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PLANNING DEPARTMENT

Town of Somers

WESTCHESTER COUNTY, N.Y.

TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

John Currie, Chairman
Fedora DeLucia
Christopher Foley
Vicky Gannon
Nancy Gerbino
Eugene Goldenberg
John Keane



SOMERS PLANNING BOARD

AGENDA

NOVEMBER 12, 2014

7:00 P.M.

MINUTES Consideration for approval of Draft Minutes for September 10, 2014

POWER POINT PRESENTATION

- 1. DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)**
Discussion on the Granite Pointe off-site remediation work.

PUBLIC HEARING

- 2. HAUSER WETLAND PERMIT [TM: 17.11-1-16]**
Application for a Wetland Permit for a single story frame garage for property owned by Michael and Randi Hauser located at 7 Scott Drive.
Consideration of a draft Resolution of Approval.
- 3. SOMERS REALTY PHASE 3 [TM: 4.20-1-15]**
Application for Preliminary Subdivision Approval, Steep Slopes, Wetland, Tree Removal and Stormwater Management and Erosion and Sediment Control Permits to create Lots 3a, 3b, and 3c (53.2 acres), relative to the Site Plan application of Avalon Bay Communities, Inc. and Lot 4 (4.9 acres) and Lot 5 (0.9 acres) for future commercial and firehouse uses, Lot 6 (7.1 acres) marketed toward an Assisted Living Facility respectively of the Planned Hamlet for the proposed subdivision, roads and stormwater management improvements. Property is owned by Somers Realty Corp. and is located on the southeast side of Route 6 and Clayton Blvd. and is in the Planned Hamlet (PH) Zoning District.

PROJECT REVIEW

4. AVALONBAY SOMERS [TM: 4.20-1-13,14,15, p/o 12]
 Application for Site Plan Approval, Steep Slopes, Tree Removal and Stormwater Management and Erosion and Sediment Control Permits for AvalonBay Communities, Inc. for the construction of 152 residential units within 17 buildings with 23 affordable units on 53.2 acres. Also proposed is a community recreation building, pool and 324 parking spaces. Property is located on the south side of Route 6 and Clayton Blvd. and east of Mahopac Avenue and is in the Planned Hamlet (PH) Zoning District.

5. AT&T MOBILITY, LLC STEEP SLOPES AND STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL PERMITS [TM: 17.05-20-2, 3, 12]
 Application of AT&T Mobility c/o Bechtel (applicant) and Heritage Hills of Westchester (owner) for the installation of 2-4" conduits from existing telecommunications building to an existing Verizon manhole.

6. HIDDEN MEADOW AT SOMERS [15.07-1-6]
 Application for Preliminary Subdivision Approval, Site Plan Approval Steep Slopes, Wetland, Stormwater Management and Erosion and Sediment Control Permits relative to application of Multifamily Residence Baldwin Place District (MFR-BP) under consideration by the Town Board to a 16.7 acre parcel located along the south side of US Route 6 for the proposed development of 53 units of housing, sixteen of which would be affordable, within 45 townhouse buildings on 45 fee simple lots plus one lot for lands to be owned in common by a Home Owners Association.

REVIEW AND COMMENT AT THE REQUEST OF THE CHAIRMAN OF THE ZBA

7. PAUL R. IACUONE FAST FOOD- USE VARIANCE
 Application for a use variance for a 1-acre parcel located at 63 Route 6 to construct a fast food restaurant with a drive through.

Next Planning Board Meeting is Wednesday December 10, 2014
Agenda information is also available at www.somersny.com

Marilyn Murphy

From: Sausville, Matt <matt.sausville@cbi.com>
Sent: Friday, October 10, 2014 10:57 AM
To: Marilyn Murphy
Cc: heidi.dudek@dec.ny.gov
Subject: November 12 Planning Board Meeting

Hi Marilyn,

Per our discussion we would like to be added to the November 12 planning board agenda as going first using a power point set up to discuss the Granite Point Off-Site remediation work. In general the topics we will discuss are as follows:

- 1) Introduction, Site location and background
- 2) The extent of the project limits and project description
- 3) Correspondence with regulatory agencies including the USFWS and NYCDEP
- 4) Project requirements based on regulatory agency requirements including clearing of the site and stormwater controls
- 5) Disturbance of neighbors and community air monitoring protection
- 6) Sequence of Construction
- 7) Questions

Please let me know if you have any questions. Thanks.

Matt Sausville P.E.
Project Engineer
Environmental and Infrastructure
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MEMORANDUM



TO: Town of Somers Planning Board
CC: Marilyn Murphy, Planning Board Secretary
FROM: Joseph C. Barbagallo, P.E., BCEE
DATE: October 30, 2014
RE: Hauser Residence
Wetland Activity Permit
7 Scott Drive
TM: 17.11-1-16, R-80 District

GENERAL

The purpose of this memorandum is to provide the Planning Board with a summary of our final comments related to our review of the applications for environmental permits that have been submitted for the project located at 7 Scott Drive. The applications relate to the construction of a new detached garage structure and subsurface infiltration chamber on the existing residential lot. The following documents were received during the current review period:

DOCUMENTS RECEIVED

- Cover Letter, by McGoey, Hauser and Edsall Consulting Engineers, D.P.C, dated October 20, 2014.
- "Garage Site Plan", Drawing Sheet: "1", prepared by McGoey, Hauser and Edsall Consulting Engineers, D.P.C., dated August 23, 2014, last revised October 20, 2014.

PERMITS AND APPROVALS REQUIRED

- Town of Somers Planning Board: Wetlands Activity Permit
- NYSDEC: State Environmental Quality Review

DISCUSSION

The Applicant has provided a revised project drawing in response to our previously identified engineering comments. Based upon our review of the provided information, the Applicant has addressed all engineering concerns. From an engineering perspective, we have no objection to the Planning Board proceeding with conditional resolution of approval for the proposed Wetland Activity Permit, providing that the following items are addressed as conditions of such approval:

- Maintenance and inspection procedures for the proposed drywell infiltration system is added to the Plan, prior to issuance of a Building Permit.
- An acceptable flow dissipation device (i.e. stone apron or flared end section) is added at the proposed drywell overflow outlet adjacent to the garage structure, prior to issuance of a Building Permit.
- All outstanding fees and escrow have been posted by the Applicant.



The following is a summary of our comments at this time. The status of all previously identified comments as well as new comments is shown in **Bold Type**.

1. The Applicant shall revise the plan to include a limit of land disturbance line and shall note total land disturbance in square feet (as referenced by the provided project narratives). **Addressed**
2. The provided drawing does not illustrate existing topography for the site. The Applicant shall revise the plan to show existing topography within the vicinity of the garage structure. It should be noted that 2' topographic data is publicly available through the Westchester County Geographic Information Systems (WCGIS) database and is acceptable for use with this application. **Addressed.**
3. The Applicant proposes to collect stormwater from the new proposed roof area into a subsurface infiltration chamber to be constructed on the west side of proposed garage. The following sub-comment applies to the proposed infiltration design:
 - a. Provide deep hole excavation data within the vicinity of the proposed chamber. Results must demonstrate a minimum of 3' vertical separation between the proposed invert and bedrock or groundwater. **Addressed.**
 - b. Clarify note on Drywell detail "4' diameter requires 4' – 6" depth, etc." It should be noted that drywells with a vertical depth / horizontal width ratio of less than 0.5 require EPA permitting as an underground injection well. The 4' diameter well at its stated depth should not be considered for this application. **Addressed. The plans show that the 6' diameter drywell has been specified for this application.**
 - c. Identify overflow bypass provisions for runoff flows beyond the storage capacity of the drywell. Bypass flow must be shown to be routed to a stabilized dissipation outlet. **Partially Addressed. The Applicant shall revise the plans to show an acceptable flow dissipation device at the proposed system overflow outlet adjacent to the garage structure.**

CONDITION: An acceptable flow dissipation device (i.e. stone apron or flared end section) shall be added at the proposed overflow outlet adjacent to the garage structure, prior to issuance of a Building Permit

- d. The proposed drywell is shown to be located 8 feet from the proposed garage. NYSDEC requires that a minimum of 10' to be provided between the edge of the drywell and structure. The Applicant shall revise the plan to provide the required separation. **Addressed.**
- e. Revise the plan to include note that inspection of the installed stormwater drywell by Consulting Town Engineer is required prior to backfill of the system. **Addressed.**
- f. Include summary of maintenance and inspection procedures for the proposed drywell during and following the completion of construction. **Not Addressed. The Applicant shall revise the plan to incorporate description of maintenance and inspection procedures prior to issuance of a Building Permit.**



CONDITION: The Applicant shall revise the plan to include a description of maintenance and inspection procedures for the proposed drywell infiltration system during and following the completion of construction, prior to issuance of a Building Permit.

4. The Applicant shall confirm that no additional impervious driveway surfaces are proposed to be created as a result of this application. **Addressed.**
5. The Applicant shall update the plan to show the proposed electrical utility connections to the new garage. The drawing shall be revised to include a construction detail for proposed electrical trench. The Applicant must confirm that the electrical supply infrastructure serving the existing dwelling has sufficient capacity to support the loads generated by the new garage structure. **Addressed.**
6. The provided plans show apparent locally regulated wetland area as "Wet Area", located to the west of the existing residence. The Applicant has provided a sketch of this wetland boundary that is identified as completed by Evans Associates, dated 2008. It is our recommendation to the Planning Board that the provided delineation of wetland boundary is acceptable based upon the minor project scope. The wetland boundary however and its associated 100 foot regulated buffer line should be superimposed on the project drawing. The Planning Board should consider whether the proposed wetland buffer disturbance warrants further assessment of ecological buffer functions and design of additional mitigation measures. **Addressed. Wetland area and associated buffer limits are shown on the drawing. Final comment satisfaction is subject to the discretion of the Planning Board.**
7. Application shall indicate whether any new exterior lighting is proposed on garage structure. If new light features are proposed, the Applicant shall update the plan to show the location(s) and detail the type of fixtures proposed. The Applicant will be required to demonstrate that appropriate shielding will be installed to the satisfaction of the Planning Board. **Addressed.**
8. Based upon the scope of site disturbance, the Applicant shall be required to prepare an acceptable erosion and sediment control plan for the construction activity. Several erosion and sediment control plan components were already included on the initial drawing submittal. The following additional comments should be incorporated that will constitute an acceptable project Erosion and Sediment Control (E&SC) plan:
 - a. Provide a summary of the proposed sequence of construction. **Addressed.**
 - b. Provide a summary of the maintenance and inspection procedures for the proposed erosion and sediment control devices. **Addressed.**
 - c. Revise the plan to include note that all disturbed areas must be stabilized within 14 days of completion of work in that area. **Addressed.**
 - d. Revise the plan to include a note that all work must be completed within allowable construction hours in accordance with Town Code. **Addressed.**



9. The Applicant shall **revise** the plan to include a note that details the proposed seed mix for disturbed area surrounding the garage within the regulated wetland buffer area.
Addressed.

Please feel free to contact our office anytime with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Barbagallo".

Joseph C. Barbagallo, P.E., BCEE
Consulting Town Engineer

PLANNING AND ENGINEERING DEPARTMENTS

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Steven Woelfle
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Syrette Dym, AICP
Town Planner
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MEMORANDUM

TO: Town of Somers Planning Board
FROM: Syrette Dym, Director of Planning
DATE: October 30, 2014
RE: Comments on Somers Realty Planned Hamlet Master Plan Preliminary Subdivision Application#3 – Submission Dated October 20, 2014

Somers Realty Corporation – Planned Hamlet Zone Phase 3 Subdivision – Preliminary Subdivision Approval

The original proposed action consisted of the following components and those that have since changed are highlighted:

- 1. Proposed Amendment to the Somers Realty Planned Hamlet Master Plan pursuant to the Somers Zoning Code Planned Hamlet PH District Section 170-23.3 Approval process which states that: "The site plan required for each proposed development within a PH district shall be consistent with the approved site master plan. The site master plan may be amended only with the approval of the Planning Board."*

The proposed amendments were initially indicated to include the following items, the first of which was identified in the application cover letter of June 9, 2014 from McCullough, Goldberger & Staudt LLP. That letter indicates that the subdivision plan is consistent with the approved Master Plan but then goes on to identify minor changes that include the following: (1) shortening of proposed Town Road B; (2) consolidation of AvalonBay site plan resulting in excess material due to imbalance of cut and fill and need for additional export from the

site in addition to stockpiled material from construction of Clayton Boulevard associated with the Mews I and 2; (3) additional area required for stormwater management facilities and associated minor disturbance outside of the designated Clearing and Grading Limit Line in area adjacent to Clayton Boulevard near the Route 6 entrance. Additional modifications not included in that letter include: (4) Elimination of 80,000 square foot assisted living facility and 30,000 square foot mixed professional office/retail/restaurant use moved south of Clayton Boulevard as part of the Subdivision 2 approval by not showing any evidence of location for these uses. The Preliminary Subdivision Plat dated June 6, 2014 showed only 5 lots whereas the September 17, 2014 plat preliminary plat drawing showed 6 lots. No use was proposed for lot 6, but a previous informal submission by Somers Realty to the Planning Board identified this area as a possible site for an assisted living facility; (5) a reserve parcel has been identified on Insite Drawing MC-1 Proposed Post-Development Drainage Boundaries that was not identified in the Planned Hamlet Master Plan; This is the same parcel that is now the 7.1 acres Lot 6 referred to above; (6) Proposed lot 3c, to be conveyed to Avalon Bay, was previously identified as a community recreation area and now is a 6.4 acre subdivided lot with no identified use; and (7) the Planned Hamlet Master Plan called for the development of 152 townhouse units which were to be fee simple units and Avalon is building rental units with a differing bedroom count than previously proposed and analyzed for purposes of impacts on traffic, parking, utilities, community facilities and fiscal impacts.)

The Preliminary subdivision Plat dated October 20, 2014 has further modified the lot arrangements. Proposed Town Road B has been extended beyond the edge of the proposed Village Green through a newly configured Avalon site layout that provides connection to a proposed Town Right-of-Way that had previously been shown on the approved conceptual Planned Hamlet Master Plan to the southern boundary of the property. This proposed Road B extension and proposed Town Right-of-Way now divide what was the prior proposed Lot 3A of 38.3 acres, into two lots, Lot 3A of 27.3 acres to the west of Town Road B and the proposed Right-of-Way and a new Lot 3D of 10.0 acres to the east of Town Road B and the proposed Right-of-Way. The increased road and right-of-way area of 1.0 acre has been added to the prior proposed Right-of-Way parcel total of 3.3 acres for a now proposed 4.3 acre total. In total, therefore, there are now 7 proposed lots in addition to the right-of-ways, compared to the original proposed submission of 5 lots.

These modifications from the Somers Realty Planned Hamlet Master Plan that was the subject of the SEQRA Findings Statement of February 10, 2009, while many are identified in the long form EAF provided, may require further analysis to determine that they are not significant changes to the approved Master Plan and that their resulting impacts are the same as or less than those identified in the Findings Statement.

2. *Preliminary Subdivision#3 for Applicant Somers Realty Corporation, for the Somers Realty Planned Hamlet Master Plan to further subdivide prior created Lot 3 (Town Tax Map Sheet 4.20, Block 1. Lot 15) now with the October 20, 2014 submission, into seven lots and several street right-of-ways totaling 62.3 acres. The right-of-ways include Clayton Boulevard extension to Route 6 and proposed town roads B, C, D, and E (4.3 acres); Lot 3A for AvalonBay Communities (27.3 acres); Lot 3B Village Green (1.4 acres); Lot 3C Area north of Road D (6.4 acres, Lot 3D (10.0 acres);) all four to be developed by AvalonBay Communities; Lot 4 is the Planned Hamlet commercial lot of 4.9 acres; Lot 5 is the firehouse parcel (0.9 acres) and Lot 6 is he formerly referred to "Reserve Parcel", now to be subdivided (7.1 acres).*
3. *Steep Slopes Permit*
4. *Wetland and Watercourse Protection Permit*
5. *Stormwater Management and Erosion and Sediment Control Permit*

Comments Relative to Submission of October 20, 2014 Regarding Somers Realty Planned Hamlet Subdivision #3

Documents and plans included in this submission included the following:

- Cover Letter from McCullough, Goldberger & Staudt, LLP Dated October 20, 2014
- Preliminary Subdivision Plat dated October 20, 2014

The submission is in preparation for a Preliminary Subdivision hearing scheduled to be held at the Planning Board meeting of November 12, 2014. The following comments on the submitted material are made based on the above submission and to determine how this submission meets all the criteria for preliminary subdivision approval and whether all issues have been covered in accordance with the criteria of Section 150-12L of the Code of the Town of Somers. Based on the comments below, those of the public and of the Planning Board, a determination will be made regarding whether the Preliminary Subdivision Plat Public Hearing should be closed or left open for submission of additional material or modifications to the preliminary plat.

Changes in Subdivision

As stated above, there have been further changes to the proposed subdivided lots since the prior submission. Due to the inclusion of Proposed Town Right-of-Way through the Avalon development to provide access to the southern Shore/Tetenbaum parcel in a similar manner as identified in the approved conceptual Master Plan, Lot 3A needed to be further subdivided and reduced in size from 38.3 acres to 27.3 acres and Lot 3D of 10.0 acres was created east of the right of way. The 1.0 acre lost in lots 3A and 3D constitutes the newly proposed additional right of way.

Master Plan Connection to Parcel owned by Shore & Tetenbaum

As indicated above, this version of the preliminary subdivision plat has provided the opportunity for roadway connection directly to the Planned Hamlet. The difference is that in the Master Plan concept plan, since residential development was proposed south of the Algonquin Gas pipeline, this was to be provided as a Town Road built by the residential developer or Somers Realty. Now that the Avalon project has become more clustered, only a right of way is provided with no provision for its future construction.

The Shore/Tetenbaum parcel is approximately 50 acres in an R80 zoning district. The property is also affected by existing environmental constraints so it is likely that its development potential is less than a maximum of 25 units. Without construction of this roadway as part of the Planned Hamlet developer, unless some other interior connection were provided, the traffic from future development of this Shore/Tetenbaum property would be forced to enter and exit off of Mahopac Avenue and pass through the Route 6/Mahopac Avenue intersection just to access the village green, Planned Hamlet commercial uses or the shopping center, creating additional impacts at this already congested intersection. I will seek input from Mike Galante of FP Clark who was not now available regarding how traffic from this development was assessed, in the Master Plan DEIS. See also discussion of this issue in the related Avalon comment memorandum of October, 2014.

There appears to be a drafting error relative to Road B in that it still stops at the corner of the Village Green when it should instead extend end of the Avalon project and the beginning of the line that signifies the beginning of the Proposed Town Right-of-Way. Please make this change.

Sight Easements

All sight easement changes identified in the memorandum of September, 2014, have been made with the exception of adding that at the intersection of Mahopac Avenue and Route 6. It appears that the sight easement was attempted to be drawn from the current right of way rather than from the point formed that would define the intersection once the road widening parcels along Route 6 and Mahopac Avenue were dedicated to the NYSDOT and the Town, respectively. Therefore, please draw the easement from this future point inward onto Lot 6 where the distance defined for sight easements will now make sense.

Village Green

The Planned Hamlet Master Plan has always shown the Village Green parcel as an organizing open space area for the Planned Hamlet. The concept plan identified a generic formal passive open space design for this area. At the Planning Board meeting of October 8, 2014 Avalon presented an alternative design that provided a mix of active and passive park areas, identifying their intent to build the park to meet the needs of the Town since it was slated to become a Town Park to be owned and maintained by the Town. Given the design options and notion of Town ownership and operation and maintenance,

a meeting was held on October 15, 2014 to get input from the Commissioner of Parks and Recreation, Steve Ralston. That meeting was held, at which time the Avalon team, Steve Ralston, Syrette Dym and Joe Barbagallo attended. In discussions prior to and at the meeting, Steve Ralston, made clear that he was never apprised of or included in any discussions which identified that the Parks Department would be responsible for park maintenance or that the Village Green would be a Town Park. Steve also raised the issue, already brought up at the October 8, 2014 Planning Board meeting regarding how provision of the park affected provision of recreation fees. In addition, Steve recalled the provision of tennis courts and other play areas as part of the Master plan that were not now being provided on a separate recreation lot. He wanted to know how provision of the Town Park related to requirements for provision of recreation and public space as specified in the subdivision regulation Chapter 150 of the Code of the Town of Somers and Town Law. More detailed discussion on this issue is included in the Planning Director's comment memorandum of October 30, 2014 on the AvalonBay at Somers P project.

Connection to Lot 6

Given the proposed creation of Lot 6, the applicant needs to submit proposed roadway connection of that lot to the rest of the Planned Hamlet so it can be identified on the preliminary plat and function as an integral part of the Planned Hamlet community. Connection to the North County Trailway also needs to be identified if it has not already been shown. These proposed connections should be prepared for review and discussion by the Planning Board and the Public hearing should remain open until the Planning Board and public have had an opportunity to review such connections.

Cape Cod curbing was addressed in the response letter as being most appropriate on such a connector road. When the route of the connector road is identified, it should include Cape Cod curbing as identified in the Master Plan.

Reserve Water Storage System

In discussion with Adam Smith, Town Water Superintendent, on Master Plan issues, it was emphasized that a goal of the Town was to create a looped water system along the Route 6 corridor. Water lines currently exist along Route 6 coming from the east and stop at Mahopac Avenue. Lines from the west begin at the Yorktown border, go east up Windsor Road and stop at Brianna Lane. It is the intention of the Hidden Meadow project to extend the water main from Brianna Lane down Windsor Road and across Route 6 through a culvert to provide water to the Hidden Meadow project. Therefore, the portion from Hidden Meadow project east to Mahopac Avenue is the area remaining necessary to complete the water loop.

Within this context, the Resolution to Extend the Amawalk Shenorock Water District approved by the Town Board July 15, 2009 included the following environmental findings #3.

“3. In view of the documented need for looping the water supply system in this portion of the District, the Applicant has agreed with input from the Town Engineer to provide an on-site reserve water storage system until such time as either a water main loop or above ground storage tank is provided. The terms relating to installation of this system will be embodied in a Declaration, the terms of which have been agreed to by the Town Board, to be recorded against the applicant’s property prior to issuance of a building permit for any improvement on Applicant’s property.”

The Applicant should provide a copy of the above referenced Declaration.

In a memorandum of October 30, 2009 from Keane Coppelman Engineers, P.C. to Guy Gagne, Somers Realty’s engineers stated that if an offsite water main loop is not available at the time of request for the first certificate of occupancy for a residential unit of the Planned Hamlet (other than the Senior Affordable Housing units), the applicant would be required to either provide a loop or install a reserve water storage system with a capacity of 100,000 gallons. It was stated that the then envisioned homeowner’s association would be responsible for maintenance and that it would probably be a pneumatic system rather than a gravity system. The location for this system was proposed to be adjacent to the future water tower lot. . The system was to be designed in conjunction with the multi-family site plan process. Should this system be provided, maintenance would now have to be the responsibility of Avalon or Somers Realty.

The Planned Hamlet Master Plan Development Findings Statement of February 10, 2009 identified an impact as being the potential of the development to not receive water during periods of maintenance on the existing 16 inch water transmission line in the absence of a looped water main system connecting to the Windsor Farms District. In addition to the mitigation measure of requiring the applicant to join the Amawalk Shenorock Water District, the following Findings and Conditions related to water service were approved:

- a. *The Master Plan identifies an area of land at the highest elevation on the property for the future construction of water tower to serve the Town of Somers. The land would be offered for dedication to the Town by the Applicant and the water tower would be constructed by the Town at some point in the future if m deemed to be necessary.*
- f. *The Applicant considered the potential to close the Water District main loop by installing a 10-inch water main between Windsor Farm and Mahopac Avenue, a distance of approximately 2,700 linear feet. This would allow the water district to continue to receive water during periods of maintenance on existing 16-inch transmission line. This connection could be achieved, but would require the installation of 2,700 linear feet of pipe within the NYS DOT right-of-way of Route 6 and expenditure of approximately \$810,000 to install the water line. This item, including the buy-in fee to connect to the transmission line, will be reviewed in greater detail by the Town Board during the application process to extend the water district.*

Based on the long term goals of the Town stated by the Water Superintendent and completion of a portion of the unfinished loop by Hidden Meadow, the Planning Board should ask the Applicant to provide a cost comparison of providing an interim reserve water system as identified above compared with the cost to complete the water loop for the remaining portion along Route 6 for its consideration as part of the SEQRA, site plan and subdivision process.

Amendments to Master Plan

The applicant has clearly stated its position that the changes proposed as identified in the project description with the addition of lack of extension of Road B and the creation of additional Lot 6 do not constitute a modification of the Planned Hamlet Master Plan. The Board should consider this question and determine if it also thinks that the proposed modifications do or do not rise to the level of a change to the Planned Hamlet Master Plan. The decision should be considered knowing that, as in the Phase 2 approval, such modification was largely an acknowledgement of such in the resolution of approval, as long as the environmental impacts are no greater than previously studied and envisioned.

**Cc: Roland Baroni
Joe Barbagallo
Steve Ralston
Adam Smith
Linda Whitehead
Janet Giris
Rich Williams**

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MEMORANDUM



TO: Town of Somers Planning Board
CC: Marilyn Murphy, Planning Board Secretary
FROM: Joseph C. Barbagallo, P.E., BCEE
DATE: October 30, 2014
RE: Somers Realty Planned Hamlet – Phase III Subdivision
Subdivision Plat Application
Route 6 and Mahopac Avenue
TM: 4.20-1-13,14,15, PH

GENERAL

The purpose of this memorandum is to provide the Planning Board with a summary of our comments related to our review of the Preliminary Subdivision Plat Approval Application that has been submitted for the parcel located at 50 Route 6. This subdivision application has been filed and is being reviewed in conjunction with a site plan application by Avalon Bay Communities, Inc. for the construction of 152 housing units located on proposed subdivision parcel Lot 3A. The Application proposes to further subdivide the existing 59.0 acre Lot 3 to create five (5) new lots that include the Avalon Bay Communities parcel, Village Green, and lots for future commercial development and construction of the proposed firehouse. The SEQR process relative to the Master Plan subdivision was completed in February 2009 through Planning Board acceptance of the Final Environmental Impact Statement (EIS) and approval of the Planned Hamlet.

Land disturbance relative to this subdivision application is limited to the extension of Clayton Boulevard, construction of proposed Town Roads "B", "C", "D" & "E" and improvements to the U.S. Route 6 shoulder, construction of stormwater management practice areas as well as construction of utility infrastructure to serve the new development. The following documents were received during the current review period:

DOCUMENTS RECEIVED

- Cover Letter, by McCullough, Goldberger & Staudt, LLP, dated October 20, 2014.
- Survey: "Preliminary Subdivision Plat known as the Somers Realty – PH Zone Phase III Re-Subdivision of Lot 3", prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., dated October 20, 2014.
- Memorandum to Engineering Department, by Town of Somers Open Space Committee, dated October 3, 2014.

PERMITS AND APPROVALS REQUIRED

- Town of Somers Planning Board: Approval of Modifications to Master Plan**
- Town of Somers Planning Board: Subdivision Plat Approval



- Town of Somers Planning Board: Stormwater Management and Erosion and Sediment Control Permit
- Town of Somers Planning Board: Wetlands Activity Permit
- Town of Somers Planning Board: Tree Removal Permit
- Town of Somers Planning Board: Steep Slopes Protection Permit
- Town of Somers Architectural Review Board Approval
- Town of Somers Open Space Committee Approval
- Town of Somers Fire Department: Approval of Proposed Hydrant Locations
- NYC DEP: Approval of Stormwater Pollution Prevention Plan
- NYC DEP: Approval of Variance for Construction of New Impervious Surfaces
- NYSDEC: State Environmental Quality Review**
- NYSDEC: SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001)
- NYSDOT: Highway Work Permit
- Westchester County Department of Health (WCDOH): Approval of Water and Sanitary Sewer Systems
- Westchester County Department of Health (WCDOH): Realty Subdivision Approval
- United States Army Corp of Engineers: Wetlands Permit

** - If proposed development activities are determined by the Planning Board to warrant modification of the previously approved Master Plan and/or require additional review under SEQR.

DISCUSSION

The documents provided with the current submittal consist of a revised Preliminary Subdivision Plat and cover letter by the Applicant's attorney. No further documents or design reports were included with the current submittal. The revised plat depicts the extension of Town Road "B" to terminate at the southern property line border with the neighboring parcel on Tax Lot 15.08-1-3. The new subdivision plat showing the extension of Town Road "B" is consistent with the original layout approved at the time of Master Plan approval for the Planned Hamlet. It should be noted that further site development with the proposed roadway extension is not proposed by the current subdivision application at this time. Site development related to the proposed Town Road "B" roadway construction is shown to terminate at the Avalon Bay Communities driveway located Buildings No. 2 and 5.

The Applicant's cover letter also indicates that the location of the access to proposed Lot 6 is currently being developed at will be presented through a series of alternative sketches at the upcoming meeting of the Board. We look forward to the Applicant's presentation and will offer initial comment on the proposed alternatives at that time.



It should also be noted that statements by the Applicants attorney relating to the installation of Cape Cod curbs appear accurate and were considered at the time of Master Planned Hamlet Approval. Based upon our review of the Planned Hamlet findings statement, installation of Cape Cod curbs was prescribed for roadway portions located within regulated wetland buffer areas.

The status of our previously identified engineering comments, summarized most recently by our memorandum dated September 29, 2014 are unchanged by the current submittal by the Applicant and are carried forward as summarized below. The status of all previously identified engineering comments as well as new comments is shown in **Bold Type**. Comments previously addressed by the Applicant have been removed from our memorandum at this time. It should be noted that additional comments may be added following the receipt of revised documents and design details.

1. The Applicant has provided a drawing sheet titled "Master Plan Conformance Drawing" that compares the new proposed layout of the phase III planned hamlet subdivision development to the Master Plan. Unlike the previous Lot 3 subdivision development, the currently proposed layout is concentrated within a development cluster at the center of Lot 3A, surrounding the Village Green area. The western portion of proposed Lot 3A is now identified as a future reserve parcel and proposed "Town Road D" has been shortened from the approved planned hamlet layout.

Provided subdivision construction drawings "SP-3.1" – "SP-3.3" depict the proposed limits of project disturbance relative to anticipated site disturbance that was contemplated during Master Plan approval. In general, overall site disturbance has been reduced by the proposed development layout. The following is a summary of observed key modifications from the approved Planned Hamlet Layout

- The plans identify the south-western portion of Lot 3A as a "reserve parcel" where development is no longer proposed by the planned residential development. **Comment No Longer Applicable. The proposed subdivision plat has been revised and now identifies the former Lot 3A as proposed Lot 6 (no longer a reserve parcel). The Applicant's provided comment response indicates that the Lot is currently being marketed towards nursing care facilities, consistent with discussion at the August 2014 meeting of the Planning Board.**
- The limits of proposed disturbance have been expanded slightly in western portion of Lot 3A, adjacent to the proposed intersection of Clayton Boulevard and U.S. Route 6. This expanded disturbance is shown to allow for the construction of shoulder/turning lane improvements on U.S. 6 and for the construction stormwater management practices. A portion of this area is located within the limits of identified Town Wetland Area "A" and its associated wetland buffer as well as the buffer of the NYC DEP watercourse. **No further comment necessary.**
- A balanced cut/fill is no longer proposed for the Subdivision development. Approximately 60,000 cubic yards of excess cut material is identified to be removed from the site by the provided project documents. **Detailed earthwork**



calculations are to be provided by the Applicant with more future detailed design submittals.

- The location / size of proposed stormwater management practices has been modified from the Approved Master Plan, based upon the revised development layout. **No further comment necessary.**

The Planning Board should consider during the course of project review if these modifications warrant modification of the Master Plan approval or if new potential project impacts require additional review under SEQR.

2. The site development activities involve greater than 2 acres of site disturbance and require review and approval of the project SWPPP by the NYC DEP. In addition, project disturbance requires the approval of a variance from NYC DEP for the construction of new impervious surfaces within the limiting distance of identified watercourses and wetlands.

Variance approval for this project is specifically related to the proposed extension of Clayton Boulevard to its intersection with U.S. Route 6 where crossing of identified "Town Wetland A" and a NYC DEP identified watercourse is required. In addition, the layout of "Town Road D" is shown to be constructed through a portion of identified "Town Wetland E". Satisfaction of NYC DEP requirements for issuance of a variance was identified on Planning Board Resolution No. 2013-01, under "On-going Conditions Required After Signing of Plat", Condition No. 2, to be completed prior to any further development on Subdivision Lot 3. The Applicant shall be required to review both of these crossings with the NYC DEP, obtain all required variances and address all NYC DEP requirements to achieve issuance of necessary permits and approvals. **Not Addressed. The Applicant indicates that application for variance is currently being prepared for submittal to NYC DEP.**

3. It has come to our attention through recent discussions with the New York State Office of the Attorney General, Watershed Inspector General, that in accordance with the Clean Water Act, additional requirements are applicable for projects located within the TMDL watershed of the Amawalk Reservoir. These requirements are in addition to those regulations already required by the NYSDEC SPDES program and the Enhanced Phosphorous requirements of the Stormwater Management Design Manual.

The proposed Lot 3 subdivision development layout has been modified from what was contemplated at the time of Planned Hamlet approval and the conclusion of project SEQR review. Based upon this understanding, the Applicant shall prepare a site specific phosphorous loading analysis that compares the current proposed post development conditions to those post development conditions that were reviewed at the point of Master Plan approval. The Planning Board shall determine whether additional study is required as part of project review. **Addressed. The Applicant has provided a pollutant loading analysis for phosphorous with the current project submittal. It is noted that the provided analysis compares the proposed planned hamlet development, exclusive of the MEWS Phase I and Phase II lots, to the pre-development existing conditions. The analysis findings indicate that the proposed stormwater management practices yield a slight net reduction of annual phosphorous loading from the overall development.**



Based upon our review of the provided information, it is our recommendation that the analysis methodology and results are acceptable. Final acceptance of pollutant loading analysis will be determined upon receipt of the final design SWPPP and construction drawings.

4. The Applicant has prepared a preliminary Stormwater Pollution Prevention Plan (SWPPP) and drawings to describe proposed project stormwater infrastructure. Our office has commenced review of the provided hydrologic and hydraulic design calculations and stormwater management practices and will continue our review as further more detailed design submittals are received. The following comments are related to our initial review of the proposed site stormwater plan and management practices.
 - a. The Applicant shall include additional required elements within future complete SWPPP submittal as specified by Somers Town Code Chapter 93 and the NYSDEC SPDES General Permit for Construction Activity (GP-0-10-001). Additional required elements include but are not limited to, stormwater practice maintenance and inspection worksheets to be used by the Qualified Inspector, and a Contractor Certification Statement. **Addressed.**
 - b. The Applicant shall prepare hydraulic pipe design calculations for all proposed stormwater conveyance pipe. Hydraulic calculations shall demonstrate adequate capacity to convey runoff collected by the 100 year design rainfall without surcharging. **Not Addressed. To be provided with future detailed SWPPP submittal.**
 - c. The Applicant shall update the plans to indicate rim and invert elevations on all stormwater infrastructure on subsequent more detailed submittals. **Not Addressed. To be provided with future detailed SWPPP submittal.**
 - d. The Applicant shall revise the SWPPP to include the Post Development HydroCAD Model Node Routing Diagram on a full size letter page. **Addressed.**
 - e. The provided Master Plan Conformance Drawing sheet identifies that Stormwater Design Point 2 receives a watershed of 27.8 acres, while the provided HydroCAD report considers a drainage area of 33.17 acres. The Applicant shall revise the project documents to reflect the correct drainage area. **Comment No Longer Applicable.**
 - f. The Application proposed to utilize Surface Sand Filters (NYSDEC Type F-1) as a treatment practice for stormwater collected within identified subcatchments 2.1, 3.1 and 3.3 within the development. The following comments are applicable to our review of the preliminary sand filter sizing calculations and details that have been provided at this time:
 - i. The Applicant shall provide site investigation data to demonstrate minimum 2 foot vertical separation between the invert of the proposed sand filter and groundwater/bedrock. **Partially Addressed. The Applicant has provided preliminary testing data with the current submittal. Further site investigation is being undertaken and data results will be included with future submittal.**



- ii. The Applicant shall provide sizing calculations for sand filter pretreatment sediment forebays, based upon the formula specified by Section 6.4.3 of the NYSDEC Stormwater Management Design Manual, latest edition. **Addressed. Sizing calculations to be confirmed upon receipt of the final design SWPPP and design drawings.**
 - iii. The Applicant shall provide a site specific construction detail for proposed surface sand filters, consistent with the NYSDEC Stormwater Management Design Manual, latest edition. The construction detail should include a summary table to identifies all applicable inverts for each sand filter practice. **Partially Addressed. The provided drawings include a construction details for typical sand filter cross section, but do not identify specific component design elevations. Final construction details to be provided with final detailed submittal.**
 - iv. The Applicant shall update the plans and detail to utilize 8" diameter perforated pipe as the filter underdrain. **Addressed.**
 - v. The provided HydroCAD hydrologic model data for proposed sand filters does not accurately represent practice stormwater volume storage for the design rainfall events. The Applicant shall revise the HydroCAD report to model sand filter exfiltration so that filter basin storage is accurately represented over required design storms. The Applicant may contact our office directly if further clarification is desired on this matter. **Addressed. The provided modeling data demonstrates adequate capacity within proposed sand filter practices. Practice storage volumes will be confirmed upon receipt of the final design SWPPP and design drawings.**
- g. The Application proposes to construct Pocket Wetlands Area (NYSDEC Type W-4) as a treatment practice for stormwater collected within identified subcatchments 2.1S and 2.3S. The following comments are based upon our initial review of the proposed wetlands design calculations that have been provided at this time.
- i. The Applicant shall prepare a Wetlands Landscaping Plan based upon Appendix H of the NYSDEC SWMDM. The Applicant shall consider the placement of chloride tolerant plant species in development of the Landscaping Plan. **Not Addressed. To be provided with future detailed SWPPP submittal.**
 - ii. The Applicant shall prepare a profile view construction detail for the proposed wetland area with a summary table that shows all applicable invert elevations for the each proposed pocket wetland system. **Partially Addressed. The provided drawings include a profile view construction detail of the pocket wetland practice, but does not summarize all respective invert elevations for practice structures.**
 - iii. Provide wetland sizing calculations that show that a storage volume of at least 10% of the required water quality volume is provided within a



micropool at the wetland outlet control structure. **Addressed. Sizing calculations to be confirmed upon receipt of the final design SWPPP and design drawings.**

- iv. Update the layout plan to demonstrate that required planting setbacks are provide between the maximum water surface elevation and adjacent structures. **Addressed.**
- h. The Applicant proposes to construct a Extended Detention Stormwater Pond (NYSDEC Type P-1) surface sand filter as part of the proposed site stormwater infrastructure. The following comments are related to our review of the proposed surface sand filter design.
 - i. The Applicant shall provide site investigation data to identify the existing groundwater elevation at the proposed pond site relative to the proposed pond invert. **Partially Addressed. The Applicant has provided preliminary testing data with the current submittal. Further site investigation is being undertaken and data results will be included with future submittal.**
 - ii. The Applicant shall prepare a profile view construction detail for the proposed Extended Detention Pond with a summary table that shows all applicable invert elevations of the proposed practice. **Partially Addressed. The provided drawings include a profile view construction detail of the pond practice, but does not summarize all respective invert elevations for practice structures.**
 - iii. Provide sizing calculations that demonstrate a storage volume of at least 10 percent of the calculated water quality volume is provided within the pond inlet forebay. **Addressed.**
 - iv. Provide a calculation of pond surface area relative to drainage area, as defined by Section 6.1.4 of the NYSDEC SWMDM. **Addressed.**
 - v. Demonstrate that an aquatic bench (maximum ponding depth of 18 inches) is provided surrounding all deep water pools in excess of 4 feet depth. **Addressed. Pond grading to be confirmed upon receipt of the final design SWPPP and design drawings.**
 - vi. Update the layout plan to demonstrate that required planting setbacks are provide between the maximum water surface elevation and adjacent structures. **Addressed.**
 - vii. The Applicant shall prepare a Landscaping Plan for the stormwater pond and buffer consistent with the requirements of the NYSDEC SWMDM, latest edition. The Applicant shall consider the incorporation of chloride tolerant plantings for the Landscaping Plan. **Not Addressed. To be provided with future detailed SWPPP submittal.**
- i. The Applicant proposes to utilize porous pavement for a portion of Proposed Town Road "D" within the eastern portion of the subdivision development. Porous



pavement systems must be designed in accordance with Chapter 5 of the NYSDEC SWMDM. The following comments are based upon our initial review of the proposed porous pavement areas.

- i. The Applicant shall provide a construction detail for the typical porous pavement installation, including all cross section materials and depths. **Not Addressed. To be provided with future detailed SWPPP submittal.**
- ii. The Applicant shall provide site investigation data (soil percolation and deep hole testing) to demonstrate feasibility of the proposed porous pavement infiltration systems. Site investigation data shall demonstrate adequate separation to bedrock/groundwater and must prove adequate infiltration rates of site soils. **The Applicant states that the proposed porous pavement installation will not be contemplated towards project stormwater management objectives and goals, and is proposed to conform with conditions of prior planned hamlet approval.**
- iii. The Applicant shall provide sizing details for porous pavement areas. Consistent with the NYSDEC SWMDM, porous pavement system stone reservoirs must be designed to contain runoff volume from the 10 year design storm without flooding. **Comment No Longer Applicable. Refer to Comment No. 4 (I)(iii), above.**
- j. The Applicant shall provide sizing calculations for all proposed water quality swales/dry swales as referenced on the project drawings and SWPPP. The Dry Swale design must demonstrate compliance with Section 6.5 of the NYSDEC SWMDM. **Partially Addressed. Further design details for the proposed dry swale practices will be reviewed upon receipt of the final SWPPP and drawings.**
- k. The Applicant shall provide sizing calculations for proposed spillways and stabilized outlet protection practices based upon peak runoff flows resulting from the 100 year design storm. Sizing calculations and associated construction details shall demonstrate that stormwater flows are discharged in a manner that minimizes the potential for erosive impacts to downgradient land surfaces and receiving wetlands/watercourses. **Partially Addressed. Provided hydraulic analysis will be reviewed upon review of the final SWPPP. The Applicant should include a stabilized outlet protection design summary table to detail the stone size and dimensions for each outlet practice based upon the hydraulic peak flows discharged.**
- l. Provided drawing sheet "SP-2.3" depicts that bypassed stormwater from proposed Surface Sand Filter "3.3" will be routed through stormwater piping towards drainage design point 3. The project plans to not illustrate the termination and stabilized outlet control device of the identified stormwater pipe. The Applicant must update the plans to show the proposed pipe outlet and associated flow dissipation measures. **Addressed.**



- m. The Applicant shall prepare a draft Stormwater Maintenance Agreement for review and acceptance by the Consulting Town Engineer and Town Attorney. **Partially Addressed. The Applicant has included a draft Stormwater Maintenance Agreement (SMA) with the current submittal. Our office has commenced review of the agreement and will provide our specific comments directly to the Applicant's Engineer.**
5. The Application proposes to construct new roadways intended for future dedication to the Town of Somers. These roadways are shown on the site drawings to include the extension of Clayton Boulevard (formally Town Road "A") as well as the construction of other roadway segments, Town Roads "B", "C", "D" & "E". The provided submittal includes proposed roadway profiles on drawing sheet "PR-1" as well as a construction detail based upon "Town Road A" code standards. Based upon our review of the provided information, the following Town Code requirements are not met by the proposed Roadway Design and are intended for consideration by the Planning Board:
 - a. Three (3) percent maximum grade within 60 feet of all Town Road intersections.
 - b. Minimum 100 foot length of tangent between reverse curves
 - c. Minimum K value of 35 for sag vertical curves

The following additional comments are applicable to our review of the roadway design documents:

- a. The Applicant shall update the plan to identify approximate sight distance at all proposed road intersections of Clayton Boulevard, including the connection to U.S. Route 6. **Partially Addressed. Sight distance at the proposed intersection of Clayton Boulevard and U.S. Route 6 has been identified on the Highway Improvement Plans by Maser Consulting. The Applicant indicates that traffic study and analysis for other proposed intersections was previously completed during review of the Planned Hamlet. It is our recommendation that at a minimum, the Applicant should update the plan to reference sight distances determined by previous analysis at proposed intersections within the development. Identification of sight distance will allow for verification that the proposed site grading has not changed apparent line of sight of intersections in an unsafe manner that would warrant further analysis and design consideration**
- b. Town Code §150-24(E) requires that sight easements be provided across all corners at intersections, outside the street right-of-way, to allow for maintenance of a clear line of sight for traffic at the intersection. The Applicant shall provide the necessary documents to comply with sight easement requirements of Town Code. **Partially Addressed. Easement agreement documents will be included with future submittal.**
- d. Improvements to the shoulder of US Route 6 are subject to the design standards, review and approval of the NYSDOT. The Applicant shall provide supporting design documents related to Route 6 improvements for review and record by the Consulting Town Engineer. **Partially Addressed. The provided application**



submittal includes Preliminary Highway Improvement Plan drawings by Maser Consulting for U.S. Route 6. While it is noted that the provided drawings are preliminary in nature, we would like to offer the following comments for consideration at this time:

- i. **The proposed layout of the curb island/median within Clayton Boulevard at the intersection with U.S. Route 6 must be coordinated with the project drawings by Insite.**
 - ii. **Provide details for the proposed relocation of fire hydrants located on the shoulder of U.S. Route 6. The Applicant shall provide fire hydrant appurtenances that are satisfactory to the Town of Somers Fire Department, if new replacement fixtures are proposed.**
 - iii. **Proposed highway improvement work must be sufficiently described and detailed in the project construction sequence.**
 - iv. **Design of proposed drainage and utility infrastructure within the proposed area of the highway improvements must be coordinated with required burial depths as noted on the plans by Maser Consulting.**
6. The Applicant has included preliminary erosion and sediment control plan elements as contained on drawing sheets "SP-3.1" – "SP-3.3" and the project SWPPP. The following comments are based upon our review of the preliminary erosion and sediment control plan and should be incorporated in future more detailed plan submittals:
- a. The plans identify that Extended Detention Pond 3.2P and Pocket Wetland Area 2.2P will be utilized as temporary sediment traps during construction activities. The Applicant shall address the following comments relative to the proposed temporary sediment traps:
 - i. Provide temporary grading and/or notes on the erosion and sediment control plan to demonstrate that the proposed invert of each sediment trap is a minimum of two feet higher than the proposed final inverts of the stormwater management practice. The Applicant shall include a note that all accumulated sediment must be removed from the temporary sediment traps prior to excavation of subgrade for the proposed stormwater management practices. **Not Addressed. To be provided with future application submittal.**
 - ii. Provide sizing details for proposed sediment traps consistent with the requirements of the NYSDEC New York Standards & Specifications for Erosion & Sediment Control, latest edition. **Not Addressed. To be provided with future application submittal.**
 - iii. Provide a construction detail for typical sediment trap consistent with the NYSDEC New York Standards & Specifications for Erosion & Sediment Control, latest edition. **Not Addressed. To be provided with future application submittal.**



- b. Update the plan to show an additional stabilized construction entrance at the end of the Clayton Boulevard Phase II hammerhead turn-around, for use by construction traffic upon completion of Phase II construction activities. **Addressed.**
 - c. Revise the layout of silt fence as shown on sheet "SP-3.1" located adjacent to southwest corner of the proposed Extended Detention Pond to capture upgradient disturbance by the proposed elevation 536' contour. **Addressed.**
 - d. The Applicant shall update the plan to show the location of proposed roadway monuments. The drawings shall include a construction detail for typical roadway monument consistent with Town Code requirements. **Addressed.**
 - e. The erosion and sediment control plan shall consider if additional measures are necessary to minimize temporary impacts from proposed construction activity to the nearby stormwater management practices and pump station part currently in construction as part of the Phase II planned hamlet development. **Not Addressed. Review of the erosion and sediment control devices and design of the proposed water quality swale to be constructed will be completed upon receipt of future detailed submittal.**
7. The Applicant shall revise the provided construction detail for typical drainage catch basin to specify a Campbell Foundry Type 2541 frame and grade, and show top of frame set 1 inch below surrounding pavement, as specified by Town Code. **Addressed.**
8. The Applicant shall revise the provided construction detail for typical drainage manhole to specify a Campbell Foundry Type 1203 Frame and Cover and show top of frame set 1 inch below surrounding pavement, as specified by Town Code.. Proposed covers shall read the word "DRAIN" as specified by Town Code. **Addressed.**
9. The Applicant shall revise the provided construction detail for proposed wood guardrails to address the following comments, as required by Town Code Section §A174-28:
 - a. Revise the detail to utilize a support post equivalent or equal to a 12" diameter circular pressure treated timber post. **Comment No Longer Applicable. Proposed guardrail posts are noted be consistent with those installed as part of the Phase II Subdivision Development.**
 - b. Revise the detail to specify the minimum embedment of the post footing as 3'-6" below ground surface and identify exposed post height as 2'-3.5" above ground surface. **Addressed.**
 - c. Revise the detail to note that posts shall be spaced at four feet on-center. **Addressed. It should be noted that proposed guardrail post spacing should be kept consist with spacing provided by guardrails part of the Phase II subdivision development.**
10. The Applicant is required to satisfy Town of Somers Fire Department requirements for the construction of firefighting measures within the proposed subdivision development. The Applicant shall update the plan to identify the proposed locations of fire hydrants and truck pull-off locations, as determined by the Town of Somers Fire Department. **Partially Addressed. The Applicant indicates no comments were received following review of**



the plan by the Somers Fire Prevention Bureau. The Applicant shall provide documentation of no objection by the Somers Fire Prevention Bureau, prior to final approval of the proposed subdivision.

11. The provided plans depict that street trees are proposed to be planted along the Clayton Boulevard extension, south-west of proposed Town Road B. The Applicant should note that specific requirements for street tree plantings are provided by Town Code §150-22 (D). The Applicant shall revise the construction detail intended for street tree plantings to reflect the required town code standards. **Addressed.**
12. The Applicant's SWPPP acknowledges that a phased construction approach is necessary to ensure that no greater than 5 acres of land are disturbed at one time. The Applicant shall develop a land disturbance phasing plan that is coordinated to the proposed description of construction sequence, Erosion and Sediment Control Plan, and related comments provided under Comment No. 14, below. **Not Addressed. Project land disturbance phasing plan to be prepared with future application submittal.**
13. The Applicant has provided preliminary documents that describe the anticipated earthwork and grading for the proposed phase III development. The following comments are based upon our initial review of the documents that have been received.
 - a. The provided project documents indicate that as a result of the revised layout, a balanced cut fill is no longer feasible for the proposed development. As a result of these changes, a net export of approximately 60,000 cubic yards of material is anticipated to be transported off-site as a result of construction activities. An estimate of this earthwork and the associated truck traffic from export activities is included on the provided Short Environmental Assessment Form, that was prepared by the Applicant.

A large portion of the material to be exported is identified to be taken from the soil stockpiles that were generated during Phase II of the Somers Realty Subdivision and MEWS Phase II projects. These projects are still in construction and must be coordinated with the development proposed by the Phase III subdivision construction. The following sub-comments summarize our concerns related to the proposed soil export activities:

- i. The Planning Board should consider whether the proposed net soil export for the site warrants additional review under SEQR. **Not Addressed. Detailed earthwork calculations have not been included at this time. The Planning Board should consider whether the Applicant's Comment response that peak traffic from off-site hauling of extra cut volume does not warrant additional review under SEQR.**
- ii. The Applicant shall develop a proposed final earthwork plan that is coordinated with the land disturbance phasing plan. The earthwork plan shall include a proposed earthwork map that indicates the depth and volume of cut and fill placement throughout the entire proposed area of disturbance. The plan shall also describe the limits and approximate height of all temporary stockpile areas and should detail the intended



schedule of truck loading and hauling operations. **Not Addressed. To be prepared with future application submittal.**

- iii. The Applicant shall provide structural measures to minimize dust generation during fill export activities. These plan elements must be coordinated with the Land Disturbance Phasing Plan and project erosion and sediment control plan within the SWPPP. **Partially Addressed. To be confirmed upon receipt of the Land Disturbance Phasing Plan and final Erosion & Sediment Control Plan.**
- iv. The Applicant shall characterize all soils planned for export to demonstrate compliance with NYSDEC DER-10 and CP-51 guidance document standards for exported fill material. **Not Addressed.**
- b. The Applicant shall prepare a rock removal plan to describe rock excavation activities during construction. The rock removal plan shall estimate rock removal quantities based upon the revised development layout and shall describe the limits of and methodology intended to be used for rock excavation. **Not Addressed. To be prepared with future application submittal.**

14. The provided plans do not depict any street lighting to be constructed within the proposed Town Roads and associated development areas. While it is understood that this information may be included in a future more detailed design submittal, the Applicant should note that all proposed street lighting, if proposed, must be shown on a future plan submittal. A project photometric plan that depicts illumination levels based upon the layout and intensity of light fixtures must be also prepared for review if street lighting is proposed. **Addressed. The provided comment response indicates that all proposed street lighting is shown on the drawings prepared by Milone & MacBroom. No additional street lighting within the Somers Realty Subdivision is proposed.**
15. Town of Somers regulated wetlands are located on the project site within the vicinity of the proposed subdivision development. These wetland limits were previously delineated by the Applicant and were most recently confirmed by NYC DEP representatives on May 19, 2014. The Applicant shall provide a Wetlands Impact Analysis prepared by a certified wetlands scientist that analyzes any potential impacts to the identified wetlands based upon the proposed site development and hydrologic conditions. Part of such Wetlands Impact Analysis will require the preparation of a Wetlands Mitigation Plan that restores any ecological functions that may become disturbed/impaired as a result of the development activities. The Applicant shall prepare a Wetlands Mitigation Plan that includes a planting plan for proposed disturbance to all wetlands and regulated buffer areas. It should be noted the proposed wetland mitigation impact analysis and mitigation plan are also subject to the permit conditions and requirements of the NYC DEP and U.S. Army Corp of Engineers. **Partially Addressed. Assessment of existing wetland function and proposed impacts relative to those contemplated under Master Plan approval has been provided. Our office has commenced review of this assessment and will provide comments, if determined necessary, upon completion of review. Documentation of Army Corp Wetland Permit issuance must be provided upon Applicant receipt.**



16. The Applicant has provided preliminary design layout for the proposed water main extension within Clayton Boulevard. Further detailed design documents have not been submitted at this time but are expected with future application submittals. Our office has completed initial review of the provided information and has identified the following comments as cited below. It should be noted that these comments reflect our review of the conceptual level of detail that has been provided and that additional comments will be issued upon future submittal of detailed design documents:

Water Main Extension

- a. The Applicant shall provide a profile view drawing of the proposed water main extension. The profile shall demonstrate that adequate vertical separation is provided at all proposed pipe crossings as shown on the project layout plan drawings. **Not Addressed.**
 - b. Update the plans to identify size and material of the proposed water main extension and connections. **Addressed.**
 - c. Provide a construction detail for the proposed water main connection to the existing public supply main located within the U.S. Route 6 Right of Way.
 - d. Provide an Engineering Report with supporting calculations for the proposed water main extension. **Not Addressed.**
 - e. **Revise the plan to note where tapping sleeve and cap connection details are to be used (i.e., note at Route 6: Connect new 10" water main to existing 10" water main with tapping sleeve and valve, per detail [...])**
 - f. **The provided hydrant detail shall call out stainless steel tie rods instead of galvanized.**
 - g. **Include construction details for proposed valve box I and utility/sanitary sewer crossing and separation.**
 - h. **Note pipe size for stub to AvalonBay development. AvalonBay plans call for 8" water main.**
 - i. **Thrust blocks or restrained joints shall be required at all bends and fittings, including caps and tees. Include thrust block or restrained joint table or detail.**
17. The grading and utilities plans do not include proposed electrical and gas service utilities for the development within the proposed Town Roads. Future detailed plan submittals shall include the proposed layout of site electrical service and gas service mains within the Phase III subdivision development. **Not Addressed. Utility information to be incorporated into future application submittals.**
18. Provided drawing sheets "SP-1.1" – "SP-1.3" include a survey of existing site trees and identify all trees to be removed as a result of development activities. The Applicant shall clarify if any existing trees are proposed to remain following project completion and will require protection during construction activities. The Applicant shall update the layout plan



to label all trees to be protected during construction and must include a construction detail for typical tree protection, if proposed. **Addressed.**

19. The provided project drawings show that the western portion of proposed Lot 3A, where development is no longer proposed by the residential site plan application at this time, is now identified as a "Reserve Parcel". The Applicant shall clarify if their intent is to develop the identified "Reserve Parcel" at a later time, and if future development is contemplated, describe how access to the parcel will be provided. It should be noted that separate access to this parcel from Mahopac Avenue was not considered under the previously completed Planned Hamlet SEQR process, if such an access route is proposed. **The provided cover letter indicates that the previously identified reserve parcel is now included in the current subdivision as Lot 6 and will be marketed towards a senior living facility. It should be noted that future SWPPP and stormwater design document submittals must consider development of Lot 6 as part of the post development site condition.**
20. **The revised plans show the layout of Town Road B has been extended to the southern parcel property line as was considered at the time of Master Plan approval. The Applicant is responsible for contemplation of stormwater runoff flows from future roadway construction within the Town Road B right of way and must coordinate with Avalon Bay Communities for the creation of necessary easement area(s) for the location stormwater management practices if such practices are determined to be necessary.**

Please feel free to contact our office anytime with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph C. Barbagallo".

Joseph C. Barbagallo, P.E., BCEE
Consulting Town Engineer

MEMORANDUM



TO: Town of Somers Planning Board
CC: Marilyn Murphy, Planning Board Secretary
FROM: Joseph C. Barbagallo, P.E., BCEE
DATE: October 30, 2014
RE: Avalon Bay Communities, Inc.
Site Plan Application
U.S. Route 6 and Mahopac Avenue
TM: 4.20-1-13,14,15, PH

GENERAL

The purpose of this memorandum is to provide the Planning Board with a summary of our comments related to review of the site plan application that has been submitted for the proposed parcel located within the Planned Hamlet at the intersection of U.S. Route 6 and Mahopac Avenue. This site plan application has been filed and is being reviewed in conjunction with a subdivision plat application by Somers Realty Corporation for the further subdivision of the Planned Hamlet development and construction of Town Roadways and common infrastructure. This site plan is located on proposed Lot 3A within the Phase III subdivision and involves the construction of 152 housing units. The proposed housing units will be constructed among 17 residential buildings, along with 324 parking spaces and related site infrastructure. The project site will be served by public water supply and sanitary sewer utilities that will be constructed as part of the related subdivision plat application.

It should be noted that the SEQR process relative to the Site Plan was completed in February 2009 through Planning Board acceptance of the Final Environmental Impact Statement (EIS) and approval of the Planned Hamlet. The following documents were received during the current review period:

DOCUMENTS RECEIVED

- Cover Letter, by Delbello, Donnellan, Weingarten, Wise & Weiderkehr, LLP, dated October 20, 2014
- Letter, by Thomas J. Daly, PE, Milone & MacBroom, Inc., dated September 15, 2014, including "Sanitary Sewer and Potable Water Design Summary."
- "Engineering Report", prepared by Milone & MacBroom Inc., dated June 9, 2014, revised October 20, 2014.
- "Avalon Bay Somers", Selected Drawing Sheets: 1 – 10, prepared by Milone & Macbroom, Inc., dated June 9, 2014, last revised October 20, 2014.

PERMITS AND APPROVALS REQUIRED

- Town of Somers Planning Board: Site Plan Approval



- Town of Somers Planning Board: Stormwater Management and Erosion and Sediment Control Permit
- Town of Somers Planning Board: Wetlands Activity Permit
- Town of Somers Planning Board: Tree Removal Permit
- Town of Somers Planning Board: Steep Slopes Protection Permit
- Town of Somers Fire Department: Approval of Proposed Hydrant Locations
- Town of Somers Architectural Review Board Approval
- NYC DEP: Approval of Stormwater Pollution Prevention Plan
- NYC DEP: Approval of Sanitary Sewer Connections
- NYSDEC: State Environmental Quality Review**
- NYSDEC: SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001)
- Westchester County Department of Health (WCDOH): Approval of Water and Sanitary Sewer Systems

** - If proposed development activities are determined by the Planning Board to warrant modification of the previously approved Master Plan and/or require additional review under SEQR.

DISCUSSION

The provided submittal by the Applicant focuses on the design of site stormwater management and green infrastructure practices intended to address Runoff Reduction Volume (RRV) requirements of the NYSDEC Stormwater Management Design Manual. Proposed site stormwater practices have been modified from those considered on previous submittals by the Applicant. Most notably, the plans have been revised to include three Bioretention filter, six rain garden areas, two dry swales and two cisterns where “infiltration areas” were previously proposed by the Applicant. In addition, porous pavement has been eliminated within the western portion of the development and is now located within proposed parking bays adjacent to Buildings 1 through 9. Calculations from these practices will be incorporated into the combined Stormwater Pollution Prevention Plan (SWPPP) currently in development by Insite Engineering, Surveying & Landscape Architecture for the Somers Realty Corp Subdivision.

The majority of our other previously identified comments related to site water supply and wastewater systems, earthwork, stormwater pipe hydraulic design and erosion and sediment control remain unaddressed by the current submittal. These comments will be carried forward and be assessed following the receipt of a future complete design submittal by the Applicant. Comments previously addressed by the Applicant have been removed from the summary as follows below.

The following is a summary of our comments at this time. The status of all previously identified comments as well as new comments is shown in **Bold Type**. Further review of our other



previously identified engineering comments will continue upon receipt of more detailed design information.

1. The provided application documents identify approximately 17 acres of disturbance are anticipated as a result of construction activities related to the Avalon Bay site plan. This area of disturbance is contained within the greater 22.7 acres of site disturbance for the overall Phase III Planned Hamlet subdivision. Based upon the Application submittal, the Applicant intends to coordinate the preparation of a single comprehensive Stormwater Pollution Prevention Plan (SWPPP) for the entire Phase III Planned Hamlet Development.

Town Code Chapter §144-7, identifies that preparation of an acceptable SWPPP is a required element necessary for approval of a site plan. Based upon our understanding and interpretation of Town Code, although the SWPPP may contain similar content, rely on comprehensive plan elements (i.e., coordinated Land Disturbance Phasing Plan, Earthwork Plan) and should be coordinated with the general SWPPP for the Somers Realty Corp. subdivision, a separate SWPPP document must be submitted for the Avalon Bay Communities site plan. The Avalon Bay Communities SWPPP will also serve for required review for necessary approvals and permits from the NYC DEP and the NYSDEC SPDES General Permit (GP-0-10-001).

The Applicant has prepared a preliminary Stormwater Engineering Report and drawings to describe the proposed project stormwater infrastructure located on the Avalon Bay Communities Site Plan. These report items, including design of onsite stormwater collection structures, conveyance pipe and associated NYSDEC Runoff Reduction Volume (RRv) calculations are referenced in the preliminary SWPPP that was provided by Somers Realty Corp. We have completed review of the stormwater engineering report that has been provided and offer the following initial comments at this time. It should be noted that further comments may be added upon receipt of more detailed design information:

- a. Page 4 of the provided stormwater engineering report states that hydrologic rainfall intensities for applicable design storms were obtained from the NYSDOT Highway Design Manual. The applicant shall revise design calculations to consider rainfall data from the Northeast Regional Climate Center (NRCC) and SCS Type III rainfall distributions as were considered for the Somers Realty Corp. Subdivision SWPPP. *Partially Addressed. The provided hydraulic computations contain acceptable hydrologic rainfall data from the NRCC based upon peak hourly rainfall intensities for the 100 year storm. Although the provided data is acceptable for the hydraulic sizing of conveyance pipes, the Applicant will also be required to also consider rainfall depths for the respective 24 hour rainfall depths, as is considered by the stormwater practices being designed as part of the Somers Realty Subdivision, to which Avalon Bay will discharge to. It should be noted that the intent of this comment is focused on the design of stormwater conveyance pipes located within the Avalon Bay Communities development prior to connection to the stormwater management practices designed by Insite Engineering, Surveying & Landscape Architecture, P.C. (Insite). The hydraulic calculations that were provided in August 2014 report submittal appear to consider NRCC rainfall intensities for the 100 year design storm assessed through the*



rational method. Hydraulic calculations that have been submitted by Insite apply NRCC rainfall intensities through the SCS TR-55 Type III rainfall distribution. The Applicant shall review their hydraulic calculation methodology to ensure that consistent peak flow data is provided for the overall development SWPPP that is to be prepared by Insite. Addressed. The provided engineering report considers NRCC rainfall depths and hydraulic analysis methodology that are consistent with those utilized by Insite. Stormwater analysis and design consistency with the SWPPP being prepared by Insite will be confirmed upon receipt of the final combined SWPPP and future complete design submittal by Avalon Bay Communities, Inc.

- b. The Applicant has submitted hydraulic pipe design calculations for all proposed stormwater conveyance pipe based upon peak runoff rates resulting from the 10 year design storm. Hydraulic calculations and pipe sizing however shall demonstrate adequate capacity to convey runoff collected by the 100 year design rainfall without surcharging. **Addressed. Comment satisfaction to be confirmed by future SWPPP submittal.**
- c. The Applicant has provided RRv calculations based upon green infrastructure practices and stormwater management practices with RRv credit that are proposed on the Avalon Bay site plan. These calculations are referenced within the Somers Realty Corp. Comprehensive SWPPP.

The provided calculation methodology is inconsistent with the NYSDEC Stormwater Management Design Manual. The following sub-comments relate to our review of the provided RRv calculations:

- i. The water quality volume equation is not appropriate to be used for determination of required Water Quality Volume/RRv for projects located within the NYSDEC East of Hudson Watershed. As referenced by Chapter 10 of the NYSDEC Stormwater Management Design Manual, water quality volume is to be taken as the runoff volume for the respective drainage area based upon the 1 year design storm calculated by the SCS drainage methodology. The site specific minimum reduction factor "S" based upon Hydrologic Soil Group shall be multiplied by the appropriate water quality volume to determine the minimum required site RRv. **Addressed.**
- ii. RRv credit shall be assessed for green infrastructure practices with area reduction (i.e., Rooftop Disconnect) by eliminating the reduced area from the initial required WQv/RRv calculation. **Addressed. Green infrastructure practices with area reduction are not proposed by the current site design and analysis.**
- iii. RRv credit shall be assessed for provided stormwater practices with volume reduction credit, by multiplying the reduction capacity factors contained on Table 3.5 of the NYSDEC Stormwater Management Design Manual for the respective design practice. It should be noted that the



runoff reduction capacity for Infiltration is 90% while Bioretention Filters provide reduction capacity of 80% or 40% depending on the practice design configuration. **Addressed.**

- d. The provided project documents identify that seven infiltration areas will be constructed on the Avalon Bay site plan that will accept stormwater runoff from proposed building rooftops. The Applicant has included a typical construction detail for "Bio-Infiltration Area", as shown on drawing sheet "SD-2". **Addressed. The revised site design utilizes a combination of rain gardens, bioretention filters, dry swales and cisterns. Detailed design comments related to each practice are provided in the sections that follow.**

The practice design is required to conform with the technical standards of the NYSDEC Stormwater Management Design Manual (SMDM). Based upon the provided system cross section, the identified "infiltration areas" are more appropriately considered Bioretention Filter Areas as specified by the NYSDEC SMDM. The following comments are applicable based upon our initial review of these systems:

- i. The Applicant shall provide site investigation data to demonstrate minimum 2 foot vertical separation between the invert of the proposed filter system and groundwater/bedrock. **Addressed.**
- ii. The Applicant shall provide sizing calculations for proposed filter areas based upon minimum filter surface area and storage volume requirements as specified by Section 6.4 of the NYSDEC SMDM. **Partially Addressed. Subsection 6.4.4 requires that at least 75% of the practice water quality volume must be provided in storage (totaling treatment & pretreatment areas) prior to filtration. The Applicant shall revise the design calculations to include an additional calculation of total practice storage prior to filtration (planting soil layer) to verify that the required storage volume is provided.**
- iii. The Applicant shall address how filter system pretreatment requirements for the proposed stormwater practices will be addressed. **Addressed.**
- iv. The Applicant shall revise the provided construction detail for the proposed practice to be consistent with the NYSDEC SMDM requirements. **Partially Addressed. The Applicant shall revise the provided construction detail for proposed Bioretention area to address the following sub-comments:**
 1. **The NYSDEC SMDM specifies that the practice planting soil layer should be between 2.5 and 4 feet in depth.**
 2. **Note that proposed Bioretention areas will be constructed in accordance with the Appendix C Construction Specifications of the NYSDEC SMDM.**



- v. The Applicant shall update the plans and detail to utilize 8" diameter perforated pipe as the filter underdrain (if intended to remain proposed in future design submittals). **Addressed.**
 - vi. The Applicant shall prepare a Landscaping Plan for the proposed stormwater practices, consistent with the requirements of the NYSDEC SMDM. **Addressed.**
 - vii. **Provide hydraulic sizing calculations for proposed diversion structures located upgrade of Bioretention filter areas.**
- e. The Applicant proposes to construct 8" diameter stormwater pipes to convey stormwater collected from building rooftops to proposed "infiltration areas". No further sizing details have been provided at this time. The Applicant shall provide hydraulic sizing calculations for proposed stormwater pipes based upon peak flows collected by the 100 year design storm. In addition, the plan shall be identified to show the location of all proposed cleanouts and drainage structures within the stormwater collection system. **Addressed. Comment satisfaction to be confirmed by future SWPPP and drawing submittals.**
- f. The Applicant proposes to utilize permeable pavers within a portion of the development driveway and parking spaces located within the northern portion of the site plan. Permeable paver systems must be designed in accordance with Chapter 5 of the NYSDEC SWMDM. The following comments are based upon our initial review of the permeable pavement areas. **The revised plans show that porous pavement has been eliminated within the western portion of the site plan and is now shown to be located within parking bays adjacent to Buildings 1 through 8.**
- i. The Applicant shall provide site investigation data (soil percolation and deep hole testing) to demonstrate feasibility of the proposed porous pavement infiltration systems. Site investigation data shall demonstrate adequate separation to bedrock/groundwater and must prove adequate infiltration rates of site soils. **Addressed.**
 - ii. The Applicant shall provide sizing details for porous pavement areas. Consistent with the NYSDEC SWMDM, porous pavement system stone reservoirs must be designed to contain runoff volume from the 10 year design storm without flooding. **Addressed.**
 - iii. The Applicant shall provide a final construction detail for the typical permeable paver cross section that demonstrates the required material types, dimensions and that the required stormwater storage volume is provided. *Partially Addressed. The provided detail notes that perforated under drain is to be sloped to storm sewer or stream. The Applicant shall revise the construction detail to eliminate reference to connection of proposed underdrain to streams.* **Addressed.**



- iv. **Revise the plans and construction detail for porous pavement to note that porous pavement system reservoir stone subgrade shall have a maximum grade of 5.0%.**
 - v. **The Applicant revise the plans to show the proposed inverts of reservoir stone sub-base and underdrain pipe. The plans must show the underdrains and their connections to stormwater conveyance pipes.**
- g. The Applicant shall identify the point of connection for the proposed Trench Drain, as shown on drawing sheet "UT-1", to the stormwater conveyance system. **Addressed.**
 - h. The Applicant shall update sizing calculations for proposed stabilized outlet apron practices to consider dissipation of peak runoff flows resulting from the 100 year design storm. **Partially Addressed. Rip rap outlet aprons should be labelled in plan view to match the sizing table "IDs" as identified on drawing sheet SD-3.**
 - i. It is noted that the proposed stormwater collection system connection points to stormwater management practices designed under the Somers Realty Corp. Subdivision application, differ between the two application drawing sets. More specifically the system connection points to "Surface Sand Filter 2.1" and "Surface Sand Filter 3.1" are inconsistent. The Applicant shall coordinate the drawings and design calculations to reflect the intended design. **Comment satisfaction to be assessed by future submittal.**
 - j. The Applicant has included a construction detail for typical "Rain Garden Area", but no rain gardens are shown on the plan view layouts. The Applicant shall update the plans to show rain garden areas where proposed, or eliminate the rain garden detail from the drawing set. **Addressed.**
 - k. The Applicant shall update the Avalon Bay drawings to superimpose the maintenance access driveways to Stormwater Management Practices designed under the Somers Realty Corp application, on the site plan. **Partially Addressed. The outline of proposed access driveways appear to be shown on drawing sheet LA-1. The Applicant should revise the plan include a callout that identifies the feature as proposed maintenance access drive (by others), clear access path to be maintained.**
 - l. The Applicant shall prepare draft Stormwater Maintenance Agreement for all permanent stormwater management practices on Avalon Bay Communities site plan for review by the Consulting Town Engineer and Town Attorney. **Not Addressed. Stormwater Maintenance Agreement to be provided with future application submittal.**
 - m. **The Applicant proposes to construct two water quality swales (Dry Swales) within the northern portion of the development as part of their design to address runoff reduction volume (RRv) requirements. These swales are**



designed to received runoff primarily from internal roadway surfaces and discharge to off-site stormwater practices being designed by Somers Realty Corp. The following sub-comments are based upon our review of the proposed dry swales:

- i. **Demonstrate that the greater than 10% of the Water Quality Volume (WQv) is provided in practice pretreatment.**
 - ii. **Demonstrate that dry swales provide a minimum of 30 minutes detention time for the required water quality volume peak flow.**
 - iii. **Revise the construction detail to utilize 6 inch perforated pipe as underdrain.**
 - iv. **Note that dry swale planting soil must conform with Appendix H specifications of the NYSDEC SMDM.**
 - n. **The Applicant shall revise the plans to identify the proposed pipe connections and associated invert elevations to the two proposed stormwater cisterns. The plans shall include a construction detail that describes the typical stormwater cistern.**
 - o. **Practice specific maintenance and inspection procedures for all proposed stormwater management practices must be summarized in the combined SWPPP by Somers Realty Corporation. Maintenance and inspection procedures must be provided for both during the project construction phase and the permanent post development condition.**
2. The site development activities involve greater than 2 acres of site disturbance and requires the approval of the project Stormwater Pollution Prevention Plan (SWPPP) from NYC DEP. In addition, NYC DEP project approval is required for proposed sanitary sewer connections to the site. The Applicant shall be required to address all NYC DEP requirements for issuance of all necessary permits and approvals. **Not Addressed.**
3. The provided site plan construction drawings include an erosion and sediment control plan and construction details and notes related to erosion and sediment control practices limited to within the Avalon Bay Communities site plan. The Applicant must prepare an acceptable erosion control plan as part of the SWPPP document that is necessary for site plan approval. The following comments are focused upon our review of the identified site erosion and sediment control plan elements within the Avalon Bay Communities drawing set:
- a. Temporary sediment traps are shown to be constructed within several of the proposed "Infiltration Areas" as shown on the drawings. While it is unclear if the Applicant wishes to pursue further design of the identified stormwater practices as infiltration basin, bioretention filters or other stormwater management practice, it should be noted that Temporary Sediment Traps are prohibited to be located in the proposed location of an infiltration practice. **Addressed.**



- b. The Applicant shall provide sizing calculations for proposed temporary sediment traps based upon the NYSDEC New York Standards & Specifications for Erosion & Sediment Control, latest edition. **Addressed.**
 - c. Update the plans to show approximate grading for temporary diversion swales intended to be used during construction activity. Swales shall be sized based upon the NYSDEC New York Standards & Specifications for Erosion and Sediment Control. **Not Addressed. To be assessed by future detailed design submittal.**
 - d. Update the plans to remove all references to the installation of hay/straw bales as a temporary erosion and sediment control practice. **Addressed.**
 - e. The provided drawings indicate that's stone check dams will be installed within temporary diversion swales during construction activities. The Erosion and Sediment Control Plan shall be updated to shall the spacing of proposed check dams based upon the provided diversion swale longitudinal slopes. **Addressed.**
 - f. Revise the provided Land Grading Notes to indicate that all inactive disturbed site areas will be stabilized within 14 days of work completion in that area, or if no additional work is intended to occur within 14 days. **Addressed.**
 - g. Revise the provided Land Grading notes to reference that all site soils will be restored following the completion of construction activities in accordance with NYSDEC Stormwater Management Design Manual Chapter 5 Soil Restoration Standards. **Addressed.**
 - h. Remove all construction details for erosion and sediment control practices not shown to be implemented on the site on plan view layouts. Such details appear to include but are not be limited to: Pipe Slope Drain and Water Bar. **Partially Addressed. Further assessment of construction details shall be completed upon receipt of the final design plans.**
 - i. Update the plan to show temporary grading intended for soil stockpile areas at their respective maximum capacity. The total available stockpile volume must be shown to adequately store excess cut material prior to off-site export, as referenced to the Earthwork Plan and Land Disturbance Phasing Plan. **Not Addressed. Partially Addressed. The Applicant has revised the plan to depict temporary topsoil stockpiles during construction. General stockpile area will be coordinated with the overall site SWPPP and Land Disturbance phasing Plan.**
 - j. **The Applicant shall revise the construction detail for proposed check dam to show the base of the check dam "keyed" into the surrounding subgrade. In addition, check dams must be shown to extend a minimum of 1.5 feet beyond the banks of the channel.**
4. The Applicant shall coordinate their intended sequence of construction and erosion & sediment control plan with the Land Disturbance Phasing Plan and Site Earthwork Plan that are being prepared as part of the Somers Realty Corp. Phase III Subdivision SWPPP.



In particular, Avalon Bay Communities shall ensure that their provided earthwork quantities and limits of phased construction activity are consistent with those considered by Somers Realty Corp. **Not Addressed. Comment Satisfaction to be assessed by future coordinated application submittals.**

5. The "Lot Development Table" as shown on provided drawing title sheet number "01" identifies provided lot area and Water and Sanitary Sewer loading demands for the Avalon Bay site plan compared to those anticipated at the time of Master Plan approval. These quantities differ from those identified on Master Plan Conformance Drawing 'MC-1" that was included with the Subdivision Plat submittal by Somers Realty Corp. The Applicant shall confirm that the provided data is correct and consistent with other provided project review documents. **Addressed.**
6. The Applicant shall revise the provided construction detail for typical drainage catch basin to specify a Campbell Foundry Type 2541 frame and grade, and show top of frame set 1 inch below surrounding pavement, as specified by Town Code. **Addressed.**
7. The Applicant shall revise the provided construction detail for typical drainage manhole to specify a Campbell Foundry Type 1203 Frame and Cover and show top of frame set 1 inch below surrounding pavement, as specified by Town Code. Proposed covers shall read the word "DRAIN" as specified by Town Code. **Addressed.**
8. The Applicant shall revise the provided construction detail for proposed wood guardrails to address the following comments, as required by Town Code Section §A174-28:
 - a. Revise the detail to utilize a support post equivalent or equal to a 12" diameter circular pressure treated timber post. **Addressed.**
 - b. Revise the detail to specify the minimum embedment of the post footing as 3'-6" below ground surface and identify exposed post height as 2'-3.5" above ground surface. **Addressed.**
 - c. Revise the detail to note that posts shall be spaced at four feet on-center. **Addressed.**
9. The Applicant is required to satisfy Town of Somers Fire Department requirements for the construction of firefighting measures within the proposed site plan. The final site layout plan shall depict the final locations of fire hydrants and truck pull-off locations, as determined by the Town of Somers Fire Department. *The Applicant has provided an AutoTurn analysis that considers travel by a Ladder Truck Fire Department design vehicle through the development. Based upon the provided drawing, we feel generally comfortable with the depicted vehicle travel. Some vehicle body travel is depicted within the western driveway entrance to the development. The Applicant should consider mountable curb on the center island to provide access in the event that wheel travel falls outside the curb limits, or widen the entrance.*

Final comment satisfaction is subject to determination by the Town of Somers Fire Department. The Applicant states that the Somers Bureau of Fire Prevention has completed review of the project plans and has no comment. The Applicant shall



provide documentation of no objection from the Somers Bureau of Fire Prevention for the final site layout prior to approval of the proposed site plan.

10. The provided site layout plans show the proposed locations of street lighting fixtures to be constructed within the Avalon Bay Communities Site Plan. A construction detail for "Typical Light Standard" is included on drawing sheet "SD-5". The following comments relate to the proposed development lighting:
- a. The Applicant shall certify that all proposed light fixtures are dark sky compliant. *Partially Addressed. The Applicant shall provide documentation of proposed fixture compliance with International Dark-Sky Association (IDA) standards. The provided product literature appears to suggest that the fixtures address the intent of dark sky standards but does not hold specific IDA certification. IDA certification is not a requirement of Town Code. The Planning Board should consider whether the provided documentation is adequate to ensure dark sky objectives are met.*
 - b. The Applicant shall prepare a site photometric plan based upon the layout and intensity of light fixtures. **Addressed. The provided photometric plan identifies the location of 59 lighting features throughout the development which produce average and maximum illumination levels of 0.06 and 2.0 foot-candles throughout the development, respectively.**

While determination of comment satisfaction is subject to the discretion of the Planning Board, it is our recommendation that the proposed illumination intensities are consistent with what is appropriate for such a development.

11. The Applicant has provided preliminary design layout and details for the proposed water service and sanitary sewer connections within the site plan development. The water service and sanitary sewer systems are proposed to connect to the water main, sanitary gravity sewer and pump station in construction as part of the Somers Realty Corp. Phase II and Phase III construction projects. Our office has completed initial review of the design layout and has prepared comments as cited below. It should be noted that these comments reflect the conceptual level of detail that has been provided and that additional comments will be issued upon future submittal of detailed design documents:

Water and Wastewater Systems Engineering

- a. Provide Engineering Reports for the proposed Water and Sewer Systems, including hydraulic design calculations. **Partially Addressed. The following comments have been generated after review of the Sanitary Sewer and Potable Water Design Summary:**
 - i. **Summary lists 7 employees at 15 gpd/employee, while Lot Development Table on drawing coversheet lists 5 employees at 15 gpd/employee and 2 employees at 13 gpd/employee.**
 - ii. **Infiltration and inflow (I/I) estimates should be included in sanitary sewer flow calculations.**



- iii. **Residential average daily flow would likely also include some minor demand that does not become sanitary wastewater (i.e., car washing, consumption, etc.)**
 - iv. **As stated, fire demand is still to be determined. Once determined, evaluation shall confirm whether existing system provides sufficient residual pressure during peak-day demand plus fire demand. Current analysis reports that a minimum of 39 psi is available at the second-floor ceiling elevation during peak-day flow only, and does not take into account fire demand.**
 - v. **Documentation of hydrant flow testing and locations, as well as system pressure analysis should be included**
- b. Provide profile view drawings of the proposed water and sanitary sewer systems. The profiles shall demonstrate that adequate vertical separation is provided at all proposed pipe crossings as shown on the project layout plan drawings. **Addressed. The following comments have been generated after review of profile sheets PR-1 and PR-2:**
- i. **A potential conflict between water and sanitary sewer is noted near Station 47+05± on PR-1, especially for the water services that will be crossing the sanitary sewer main.**
 - ii. **Sanitary MH-2 on PR-1 has inverts greater than 2' apart, requiring a drop manhole per TR-16.**
 - iii. **Sanitary MH-9 on PR-2 has inverts greater than 2' apart, requiring a drop manhole per TR-16. In addition, the invert in to MH-9 at elevation 550.0 is only 2' below the top of frame elevation and should be lowered.**
 - iv. **Not all sanitary sewer pipes and manholes were shown in profile view. Either all pipes and manholes should be shown in profile or all manhole top of frame and invert elevations should be noted on the plans. At a minimum, profile views should be generated for sewer segments "SMH-14 – Ex. SMH-B" and "SMH-9 – SMH-18"**
- c. Update the design plans to size and material of water pipes and connections. **Addressed.**
- d. Revise the construction detail for sanitary sewer manholes to identify benches within the Manhole and address how inflow from elevated inlets will be accepted. **Partially Addressed. The construction detail should also identify pipe boot connection details, joint sealant, and detail on how drop connections will be made.**
- e. Provide a construction detail for typical House Trap. **Addressed.**



- f. The proposed sanitary sewer main has several segments where additional length of pipe is proposed upstream of the first service connection. Please clarify why this layout element is proposed. **Addressed.**
 - g. Revise the construction detail for Hydrant to specify stainless steel tie rods instead of galvanized. **Addressed.**
 - h. Revise the Combination Valve detail to only consist of an air release valve, and remove references to use on a force main. **Addressed.**
 - i. The Applicant shall evaluate the possibility of looping the water main back to "Town Road C" / Clayton Boulevard within the eastern portion of the Avalon Bay development. This alternative layout will eliminate the dead end in the distribution system and provide hydraulic redundancy to serve the project. **Not Addressed. The Applicant states that design plans have been provided to the Water and Sewer Department for review. Our office is awaiting further input from Town Water & Sewer Department on this design consideration.**
12. The grading and utilities plans do not include proposed electrical and gas service utilities for the development within the Avalon Bay development. Future detailed plan submittals shall include the proposed layout of site electrical service and gas service mains within the site layout. **Addressed. The final layout of electric and gas service main providers shall be confirmed by the Applicant and utility provider prior to issuance of a Building Permit.**
13. The provided plans indicate that several retaining wall segments are proposed to be constructed within the proposed site plan. It should be noted that structural design calculations must be provided for all retaining walls in excess of 4 feet in exposed height. Structural design calculations shall be signed and sealed by a licensed professional engineer and must be accompanied by a construction detail and cross section view showing materials, to describe the proposed wall design and aesthetics. **Addressed. Note 5 on sheets LA-1 and LA-2 include requirement that retaining wall calculations be signed and sealed by a licensed professional engineer. Note 29 on drawing sheet "IN" should also be updated to include requirement that calculations are to be signed and sealed by a licensed professional engineer.**
14. The Applicant has provided tree survey data and a Tree Removal Schedule on drawing sheet "EX-5". The Applicant shall revise the tree schedule to include column titles for what appear to be measured tree calipers. In addition, the Tree Removal Plan shall be updated to also identify trees to be protected during construction, if any existing site trees are proposed to remain following site development. **Addressed.**
15. The provided site grading plans depict that the proposed Village Green area will be constructed with a mounded high point near the center within the walkway loop. The proposed elevation difference across the interior green area is shown to be approximately 10 feet. The Planning Board may wish to consider if an alternative grading plan should be prepared for the Village Green that better suits recreational opportunities within the open space. **Partially Addressed. On October 15, 2014, Town representatives met with the**



Applicant to review the existing design and the Town's program preferences for the green area. Based on this meeting, the Applicant was going to develop some preferred alternatives for consideration by the Planning Board.

- 16. The revised plans show the layout of Town Road B has been extended to the southern parcel property line as was considered at the time of Master Plan approval. The Applicant shall coordinate with Somers Realty Corporation for the creation of necessary easement area for the location stormwater management practices if determined to be necessary.**

Please feel free to contact our office anytime with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph C. Barbagallo".

Joseph C. Barbagallo, P.E., BCEE
Consulting Town Engineer

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Syrette Dym, AICP
Director of Planning
sdym@somersny.com

MEMORANDUM

TO: Town of Somers Planning Board
FROM: Syrette Dym, Director of Planning
DATE: October 30, 2014
RE: Comments on Avalon Bay Somers Residential Site Plan Application Package

AvalonBay Communities, Inc. - Site Plan Approval for Somers Avalon

The current proposed action consists of the following components:

1. *Site Plan approval for Applicant AvalonBay Communities, Inc. for Avalon Somers, to construct 152 residential rental apartments units containing a total of 183,060 square feet of which 129 are market rate and 23 are to be affordable units. Apartment mix is to be 62 one-bedroom, 66 two-bedroom and 24 three-bedroom units. The project includes a 3,779 square foot community recreation building and outdoor pool, and a "town green", the community recreation building for the sole use of apartment unit renters. The project site consists of proposed subdivided Lot 3A at 45.4 acres and Lot 3B as the Village Green lot at 1.4 acres to be subdivided as part of the associated Somers Realty, Inc. subdivision application...*
2. *Tree Removal Permit*
3. *Stormwater Management and Erosion and Sediment Control Permit*
4. *Steep Slope Protection Application*

Submission Letter of October 20, 2014

The submission cover letter dated October 20, 2014 addressed issues raised in my comment memorandum of September 26, 2014. I am in agreement with the responses with the exception of the following:

Refuse and Recyclables

While it is understood that Avalon has considerable experience in their rental communities for dealing with placement of their garbage and recyclable collection facilities, the Planning Board should still provide their input regarding the adequacy of one garbage collection area given its proposed location and the layout of the entire community.

Extension of Roadway B and Need for Site Pan Modification

The site plan has been modified to provide for an opportunity to extend Road B in the future past the limit of the Avalon development area. This is now being provided as a future easement opportunity as opposed to a developed road to be dedicated to the town, due to changes in the design of the residential development and greater clustering of the residential use on the site. Given the distance to the southern site boundary of approximately 340 linear feet and lack of development, the likelihood of future construction of this connector road is in question. The traffic analysis in the DEIS of July 2007 and FEIS for the Somers Planned Hamlet emphasized internal road trips that would be encouraged by the roadway layout, thereby reducing the external trips on congested adjacent Mahopac Avenue and Route 6. Alternative 4.4.h Element D8 (Page 4.0-15 Planned Hamlet DEIS July 2007) was an alternative road network “that provides for future connection to adjacent parcels under the Applicant’s ownership and to separately owned property to the south of the site, including identification of a schematic subdivision layout for the adjacent parcels showing interconnections with the existing street network”. Figure 4-7 of the DEIS illustrates this alternative and envisions a future roadway connection between the landlocked parcel to the south owned by Somers Realty and the adjacent Shore/Tetenbaum parcel to its west and south of the Planned Hamlet. Given the possibility that the future southern connection being provided for by Avalon may not be built in the future, a connection to a future eastern subdivision could be identified for future consideration to continue to accomplish the DEIS stated traffic goal of maximizing internal traffic in the Planned Hamlet and on surrounding adjacent parcels.

Miscellaneous Comment – Fiscal

While the current and approved projects contain 152 units and 23 affordable units as stated in the October 20, 2014 letter, the project that was analyzed for fiscal and school impacts included only 12 affordable units and 36 age restricted units. As stated in the Planned Hamlet FEIS December 2008 Comment 3.11.2 page 137: “Table 3.11-3 of the DEIS, given the bedroom mix, age restriction, and income structure of the future residents, it is expected that 20-24 elementary and secondary school-aged children will be

generated by the development.” Given what was determined to be 10 percent attendance at private schools, child generation would have been 20-22 students. It was also stated that the Planned Hamlet Master Plan was anticipated to cost \$514,834 in additional public expenditure from residential units but that the project would generate \$1.96 million in annual net revenue to the Town of Somers. These rates were based on an ownership tax generation model as well.

The Planned Hamlet Master Plan DEIS Section 4.7 provided a fiscal estimate for Alternative G which was a condominium ownership scenario. In this scenario, the 152 units of the then envisioned project were estimated for tax revenue purposes based on income (rental) value that they would generate rather than on the market value of the units, so the estimated taxes would be comparable to a rental project. It is estimated that taxes generated from the residential portion as a condominium/rental would be half that generated by an owner project at \$650,000.

Based on the above, it appears that a limited fiscal analysis does still need to be prepared for the project as approved with its proposed bedroom count, 23 affordable units and rental tax status. Once the number of school children generated by both the Rutgers methodology and information from Avalon’s own projects are prepared, and anticipated taxes for the school district and Town are presented, these can be compared in percentage terms with prior rates even if past methodologies may differ from that used for the current project. This should also be done for all costs to the Town on an order of magnitude basis. If it can be determined how the 1.5 acre Village Green was treated as part of the fiscal analysis in the DEIS, that should be presented, including whether it was removed from consideration of tax generation and costs related to its future maintenance by the Town if accepted as a town park.

The SEQRA Findings for the Planned Hamlet Master Plan states the following with regard to Economic and Fiscal Impacts:

K. Economic and Fiscal Impacts

1. Impacts Identified

- a. The Master Plan will generate \$1.96 million in annual net revenue to the Town of Somers. This is an increase of \$1.92 million over the revenue that is currently generated by the site.
- b. The non-residential component of the Master Plan will provide new job opportunities for local residents, both during construction and in the long term, and will create new sales tax revenues.

2. Mitigation Provided

Mitigation was not necessary for Economic and Fiscal Impacts.

Other Issues

Village Green and Recreation Fees

At the Planning Board meeting of October 8, 2014, Avalon presented an alternative potential design for the Village Green component of the Planned Hamlet Master Plan that is to be constructed as part of the Avalon development. A subsequent meeting on October 15, 2014 with the Avalon team, Steve Ralston, and the Town Director of Planning and Town Consulting Engineer was held to get input from the Park Commissioner on the alternative Village Green design. It became clear at that meeting that Steve Ralston had not been anticipating that this 1.5 acre green was to become a Town park and he raised concerns regarding its use, facilities and ability and cost of future maintenance. He asked for documentation regarding the background of how this parcel came to be considered as a Town park, and what was its relationship to anticipated recreation fees from the project.

After review of the Planned Hamlet Master Plan document of February 2009, the DEIS of July 2007, FEIS of December 2008 and SEQRA Findings Statement of February 2009, I have the following comments.

Page one of the Executive Summary of the Planned Hamlet Master Plan identifies the village green as the “organizing feature of the proposed plan”. The Master Plan refers to the whole plan as a village and within this context, the “village green” is meant to be the public open space that serves this “village” and will serve as the center of the planned hamlet. Page 18, under “Clubhouse”, states specifically: “The green will be approximately 1-2 acres and is proposed to be dedicated to the town as public property”.

The DEIS refers to the village green numerous times. On page 2-20 in the Description of the Proposed Action, the Village Green is described as follows:

“The central Village Green, shown in Figure 2-10 is the main element of the open space system and will serve as the recreation focal point of the community, providing an outdoor activity center for the neighborhood and facilitating neighborhood social interaction. It will provide space for individual outdoor relaxation and recreation as well as for community gatherings and events. In contrast to the natural landscape character of the connecting greenways and a natural areas described below, the Village Green will be developed as a more traditional community park with open lawn for passive recreation, shade trees, play areas for children, walkways, benches, and paved gathering space for special events such as concerts and other festivities. The Village Green will provide the full range of typical park amenities.”

Page 3.10-4 under Open Space and Recreation Facilities, under Anticipated Impacts, the Master Plan is identified as providing the following facilities to serve the recreational needs of the Planned Hamlet’s new residents: “... the Master Plan provides for a village green in the center of the project site, tennis courts on the eastern portion of the site, and a clubhouse that will front on the village green, as well as a connection to the North County

Trail. In addition, the Master Plan will preserve approximately 30 acres of forest land and wetlands on the project site". Again it is stated: "The Applicant proposes to dedicate this green to the town as public open space".

The SEQRA Findings for the Planned Hamlet Master Plan states the following with regard to Open Space and Recreation Facilities:

J. Open Space and Recreational Facilities

1. Impacts Identified

- a. Development of the project site under the Master Plan is expected to increase the Somers' permanent residential population by approximately 2.7 percent.

2. Mitigation Provided

- a. In order to meet the recreational and open space needs of the site, the Master Plan provides a village green in the center of the site, tennis courts, a community club house and a connection to the North County Trail. In addition, 30 acres of natural open space consisting of forest, old field/brushland and wetlands will remain on the site.

3. Findings and Conditions

- a. The Planning Board will require that the recreation fee amount to be paid will be reviewed prior to action being taken on the application for subdivision plat approval or any application for detailed site plan involving residential units.

In addition, Resolution No. 2009-02 Granting Approval of the Master Plan to Somers Realty Corporation for the Somers Realty Planned Hamlet, identified the following on page 3 of the resolution: " WHEREAS, the Master Plan also includes a $\frac{3}{4}$ acre parcel on Mahopac Avenue to be donated to the Somers Fire District, as well as utilities lots for a sewer pump station and a future water tower site to be dedicated to the Town of Somers, and a village green which will be offered for dedication to the Town; and...."

As seen in all the above references, the Village Green was meant to serve as an open space recreational amenity to serve the Planned Hamlet and was only to be "offered" to the Town by the applicant. There was no determination as to whether it would be accepted by the Town and how it would or would not count along with the North County trail connection easement or the then community wide clubhouse and tennis courts toward the provision of recreation fees. However, even if accepted by the Town, it is clear that its main purpose was to serve as a neighborhood park for the Planned Hamlet development, thereby potentially fulfilling one of the goals stated in the Parks Master Plan prepared for, but not adopted by the Town.

These issues are still to be resolved by the Town Board with input from various departments and Boards. As part of this process, a meeting is scheduled on this village green issue on November 5, 2014.

Recreation Fees

As part of my research on Avalon, although it is not yet clear how provision of the 1.5 acre park, with or without its acceptance by the Town, relates to provision of recreation fees, what is clear is that the recreation fees that would be provided, if required, would be similar for this project as a rental project as it would have been for the prior proposed fee simple townhouse ownership project save that the bedroom count and resulting fees based on \$11,500 required per unit, would be affected.

Section 55-3 of the Town Code – Recreation fee for residential site plan separates out single family detached dwellings from other type of dwelling units. Since both townhouses and apartments would fall into the “other” category fees are based on the following:

Units with 4 bedrooms – 100 % of recreation fees
3 bedroom units - 85% of recreation fee
2 bedroom units - 70% of recreation fee
0 to 1 bedroom unit – 50% of recreation fee

The Avalon development proposes:

62 1-bedroom (41%)
66 2-bedroom (43%)
24 3- bedroom (16%)

For one bedroom units the recreation fee would be \$5,750(X62= \$356,500)
For two bedroom units - \$8,050 (X66=\$531,300)
For three bedroom units - \$9,775(X24=\$234,600)

Section 55-5 permits the Town Board after holding of a public hearing to waive in whole or part a recreation fee as relates to the provision of affordable housing units. Without consideration of affordable units, or provision of any other amenities, recreation fees would be \$1,122,400. If fees were totally waived for affordable units and they are assumed to be distributed throughout the project in the same percentage as other units such that there would be 9 one bedroom, 10 2 bedroom, and 4 three bedroom affordable units, fees lost would be \$51,750, \$80,500, and \$39,100 respectively or a total of \$171,350 lost from total fees.

Regarding how provision of the village green, connection to the North County Trailway and on-site Avalon restricted clubhouse without provision of earlier envisioned two tennis courts would offset recreation fees, if at all, it is not now clear and needs further thought and input.

Traffic Calming

Traffic calming measures in the form of stop signs have been placed at key intersections on the site generally as indicated in Figure 7. Site Access and Public Roads of the Somers Realty Planned Hamlet Master Plan with modifications made due to site plan modifications. No traffic calming circles are provided, however.

Cc:

**Roland Baroni
Joe Barbagallo
Steve Ralston
Janet Giris
Grant Jaber
Linda Whitehead
Rich Williams**

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MEMORANDUM



TO: Town of Somers Planning Board
CC: Marilyn Murphy, Planning Board Secretary
FROM: Joseph C. Barbagallo, P.E., BCEE
DATE: October 31, 2014
RE: AT&T Mobility, LLC
Stormwater Management and Erosion & Sediment Control Permit, Steep Slopes Protection Permit
West Hill Drive
TM: 17.05-20-2,3,12 DRD District

GENERAL

The purpose of this memorandum is to provide the Planning Board with a summary of our initial comments related to our review of the environmental permit applications that have been submitted for the project located adjacent to the Heritage Hills Waterworks Water tank on the West Hills Drive. The applications propose the construction of approximately 1250 feet of fiber optic telecommunications conduit from an existing telecommunications facility to an existing manhole located on West Hill Road. No new impervious surfaces are proposed to be created by the application. The following documents were received during the current review period:

DOCUMENTS RECEIVED

- Cover Letter, by William Moran, PE, of Tectonic Engineering & Surveying Consultants P.C., dated October 9, 2014.
- Town of Somers Planning Board: "Application for Site Plan Approval", by John Oakes, dated October 8, 2014.
- Town of Somers Planning Board: "Application for Environmental Permit, Chapter 148 "Steep Slope Protection", by John Oakes, dated October 8, 2014.
- Town of Somers Planning Board: "Application for Environmental Permit, Chapter 93 "Stormwater Management and Erosion and Sediment Control", by John Oakes, dated October 8, 2014.
- NYSDEC State Environmental Quality Review: Short Environmental Assessment Form (EAF), by William Moran, PE, dated October 9, 2014.
- Figure: USDA Soils Map – Westchester County, NY, dated August 22, 2014.
- Survey: "Topographic Survey – Heritage Hills Water Tank – Utility Route West Hill Drive", prepared by Tectonic Engineering & Surveying Consultants, P.C., dated August 14, 2014.
- "Site Plan", Drawing Sheet: "T01-C06", prepared by Tectonic Engineering and Surveying Consultants, P.C., dated September 15, 2014, last revised October 9, 2014.



PERMITS AND APPROVALS REQUIRED

- Town of Somers Planning Board: Steep Slope Protection
- Town of Somers Planning Board: Stormwater Management and Erosion and Sediment Control Permit
- NYSDEC: SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001)
- NYSDEC: State Environmental Quality Review

DISCUSSION

The Applicant has provided preliminary project drawings that describe the proposed conduit installation and include preliminary erosion and sediment control plan elements and tree protection guidelines. The following is a summary of our comments at this time. It should be noted that additional comments may be issued following the completion of a site walk by the Planning Board and upon the review of more detailed design submittals.

1. The Applicant shall revise the identified limits of land disturbance line to reflect area needed for construction access equipment during trenching and installation activities. The limits of disturbance must also consider material staging areas and access points from adjacent roadways.
2. Based upon the preliminary limits of disturbance, it is apparent that the project will disturb greater than 5,000 square feet of land area and includes greater than 50 cubic yards of earthwork. As a result of the anticipated disturbance, the project is required to obtain coverage under the Town of Somers Stormwater Management and Erosion & Sediment Control Permit. In addition, the project is located within the NYC DEP East of Hudson Watershed and must obtain coverage under the NYSDEC General SPDES Permit for Stormwater Discharges from Construction Activity (GP-0-10-001).

It is noted that some required erosion and sediment control SWPPP elements are already provided on the submitted plans. The following sub-comments are intended to guide the Applicant with preparation of an acceptable SWPPP to address Town Codes and SPDES Permit requirements:

- a. Revise the plan to show limits of erosion control blanket/stabilization matting distribution on all steep slopes 25% or greater. Include a construction detail to describe the required stabilization device and installation.
- b. Revise the plan to show the installation of silt fence downgrade of proposed trenching along the roadway shoulder on West Hill Drive.
- c. Identify a stabilized construction entrance and include an acceptable construction detail consistent with the NYSDEC New York Standards & Specifications for Erosion & Sediment Control, latest edition.
- d. Provide a summary of maintenance and inspection procedures for the proposed erosion and sediment control devices during construction.



- e. Revise the plans to indicate that required weekly site inspections will be completed by a Qualified Professional, as defined by the SPDES General Permit. Include the template inspection form to be used by the Qualified Inspector on weekly inspections.
 - f. Include a description of general site housekeeping procedures and guidelines for construction fuel and chemical storage on-site.
 - g. Include a Construction Certification Statement, consistent with the language specified by the SPDES General Permit.
3. The provided plans identify trees to be protected during construction located adjacent to the area of work. The Applicant shall update the tree protection construction detail to identify that all tree protective measures will installed surrounding the trunk radius based upon the following measurement from the area of disturbance: (1 foot per inch of tree dbh). The plans shall be updated to show protection for all regulated trees within the specified proximity to the work area.
 4. It is noted that the proposed construction will generate some excess soil volume as spoil during backfill of the proposed trench. The Applicant should address how excess spoil will be staged during construction and must identify where such material will ultimately be disposed (i.e. offsite removal or grading)
 5. The Applicant shall identify if rock removal is anticipated during construction activities. In the event that rock removal is expected, the Applicant shall estimate the approximate volume of duration of such rock removal activities. It is recognized that the proposed trenching activities is generally minor and involves shallow depth of excavation. We recommend that the Applicant complete of site walk of the proposed length of trench excavation to assess the area for surface rock ledge that should avoided. Applicant shall add note to the plans to indicate that no rock excavation will be done without prior field change approval.
 6. The Applicant shall add a note the plans indicating that the proposed water main within the area of the proposed utility crossing shall be field verified by hand excavation methods prior to the start of mechanical trench excavation. The Applicant shall revise their utility crossing construction detail to indicate that any disturbance to the water main haunch zone and immediate cover material shall be replaced and re-compacted prior to general backfill of the trench.

Please feel free to contact our office anytime with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joseph C. Barbagallo', written over a faint circular stamp or watermark.

Joseph C. Barbagallo, P.E., BCEE
Consulting Town Engineer

PLANNING AND ENGINEERING DEPARTMENTS

Telephone
(914) 277-5366
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(914) 277-4093

Town of Somers
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Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com



Syrette Dym, AICP
Director of Planning
sdym@somersny.com

MEMORANDUM

TO: Town of Somers Planning Board
FROM: Syrette Dym, Director of Planning
DATE: October 31, 2014
RE: Comments on Request by AT&T for Telecommunication Conduit Installation

My comments are limited only to the initial question by the applicant regarding whether the application for installation of a conduit at this location required site plan approval. Also, the application raised the question as to whether any facilities on the site also might need permit renewals. The basis for any opinions is on the original fact that this facility on the Heritage Hills water tower parcel pre-dated both the federal and local telecommunications law, and was found by the Zoning Board of Appeals to be a public utility use on a public utility parcel. Based on the information provided and discussions with the Town Attorney, as seen in the attached communication, neither site plan nor special permit renewals are required for this application or for any facility on the site due to its grandfathered status and interpretation by the Building Official.

Attach.

Cc: Neil Alexander
Roland Baroni
Efreem Citarella

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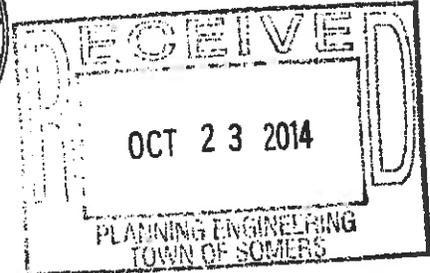
OPEN SPACE COMMITTEE

Telephone
(914) 277-3637
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Town of Somers
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

MICHAEL BARNHART
CHAIRMAN



*C-1
PB
TP
CTE
applicant*

734

MEMO TO: Planning and Engineering Department

FROM: Open Space Committee

RE: AT&T Mobility, LLC – c/o Bechtel – Heritage Hills

DATE: October 22, 2014

At our monthly meeting on October 16, 2014, the Committee reviewed and discussed the Site Plan, Steep Slope Permit, and SMESC Application for AT&T Mobility, LLC – c/o Bechtel – Heritage Hills. There were no issues or concerns with the Plan, Permit or Application. However, the Short EAF indicates that a Tree Removal Permit will be required, yet there was neither an application nor supporting information included in the packet. In addition, there was no list of the type of trees or numbers to be removed in the plans provided. Without such information, the Committee cannot comment on the adequacy of the application.

MEMORANDUM



TO: Town of Somers Planning Board
CC: Marilyn Murphy, Planning Board Secretary
FROM: Joseph C. Barbagallo, P.E., BCEE
DATE: October 31, 2014
RE: Hidden Meadow at Somers
Subdivision Plat Application, Site Plan Application
16 Route 6 (Birdsall Road)
TM: 15.07-1-6, R-80 District

GENERAL

The purpose of this memorandum is to provide the Planning Board with a summary of our comments related to our review of the Preliminary Subdivision Plat Approval and Site Plan Applications that have been submitted for the parcel located at 16 Route 6. The applications propose the creation of 46 individual lots for the construction of 53 housing units contained on 9 attached "townhouse-style" buildings. The 46 subdivided lots will be composed of 45 fee-simple lots and 1 home-owners association lot for common infrastructure. Proposed work includes the construction of sanitary sewer infrastructure, connection to municipal water supply system, stormwater infrastructure and electrical service utilities. The Application also proposes the construction of additional roadway and drainage infrastructure necessary to provide future connection to the adjacent Town owned parcel, located west of the project site. The following documents were received during the current review period.

DOCUMENTS RECEIVED

- Cover Letter, by Insite Engineering, Surveying & Landscape Architecture, P.C., dated October 20, 2014.
- "Hidden Meadow at Somers", Drawing Sheets: 1-12, prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., dated September 10, 2013, last revised October 20, 2014.
- "Parallel Parking Sketch PP-1," Drawing, prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., dated October 20, 2014.
- "Preliminary Stormwater Pollution Prevention Plan for Hidden Meadow at Somers," prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., dated October 20, 2014.
- "Biodiversity Assessment Report," prepared by Ecological Solutions, LLC, dated July 15, 2014.

PERMITS AND APPROVALS REQUIRED

- Town of Somers Town Board: Application of MFR-BP Zoning District



- Town of Somers Town Board: Water/Sewer District Extension.
- Town of Somers Planning Board: Subdivision Plat Approval
- Town of Somers Planning Board: Site Plan Approval
- Town of Somers Planning Board: Stormwater Management and Erosion and Sediment Control Permit
- Town of Somers Planning Board: Wetlands Activity Permit
- Town of Somers Planning Board: Tree Removal Permit
- Town of Somers Planning Board: Steep Slopes Protection Permit
- Town of Somers Fire Department: Approval of Proposed Hydrant Locations
- NYC DEP: Approval of Stormwater Pollution Prevention Plan
- NYC DEP: Approval of Sanitary Sewer Connections
- NYSDEC: State Environmental Quality Review
- NYSDEC: SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001)
- NYSDOT: Highway Work Permit
- Westchester County Department of Health (WCDOH): Approval of Water and Sanitary Sewer Systems
- Westchester County Board of Legislators: Sewer District Expansion
- Westchester County Planning Board: Approval of Funding
- New York State Affordable Housing Corporation: Approval of Funding
- U.S. Army Corps of Engineers: Application for Department of Army Permit (Wetlands)

DISCUSSION

The provided documents included in this month's application submittal focus on the proposed site Runoff Reduction Volume (RRv) practices intended to address NYSDEC Stormwater Management Design Manual requirements. The SWPPP and drawings also provide greater detail to describe components of the site layout, grading, and the project erosion and sediment control plan. The project Biodiversity Assessment Report based upon completed field study protocol was also included with the current submittal.

It is our understanding that the provided submittal was intended to focus on resolving open design items under SEQR review. The majority of our previously identified comments related to the proposed water supply, wastewater systems, earthwork analysis and stormwater infrastructure design details have not been addressed by the Applicant at this time and are carried forward in this memorandum. Comments previously addressed by the Applicant have been removed from the summary as follows below.



The following is a summary of our comments at this time. The status of all previously identified comments as well as new comments is shown in **Bold Type**. It should be noted that additional comments may be added following the receipt of further detailed design information.

1. The revised landscape and layout plan depicts eleven community refuse enclosures within the Hidden Meadow development. A typical construction detail for the proposed "Refuse Enclosure" has been included on the plan. The following comments relate to proposed refuse enclosures. While final acceptance of the proposed enclosures and locations is subject to the discretion of the Planning Board, our office would like to offer the following comments for the consideration:
 - a. Revise the construction detail to include the proposed height of enclosure structure. **Addressed**
 - b. Based upon the provided detail, it is unclear if refuse is intended to be placed in the enclosure through the front gates or top lid. If refuse is planned to be contributed through the top lid, special consideration for lightweight lid materials should be considered as the provided design may be difficult to operate by elderly residents. *Partially addressed. Revised detail shows top lids on top of enclosure, as well as side doors. Further details to be discussed at November 12 Planning Board meeting. Addressed.*
2. The provided plan includes the layout of five parking spaces at the proposed school-bus waiting area adjacent to the development roadway intersection with U.S. Route 6. Detailed grading details have not been updated at this time. The Applicant shall consider the proposed parking spaces and resulting impacts and grading and the proposed layout of site utilities during the development of future plan more detailed submittals. *Partially addressed. Submittal package includes Sketch PP-1, which shows an alternate proposal for parallel parking. Further details to be discussed at November 12 Planning Board meeting. Addressed. The Applicant has provided a sketch layout for the location of 5 parallel street parking spaces along proposed Road A. No grading details or indication of impacts to other site infrastructure and the wetland buffer are shown on the sketch layout. Providing that the resulting impacts do no increase wetland buffer disturbance, it is our recommendation to the Planning Board that the parallel street parking layout is preferable over the originally proposed perpendicular parking.*

REVIEW COMMENTS FROM JUNE 4, 2014 MEMORANDUM.

1. The NYC DEP has issued review comments for the project based upon preliminary project sketch plans that were provided to the DEP prior to receipt of the current Applicant submittal. NYC DEP comments shall be considered in coordination with engineering comments provided by this memorandum. Additional NYC DEP comments have not yet been received in response to the Applicant's January comment response memorandum. Project review by the NYC DEP will continue as design development progresses with final NYC DEP satisfaction confirmed through approval of the project SWPPP. **Satisfaction**



Pending. Final satisfaction of NYC DEP comments for SWPPP approval shall be documented prior to issuance of project approvals by the Town of Somers.

2. Our office has reviewed project review comments that have been offered by the office of the Watershed Inspector General, as referenced in their letter dated February 26, 2014. Several of these comments match the outstanding concerns already raised by our previous reviews of the draft Stormwater Pollution Prevention Plans and phosphorous loading calculations, as referenced within this memorandum. Some of the identified WIG comments related to the project phosphorous loading calculations have already been addressed by the revised project submittal. Other outstanding issues, especially those related to erosion and sediment control and design details must be incorporated as the Applicant continues to develop their design following additional input of the Planning Board. The Applicant indicated at the March 6th meeting that it will be working directly with the WIG to resolve remaining issues. We will continue to assist the Planning Board and the office of the WIG to make sure that all applicable comments are addressed as project design development progresses. **Satisfaction Pending. The Applicant has provided updated comment responses directly to the office of the WIG concurrent with their submittal to the Planning Board. Final satisfaction of WIG concerns will be confirmed prior to issuance of project approvals by the Town of Somers.**
3. The Applicant has prepared a preliminary Stormwater Pollution Prevention Plan (SWPPP) and drawings to describe proposed project stormwater infrastructure under the revised site layout. The provided stormwater management practices are essentially similar to those provided with the prior plan alternate. The revised plan proposes more limited construction of porous pavement due to the unacceptable site soil conditions for the practice on a portion of the site. The current layout now incorporates a series a rain gardens and two Bioretention Filter areas that provide supplementary stormwater quality treatment and runoff reduction volume (RRv). The following comments are related to our review of the proposed site stormwater plan and systems.
 - a. The Applicant shall prepare hydraulic pipe design calculations for all proposed stormwater conveyance pipe in future design submittals. Hydraulic calculations shall demonstrate adequate capacity to convey runoff collected by the 100 year design rainfall without surcharging. **Not Addressed. Response to comment expected with future Applicant submittal.**
 - b. The Applicant shall update the plans to indicate rim and invert elevations on all stormwater infrastructure in future design submittals. **Not Addressed. Response to comment expected with future submittal.**
 - c. The Application proposed to construction two Pocket Wetlands Areas (NYSDEC Type W4) on the site. Proposed Pocket Wetland Area "1.2P" is shown as the second practice receiving stormwater from the Surface Sand Filter. The following comments are based upon our initial review of the proposed wetlands design.
 - i. The Applicant shall prepare a Wetlands Planting Plan based upon Appendix H of the NYSDEC Stormwater Management Design manual.



Not Addressed. Response to comment expected with future submittal.

- ii. The Applicant shall prepare a final profile view construction detail for the proposed wetland area that shows all applicable invert elevations for the proposed wetland system to be confirmed through review of the final SWPPP. **Not Addressed. Response to comment expected with future submittal.**
 - iii. The Applicant shall provide deep hole test pit excavation data for the proposed location of each Pocket Wetland Area with future submittal. **Not Addressed. Response to comment expected with future submittal.**
- d. The Applicant proposes to construct a surface sand filter as part of the proposed site stormwater infrastructure. The proposed surface sand filter is shown as the first treatment practice in series routing to proposed Pocket Wetland Area "1.2P". The following comments are related to our review of the proposed surface sand filter design.
- i. The Applicant shall provide site investigation data to demonstrate minimum 2 foot vertical separation between the invert of the proposed sand filter and groundwater/bedrock. Adequate vertical separation will be confirmed by future deep hole excavations to be conducted within the proposed sand filter practice. **Not Addressed. Response to comment expected with future submittal.**
 - ii. The provided HydroCAD report indicates that a portion of the stormwater flow resulting from the 1 year design storm is bypassed directly to the proposed Pocket Wetland Area "1.2" at the proposed flow splitter structure. The entire 1 year design storm must be routed through the proposed surface sand filter in order to address NYC DEP requirements to provide two treatment practices in series. The Applicant shall revise the flow splitter structure design to address NYC DEP requirements. **Addressed.**
 - iii. The Applicant shall provide a construction detail for the proposed hydrodynamic separator unit located prior to acceptance of the Final SWPPP. **Partially Addressed. Current drawing SP-3 notes separator manufacturer and model. Final plans to include construction detail.**
- e. The Applicant proposes to utilize porous pavement for a portion of the proposed unit driveways and also on the lower roadway within the development. Porous pavement systems must be designed in accordance with Chapter 5 of the NYSDEC SWMDM. The following comments are based upon our initial review of the proposed porous pavement areas.
- i. The Applicant shall provide site investigation data (soil percolation and deep hole testing) to demonstrate feasibility of the proposed porous pavement infiltration systems. Site investigation data shall demonstrate



adequate separation to bedrock/groundwater and must prove adequate infiltration rates of site soils. **Partially Addressed. Further soil percolation testing results to be included in future submissions.**

- ii. The Applicant shall update the final design plans to demonstrate that proposed porous pavement driveways will be constructed at no greater than a maximum slope of 5% grade. **Addressed. Pending confirmation during review of final design plans.**
 - iii. The Applicant shall update the final design plan to show the location and connection of porous pavement bypass pipe outlets, if intended to be proposed, as suggested by the provided construction detail. **Not Addressed. Response to comment expected with future submittal.**
 - iv. The Applicant shall prepare a porous pavement sizing summary worksheet to demonstrate that storage for the 10 year runoff volume is contained below the pavement section, as required by Chapter 5 of the Stormwater Management Design Manual. **Addressed. Pending confirmation during review of final design plans.**
 - v. The Applicant should consider if additional provisions are necessary to prevent infiltration of stormwater into adjacent building basements and footing drains where porous patios are proposed upgradient (on the western face) of the structure. **Not Addressed. Response to comment expected with future submittal.**
 - vi. The Applicant shall revise the provided construction detail for porous pavement to incorporate a non-woven geotextile fabric on sidewalls of the stone reservoir cross section. **Addressed.**
- f. The revised site layout incorporates two Bioretention Filter areas within the site stormwater system design. One of these filters will be constructed within the common center green located between Proposed Road B and Proposed Road C. The second Bioretention Filter is proposed to be constructed along the shoulder of Proposed Road A and U.S. Route 6 adjacent to the site entrance. The following comments are based upon our initial review of the proposed Bioretention Areas:
- i. The NYSDEC Stormwater Management Design Manual requires that 75% of the required Water Quality Volume must be provided prior to filtration in the stormwater practice. The Applicant shall revise the Bioretention filter design calculations to eliminate filtration media void space storage from the provided storage calculation. **Addressed. Pending confirmation during review of final design plans.**
 - ii. The Applicant shall provide site investigation data (soil percolation and deep hole testing) to demonstrate feasibility of the proposed porous pavement infiltration systems. Site investigation data shall demonstrate adequate separation to bedrock/groundwater and must prove adequate



infiltration rates of site soils. **Not Addressed. Response to comment expected with future submittal.**

- g. The revised site layout incorporates a series of eleven (11) rain garden areas located along the eastern and southern limits of development to provide water quality treatment and Runoff Reduction Volume (RRv) treatment for runoff from impervious roof areas and the proposed multi-sport court surface. The following comments are based upon our initial review of the proposed rain garden design at this time:
 - i. The Applicant shall prepare a rain garden area practice design summary worksheet that provides a breakdown of rain garden water quality storage by stone, soil and ponding layers, consistent with the Chapter 5 requirements of the NYSDEC Stormwater Management Design Manual. **Addressed.**
 - ii. The Applicant shall revise the plans to show the location and connection of all Rain Garden underdrains, if intended to be proposed, prior to approval of the final site SWPPP. **Not Addressed. Response to comment expected with future submittal.**
 - iii. **Routine inspection and maintenance procedures for proposed rain garden areas must be summarized in the SWPPP, as specified by Chapter 5 of the NYSDEC Stormwater Management Design Manual.**
- h. The Applicant shall prepare sizing calculations to support the provided detail for the proposed level spreader spillway. Spillway stone stabilization must be sized to convey peak flows resulting from the 100 year design storm. **Not Addressed. Response to comment expected with future submittal.**
- i. The Applicant has prepared a draft Stormwater Maintenance Agreement for review and acceptance by the Consulting Town Engineer and Town Attorney. Draft easement review comments will be communicated directly to the Applicant's Engineer. **Comment Satisfaction Pending.**
- j. Improvements to the shoulder of US Route 6 are subject to the design standards, review and approval of the NYSDOT. The Applicant shall provide supporting design documents related to Route 6 improvements for review and record by the Consulting Town Engineer. **Not Addressed. Response to comment expected with future submittal.**
- k. The provided Utilities Plan drawing sheet suggests that the proposed stormwater conveyance pipe from drainage subcatchment 1.3S may conflict the pipe shown to discharge to Proposed Bioretention Filter #2 from the site driveway area. The Applicant shall demonstrate that adequate clearance will be provided to accommodate the pipe crossing or revise the plan as necessary. **Addressed. Comment satisfaction to be confirmed during review of the final design plans.**



- i. The Applicant shall revise the plan to provide rip-rap along drainage flowpath adjacent to the 6 shoulder expansion embankment within the site. Rip-Rap stone shall be sized based upon peak flows resulting from the 100 year design storm. **Partially Addressed. Stone sizing calculations to be provided with future submittal.**
 - m. The Applicant has provided an updated RRv calculation worksheet to supplement calculations provided under Appendix A. We have completed a preliminary review of the provided calculations at this time. In the event that further technical comments are determined, such comments will be provided during the upcoming meeting of the Planning Board. **No Response Necessary. RRv calculations to be confirmed during review of the final project SWPPP and design plans.**
 - n. **It is acknowledged that the provided HydroCAD analysis report does not accurately represent the proposed flow splitter structure adjacent to the Pocket Wetland and Surface Sand Filter practice areas as runoff reduction from proposed green infrastructure practices is not considered in the model. The Applicant shall provide calculations to demonstrate their design approach for the flow splitter and that the respective pipe invert elevations have been sized appropriately.**
4. It is our understanding that the Applicant does not wish to dedicate constructed roadways to the Town of Somers. The Applicant shall prepare draft homeowners association agreement documents for review by the Consulting Town Engineer and Town Attorney.
5. The Applicant's SWPPP and Environmental Assessment acknowledge that a phased construction approach is necessary to ensure that no greater than 5 acres of land are disturbed at one time. The Applicant begun development of a land disturbance phasing plan as referenced in the SWPPP and depicted on drawing sheet "SP-4". The Applicant must complete development of an acceptable land disturbance phasing plan prior to approval of the final site SWPPP. **Partially Addressed. Additional details on the proposed land disturbance phasing plan to be provided with future submittal.**
6. The Applicant has provided preliminary documents to describe the anticipated earthwork and grading for the proposed site development. The following comments are based upon our initial review of the preliminary earthwork documents that have been received.
 - a. The Applicant shall develop a proposed earthwork plan that will be coordinated with the land disturbance phasing plan. The earthwork plan shall include a proposed earthwork map that indicates the depth and volume of cut and fill placement throughout the entire proposed area of disturbance. The plan shall also describe the limits and approximate height of all temporary stockpile areas and should detail the intended schedule of truck loading and hauling operations. **Not Addressed. Applicant response to comment to be provided by future submittal.**
 - b. The Applicant shall provide an updated profile view which depicts subsurface soil strata and depth to bedrock and groundwater based upon the revised site layout



relative to previously completed site investigation findings. **Not Addressed. Applicant response to comment to be provided by future submittal.**

- c. The Applicant shall confirm that rock removal is not anticipated to be necessary based upon the revised site layout relative to previously completed site investigation findings. **Not Addressed. Applicant response to comment to be provided by future submittal.**
7. The Applicant shall prepare an updated site Erosion and Sediment Control Plan following the completion of the earthwork management plan. Final location and limits of all stockpile areas shall be coordinated with the Land Disturbance Phasing Plan and Site Earthwork Plan, to be included with future Applicant submittals. **Partially Addressed. Detailed Applicant response and an updated Erosion and Sediment Control Plan to be provided by future submittal.**
8. The Applicant has provided an updated site photometric plan based upon the revised site layout. Consistent with the previously reviewed layout, the provided plan identifies that there will be no resulting illumination at or in the vicinity of the western, southern and eastern property lines. Average photometric levels along site roadways are generally depicted as less than 0.5 foot-candles. Based upon our review of the provided photometric plan, we feel comfortable that the depicted site illumination does not appear to be above what would be appropriate for such a development. We look forward to providing the Planning Board with further input on this issue as project review progresses. **Addressed. Pending no further comment or concern by the Planning Board.**
9. Our office previously reviewed the provided "Endangered Species Habitat Sustainability Assessment and Wetland Report", prepared by Ecological Associates, LLC, dated January 22, 2014. Following the receipt of the review memoranda issued by Town of Somers Open Space Committee (OSC) memorandum, dated February 26, March 21 and April 14, 2014 it was determined that additional evaluation of the project site for locally protected animal and plant species was necessary. A biodiversity survey protocol was prepared and reviewed by the Town of Somers Open Space Committee and field investigation activities are still being undertaken at this time. We look forward to the receipt of biodiversity study findings and will provide our recommendations on the assessment and necessary mitigation to the Planning Board at that time. **The Biodiversity Assessment Report has been included by the Applicant with the current submittal. Our office has begun review of the report and would like to offer the following comments at this time:**
 - a. **The West Virginia white butterfly (*Pieris virginiensis*), may have suitable habitat onsite. In the text of the document, the habitat requirements and presence of larval host plants for Westchester County Protected butterfly species are written off by saying, "bogs, fens, trout streams, and coldwater seeps, prairies, meadows, dry fields, and undisturbed marshes" are not present. Although many of the fourteen listed species require these habitat types, the West Virginia white butterfly prefers deciduous hardwood forests, which is an onsite habitat type. The larval host plant for this butterfly is various species of toothworts. However, in the vegetation sections of this**



report, there is very little mention of the onsite herbaceous vegetation, and it is unclear whether or not these plants are present.

- b. **The Aphrodite Fritillary butterfly (*Speyeria aphrodyte*) is described as not having suitable habitat or larval host plants onsite. However, this butterfly's habitat includes open oak woods and the larval stage prefers violet species. In the Potential Threatened/Endangered Species section of the text, violets are listed as being absent from the site, but in the vegetation description of the red maple hardwood swamp section, various violet species are noted in field observations.**
 - c. **The following Species on the Westchester County Protected Species List were not addressed in the report:**
 - d. **Those that do not appear to have suitable habitat onsite: northern dusky salamander (*Desmognathus fuscus*), eastern ribbon snake (*Thamnophis sauritis*), American black duck (*Anas rubripes*), prairie warbler (*Dendroica discolor*), worm-eating warbler (*Helmitheros vermivorus*), and Canada warbler (*Wilsonia canadensis*).**
 - e. **Those that do appear to have suitable habitat onsite: slimy salamander (*Plethodon glutinosus*), timber rattlesnake (*Crotalus horridus*), northern fence lizard (*Sceloporus undulatus*), five-line skink (*Eumeces fasciatus*), eastern hognose snake (*Heterodon platyrhinos*), northern copperhead (*Agkistrodon contortrix*), worm snake (*Carphophis amoenus*), common nighthawk (*Chordeiles minor*), and whip-poor-will (*Caprimulgus vociferous*).**
 - f. **The wood thrush (*Hylocichla mustelina*), a Westchester County species of special concern, is listed as being vocally identified onsite in 2012 and is recorded on Block 5957B of the Breeding Bird Atlas for 2000-2005. However, the report does not address anticipated impacts to this species, nor does it make any recommendations on how to minimize these impacts.**
 - g. **Protected plant species are collectively written off in the text, stating that there are no observed occurrences in the field. However, potential habitat concerns for these species are not addressed either and should be listed, given the variety of habitats on site and the variety of plant species on the list.**
10. Town of Somers regulated wetlands are located on the project site downgradient of the proposed area of disturbance. These wetland limits were delineated by the Applicant and confirmed by a Woodard & Curran Wetlands Scientist on August 21, 2013. The Applicant intends to provide an updated Wetlands Impact Analysis prepared by a certified wetlands scientist to analyze any potential impacts to the existing wetlands based upon the proposed site hydrologic conditions. Such report is intended to be prepared based upon the final limits of site disturbance following further acceptance of the site layout by the Planning Board. Review of the Wetlands Impact Analysis and necessary mitigation will be coordinated with the findings of the site biodiversity study protocol currently in progress.



Not Addressed. Wetlands analysis findings and mitigation to be coordinated in the future between our office and the Applicant's consultant.

11. Preliminary design calculations and details for the proposed water service and sanitary sewer connections have not yet been updated to reflect to current design layout development. Our previously identified comments that remain unaddressed have been carried forward in this memorandum as provided below. It should be noted that these comments reflect our review of the conceptual level of detail that has been provided and that additional comments will be issued upon future submittal of detailed design documents:

Wastewater Engineering Report

- a. Section 4 – The Applicant must provide design calculations for the pump station and force main discharge will be included in future submittals. **Not Addressed. Response to comment expected with future Applicant submittal.**
- b. Section 4 - Future discussion of pump station design should include system controls and emergency power. **Not Addressed. Response to comment expected with future Applicant submittal.**

Water Engineering Report

- c. Section 3 - Please provide additional information on water distribution system demands in the Windsor Farms district to justify the availability of adequate flow and pressure, as well as additional information on the fire flow test, including the location of the hydrant that was opened and the time of day of the test. We note that there was a significant drop in residual system pressure during the fire flow test, which was run at a relatively low flow for a 10-inch diameter pipe. Please comment on whether the observed residual pressure drop is due to friction losses in the pipe or if the meter pit is restricting the available flow. The Applicant should evaluate whether the existing 6" meter is appropriately sized given the added demand. **Not Addressed. Response to comment expected with future Applicant submittal.**
- d. Section 3 - It is noted that additional review of flow availability will be required when the project's fire flow requirements are known. **Not Addressed. Response to comment expected with future Applicant submittal.**

Utility Plan and Details

- e. SP-3 - While we note the preliminary nature of these plans, an initial review of the proposed pump station location does not show much space or provisions for access, controls, and emergency power. **Partially Addressed. Review of the final pump station layout will be confirmed following the submittal of detailed wastewater engineering plans and details.**
- f. D-2 – Please note that all future plan details and design calculations must consider Class 52 Ductile Iron Pipe for the proposed water main. **Addressed.**



- g. D-2 – Please provide clarification about the method of pipe restraint. There is a detail for thrust blocks on D-2, the notes specify Field Lok mechanical joints, and the Engineer’s report calls for Mega-lug fittings for restrained joints. **Addressed.**
 - h. The Applicant shall prepare a utilities profile to illustrate all layout of sanitary sewer and water service infrastructure in profile view. **Not Addressed. Response to comment expected with future Applicant submittal.**
12. The proposed site layout includes construction of access roadway terminating at the eastern property boundary of the adjacent Town of Somers owned parcel (the Windsor Farms parcel). It is our understanding that the Town of Somers may wish to pursue development of a conceptual park layout for adjacent Town owned parcel so that it can be coordinated with the current applications. Coordination of conceptual plan development should be contemplated by the Planning Board during review of the subject application. **Addressed. Development of the adjacent parcel is no longer being pursued at this point in time. The Applicant shall leave this access road in future easement and must consider resulting runoff in site stormwater analysis.**
13. The provided plans indicate that a block retaining wall is proposed to be constructed to a maximum height of 6.5 feet between the parking area and adjacent slope to Pocket Wetland “1.2P”. The Applicant must be provide structural design calculations based upon the proposed wall construction, signed and sealed by a licensed professional engineer, for record by the Consulting Town Engineer. **Not Addressed. Response to comment expected with future submittal.**

Please feel free to contact our office anytime with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph C. Barbagallo".

Joseph C. Barbagallo, P.E., BCEE
Consulting Town Engineer

PLANNING AND ENGINEERING DEPARTMENTS

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Syrette Dym, AICP
Director of Planning
sdym@somersny.com

MEMORANDUM

TO: Town of Somers Planning Board

FROM: Syrette Dym, Director of Planning

DATE: October 30, 2014

RE: Project: Hidden Meadow – Town Board Referral
Applicant: The Kearney Realty & Development Group
Location: 16 Route 6 (Section 15.07 Block 1 Lot 6)
Zoning: R80 Residence District
Actions: Request for Designation of the MF-BP Multifamily Residence Baldwin Place Floating Overlay Zone – Preliminary Subdivision and Site Plan Approval Application

Application Request:

By original application dated September 27, 2013 and received by the Town Board on September 27, 2013 and by the Planning Board office on September 30, 2013, The Kearney Realty & Development Group seeks to develop a 16.7 acre parcel located on Route 6 that is currently zoned Residence District R-80 with 53 townhouse type dwelling units through application of the Multifamily Residence Baldwin Place MFR-BP Floating Overlay district (Section 170-13.A Town Code) that would permit development at the requested density and unit type. Specifically, there will be 45 townhouses on individual fee simple lots, of which 8 will be affordable. In each of those 8 affordable townhomes, there will be a first floor affordable one-bedroom rental unit to be rented out by the owner of the three-bedroom affordable townhouse building above, for an additional 8 affordable units, or total of 16 affordable housing units.

In furtherance of that original application, the Applicant submitted an application for preliminary subdivision approval and site plan approval with accompanying applications for environmental permits that include those for steep slopes, wetland and watercourse protection, and stormwater management and erosion and sediment control, all dated December 18, 2013. An Application for a tree removal permit with tree removal plan followed after completion of a tree survey and was dated March 26, 2014.

Background

Preliminary Application for MFR-BP Overlay District and Town Board Actions

At the Town Board meeting of October 10, 2013, the Town Board reviewed the Applicant's preliminary development concept plan and submission letter. After review and discussion regarding the proposal, the Town Board indicated its opinion that the MFR-BP Floating Zone could be applied to this site, but that this opinion was not binding and was subject to all future analyses and studies.

The Town Board decided that the Planning Board was best suited to carry out the SEQR environmental review process. Therefore, the Town Board referred the application to the Planning Board for its review under the procedures of Section 170-13C and, asked the Planning Board to act as lead agency as part of a coordinated review under SEQR (6 NYCRR Part 617).

The additional actions undertaken by the Town Board under Section 170-13C.(1)(a)[5][f] at its meeting of October 10, 2013 included the establishment of an application fee and escrow fee.

Preliminary Actions by Planning Board

Planning Board Meeting of November 13, 2013

- Planning Board declared its intent to establish itself as Lead Agency
- Planning Board determined the Proposed Action to be a Type I Action
- Notice of intent was sent to all involved agencies; responses required by December 19, 2013
- Planning Board in receipt of correspondence indicating no objection to Planning Board as lead agency from:
 - NYC DEP(12-18-13), NYS DEC Ret.3 Division of Environmental Permits (11-25-13),
 - NYS Affordable Housing Corporation (12-3-13),
 - NYS Office of Parks, Recreation & Historic Preservation (12-6-13;11-25-13)
 - Westchester County (11-25-13)

Planning Board Meeting of January 8, 2014

- Planning Board accepts lead agency status

- Receipt of correspondence from Open Space Committee dated November 27, 2013

Planning Board Meeting of February 12, 2014

- Continued Discussion regarding location of recreation space, stormwater and phosphorous issues, information needed by Board for SEQR determination of significance.

Planning Board Meeting of March 14, 2014

- Presentation of alternative locations of recreation area by applicant; determination by Planning Board that it be onsite and in rear of site away from Route 6
- Discuss issues in letters from Watershed Attorney General of February 25, 2014 and March 11, 2014
- Set extra meeting for discussion of EAF Parts 2 and 3
- Request determination by Director of Planning regarding eligibility of site for application of MFR-BP district

Planning Board Meeting of March 25, 2014

- Review of EAF Parts 2 and 3; identification of additional studies to be required or further input necessary to make such determination
- Discussion regarding approach, approved by Town Attorney; regarding steps necessary to consider site eligible for application of MFR-BP site; determination to continue with site and SEQRA review while that eligibility determination is ongoing by Town Board

Planning Board Meeting of April 9, 2014

- Extended time frame for determination of significance from May 20, 2014 to August 13, 2014.
- Identify alternative of placing garages in rear or other site plan alternatives

Planning Board Meeting of April 22, 2014

- Review Alternative concept plans and select Alternative A3 for site plan modification
- Recommended agreement with changes to 1994 Comprehensive Master Plan and MFR-BP Zoning district with minor change back to town Board
- Heard ecological filed plans for determination of impacts due to concerns by OSC

Planning Board Meeting of June 11, 2014

- Review of Site Plan submission of May 28, 2014
- Revised layout with revised unit type based on prior revised approved alternative layout concept plan

Planning Board Meeting of July 22, 2014

- On agenda but applicant not appearing so no discussion

Planning Board Meeting of August 13, 2014

- Parking at school drop-off area design and provision of alternative design
- Refuse enclosure discussion

Basis of Comments

- Insite Cover Letter of October 20, 2014
- Plan Set dated October 20, 2014
- Alternative Parallel Parking Sketch at Bus Stop dated 10-20-14
- Biodiversity Assessment Report dated July 15, 2014
- Preliminary Stormwater Pollution Prevention Plan

Town Board Actions

At its meeting of October 9, 2014, the Town Board closed the second public hearings on the 1994 Comprehensive Master Plan amendment and the MFR-BP zoning amendment after asking for speakers of which there were none. The Board then took a roll call vote on each of the proposed amended Town Laws and by a vote of 4 to 1, with Councilman Faulkner voting no on each, the amendments to the Local Laws were passed. The Town Local Law #3 to amend the 1994 Comprehensive Plan and Local Law #4 to amend Chapter 170 entitled Zoning Section 170-13 Multifamily Residence MFR District was filed with the New York State Department of State on October 21, 2014. The Resolution of approval which incorporates SEQRA having been drafted by this office and F.P. Clark with input by the Town Attorney is awaiting official issuance by the Town Clerk.

As a result of passage of these amendments and local laws, the next step in the project approval process is for the Planning Board to make a SEQRA determination of significance for the site plan, subdivision, and overlay of the amended MFR-BP zoning district on the subject Hidden Meadow site.

For this reason, many of the items in the Insite letter of October 20 indicate that detailed site plan items will be provided later and the emphasis of the Board at this time should be on outstanding SEQRA issues so the applicant can focus on those issues first.

Main Issues for Planning Board Meeting of November 12, 2014

Plan Layout

Garbage Enclosures

In response to concerns expressed at the Planning Board meeting of August 13, 2014, the applicant has indicated that enclosures are enlarged to store one garbage can and one recycling can per unit. It should be noted that in many municipalities, a plastic container about half the size of a can is issued to each household to be put curbside weekly for recyclables and that seems sufficient for plastics. Newspapers can be stored inside and placed outside once per week. Therefore, one full can per unit may be more than is required. As a result of this requirement, the plan now shows what appears to be 14

locations of refuse enclosures, including seven of these (no.'s 3 through 9) being located in the central open space area. The Board may want to consider the visual impact of these larger enclosures

School Bus Stop Parking

Based on concerns regarding the layout of the head-in parking provided for the school bus waiting area in the prior plan, the Applicant has provided an alternative layout that shows parallel parking. This layout still provides the same five spaces and surrounding sidewalk area. In addition to adding slightly more impervious surface, the amount which should be identified by the applicant, and reducing green landscape area on the entrance drive this solution improves some traffic issues as compared with head in parking, while still having some of its own issues. The head-in spaces are slightly angled in the wrong direction and difficult to enter and, if anything, would have better been arranged as angle parking similar to spaces by the affordable units. From an internal traffic circulation point of view, cars entering the head-in parking will have less of an impact on internal traffic flow than will parallel parking, although the impact may be de minimus and does not affect critical traffic flows along Route 6. If all drivers dropping off children were destined to exit onto Route 6 leaving the project, parallel parking is less likely to impede traffic flow both within the project and along Route 6 because the entry lane into the development would not be blocked even momentarily as parkers back out of their spaces, potentially holding up drivers wanting to enter the project driveway from Route 6. However in both cases, if parkers are destined to return back to their townhouses, both spaces are equally problematic. Head-in parkers will cross back into the entry lane and head back into the development and parallel parkers will do a u- or three point turn to head back into the development. In all cases, parkers will avoid entering Route 6 just to turn back into the development and the goal should be to keep them from doing so. The Board can review this and decide and it could also request an opinion from the Applicant's traffic engineer regarding which layout has less of an internal as well as any potential external traffic impact.

Recreation Area Details

Details of the playground and barbecue/picnic area still have to be provided. The applicant has indicated that these will be provided as part of detailed site plan review

Details of Site and Residential Unit Retaining Walls

There is now a height provided for the retaining wall between the parking spaces along Driveway C and the large stormwater management practice. The applicant has indicated that heights of retaining walls for residential driveways are anticipated to be about four feet and will be used to create a planted area along the foundation.

Treatment of Road to Adjacent Town Parkland

Separate from determination of any recreational fees, the Planning Board needs to determine whether the road connection of Road A offered to be built by the applicant should to the adjacent undeveloped town park land be constructed now as part of the subdivision/site plan development or whether actual construction should stop at Road B an easement be provided with or without rough grading and/or whether some other mechanism be provided such as a letter of credit, to ensure the future construction of this road by the Town. In this event, the Town would have funds available at such time the parkland may be developed and require access through the project site. Under any condition, the resolution of approval needs to contain some measures, to be provided with input from the Town Attorney that provides for a Town easement over the entry and “future” extension right-of-way, should that be the case, and that this requirement be incorporated into the Homeowners Association legal obligations. It would be necessary to ensure that public access through the project entrance is secured for some future time.

In addition, how provision of this easement/road in any form affects recreation fees, if at all, also needs to be determined.

Biodiversity Assessment Report

The applicant has incorporated the recommendations of the biodiversity study based on the agreed upon protocol. The Planning Board is being asked to consider whether Cape Cod style curbing should be provided throughout the project. In addition, the applicant has indicted that stop signs have been provided as traffic calming measures.

Timeline

Town Board Actions

The Town Board opened a public hearing on June 12, 2014 on the Local Law to Amend the Town of Somers 1994 Comprehensive Master Plan and a Local Law to amend the Code of the Town of Somers Chapter 170 Section 170-13 Multifamily Residence MFR District. The Town Board took comments at that meeting and then closed the public hearing on the Master Plan because a second public hearing would be scheduled, but left the comment period open for 10 days during which time comments were received. The public hearing on the zoning amendment was left open and continued at the Town Board meeting of July10, at which time comments were taken and the zone change hearing closed. The Town Board voted to hold the second public hearing on the Local Law to Amend the Town of Somers 1994 Comprehensive Master Plan on September 11, 2014 and directed the Director of Planning to make any required further amendments to the 1994 plan and zoning as required based on comments and to make that available for public review prior to the second public hearing date. The hearings were continued on both local laws as stated above to the October 9, 2014 meeting at which time the hearings were closed and both local laws were approved by a vote of 4 to 1. Copies of the Town Board Resolutions of Approval and of the approved local laws are attached.

The Board should now determine what if any SEQRA items have not been addressed based on the EAF and all other information provided. Based on that determination, FP Clark and I would prepare a draft Negative Declaration for review by the Planning Board relative to site plan, subdivision and overlaying the zoning on the site.

Att.

Cc: Town Board
Town Clerk
Roland Baroni
Joe Barbagallo
Open Space Committee
Ken Kearney
Rich Williams
Steve Ralston

Z:\PE\Subdivision files\Hidden Meadow\Town Comments\Subdivsison-Site Plan Application\Planner's Comments10-30-14.docx



Robert P. Astorino
County Executive

County Planning Board

November 3, 2014

Syrette Dym, AICP, Town Planner
Town of Somers Town House
335 Route 202
Somers, NY 10589

Subject: Referral File No. SOM 14-001C – Hidden Meadows at Somers; Zoning Map Amendment, Subdivision and Site Plan

Dear Ms. Dym:

The Westchester County Planning Board has received revised materials including a “parallel parking sketch” (dated October 2, 2014) for the above referenced application for the development of a 16.7-acre parcel with 53 housing units of which 37 would be single-unit townhouses and eight would be duplex townhouses containing one 3-bedroom homeownership unit on the upper floors and one 1-bedroom rental unit on the ground floor with the entrance in the rear. The 16 units in the eight duplex townhouses are to be affordable affirmatively furthering fair housing (AFFH) units. Each townhouse would contain a one-car garage. The eight rental apartments would have reserved on-street parking spaces on the internal roadways. Surface parking spaces will be provided for 21 cars to accommodate parking for visitors. Recreational spaces would also be provided throughout the site. The development is to be serviced by a common driveway/private roadway connecting into Birdsall Road (US Route 6).

The site, which is currently zoned R-80 Single-Family, is proposed to be rezoned with a zoning map amendment that would place the MFR-BP Multi-Family Residential Floating District onto the site. It is our understanding that site plan and subdivision approvals would be required.

We have previously reviewed this matter under the provisions of Section 239 L, M and N of the General Municipal Law and Section 277.61 of the County Administrative Code and responded to the Town in letters dated November 15, 2013, April 1, 2014 and June 9, 2014. We offer the following comments with respect to the most recent site plan revisions:

Vehicular parking for school bus drop off/pick up. The “parallel parking sketch” shows five parking spaces to be constructed near the front entrance of the development that are to serve as a vehicular waiting area for school bus pick up and drop off. Given the proposed development’s compact size, it is not clear why these spaces are needed. We recommend the Town consider the relationship of such parking to potential conflict with Westchester County’s anti-idling law. In addition, our previous letters noted that the internal sidewalk network shown on the plans was incomplete. We recommend that the applicant consider making the site more walkable.

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118 Marine Avenue
White Plains, New York 10601

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Thank you for calling this matter to our attention.

Respectfully,
WESTCHESTER COUNTY PLANNING BOARD

For: 
By:

Edward Burroughs, AICP
Commissioner

EEB/LH

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Syrette Dym, AICP
Director of Planning
sdym@somersny.com

MEMORANDUM

TO: Town of Somers Planning Board
FROM: Syrette Dym, Director of Planning
DATE: November 3, 2014
RE: Request by Chairman of the Zoning Board of Appeals for Planning Board Input on Variance Request for 63 Route 6 (\$.20-1-5) by Paul R. Iacuone, LLC

The Chairman of the Somers Zoning Board of Appeals has requested input and comments by the Planning Board on a request by Paul R. Iacuone, LLC for a variance to permit a fast food restaurant and drive-thru on this one acre site located in the NS Neighborhood Shopping District. While this request for Planning Board input may not be a usual one or one that has been made in the past in the Town of Somers, it is not unusual for a Planning Board to send a letter in support of passage or denial of use or area variances before a Zoning Board of Appeals.

The site is located along Route 6 directly east of the Golfworx site that was the subject of The Greens application before this Planning Board more than two years ago.

Fast food establishments are defined in the Zoning Law as:

“A business primarily engaged in the rapid retail sale of pre-prepared or quickly prepared food and beverages served in disposable containers and where a substantial portion of sales is by customers ordering and picking up food at a counter with limited table service. “Fast-food establishment” shall not include bakeries, food markets, delicatessens or other nonrestaurant businesses engaged in the sale of food that have a seating capacity, as defined by the Building Inspector in accordance with applicable codes, of not more than 10.”

Fast food establishments are not permitted uses in the NS district in which this site lies. Fast food establishments are permitted in the CS Community Shopping District which lies to the south of the site and which contains the Somers Commons Shopping Center. However, even where fast food establishments are a permitted use, drive-in windows or curbside service is not permitted.

The applicant and his representative have presented a series of arguments supporting their request for a use variance at this location that would permit a fast food establishment with drive-thru... I would like to provide information to the Planning Board to help them in their consideration of this request by the Zoning Board Chairman. Some of this input is based on a field investigation I took Monday, November 3, 2014.

Cannot Retain a Reasonable Return on Investment

Page 4 of the September 13, 2014 letter from the Applicant's representative states in paragraph two the reasons that the applicant has been unable to lease or have others purchase the property including:

- Recent business failures
- Inability (i.e. due to zoning) to site a fast food restaurant with a drive in
- Significant number of banks on other properties in vicinity
- Need to knock down the existing building to make it profitable

Of the above, the business failures may be that the business model of the proprietor was not sound or that the building itself did not provide an appropriate restaurant atmosphere. In fact, on field inspection, the building itself may be obsolete for many purposes and require either a tear down or major renovation by the owner to attract any tenant. There is no evidence that only a fast food restaurant with a drive-in could work. A new building set differently on the site might be able to accommodate any number of uses not just a fast food establishment, particularly one with a drive thru. .

Uniqueness

The reasons for uniqueness are stated at the bottom of page 6 in the September 15, 2014 letter as:

- History of failed restaurants
- Not a corner lot
- No viable market for current use
- Current building is not perpendicular to road:

The uniqueness of the site is established by citing how this site has had more restaurant failures than any other site in the corridor. This only again tells us that those restaurant business models may not have been sound, sufficiently financed or the building was w not conducive to an attractive restaurant environment. . The Naclerio lot only one lot further east along Route 6 is seeking a re-granting of site plan approval to establish another use and has not requested any relief for such use from the Zoning Board.

As indicated in a follow-up letter of October 6, 2014, there are two properties at 75 and 77 Route 6 that have vacant buildings, and are not generating income. 75 Route 6 is the Naclerio property that was operating in the past as a doctor's office. The building at 77 Route 6 does not appear to be vacant, and in fact, appears to have contracting equipment in the yard. Lot 81 is a wooded lot that is not developed.

Of the 10 parcels identified in the October letter, the Strip Mall at 250 Mahopac Avenue and Shell Station at 87 Route 6 are the only corner properties. This leaves eight other properties plus the subject property that are not corner lots, so this does not establish its uniqueness, from a planning point of view.

The location and size of the property and its adjacency and frontage to the Golfworx site does present an opportunity that has not been identified in the narrative presented. From a Route 6 corridor future development point of view, the Golfworx site is the only large, deep undeveloped site in this portion of the corridor. As seen in the plans for the site as part of The Greens application, a development constraint of the Golfworx site was its limited Route 6 frontage relative to the remainder of its site. So from a corridor planning point of view, a recommendation for this area would be to suggest combination of the subject site with that of the Golfworx site. Therefore, this is one additional avenue that could be explored, if so desired by the applicant, perhaps for a joint development of the site within the parameter of the NS district. Also, the site is not "wedged against the Putnam County border" as represented on page 7 of the September memorandum.

The fact that the building is not perpendicular to the road does not define its uniqueness since other buildings along the corridor have similar orientation.

Altering the Character of the Neighborhood

The NS district still has many sites in transition from an older neighborhood corridor characterized by local uses in older buildings mixed with convenience uses. Establishing a national chain fast food establishment particularly with a drive-in on this north side of Route 6 would change the character of this portion of the corridor and possibly set a precedent. Whereas it is clear more viable uses need to be established in this area over time, a full corridor approach with design guidelines would appear to be more appropriate than a piecemeal use variance. The Dunkin Donuts use as part of the close-by gas station convenience store is much less a stand-alone fast food establishment than a larger equivalent of Dunkin Donut offerings within places like Seven Eleven Stores. There is no drive-thru and it is part of the already established convenience store. The neighborhood character that its NS name connotes is actually now being strengthened through development of the Planned Hamlet residential uses and the potential development of Hidden Meadow. With this influx of new residents, the viability of uses to serve local residents is likely to be greater than it has been in the past.

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LESLIE J. SNYDER
ROBERT D. GAUDIOSO

DAVID L. SNYDER
(1000-2012)

October 6, 2014

Honorable Chairman Victor Cannistra
and Members of the Zoning Board
335 Route 202
Somers, NY 10589

RE: Paul R. Iacuone, LLC
63 Route 6
Somers, NY 10589

4.20-1-5

Hon. Chairman Cannistra and Members of the Zoning Board:

As you are aware we represent Paul R. Iacuone, LLC in connection with its request for a use variance for the above captioned property ("Property").

Listed below are the uses and purchase dates for all the commercial properties in the Neighborhood Shopping District in the vicinity of the Property:

- 4.19-2-20 • The Strip Mall-250 Mahopac Ave (Purchase date 05/08/1997)
- 4.19-2-19 • Maple Grove Farms-51 Route 6 (Purchase dated 12/31/1970)
- 4.20-1-1 • Valero with a Dunkin Donuts-55 Route 6 (Purchase date 08/25/1993)
- 4.20-1-3 • Golf Worx-57 Route 6 (Purchase date 12/18/1998)
- 4.20-1-6 • Grand Central Deli-71 Route 6 (Purchase date 04/09/2001)
- 4.20-1-7 • Doctor's Office-75 Route 6 (Purchase date 5/31/1985) *Handwritten*
- 4.20-1-9 • Vacant Building-77 Route 6 (Purchase date 06/24/2002) *Handwritten*
- 4.20-1-8 • Wooded Lot-81 Route 6 (Purchase date 09/03/2002)
- 4.16-1-1 • PJ's Bar-85 Route 6 (Purchase date 12/16/2001)
- 4.16-1-2 • Shell Station-87 Route 6 (Purchase date 12/16/2001)

Based on the foregoing information, granting a use variance to the applicant will have little, if any, precedential value. All the properties, except 51 Route 6 and 75 Route 6, were purchased subsequent the rezoning in 1993 and thus any hardship is self-created. Moreover, other than 75 Route 6 and 77 Route 6, all the properties host thriving businesses and thus cannot meet the first use variance criteria because they yield a reasonable return. The property at 75 Route 6 does not have the unique characteristics that the Property has (constructed as a restaurant

Handwritten signature

with a series of failed restaurants). As a result, none of the other commercial property owners in the Neighborhood Shopping District can claim they are entitled to a use variance.

Also, attached please find various recent available receipts for the Property. The receipts include the costs for water, insurance, electric, fuel oil, garbage removal and other miscellaneous maintenance. As previously noted, illegal dumping at the Property has created a constant expense for the applicant and has resulted in notices from the Building Department in light of the Property vacancy over the last few years, thereby creating further unnecessary hardship.

We thank you for your consideration and look forward to discussing this matter with the Zoning Board at the October 21, 2014 hearing. If you have any questions or require any additional documentation, please do not hesitate to contact me.

Respectfully submitted,
SNYDER & SNYDER, LLP

By: 
Robert D. Gaudio, Esq.

RDG/JG

Enclosures

cc: Paul R. Iacune, LLC

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C/PB TP

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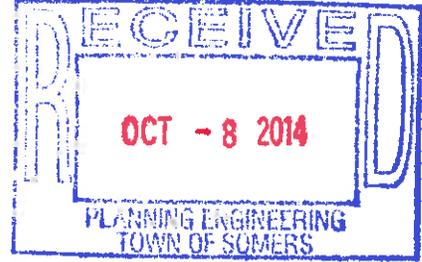
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TARRYTOWN OFFICE

DAVID L. SNYDER
(1956-2012)

September 15, 2014

Honorable Chairman Victor Cannistra
and Members of the Zoning Board
335 Route 202
Somers, NY 10589



RE: Paul R. Iacuone, LLC
63 Route 6
Somers, NY 10589

730

Hon. Chairman Cannistra and Members of the Zoning Board:

We represent Paul R. Iacuone, LLC in connection with its request for a use variance for the above captioned property. In furtherance of the foregoing, enclosed please find seven (7) copies of the following materials:

1. Memorandum of Law in Support a Use Variance with the Affidavits of Louis Cardillo and Paul R. Iacuone attached as Exhibits; and
2. The existing survey of the property.

We thank you for your consideration and look forward to discussing this matter with the Zoning Board at the September 16, 2014 hearing. If you have any questions or require any additional documentation, please do not hesitate to contact me.

Respectfully submitted,
SNYDER & SNYDER, LLP

By: 
Robert D. Gaudioso, Esq.

Enclosures
RDG/JG

cc: Paul R. Iacuone, LLC
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TOWN OF SOMERS
ZONING BOARD OF APPEALS

-----X
In the matter of the Proposal of

PAUL R. IACUONE, LLC

Premises: 63 Route 6
Somers, NY 10598
-----X

MEMORANDUM OF LAW IN SUPPORT OF A USE VARIANCE

I. Introduction

Paul R. Iacuone, LLC (the "Applicant") respectfully submits this memorandum of law in support of its application for a use variance, with respect to the property 63 Route 6, Somers, New York (the "Property") for a fast-food restaurant with a drive-in. The Applicant meets all four criteria in Town Law Section 267-b (2)(b) and as a result the Applicant respectfully requests that the Zoning Board of Appeals grant the requested use variance.

II. Statement of Facts

The Property is 43,887 square feet and is located in the Neighborhood Shopping District. The Applicant purchased a 50% portion of the Property in 1988 for \$120,000.00. See Deed for 63 Route 6, attached hereto as Exhibit 1. On March 19, 1996 the Applicant purchased the remaining 50% portion of the business and the Property from his business partner Michael Campolieta for an additional \$335,000. From the date of purchase through 2002 the Applicant operated PaTerri's Restaurant, later known as the Peppermill Grill at the Property. Due to personal health issues, including heart attacks in 2001 and 2006, the Applicant no longer operates a restaurant at the Property and has leased to Property to various tenants starting in 2002. See Paul R. Iacuone Affidavit attached hereto as Exhibit 2.

On multiple occasions the Property has been operated unsuccessfully as a restaurant. Currently the Property is vacant and the Applicant has been unable to sell or lease the Property for a permitted use and suffers from an unnecessary hardship.

III. Use Variances Standard

Pursuant to Town Law Section 267-b(2)(b) the standard for a use variance is as follows:

No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.

As detailed below, the Applicant meets each of the four use variance criteria.

IV. The Applicant Cannot Obtain a Reasonable Return on Its Investment

An applicant for a use variance must demonstrate the lack of a reasonable return on an investment by substantial evidence and that evidence must include "dollars and cents proof." Victory Blvd. Assoc. v. City of New York, 85 A.D.2d 725, 445 N.Y.S.2d 823 (2d Dept. 1981), order rev'd on other grounds, 58 N.Y.2d 900, 460 N.Y.S.2d 283. The New York Court of Appeals articulated the types of documentary proof a landowner must provide as "dollars and cents" proof to establish inability to realize a reasonable return to include: (1) the purchase price of the parcel in issue; (2) the present value of the parcel; (3) expenses

attributable to maintenance of the parcel; (4) the amount of taxes on the parcel; (5) the amount of mortgages and other encumbrances; (6) income from the land in issue; and (7) other facts relevant to the particular circumstances of the case. Providing the evidence of the minimum variance required to yield a reasonable return on the investment is "dollars and cents" proof. Sullivan v. City of Albany Board of Zoning Appeals, 20 A.D.3d 665, 798 N.Y.S.2d 200 (3d Dept. 2005).

Moreover, the inability to sell a property subject to restrictive zoning ordinances serves as relevant evidence of the impossibility of realizing a reasonable return on an investment in property. Citizens for Ghent, Inc. v. Zoning Board of Appeals of Town of Ghent, 175 A.D.2d 528, 572 N.Y.S.2d 957 (3d Dep't 1991). The applicant for a use variance needs to assert the inability to sell a property with particular facts regarding advertising, agents employed, pricing and terms and conditions of sale in order to prove an inability to realize a reasonable return on an investment. Cortese v. Avis Rent A Car System, Inc., 167 A.D.2d 940, 561 N.Y.S.2d 1005 (4th Dep't 1990). Furthermore, in Cities Serv. Oil Co. v. Sacca, 54 A.D.2d 981, 981, 389 N.Y.S.2d 26, 26 (2d Dept. 1976), the Court held that the petitioner failed to present any proof of an attempt to sell or lease its property and as a result the Zoning Board's determination granting a use variance was irrational. Id. see also Kennedy v. Zoning Board of Appeals of Village of Dobbs Ferry, 145 A.D.2d 487, 489, 535 N.Y.S.2d 636 (2d Dept. 1988) (holding that evidence that the property cannot be profitably used, sold or leased under the zoning must be submitted to obtain a use variance).

The Applicant purchased a 50% interest in the Property in 1988 for \$120,000 and subsequently bought out his partner for an additional \$335,000 in 1996. See Paul R. Iacune

Affidavit attached hereto as Exhibit 2. The expenses attributable to the maintenance of the Property are approximately \$11,700.00 per year including \$6,000.00 for insurance, \$4,000.00 for fuel, \$700.00 for water, and \$1,000.00 for general maintenance. Other maintenance is also routinely required, such as the recent installation of a new furnace and water heater. The taxes on the Property are \$23,000.00 per year. The amount of mortgages and encumbrances on the Property is \$200,000 with payments between \$2,800 and \$2,900 a month to Signature Bank. The income of the Property is \$0.00. As a result, the Applicant needs to collect approximately \$5,972 a month in rent just to cover expenses.

Louis Cardillo has been employed by the Applicant for the last four (4) years as the broker for the Property. For the last two (2) years the Property has remained vacant despite Mr. Cardillo's best efforts to rent the Property. See Louis Cardillo Affidavit attached hereto as Exhibit 3. Mr. Cardillo has taken extensive efforts to market the Property to all businesses that would be permissible under the Zoning Code, such as retail stores, personal service establishments, restaurants other than fast-food establishments, banks, medical, dental, veterinary, professional and business offices and child/adult day-care facilities. Nevertheless, based on concerns including the myriad of recent failed businesses, the inability to site a fast-food restaurant with a drive-in on the Property, the significant number of banks in the area, or even the need to knock down the existing building on the Property in order to make it profitable has resulted in the inability to purchase or lease the Property. Since the Property cannot be rented or sold the Applicant has had to pay all the carrying expenses on the Property without the benefit of receiving any income or rent. See Paul R. Iacuone Affidavit attached hereto as Exhibit 2.

The Applicant cannot run a business on the Property because of Paul R. Iacuone's current health. See Paul R. Iacuone Affidavit attached hereto as Exhibit 2. Moreover, the Applicant cannot sell the Property because of the current real-estate market, size of the Property, and current condition of the building. See Louis Cardillo Affidavit attached hereto as Exhibit 3. Furthermore, new housing across the street, and new lights and sewers, are scheduled to be installed in the future which contribute to the Property being undervalued. Id. Since the Applicant cannot run a business at the Property, cannot rent the Property and cannot sell the Property, the Applicant cannot obtain any return on its investment let alone a reasonable return.

V. **The Alleged Hardship is Unique and Does Not Apply to a Substantial Portion of the Neighborhood Shopping District.**

In order for the hardship to be considered unique the conditions burdening the property must be "peculiar to and inherent to the subject property in comparison to other properties in the same zoning district." Supkis v. Town of Sand Lake Zoning Board of Appeals, 227 A.D.2d 779, 780, 642 N.Y.S.2d 374, 376 (1996). Moreover, if neighboring properties share the same characteristics as the property in question, then the claim of uniqueness is eviscerated. Id., see also, Matter of Citizens of Ghent v. Zoning Board of Appeals of the Town of Ghent, 175 A.D.2d 528, 572 N.Y.S.2d 957 (3d Dept. 1991). Uniqueness does not require that the property seeking a use variance to be the only property affected by the hardship condition, but instead the hardship condition cannot be "so generally applicable throughout the district as to require the conclusion that if all parcels similarly situated are granted variances the zoning of the district would be materially changed."

Douglaston Civic Ass'n v. Klein, 51 N.Y. 2d 963, 435 N.Y.S.2d 705 (1980).

In Supkis the Court determined that the property was unique because of a variety of “cumulative negative factors.” Supkis, 227 A.D.2d at 780. The cumulative factors included being next to an electrical substation, a town highway garage on the property, poor soil conditions, and the necessity of removing a 30,000-gallon storage tank from the property. Id. The court reasoned that although other neighbors were near the electrical substation, the presence of the poor soil coupled with the expense of removing the storage tank caused the property to be unique. Id.

Similarly, in Jones v. Zoning Board of Appeals of Town of Oneonta, 90 A.D.3d 1280, 934 N.Y.S.2d 599 (2011), the Court of Appeals held that the property seeking a use variance was unique because although neighboring properties also had the “exact same steep slopes, uneven terrain, wetlands, creek and gravel/soil composition” the fact that the property had an already existing mine on it constitutes a unique characteristic that significantly contributes to the hardship. Also, in Save the Pine Bush Inc. v. Zoning Board of Appeals of Town of Guilderland, 220 A.D.2d 90, 643 N.Y.S.2d 689 (3d Dept. 1996), the Court held that although all neighboring properties were near the Pine Bush the property in question was unique because it was the only property that was improved, there was no market for the current use of the property, and the cost of removing the improvements was excessive.

Here, the Property is similar to the properties in Jones, Save the Pine Bush, and Supkis because although every parcel in the Neighborhood Shopping District is subject to the same zoning restrictions and no fast-food restaurants and drive-ins are allowed, the Property is unique because of its history of failed restaurants, it is not a corner lot, there is no viable

market for the current use, and because the current building is built of r a restaurant and is not built perpendicular to the road. See Louis Cardillo Affidavit attached hereto as Exhibit 3.

Louis Cardillo has marketed the Property to numerous businesses which have refused to rent the Property because of its unique characteristics. Prospective tenants are deterred from renting because of the Property's history and because if the Property was repurposed as something other than a restaurant the building would have to be knocked down and rebuilt thus increasing the cost to any prospective tenant. This is analogous to removing the 30,000 gallon storage tank and numerous cumulative factors considered in Supkis. The Neighborhood Shopping District is very small in size and wedged against the Putnam County border. The Property is unique compared to the other adjacent properties in the Neighborhood Shopping District, including the Baldwin Golf Range, the Grand Central Market, and the Valero gas station.

VI. The Requested Variance Will Not Alter The Essential Character of the Neighborhood.

Uses that result in imperceptible changes to an area have been held to have no effect on the character of the neighborhood. See Fiore v. Zoning Board of Appeals of the Town of Southeast, 21 N.Y.2d 939, 288 N.Y.S.2d 62 (1968). In Hanna v. Crossley, 40 A.D.2d 577, 334 N.Y.S.2d 443 (4th Dept. 1972), the Court held that a gas station would not alter the essential character of the neighborhood because there were other gas stations and commercial sites not just in the zone but in the immediate vicinity of the proposed gas station. Similarly, in Sunrise Plaza Assoc., L.P. v. Town Board of Town of Babylon, 250 A.D.2d 690, 673 N.Y.S. 179 (3d Dept. 1998) the Court held that the addition of some parking spaces did not alter the character of the neighborhood. Also in LaDirot Assoc. v. Smith, 169 A.D.2d 896,

564 N.Y.S.2d 620 (3d Dept. 1992), the Court held that although a kennel was not permitted in the district that a use variance should be granted because it could barely be seen from the road and thus did not alter the essential character of the neighborhood.

The variance requested by the Applicant is relatively minor because the Neighborhood Shopping District and immediate area surrounding the Property have changed drastically since the Applicant's original investment in the Property in 1988. Moreover, the variance is similar to the one granted in Hanna because there are other fast food restaurants in the area such as a Chili's and a Dunkin Donuts and although a majority of other fast food restaurants are not in the Neighborhood Shopping District they are in the immediate vicinity of the Property.

Pursuant to the Town of Somers Comprehensive Master Plan:

It is the purpose of the Neighborhood Shopping District to provide the opportunity and encouragement for the creation of economically healthy, functionally efficient, environmentally sound and visually attractive neighborhood business areas designed to primarily serve the local convenience retail and personal service needs of the residents of the Town of Somers, as well as to provide alternative housing opportunities for small households.

Based on the changes in the character of the community, this purpose no longer applies to the Property. Town of Somers Code §170-11. Since the rezonings in 1993 and 1996, the area houses large commercial stores, banks, and numerous other businesses that are similar to the proposed use of the Property. What once was an area needed to serve the need of the local residents is no longer the case. The area has changed from one that merely houses local businesses and caters to the residents of Somers to an area that serves all travelers along Route 6. Furthermore, Route 6 is no longer a quiet road but a busy thorough-fare that

connects the large population that lives on the border of Westchester and Putnam Counties. A well desired fast-food restaurant will be consistent with the adjacent Grand Central Market, Dunkin Donuts, and PJ's Restaurant (and bar), as well as the Somers's Commons Shopping Center. The variance is thus an imperceptible and not a major change.

VII. The Hardship is not Self-Created

Although not specifically an element for a use variance pursuant to the Town of Somers Zoning Code Section 170-111, Town Law requires that the hardship not be self-created. A hardship is self-created where an applicant purchases property subject to the restrictions from which relief is sought. See First National Bank of Downsville v. City of Albany Board of Zoning Appeals, 216 A.D.2d 680, 628 N.Y.S. 2d 199 (3d Dept. 1995). A hardship though is not considered self-created where a restrictive zoning ordinance is passed after the purchase of property. Center Square Assoc. Inc. v. City of Albany Board of Zoning Appeals, 19 A.D.3d 968, 798 N.Y.S.2d 756 (3d Dept. 2005).

The Applicant initially invested in the Property in 1988 and became the sole owner of the Property on March 19, 1996. See Paul R. Iacuone Affidavit attached hereto as Exhibit 2. At the time of the Applicant's initial investment, the Property was in the General Business District. Subsequent to the Applicants purchase of the Property in 1988, in 1993 the Town of Somers amended its Zoning Code and outlawed fast-food restaurants in the General Business District. See L-L No. 2-1993 attached hereto as Exhibit 4. On this basis alone, the hardship was not self-created. Even so, permitted as of right in the General Business District were restaurants and taverns but such uses "shall not include fast-food establishments and outdoor counter, drive-in, or curb service." See 1994 Town of Somers Zoning Code § 170-22,

attached hereto as Exhibit 5. In 1996, the Town amended its Zoning Code a second time and created two districts out of the General Business District: (1) the Neighborhood Shopping District; and (2) the Community Shopping District. Attached as Exhibit 6 is a copy of the current Town of Somers Zoning Map and the 1994 Town of Somers Zoning Map.

The Applicant originally invested in the Property at a time when fast food restaurants and drive-ins were permitted. Thus, the subsequent rezoning in 1993 and splitting of the General Business District in 1996 created the hardship. Since the restrictive ordinance was passed after the initial investment in the Property the hardship is not self-created. Moreover, the two rezones caused the area to change in character from an area that supported only local shops and businesses to an area that is now populated with national chains serving not only the population of Somers but the influx of people traveling daily on Route 6. Moreover, the Somer's Commons Shopping Center has also become a destination with stores such as Stop & Shop and Home Goods.

In the Community Shopping District fast-food restaurants are permitted as of right. Town of Somers Code §170-21.2. As a result, there is now a Chili's, a Chase Bank with a drive-in, and a Hudson City Saving Bank also with a drive-in, PJ's Restaurant (and bar) and the Grand Central Market, which serves counter service food, are also in the immediate vicinity of the Property.¹ A Valero gas station with a Dunkin Donuts is adjacent to the Property as well. The change in zoning from the General Business District to both the Community Shopping District and the Neighborhood Shopping District created the hardship

¹ Please note that there is also a Dunkin Donuts in the Neighborhood Shopping District. The Dunkin Donuts was issued a building permit without the need for a use variance because it was determined that it was not a fast-food restaurant by this Honorable Board. Attached hereto as Exhibit 7 is a copy of the Town of Somers Zoning Board Minutes dated February 21, 2012 granting a Build Permit for the Dunkin Donuts.

and not the Applicant. The Property can no longer compete with the other businesses that have been built in the immediate vicinity because they provide cheaper and quicker food alternatives to the local restaurants that have previously been run at the Property. This issue has been exacerbated in recent years as a result of the economic downturn further evidenced by continued vacancy of the Property for over two (2) years.

The hardship is also not self-created because businesses are hesitant to rent the Property because of its history. Since the Applicant stopped running a business at the Property in 2002 there have been five (5) different tenants all of which have been unsuccessful in running a restaurant at this location. See Paul R. Iacuone Affidavit attached hereto as Exhibit 2. Since all prospective tenants are cognizant of this fact many businesses are unwilling to rent the Property because they presume that the failures will continue. This type of failure is not self-created but a result of the rezoning and changed neighborhood character.

IX. Conclusion

By granting the requested use variance, the Zoning Appeals Board of Appeals will permit the Applicant to experience a reasonable return on the Property and provide the Town of Somers with a viable business for the Town residents to frequent. There will be no significant adverse effects from the proposed use because the area around the Property has significantly changed since the Property was purchased by the Applicant in 1988. Moreover, granting the use variance will relieve the Applicant of the unnecessary hardship suffered as a result of the rezoning.

WHEREFORE, for all of the foregoing reasons, the Applicant respectfully prays that this Honorable Board grant the requested use variance.

Dated: September 15, 2014
Tarrytown, New York

Respectfully submitted,
Robert D. Gaudio, Esq.
SNYDER & SNYDER, LLP
94 White Plains Road
Tarrytown, NY 10591



Robert P. Astorino
County Executive

County Planning Board

September 29, 2014

Denise Schirmer, Secretary
Somers Zoning Board of Appeals
Town of Somers Town House
335 Route 202
Somers, NY 10589

Subject: Referral File No. SOM 14-004 – Paul R. Iaccone Fast-Food – Use Variance

Dear Ms. Schirmer:

The Westchester County Planning Board has received a copy of a proposed application for a use variance for a 1-acre parcel located at 63 US Route 6 in the Baldwin Place hamlet of the town. The applicant is seeking a use variance to construct a fast-food restaurant with a drive through. The subject site is located in the NS – Neighborhood Shopping district which does not permit restaurants with counter service or drive-throughs.

We have reviewed this matter under the provisions of Section 239 L, M and N of the General Municipal Law and Section 277.61 of the County Administrative Code. With respect to the use variance, we find there are no County or intermunicipal planning issues of concern to the County Planning Board, this action is a matter for local determination in accordance with your community's planning and zoning policies. We will reserve comment on the site plan until a later date if site plan approval is sought after a use variance is granted.

Thank you for bringing this matter to our attention.

Respectfully,
WESTCHESTER COUNTY PLANNING BOARD

By: 

Edward Burroughs, AICP
Commissioner

EEB:LH