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5 **SOMERS PLANNING BOARD MINUTES**
6 **MARCH 10, 2010**
7

8
9 **ROLL:**

10
11 **PLANNING BOARD**

12 **MEMBERS PRESENT:** Chairman DeLucia, Mr. Keane,
13 Mr. Goldenberg, Mr. Foley and Ms.
14 Gannon
15

16 **ALSO PRESENT:** Town Planner Charney Hull
17 Consulting Town Engineer Barbagallo
18 Town Attorney Joseph Eriole
19 Planning Board Secretary Murphy
20

21 **ABSENT:** Ms. Gerbino
22

23 Chairman DeLucia explained that the last meeting of the Planning
24 Board was held on January 13, 2010. She noted that the meetings of
25 January 27, 2010, February 19, 2010 and February 24, 2010 were
26 cancelled.
27

28 The Chair said that she is pleased to announce that the Town Board
29 re-appointed John Keane as a member of the Planning Board for a
30 new seven-year term ending December 31, 2016. She mentioned
31 that Mr. Keane has also been appointed by the Planning Board
32 members to be acting chairman in her absence.

33 The Meeting commenced at 7:30 p.m. Planning Board Secretary
34 Marilyn Murphy called the roll. Chairman DeLucia said that a
35 required quorum of four members of the Board were present and
36 called the meeting to order.
37

38 Chairman DeLucia noted that Planning Board Secretary Murphy
39 prepared and submitted for the Board's consideration the approval of

1 the draft minutes of the December 9, 2009 Planning Board meeting
2 consisting of twenty-two (22) pages.

3

4 The Chair asked if there were any comments or questions from
5 members of the Board and no one responded.

6

7 The Chair asked if there was a motion to approve the December 9,
8 2009 draft minutes.

9

10 On motion by Mr. Goldenberg, seconded by Ms. Gannon, and
11 unanimously carried, the minutes of December 9, 2009 were
12 approved.

13

14 Chairman DeLucia noted that Planning Board Secretary Murphy
15 prepared and submitted for the Board's consideration the approval of
16 the draft minutes of the January 13, 2010 Planning Board meeting
17 consisting of thirty-four (34) pages.

18

19 The Chair asked if there were any comments or questions from
20 members of the Board.

21

22 Ms. Gannon mentioned that her name and Ms. Gerbino's name were
23 flip flopped on Page 28 and Page 29 on line 2.

24

25 The Chair asked if there was a motion to approve the January 13,
26 2010 draft minutes, as amended.

27

28 On motion by Mr. Goldenberg, seconded by Ms. Gannon, and
29 unanimously carried, the minutes of January 13, 2010 were
30 approved, as amended.

31

32 The Chair noted that the DVD of the December 9, 2009 and January
33 13, 2010 Planning Board meetings are made a part of the approved
34 minutes and are available for public viewing at the Somers Public
35 Library. The approved minutes are also on the Town's website
36 www.somersny.com and are available for public review at the
37 Planning & Engineering office at the Town House.

38

39

40

1 **PROJECT REVIEW**

2

3 **HOMELAND TOWERS, LLC AND NEW CINGULAR**
4 **WIRELESS PCS, LLC (AT&T) SITE PLAN APPROVAL AND**
5 **WETLAND PERMIT (SANTARONI PROPERTY)**
6 **[TM: 37.13-2-3] 2580 ROUTE 35**

7

8 Chairman DeLucia said that this is the project review of the
9 application of Homeland Towers, LLC/New Cingular Wireless PCS
10 LLC (“AT&T”), collectively referred to as the “Applicants”, for site plan
11 approval and wetland permit for property located at 2580 Route 35
12 owned by Umberto and Carol Santaroni for the installation of a
13 wireless telecommunications facility in an R-120 Residential Zoning
14 District.

15

16 The Chair explained that on March 5, 2010 the Board received a
17 letter by e-mail and regular mail from Attorney Robert D. Gaudioso
18 representing Homeland Towers requesting that this application be
19 adjourned to a future date and commenting that they are in the
20 process of substantially revising the site plan pursuant to the
21 comments of the NYS Department of Environmental Protection
22 (DEP).

23

24 **HOMELAND TOWERS, LLC/NEW CINGULAR WIRELESS**
25 **PCS. LLC (AT&T) SITE PLAN APPROVAL AND STEEP SLOPES**
26 **PERMIT (AMATO PROPERTY)**
27 **[TM: 38.17-1-5] 121 ROUTE 100**

28

29 Chairman DeLucia mentioned that this is the project review of the
30 application of Homeland Towers, LLC/New Cingular Wireless PCS
31 LLC (“AT&T”), collectively referred to as the “Applicants”, for site plan
32 approval and steep slopes permit for property located at 121 Route
33 100 owned by Michael P. Amato and Alice T. Amato for the
34 installation of a wireless telecommunications facility in an R-80
35 Residential Zoning District.

36 The Chair explained that on March 5, 2010 the Board received a
37 letter by e-mail and regular mail from Attorney Robert D. Gaudioso
38 representing Homeland Towers requesting that this application be
39 adjourned until April and commenting that they anticipate making a

1 substantial re-submission of revised plans, documents and materials
 2 for review by the Planning Board and its consultants.

3
 4 **MERRITT PARK ESTATES SUBDIVISION**
 5 **[TM: 5.10-1-1]**

6
 7 Chairman DeLucia said that this is the project review of the
 8 application of Mancini Building Corp. for final subdivision approval,
 9 wetland, steep slopes and tree preservation permits for property
 10 known as Merritt Park Estates located on the easterly side of Lovell
 11 Street and Adson Way for 15 single family building lots on 19.99
 12 acres in a Residential R-40 Zoning District. The Chair mentioned that
 13 this application was last discussed on September 21, 2005. She
 14 explained that an application for preliminary subdivision approval was
 15 submitted to the Planning Board on January 31, 1996 and noted that
 16 this application has been before the Planning Board for 14 years
 17 beginning on January 31, 1996 with the submission of an application
 18 for preliminary subdivision approval.

19
 20 The Chair acknowledged receipt of the following: applicant's
 21 application for final subdivision approval and related documents and
 22 materials received on January 25, 2010; cover letter dated February
 23 16, 2010 and received February 17, 2010 from Geraldine N.
 24 Tortorella, Esq. of Hocherman, Tortorella & Wekstein, LLP
 25 responding to and addressing Town Planner Sabrina Charney Hull's
 26 January 29, 2010 letter to applicant's consultant Joseph Riina, P.E.
 27 of Site Design Consultants and also to supplement applicant's
 28 application. She noted that Attorney Tortorella also enclosed
 29 information and/or plans that respond to the incomplete items listed in
 30 Town Planner Hull's letter. The Chair said that the 8-page letter with
 31 attachments and all of the enclosures can be reviewed at the
 32 Planning and Engineering office at the Town House together with
 33 Town Planner Hull's 6-page letter dated January 29, 2010.

34
 35 The Chair also acknowledged receipt of copies of letters of approval
 36 from the NYC Department of Protection (DEP), Westchester County
 37 Sanitary Main Extension and Permit, Westchester County Health
 38 Department, and additional approvals; a letter dated March 8, 2010
 39 received on March 9, 2010 from Michael O'Keefe, Chairman of the
 40 Board of Lake Lincolndale Property Owners' Association informing

1 the Planning Board that after a recent review of the current plans their
 2 intention remains the same as in 2005 and having no new concerns
 3 and agree in principle to the construction of the two proposed storm
 4 water basins per plans provided by Joseph Riina, P.E. of Site Design
 5 Consultants; a memo dated March 8, 2010 and received on March
 6 10, 2010 from Thomas Chiaverini, Highway Superintendent saying
 7 that he foresees no problems in the maintenance of the storm water
 8 structures and facilities; and a memo from Roland Baroni, Town
 9 Attorney, dated and received March 8, 2010 which is in response to
 10 agreements from the applicant's attorney that he reviewed.

11
 12 The Chair mentioned that Town Planner Hull has submitted to the
 13 Board a memorandum listing the documents submitted in relation to
 14 the final subdivision application, a list of all of the conditions
 15 contained in the Amended Conditional Preliminary Resolution No.
 16 2005-04 and giving her review comments.

17
 18 The Chair asked Attorney Tortorella, representing the applicant, to
 19 give a summary of this application for the benefit of the Board and the
 20 public. She said that she will ask Joseph Riina, P.E. of Site Design
 21 Consultants, also representing the applicant, to give a summary
 22 regarding the engineering and other information for the benefit of the
 23 Board and the public. The Chair said that if there are other
 24 consultants who would like to make a presentation, to please come
 25 forward and give his/her name and designation.

26
 27 Mr. Goldenberg referred to an e-mail from Joan Cass stating that
 28 after much consideration she is not prepared to grant an easement or
 29 convey land for the utility mains to be installed across the rear of her
 30 property.

31
 32 Attorney Tortorella, the applicant's attorney, said that she would like
 33 to address three aspects of preliminary approval. She explained that
 34 there are 15 lots which are located on a 19.99 acre parcel. Attorney
 35 Tortorella explained that the applicant had to deal with three party
 36 entities and three off-site conditions as part of the subdivision
 37 proposal. Attorney Tortorella mentioned that the off-site conditions
 38 are not on the applicant's property. She said that the Lake
 39 Lincoln Property Owners' Association agreed that the two
 40 stormwater basins can be constructed across Lovell Street. She

1 noted that the basin will be handling untreated stormwater run-off.
2 Attorney Tortorella stated that a letter was received from the Lake
3 Lincolndale HOA stating that there are no new concerns and they
4 agree in principle to the construction of the two proposed storm water
5 basins on their property. She explained that the legal instruments
6 have been prepared to construct these improvements and to define
7 the responsibilities for long term maintenance of the two basins.
8 Attorney Tortorella indicated that the applicant communicated with
9 Condo 29 at Heritage Hills to address improvements that will go
10 along Robert Martin Boulevard. She explained that there is a strip of
11 land behind Condo 29 where run-off from the Town's right-of-way on
12 Robert Martin Boulevard runs down that property and makes its way
13 into the drainage system at the Heritage Hills Condominiums. She
14 commented that the applicant met with the Heritage Hills Society as
15 well as representatives of Condo 29. Attorney Tortorella noted that
16 the Heritage Hills Society is the entity that takes care of the storm
17 water basins on the Heritage Hills property. She explained that the
18 discussion was in reference to what are the proper improvements that
19 will be constructed to address storm water treatment and volume to
20 the unimproved area and who should be responsible for the
21 improvements. Attorney Tortorella stated that the applicant's team
22 met with the Heritage Hills Society Condo 29, the former Town
23 Engineer Guy Gagné, Heritage Hills consultant engineer and Mr.
24 Keane. She noted that a collection of improvements were agreed
25 upon which Engineer Riina will discuss.

26
27 Attorney Tortorella said that another entity that the applicant spoke
28 with was Joan Cass who is the owner of property on Adson Way
29 which abuts the rear and side of the Condo 29 property. She
30 explained that the applicant consulted with Mrs. Cass because of the
31 sewer and water line that will be installed as part of the sewer and
32 water line connections to the Heritage Hills Sewer and Water
33 Treatment companies and plants. Attorney Tortorella said that there
34 are trees located in the area where the sewer and water main will be
35 installed. She mentioned that the applicant asked Mrs. Cass if she
36 would be willing to allow the sewer and water mains to be installed
37 across the corner of her property where fewer trees will have to be
38 relocated or removed. Attorney Tortorella said that when the time
39 came for Mrs. Cass to make a decision she decided that she is not
40 prepared to grant an easement or covey land that would allow the

1 utility connection across the back of her property. She explained that
2 Preliminary Approval was based on the installation of the sewer and
3 water mains where the applicant has the legal right to install them as
4 shown on Alternative A in the Resolution. She stated that Preliminary
5 Subdivision Approval has not been changed as the applicant will
6 pursue Alternative A.

7
8 The Chair asked if there are evergreen trees in the area where the
9 water and sewer main will be installed.

10
11 Joseph Riina, the applicant's engineer, replied that there are
12 evergreen and deciduous trees in the area where the water and
13 sewer main will be installed.

14
15 Mr. Keane said that the improvements at Lake Lincolnale and the
16 reason why the improvements are being made should be discussed.
17 He stressed that everyone should understand the benefits that will be
18 derived from what the applicant has volunteered to do.

19
20 Engineer Riina said that the project encompasses approximately 20
21 acres with 950 feet of frontage on Lovell Street and is located East of
22 Lake Lincolnale. He explained that access for the project will be off
23 of Robert Martin Boulevard through an extension of Adson Way.
24 Engineer Riina noted that the original project started with 18 lots and
25 ultimately was reduced to 15 lots. He mentioned that in the
26 homeowners' deed there will be a conservation easement attached to
27 their property. Engineer Riina said that each house site will have
28 access from the proposed roadways and the minimal lot size is
29 40,000 square feet which complies with the requirements of Town
30 Zoning. He mentioned that public sewer and water will be extended
31 into the site. Engineer Riina noted that from a storm water
32 perspective there will be a series of catch basins in the road which
33 will collect a majority of the site drainage. He stressed that the
34 disturbed area of the site and the surface runoff will be captured and
35 treated and attenuated to minimize the impacts off site. Engineer
36 Riina said that in addition to the two stormwater basins attenuation
37 will be provided up to the 100-year storm event. He mentioned that
38 the stormwater basins will be maintained by the Town Highway
39 Department pursuant to the letter from the Highway Superintendent.
40 Engineer Riina said that there will be two sub-surface infiltrator banks

1 that will intersect the remaining part of the proposed road and the
2 remaining portions of Lots 14 and 15 which will drain toward the
3 proposed road. He noted that Lots 1 through 7 will have independent
4 stormwater management systems which will capture, treat and store
5 stormwater runoff. Engineer Riina stated that overall there will be
6 zero increase of peak runoff from the site onto Heritage Hills. He
7 stressed that overall there will be a decrease in the peak rate of
8 runoff to Heritage Hills.

9
10 The Chair said that the Department of Environmental Protection
11 (DEP) has been involved in the process.

12
13 Engineer Riina noted that the DEP has approved the project.

14
15 Engineer Riina explained that changes were made on the
16 recommendation of the Heritage Hills Consultant Engineer Kellard on
17 how to treat the runoff coming off Robert Martin Boulevard. He
18 commented that the concern was in reference to the size of the pipe
19 that discharges from the catch basin that ultimately goes behind the
20 Rice residence. He noted that the pipe is 15 inches which cannot
21 handle a ten year storm event. Engineer Riina explained that another
22 concern was who will maintain the catch basin. He noted that the
23 Town will maintain the catch basin and the pipe up to its discharge
24 point and the area immediately around the discharge with the
25 remainder to be maintained by Heritage Hills. Engineer Riina said
26 that making the pipe larger will alleviate the problem and will handle
27 large storm events. Engineer Riina mentioned that these changes
28 were agreeable to Condo 29 and the Heritage Hills Society.

29
30 Engineer Riina showed the Board the original subdivision proposal.

31
32 Engineer Riina explained the change to Lots 14 and 15 is the moving
33 of the storm water basin and that the homes now face Adson Way
34 instead of Merritt Court.

35
36 Engineer Riina mentioned that as part of the evolution of the project
37 concerns were raised by Lake Lincolndale.

38

1 Mr. Keane interjected that improvements are being made by the
2 applicant at the end of Robert Martin Boulevard. He stressed that the
3 prime benefactor is the Town of Somers.

4
5 Engineer Riina mentioned that former Town Engineer Gagné was
6 involved in the original proposal as well as the changes that have
7 been made. He noted that former Town Engineer Gagné approved
8 all the changes before he retired.

9
10 The Chair said that former Town Engineer Gagné wrote a letter dated
11 December 21, 2009 signing off on the project. He wrote *Dear Mr.*
12 *Riina, Pursuant to a review of your December 17, 2009 submittal, the*
13 *changes reflected in the revised plans reflect the outcome of our*
14 *meeting with John Kellard representing the Heritage Hills Society.*
15 *This office has no objection to the revisions that will also eliminate the*
16 *need for the town drainage easement over the Heritage Hills lands.*

17
18 Engineer Riina said that Lake Lincolndale had a problem with
19 discharge into the lake. He said that what has evolved is a way to
20 treat the discharge into the lake by proposing a sediment trapping
21 condition with a forebay and a small water quality basin which will
22 provide treatment. Engineer Riina stated that this will control and
23 contain sediment in the forebay and will provide better access to the
24 Town to clean out the forebay. He stressed that these improvements
25 will be a tremendous benefit to Lake Lincolndale and are all being
26 done at the applicant's expense.

27
28 Mr. Keane noted that Lake Lincolndale has a phosphorus problem
29 and the stormwater practices will have an attenuating effect on the
30 particulate phosphorous that is absorbed to the sediment particles
31 that wind up in the lake. He said that Lake Lincolndale will benefit by
32 the reduction of phosphorus in the lake and the Town will benefit from
33 an MS4 perspective. Mr. Keane said that these improvements will
34 benefit the Town and homeowners in the area.

35
36 Attorney Tortorella mentioned that she submitted a series of legal
37 instruments dealing with on-site drainage conditions, conservation
38 easement and the off-site conditions. She indicated that her letter
39 made it clear that she submitted the applicant's legal instruments and
40 they have not been reviewed by the Lake Lincolndale Property

1 Owners' Association, Heritage Hills Society or Condo 29. Attorney
2 Tortorella noted that she is waiting until the Town's legal counsel
3 reviews the legal instruments before submitting them to the various
4 entities. She said that she will keep the Board apprised of the
5 changes.

6
7 The Chair asked Town Planner Hull to share her memo with her
8 review comments to the Board for the benefit of the Board and the
9 public.

10
11 Town Planner Hull explained that her memo goes through the
12 preliminary resolution of approval and addresses her action letter.
13 She mentioned that on Page 3 of her memo she asked that the
14 *Highway Superintendent be satisfied with the location of the*
15 *proposed stormwater detention basins.* Town Planner Hull stated that
16 Superintendent of Highways Chiaverini submitted a letter stating that
17 he did not foresee any problems in the maintenance of the
18 stormwater structures and facilities. Town Planner Hull referenced
19 Number 5 on Page 4, *The Applicant should use reasonable efforts to*
20 *consummate the Land Swap with the property owner of Tax Lot*
21 *#5.16-2-13...* She said that via e-mail the status of the land swap has
22 been decided.

23
24 The Chair suggested that the name of the owner (Joan Cass) be
25 inserted along with the Town Tax Number.

26
27 Town Planner Hull referred to Page 6, Number 4.h *The existing*
28 *stonewall crossing Lots 1 and 2 is to be preserved.* She said that a
29 note has been added, however it provides for the relocation of the
30 stonewalls, and is not consistent with the preliminary subdivision
31 approval. She asked the applicant to explain why this condition was
32 added and if the Planning Board is satisfied with the applicant's
33 answer.

34
35 Attorney Tortorella explained that the stonewall is in the middle of
36 Lots 1 and 2. She noted that preliminary approval asked that the
37 stonewall be preserved. She said that the stonewall bisects Lot 1 in
38 half and if a homeowner in the future wants to open up the lot the
39 applicant would like to relocate the stonewall to the rear property line.

1 Attorney Tortorella said that she does not know where this condition
 2 came from as she cannot find a record as to why the stonewall has to
 3 be maintained.

4

5 Mr. Keane said that a stonewall is an excellent water quality device.

6

7 Attorney Tortorella noted that there are stormwater devices on Lots 1
 8 and 2. She asked if the Board can have flexibility in regard to moving
 9 the stonewall back on the lot.

10

11 Mr. Keane said that the physical conditions on Lots 1 and 2 have to
 12 be explained to justify the moving of the stonewall. He noted that
 13 knowing that a stonewall was on the lots and the discussion arose
 14 with regard to the stormwater systems that would be developed on
 15 the lots and also knowing, that a stonewall has stormwater
 16 management benefits for its presence, it was decided to leave the
 17 stonewall where it is to provide those benefits. He noted that if the
 18 stonewall is relocated to the back of the property line it would provide
 19 the same benefits.

20

21 Engineer Riina noted that originally there was a detention basin on
 22 the side of the wall and the wall may have been used to separate the
 23 homeowner from the detention basin.

24

25 The Chair said that Resolution 2002-16 says that a note shall be
 26 added to the plans that existing stonewalls and trees are to be
 27 preserved to the maximum extent practicable.

28

29 Ms. Gannon asked if there was any other Board that articulated the
 30 reason why the wall had to be in a particular place to accomplish the
 31 required stormwater management. She opined that if a Board made
 32 this determination then you cannot arbitrarily move the stonewall but,
 33 if not and the function can be maintained by moving the wall, that
 34 makes sense.

35

36 Mr. Keane stated that the Department of Environmental Protection
 37 (DEP) is the only Board that would make that determination.

38

39 Ms. Gannon said that she has no problem moving the wall as no
 40 agency or Board has determined that the wall cannot be relocated.

1 Town Consulting Engineer Barbagallo asked if the wall is moved will
2 there be changes in surface treatments and will the yard be
3 expanded to a point where it would have been woods and now will be
4 lawn.

5
6 Engineer Riina said that he would have to expand what is being done
7 on Lots 1 and 2.

8
9 Town Consulting Engineer Barbagallo asked if because of runoff
10 going from woods to grass the system will have to be modified.

11
12 Engineer Riina replied that will have to be looked at and if there is a
13 big change he can make a formal proposal to show the changes to
14 the stormwater system.

15
16 Mr. Keane noted that if you follow the DEC Manual that was recently
17 published the grass is close to what exists there now which will yield
18 a great amount of infiltration with a lot less shallow subsurface flow.
19 He commented that now there is no treatment on the back side of the
20 wall.

21
22 Town Consulting Engineer Barbagallo opined that there could be a
23 benefit to moving the wall as long as the stormwater increase in
24 runoff is addressed.

25
26 Mr. Foley questioned why this was not addressed before preliminary
27 approval and why was this condition in the preliminary subdivision
28 resolution. Mr. Keane explained that standards have changed since
29 preliminary approval was granted.

30
31 The Chair noted that stonewalls should be preserved to the greatest
32 extent practicable. She said that the former Town Engineer allowed
33 stonewalls to be relocated but they had to be rebuilt in the same
34 fashion.

35
36 Mr. Goldenberg expressed concern because the Board would be
37 going against what was originally approved.

38 Mr. Keane noted that if you want to be technical the wall is being
39 preserved but is relocated.

40

1 Mr. Foley noted that the applicant feels that the language that exists
2 now does not allow the wall to be relocated.

3
4 Ms. Gannon opined that the applicant if allowed to move the
5 stonewall should use the same height and materials. She said that
6 the applicant has stated that they will document the procedure.

7
8 Rick Mancini, applicant, said that the wall is falling down now and he
9 will rebuild the wall.

10
11 Mr. Keane noted that someone may buy the property and disturb the
12 area on the other side of the wall. He opined that moving the wall to
13 the back of the property line is a better alternative.

14
15 Attorney Tortorella stated that there is no condition in the Resolution
16 that says there can be no disturbance to the right side of the wall.

17
18 Mr. Foley mentioned that improvements on the lot will only be
19 possible if the wall is moved.

20
21 Town Attorney Eriole said that the condition in the Resolution does
22 not prohibit the moving of the wall.

23
24 Mr. Foley opined that he is not convinced that the condition in the
25 Resolution means that the wall can be moved and still be preserved.

26
27 Town Planner Hull mentioned that the Master Plan recommends
28 preservation of stonewalls.

29
30 The Chair suggested removing the condition in reference to the
31 preservation of the stonewall on Lots 1 and 2; however, there was no
32 consensus.

33
34 The Chair mentioned Town Planner Hull's memo, page 7, number 6,
35 waiver of fees for wetland disturbance which will need Planning
36 Board action.

37
38 Town Planner Hull explained that the fees for wetland disturbance

1 are to be submitted for construction of the off-site detention basins
2 located on LLPOA property. She said that the applicant is asking for
3 the waiver because this fee is not associated with their development.

4
5 Attorney Tortorella said that the improvements do not benefit the
6 applicant.

7
8 Mr. Foley said that the improvements on the LLPOA property made
9 the project more likely to be approved.

10
11 Attorney Tortorella said that the Planning Board legally could not
12 obligate the applicant to do off-site improvements.

13
14 Mr. Keane noted that he was part of the approval process and the
15 applicant is doing the off-site improvement out of the goodness of
16 their hearts and the Town is the main beneficiary.

17
18 Town Planner Hull explained that the former Town Engineer
19 requested drainage easements for the off-site quality features. She
20 mentioned that the applicant does not want to bear the expense of
21 dimensioning these easements on the Plat but are willing to describe
22 them but not dimension them. She said that the Planning Board will
23 need to determine if this is acceptable.

24
25 Mr. Keane said that the Board should look at the waivers in a
26 practicable sense because the Town is getting thousands of dollars in
27 benefits. He said if it was up to him he would trade off and not collect
28 the fees because of all the benefits the Town is receiving.

29
30 Mr. Foley questioned why the request to waive the off-site stormwater
31 improvement fee was not made by the applicant during preliminary
32 approval.

33
34 Attorney Tortorella said that she does not recollect the off-site
35 stormwater fees being discussed during preliminary approval.

36
37 The Chair said that the Board should look at the benefits that the
38 Town will be receiving versus the collecting of the wetland impact fee.
39 She said that water quality will be improved at the expense of the
40 applicant.

1 Mr. Keane explained that the Town will be fined if any discharge from
2 a town road into Lake Lincolndale that is found to be in violation of
3 the water quality requirements and the MS4 requirements.
4

5 Attorney Tortorella reminded the Board that the project was originally
6 approved with wells and septic systems. She noted that the project
7 was held up for two years because the applicant was required by the
8 Westchester County Health Department to exhaust all efforts to make
9 a connection to the Sewage and Water Treatment Plant at Heritage
10 Hills.
11

12 Mr. Goldenberg said that he is concerned that the draft easement and
13 agreements have not been approved by the other entities.
14

15 Attorney Tortorella replied that she is concerned that some members
16 may think that the legal agreements and easements are not
17 consistent with what has been discussed. She said that it makes no
18 sense to send the agreements to private entities until the agreements
19 are approved by the Town Attorney.
20

21 The Chair noted that Town Planner Hull would like to continue with
22 the review of her memo.
23

24 Town Planner Hull referred to her memo on Page 7, Number 6, *and*
25 *an escrow account deposit in the amount of \$5,000 per Section 133*
26 *of the Code of the Town of Somers*. She said that the applicant is
27 requesting a waiver from establishing this escrow and the Board will
28 need to determine whether or not they wish to grant this waiver. She
29 explained that the previous Town Engineer approved the plans and
30 they have not changed and the applicant is requesting that the
31 escrow account not be set up for the Town Consulting Engineer.
32

33 Town Planner Hull mentioned the dimensioning of the off-site
34 improvements. She noted that the applicant is requesting that the
35 Board waive this requirement.
36

37 Ms. Gannon said that the waivers are being requested for the off-site
38 improvements.
39

1 Town Planner Hull agreed but noted that the exception is the escrow
2 account for the Town Consulting Engineer. She referred to her
3 memo to *include a note on the plat that states "no further subdivision*
4 *of this property shall occur."*

5
6 Attorney Tortorella stated that the note on the plat that there will be
7 "no further subdivision of this property" is not a problem.

8
9 Ms. Gannon referred to Page 4, Number 7 of Town Planner Hull's
10 memo *The Applicant shall redesign the stormwater basin in Lots 14*
11 *and 15 in such way as to maintain a 100 foot buffer zone between the*
12 *edge of the basin and the O'Reilly property line or to minimize the*
13 *extent of off-site wetland buffer impact that would be projected onto*
14 *the O'Reilly property to an extent acceptable to the O'Reillys.* She
15 noted that she does not have the institutional history so she asked
16 how does she know that the O'Reilly's are happy with this outcome.

17
18 Attorney Tortorella explained that the O'Reilly's appeared at the
19 Public Hearing on Preliminary Subdivision Approval to express their
20 concerns about the location of the stormwater basin near their
21 property which would throw off the 100 foot setback onto their
22 property and if they wanted to do something on their property it would
23 now require a wetland permit. She explained that by reorienting Lots
24 15 and 14 the applicant was able to relocate the basin away from the
25 O'Reilly property.

26
27 Mr. Foley said that the Town Code lays out what the Board should
28 consider and he questioned when it would be appropriate to grant fee
29 waivers. He said that he would like to see the provision in the Code
30 that allows the Planning Board to act on the fee waivers.

31
32 Town Attorney Eriole said that the Code does not provide specific
33 guidance on waiving fees and without that guidance it will be subject
34 to the general administrative standard that it not be arbitrary and
35 capricious and that it be based on factual considerations that are on
36 the record.

37
38 The Chair said that her memory is that the Town Board gave
39 authorization to the Planning Board to use discretion.

40

1 Town Attorney Eriole said that what he is referring to is the general
 2 right under the provisions of the Code but he is not aware of specifics
 3 because he lacks institutional knowledge. He advised that the Town
 4 Board can waive fees by resolution and he recommended that the
 5 Planning Board send a memo to the Town Board with a favorable
 6 recommendation.

7
 8 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and
 9 unanimously carried, the Board moved to send a recommendation to
 10 the Town Board requesting to waive by resolution the wetland fees
 11 associated with this application.

12
 13 Ms. Gannon asked what the applicant's rationale is in reference
 14 to the waiving of the escrow account deposit in the amount of \$5,000
 15 for engineering fees.

16
 17 Attorney Tortorella opined that the final engineering review is
 18 completed. She explained that before Health Department approval of
 19 the plat the former Town Engineer had to approve the roads and
 20 drainage. She stated that former Town Engineer Gagné endorsed
 21 the plans to the Health Department on November 19, 2009. She
 22 mentioned that former Town Engineer Gagné reviewed the material
 23 change on the drainage plans at the Heritage Hills Condo 29 property
 24 and he issued a letter on December 21, 2009 approving those plans.
 25 Attorney Tortorella stated that based on the approvals from former
 26 Town Engineer Gagné the applicant feels that engineering is
 27 complete.

28
 29 Ms. Gannon asked Town Consulting Engineer Barbagallo if he
 30 agrees with the applicant's assessment that there is no need for
 31 additional engineering on this project and the engineering review on
 32 the moving of the stonewall.

33
 34 Joseph Barbagallo, Town Consulting Engineer, said that he has not
 35 reviewed the Merritt Park file but the discussion this evening made
 36 him believe that there will not be a lot of additional engineering review
 37 on the plans. He noted that the moving of the wall may take a small
 38 amount of time to review the modification to what was originally
 39 approved.

40

1 The Chair stated that the applicant has requested a waiver from
 2 establishing an escrow account deposit for engineering review.
 3 She asked if there is a consensus of the Board to waive the additional
 4 escrow account deposit.

5
 6 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and
 7 unanimously carried, the Board moved to waive the escrow account
 8 deposit in the amount of \$5,000 for engineering review pursuant to
 9 Section 133 of the Code of the Town of Somers.

10
 11 The Chair mentioned that the applicant does not want to bear the
 12 expense of dimensioning the easements on the Plat.

13
 14 Town Planner Hull said that this request was from former Town
 15 Engineer Gagné and she felt that this determination is in the purview
 16 of the Planning Board.

17
 18 Ms. Gannon asked if the dimensioning has to be done as she is not
 19 comfortable with waiving something she does not understand and
 20 asked that the dimensioning be explained.

21
 22 The Chair explained that the applicant is willing to describe the
 23 dimensions but not dimension them.

24
 25 Town Consulting Engineer Barbagallo said that when the
 26 improvements are made especially on the basin that will become the
 27 Town's requirement for maintenance and that the As-Built conditions
 28 should reflect the conditions and be dimensioned on a map. He
 29 noted that as it relates to the improvements on the basins that the
 30 Town will maintain there should be a document representing both
 31 graphically and in written form that represent the easement. He said
 32 it is at the Board's discretion if that should be done now or on an As-
 33 Built drawing.

34
 35 Town Planner Hull said that dimensioning is not a condition of
 36 approval at this time.

37
 38 Mr. Keane asked if it is more or less likely that the basin that is
 39 adjacent to Lovell Street could move around or get longer instead of
 40 wider.

1 Engineer Riina said that the basin will not get longer because of
2 restrictions and he does not believe that it will change much.

3
4 Mr. Keane opined that the dimensioning should be put on the As-Built
5 drawing. He said that the two issues: the dimensioning of the
6 drainage easements for the off-site basin and the basin that will be
7 maintained by the Town should be separated and a decision on what
8 type of drawing, if any, should the easements be dimensioned on.

9
10 The Chair asked Town Consulting Engineer Barbagallo if the
11 dimensions should be on the Plat or As-Built.

12
13 Town Consulting Engineer Barbagallo responded that the dimensions
14 should be on the As-Built and referenced on the Plat. He noted that
15 the stormwater basin on the Lake Lincolnale property does not have
16 to be shown but the basin next to Lovell Street should be on the As-
17 Built drawing.

18
19 On motion by Mr. Keane, seconded by Ms. Gannon, and
20 unanimously carried, the Board moved to have the stormwater basin
21 next to Lovell Street dimensioned on the As-Built drawing.

22
23 The Chair explained the reasons why a public hearing should be
24 waived, such as Section 150-13F. (2) when the Planning Board
25 deems the final subdivision plat to be in substantial agreement with
26 the preliminary subdivision plat the Planning Board may waive the
27 Public Hearing and (3) if submitted more than six months after the
28 date of approval of the application for preliminary subdivision plat, the
29 Planning Board may, in its discretion, conduct a public hearing.

30
31 The Chair stated that there is a consensus of the Board that a Public
32 Hearing is not needed.

33
34 On motion by Ms. Gannon, seconded by Mr. Keane, and
35 unanimously carried, the Board moved to waive the Public Hearing
36 on the application of Mancini Building Corp. for Merritt Park Estates
37 Subdivision in accordance with Somers Town Code
38 Section 150-13F.(2).

39

1 Town Planner Hull said that the issue of the relocation of the
2 stonewall has not been decided.

3
4 Mr. Keane noted that part of the issue is that the stonewall is in
5 disrepair and is not aesthetically pleasing. He said that if the wall is
6 reconstructed it would be more aesthetically pleasing and will give
7 better stormwater benefits than where it is currently located.

8 Town Planner Hull suggested that the relocation of the stonewall be
9 decided during the review of the draft resolution of approval.

10
11 Town Consulting Engineer Barbagallo reminded the Board that the
12 applicant was requested to provide documentation on the relocation
13 of the stonewall.

14
15 The Chair directed Town Planner Hull to prepare a draft conditional
16 Final Subdivision Approval Resolution for the April 14, 2010 agenda.

17
18 **ACTION LETTER PROCEDURE**

19
20 The Chair said that this will be an open discussion by Planning Board
21 members and Town Planner Hull.

22
23 Chairman DeLucia asked Town Planner Hull to begin the open
24 discussion.

25
26 Town Planner Hull noted that previously when there was an in-house
27 Town Engineer they coordinated on one action letter for the applicant
28 combining Planning Board comments, Town Planner and Town
29 Engineer comments. She explained that now that the Board is
30 working with a consulting engineer it is not as easy to coordinate one
31 memo and she asked that the Board consider accepting two action
32 letters; one regarding engineering and one regarding Planning Board
33 and Town Planner comments.

34
35 The Chair indicated that the engineering action letter will incorporate
36 Planning Board and engineering comments. She noted that the
37 action letter is very helpful to the applicant as they know exactly what
38 is required and the materials that were requested by the Board.

39

1 Mr. Goldenberg noted his concern about the Town having an added
2 expense when a consultant engineer submits an action letter to the
3 applicant.

4
5 Town Consulting Engineer Barbagallo explained that the procedure is
6 the establishing of an escrow account for the applicant and an action
7 letter is part of the standard work and will be billed against the escrow
8 account and is not a Town incurred expense.

9 Mr. Keane opined that Town Planner Hull's memo to the Planning
10 Board is not in agreement with what was stated this evening. He said
11 that Town Planner Hull said that if the Planning Board makes
12 comments with regard to engineering the Town Engineering
13 consultant will incorporate Planning Board issues relating to
14 engineering in his action letter and the Town Planner will incorporate
15 Planning Board issues in the Town Planner's action letter.

16
17 Town Planner Hull said that she did not say what Mr. Keane just
18 stated and explained that the Town Consulting Engineer expressed
19 that idea which was reiterated by the Chair. She commented that
20 her memo said that she would incorporate all the Planning Board's
21 comments in her action letter and the Town Consulting Engineer will
22 include engineering comments made by the Planning Board and his
23 comments in his action letter. She noted that sometimes Planning
24 Board issues cross borders between planning and engineering so
25 she will incorporate all the comments from the Planning Board in her
26 action letter.

27
28 Mr. Keane suggested that if there is one letter from Planning and
29 Engineering the applicant can deal with them based on whatever
30 discipline deals with the issues but the comments will all be on one
31 letter.

32
33 Town Planner Hull said that the issue is timing as the Town
34 Consulting Engineer has a different schedule and is not working in
35 the same office. She mentioned that having one action letter while
36 using Town letterhead makes her responsible for things she is not
37 licensed for.

38 Town Consulting Engineer Barbagallo said that he issues a memo on
39 engineering items that he has requested and will review the Town
40 Planner's memo before he finalizes his memo to avoid redundancy.

1 Town Planner Hull said she is willing to try this approach but wants to
2 make sure that the Board is comfortable with the approach and the
3 Planning Board understands the process that she is striving to reach.

4
5 The Chair said that she likes the idea of planning and engineering
6 comments done separately.

7
8 Mr. Keane noted that the comments will be broken up into three
9 parts; planning, engineering and Planning Board comments.

10
11 Town Planner Hull said that even if there is no consensus by Board
12 members the comments are still put in the action letter.

13
14 Ms. Gannon said that what she considers important is that both
15 action letters are on the same page and that there is no fundamental
16 disagreement on what the Board asked for. She suggested trying out
17 the separate action letter to see how it functionally works.

18
19 Mr. Foley said that the change in the action letter format is coming
20 about because of the problem with coordinating on a week to week
21 basis.

22
23 Mr. Keane said that the most important purpose and intent of the
24 action letter is to make sure that all requests and information that was
25 requested is received. He said that there is a problem in getting the
26 results of the action letters to the Board in a timely fashion. He
27 commented that getting reports today or yesterday is unacceptable.
28 He mentioned that the applicant has to submit information by a cutoff
29 date and if that information is not submitted the application does not
30 go on the agenda. He noted that getting the information in a timely
31 fashion gives the Board time to thoroughly review and understand the
32 information.

33

34 **RECOMMENDATION OF EXPERT CONSULTANTS FOR**
35 **WIRELESS COMMUNICATIONS**

36

37 Town Planner Hull said that she conducted a web search regarding
38 wireless consultants. She noted that the City of New Rochelle issued
39 a request for proposal looking for résumés from wireless consultants
40 with two firms responding.

1 Mr. Keane asked what type of consultant was Town Planner Hull
2 looking for.

3

4 Town Planner Hull said that the search was for expert consultants in
5 aesthetics, site plans and cell towers.

6

7 Mr. Keane said that he sent a list in reference to types of wireless
8 consultants on February 20, 2010. He opined that a consultant who
9 is good at environmental aesthetics is what is needed to review the
10 cell tower applications and aspects from a SEQRA perspective.

11

12 Town Attorney Eriole said that he has a relationship with the
13 government law center at Albany Law School and he will follow up
14 with them to see if they have some resources available.

15

16 Town Planner Hull said she will put together a list of consultants that
17 specialize in environmental aesthetics. She said that timing is an
18 issue.

19

20 Ms. Gannon said that Mr. Keane made suggestions to HDR's request
21 for additional information and she asked if anything has been done.
22 She said that information should be provided to the Planning Board
23 and possibly appearing before the Planning Board specifically under
24 aesthetics as this is something that the Board needs to see.

25

26 Mr. Keane said that there is a big issue because there are two
27 Boards granting approval. He mentioned that the SEQRA process is
28 a singular process with the Lead Agency creating guidance under
29 SEQRA for making a determination of significance. He said that the
30 review by the Zoning Board of Appeals seems to be oriented toward
31 the Special Exception Use Permit (SEUP) and not related to SEQRA
32 generally which it should be.

33

34 Town Planner Hull indicated that the Board has to adopt Mr. Keane's
35 comments to amend the scope and forward them to the ZBA so it is a
36 request of the Planning Board and not just one member.

37 Town Planner Hull said that it is the consensus of the Board that Mr.
38 Keane's comments on the proposed scope be submitted to HDR.

39

1 Mr. Keane asked Town Planner Hull if she explained the coordination
2 with both Boards and the SEQRA information that is required for a
3 scope in preparation of making a determination of significance.

4
5 Town Planner Hull said that after it was decided that she would act as
6 the go-between between the two Boards it became her role.

7 Mr. Keane said that it would be appropriate to keep a running list
8 based on the 13 elements that SEQRA requires to be addressed so
9 the Lead Agency has an idea about what is being requested.

10
11 Ms. Gannon requested that more information be provided regarding
12 Sabre Industries stealth tree pole that is being proposed; specifically
13 she would like more information pertaining to the color options.
14 She asked if there are any local installations of this company's
15 product in this area or are there other company's that could meet the
16 needs of this installation.

17
18 The Planning Board requested that Ms. Gannon's comments be
19 incorporated into the scope of work that is being prepared.

20
21 Mr. Keane suggested that the Board make a list of the SEQRA issues
22 that the Board deems appropriate for each application and send that
23 list to the Lead Agency so they can supply the information to the
24 applicant.

25
26 Town Planner Hull asked if three Planning Board members can meet
27 in a work session to discuss the applications and SEQRA issues or if
28 this is not possible the discussion can take place at a Planning Board
29 meeting.

30
31 The Chair suggested that the cell tower application be placed on a
32 Planning Board agenda so the Board can be prepared for the
33 discussion.

34
35 Town Attorney Eriole advised that both Boards keep a good record
36 on the scope of the review and follow the law and do not worry so
37 much about the 150-days.

38 Mr. Keane said that the Planning Board must make a record of
39 everything they want addressed.

40

1 The Chair suggested a biodiversity study be conducted and Town
2 Planner Hull said she will forward this request to the ZBA.

3
4 **KAUFFMAN WETLAND PERMIT**
5 **[TM: 17.12-1-2.11]**

6
7 Chairman DeLucia said that this is the project review of the
8 application of Rodd Kauffman for a Wetland Permit and Stormwater
9 Management and Erosion and Sediment Control Permit for property
10 located at 13 Route 116 in a R-40 Residential Zoning District
11 consisting of approximately 2.754 acres. The Chair explained that
12 the applicant, who is the owner of the property, proposes to construct
13 an in-ground swimming pool and drainage at the rear of the existing
14 house in the regulated wetland buffer. She commented that the
15 application was submitted on February 8, 2010.

16
17 The Chair acknowledged receipt of the following: project plans, Short
18 Environmental Assessment Form and related environmental permit
19 applications; a memo to the Planning Board dated March 8, 2010
20 from Town Consulting Engineer Joseph C. Barbagallo, P.E., BCEE of
21 Woodard & Curran with review comments; and a memo dated and
22 received on March 10, 2010 from the Conservation Board (CB) listing
23 9 items of concern and recommendations.

24
25 The Chair asked the applicant's representative Timothy S. Allen, P.E.
26 of Bibbo Associates to give a brief presentation regarding this
27 application for the benefit of the public.

28
29 Tim Allen, the applicant's engineer, explained that the property is
30 located off Route 116 near IBM. He noted that an application to build
31 a house was before the Planning Board in 2002-03. He noted that he
32 was asked to push the house back on the property.

33
34 Engineer Allen said that there is a ditch on the property but there is
35 no wetland system associated with it.

36
37 The Chair mentioned the Conservation Board's (CB) memo that was
38 received today.

39

1 Engineer Allen said that he questioned the reference to a violation on
2 this property that was mentioned in the CB memo. He noted that he
3 will check to see if there is a violation in connection with the existing
4 shed located on the property.

5
6 Engineer Allen noted that the property is located on 2.07 acres and
7 the reason for the layout is that the house was pushed back to protect
8 the front of the property and streetscape. He said that the applicant
9 would like to build an in-ground pool at the rear of the existing house.

10
11 The Chair stated that under Section 167-7 a Public Hearing for a
12 wetland permit cannot be waived; however, it can be waived for a
13 steep slopes permit.

14
15 The Chair asked Town Consulting Engineer Barbagallo to summarize
16 his memo to the Board for the benefit of the public.

17
18 Town Consulting Engineer Barbagallo said that after reviewing the
19 application he determined that a Wetland Permit and Stormwater
20 Management and Erosion and Sediment Control Permit will be
21 needed. He mentioned that the applicant will confirm with the
22 Department of Environmental Protection (DEP) if the regulatory
23 jurisdiction of the intermittent watercourse located on the property will
24 require a DEP Wetland Permit.

25
26 Town Consulting Engineer Barbagallo stated that the applicant shall
27 indicate on the drawings information of the qualified professional who
28 performed the wetland delineation and topographic survey including
29 name and the date the survey was completed. He noted that a north
30 arrow and appropriate scale shall be provided on all drawings. Town
31 Consulting Engineer Barbagallo stated that the applicant shall
32 indicate on the drawings all construction access areas necessary to
33 facilitate the proposed project. He said he wants to make sure that
34 there is no activity over the septic area. He also requested
35 clarification on the details of any pool appurtenances including the
36 patio (material, size, etc.) fencing and lighting. Town Consulting
37 Engineer Barbagallo said that the silt fence should encompass the
38 upgradient limits of disturbance. He indicated that an Erosion and
39 Sediment Control SPPP should be prepared and submitted by a
40 qualified professional. Town Consulting Engineer Barbagallo said

1 that in accordance with Section 167-9 of the Town Wetland Code the
2 applicant shall develop a mitigation plan which shall specify mitigation
3 measures. He noted that he is curious if there are any trees that are
4 not identified on the map that will be removed.

5
6 Engineer Allen said that a Tree Permit will not be necessary.

7
8 The Chair stated that Town Consulting Engineer Barbagallo has
9 determined that the proposed activity to be a Type II Action and she
10 asked if the Board agreed.

11
12 On motion by Mr. Goldenberg, seconded by Ms. Gannon, and
13 unanimously carried, the Board moved that pursuant to 6 NYCRR
14 Part 617 regulations pertaining to SEQRA Article 8 of the
15 Environmental Conservation Law, and Chapter 92 of the Code of the
16 Town of Somers, that the Board determines that the proposed activity
17 to be a Type II Action and therefore no further environmental review
18 is necessary.

19
20 The Chair asked if there were any comments or questions from the
21 members and no one responded.

22
23 The Chair asked if the Board wants to proceed with a site walk. She
24 mentioned that in some cases, the Board may request the engineer
25 to go on the site walk alone and report to the Board.

26
27 The Chair directed the applicant to revise the plans in accordance
28 with Town Consulting Engineer Barbagallo's memo and the Board's
29 comments. She said that an Action Letter will be sent to the applicant
30 by Town Consulting Engineer Barbagallo. She explained that when
31 the Board is in receipt of all the requested documents and information
32 and the submission is complete, the application will be placed on the
33 next available agenda.

34
35 The Chair scheduled a site walk for the Kauffman and Iverino wetland
36 applications for Saturday, March 20, 2010.

37
38 There being no further business, on motion by Mr. Goldenberg,
39 seconded by Mr. Foley, and unanimously carried, the meeting
40 adjourned at 11:20 P. M.

1 Chairman DeLucia noted that the next meeting of the Planning Board
2 will be held on Wednesday, March 24, 2010 at 7:30 P. M. at the
3 Somers Town House.

4

5

6

7

Respectfully submitted,

8

9

10

11

Marilyn Murphy
Planning Board Secretary

12

13

14

15