-23-04

Dated: