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PLANNING DEPARTMENT

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Town of Somers

WESTCHESTER COUNTY, N.Y.

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

SOMERS PLANNING BOARD MINUTES
SEPTEMBER 14, 2011

ROLL:

PLANNING BOARD MEMBERS PRESENT: Chairman DeLucia, Ms. Gerbino, Mr. Foley, Mr. Goldenberg, Ms. Gannon and Mr. Currie

ABSENT: Mr. Keane

ALSO PRESENT: Town Planner Sabrina Charney Hull
Consulting Engineer Joseph Barbagallo
Town Attorney Joseph Eriole
Planning Board Secretary Marilyn Murphy

The meeting commenced at 7:30 p.m. Planning Board Secretary Marilyn Murphy called the roll. Chairman DeLucia noted that a required quorum of four members was present in order to conduct the business of the Board.

PROJECT REVIEW

HOMELAND TOWERS, LLC\NEW CINGULAR WIRELESS PCS, LLC (AT&T) SITE PLAN APPROVAL AND TREE REMOVAL, STEEP SLOPES, WETLAND, AND STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL PERMITS [SANTARONI PROPERTY] 2580 ROUTE 35 [TM: 37.13-2-3]

Chairman DeLucia noted that this is the project review of the application of Homeland Towers, LLC\New Cingular Wireless PCS, LLC for Site Plan Approval and permits for Tree Preservation, Stormwater Management and Erosion and Sediment Control, Steep Slopes and Wetlands. She said that the applicants propose to install a wireless telecommunications facility consisting of a 135-foot tall monopole disguised as a stealth tree together with an equipment compound at the base thereof on a portion of a 6.4 acre residential property located at 2580 Route 35 in the R-120 Residential Zoning District (3 acre) owned by Umberto and Carol Santaroni. She said that the leased area consists of approximately 3,500 square feet. The Chair indicated that the Somers Fire Department equipment has been added to the proposal. She noted that this application is currently before the Zoning Board of Appeals (ZBA) as Lead Agency under SEQRA, in a coordinated review with the Planning Board as an Involved Agency, for a Special Use Permit and area variances. Chair DeLucia explained that Manuel Vincente is the managing member of Homeland Towers, LLC a New York limited liability company with a main office located in White Plains, New York and is represented by Robert D. Gaudioso, Esq. of Snyder & Snyder, LLP and AT&T is represented by Neil J. Alexander, Esq. of Cuddy & Feder, LLP.

The Chair mentioned that this application was last discussed at the August 24, 2011 Planning Board meeting whereby the Board expressed concerns regarding visual impacts of the proposed facility to the proximity to the roadway, particularly photographic simulations of a view from Route 35 northbound directly across from the proposed facility shown as View 4 and other issues and that the Board did not receive the expected report from Consulting Engineer Michael Musso of HDR for Consulting Engineer Barbagallo's review and comment regarding the Visual Impact Analysis dated July 2011 prepared by applicant's consultants VHB Engineering & Surveying. The Chair mentioned that at the August 24, 2011 meeting, Stacey Calta, Landscape Architect, and HDR's Visual Resource Analyst, provided the Board with the issues she discussed at the Zoning Board of Appeals (ZBA) August 16, 2011 meeting and gave a presentation regarding the proposed landscaping and an update of the status of the applicant's Visual Impact Analysis dated July 2011. The Chair noted that the ZBA requested the Planning Board to provide them with their comments and recommendations together with their preference for a monopine, monopole or concealment pole favorable for this location. She explained that the applicant was then directed to revise the drawings and address the

outstanding issues provided in staff's memoranda and comments and concerns of staff, consultants and the Board.

The Chair acknowledged for the record receipt of the following: a report dated and received September 6, 2011 addressed to ZBA Chairman Paul Marx from HDR by Michael P. Musso, P.E. and Stacey Calta, RLA summarizing HDR's technical review of the application with a summary of findings and recommendations for the ZBA's and Planning Board's review and comment; a letter dated September 2, 2011 received September 6, 2011 addressed to ZBA Chairman Paul Marx and members from Robert D. Gaudioso, Esq. of Snyder & Snyder enclosing 8 copies of a letter from applicants' consultant VHB Engineering & Surveying dated August 31, 2011 in response to the comments regarding the visibility of the proposed facility along Route 35; a memo dated September 9, 2011 from Consulting Town Engineer Barbagallo with his review comments and recommendations; and a memo dated September 9, 2011 from Town Planner Hull to the Planning Board and ZBA with comments and recommendations regarding HDR's review of the applicant's Visual Impact Analysis.

The Chair commented that after Town Planner Hull summarizes her memo, she would like to make a comment.

The Chair asked the applicant's representative to give a brief presentation regarding this application and recent submission.

Robert Gaudioso, the applicant's attorney, said that he received the HDR Report and does not have any major issues with the report. He noted that Consulting Engineer Barbagallo's memo mentioned that the location of the electrical utility panel was not on the plan although the location has been on the plan since March 2011. Attorney Gaudioso said that Consulting Engineer Barbagallo also indicated that the applicant had not replied to the comments and requirements from the Westchester County Planning Board and that issue was addressed in July. He mentioned that Planning Board members have indicated at the last meeting that the tower is not visible from Lasdon Park.

Attorney Gaudioso noted that the applicant in response to the Town Planner's memo prepared sketches in reference to relocating the pole within the compound.

The Chair asked Consulting Engineer Barbagallo to summarize his memo for the benefit of the public.

Consulting Engineer Barbagallo said that under his new comments the applicant shall show underground utilities along with all equipment that will be required by NYSE&G to provide electrical service on Site Plan drawing sheet, Site Detail Plan. He noted that the utilities are shown on one of the plans but it is important to be shown on the detail sheet of the blow-up plan.

Consulting Engineer Barbagallo stated that comments from his August 19, 2011 memorandum were not addressed by new material received in this review period. He indicated that he spoke with the applicant's engineer and they are working on those comments.

Consulting Engineer Barbagallo said that comments from his memorandum dated January 7, 2011 that the Visual Impact Analysis dated July 2011 is currently being reviewed by HDR and consistent with comments presented by HDR the applicant shall consider all recommendations made by the Review Report dated September 5, 2011.

Consulting Engineer Barbagallo noted under his miscellaneous comments that the potential tower fall zone as described by Sabre Towers & Poles letter, dated April 16, 2011, indicates a collapse radius of 64 feet. He said that this potential collapse radius reaches the property boundary along Route 35. He indicated that the applicant shall minimize the potential fall radius in the design of the tower as to provide a greater separation from the adjacent roadway. He mentioned that consistent with the recommendations of HDR he agrees that a site specific fall zone analysis should be performed for the proposed tower. Consulting Engineer Barbagallo stated that the applicant shall address if the analysis based upon tower height increase for future co-location is warranted.

Attorney Gaudioso indicated that as part of the building permit process full construction drawings with a full structural detailed analysis showing how the tower is designed with the fall zone will be submitted.

The Chair said that HDR's report recommends that the final monopole design consider the possibility of a future height increase of a minimum of an additional 15-20 feet to accommodate future co-locations. She noted that her concern is the distance between the tower and the road.

Consulting Engineer Barbagallo stated that he wants his comment to remain until the issue of the tower extension is resolved.

Mr. Currie asked if the proposed tower height is not sufficient for co-locators.

Consulting Engineer Barbagallo said that there is another application where the tower has to go higher in order to make their network work. He noted that there might be carriers that need to have the pole modified.

Attorney Gaudioso indicated that the applicant has offered to build the tower foundation and the tower so that in the future it can be extended. He explained that if the extension is granted it would have to be done by the Zoning process. He said that it is a good planning practice to have the tower designed so it could be extended in the future.

Mr. Foley said that if the tower is made higher that will throw off the visual analysis.

Attorney Gaudioso said that the visual analysis would have to be reviewed in the future if another carrier applies to co-locate on the tower.

Ms. Gerbino noted that Consulting Engineer Barbagallo asked about the tower being extended because of the fall zone.

Attorney Gaudioso explained that the fall zone has been designed to stay within the property. He reminded the Board that the tower is designed over the New York State limit. He noted that under the Somers Code the tower only has to be designed for one future co-locator and this tower is being built for 4 locators plus the Somers Fire Department. Attorney Gaudioso stressed that the applicant is willing to design the tower for the future availability for the Town to analyze whether going with a higher tower or a new tower someplace else is in the Town's best interest. He stated that if this prejudices this application the offer will be withdrawn.

Town Planner Hull advised that it is the burden of a future applicant to demonstrate that they can co-locate. She opined that the applicant's offer is generous to build the base to support an additional 20 feet but that is not something that the Board should consider because it opens up issues the

Board is not considering at this time. Town Planner Hull stated that an applicant should come before the Board with that analysis already done.

Mr. Foley disagreed with Town Planner Hull saying that he favors co-location and anticipates additional co-locaters and the Town will have a pole that can't handle the co-location that is needed.

Town Planner Hull noted that the addition will be for a sixth co-locater.

Mr. Foley said that there may be a potential need for other carriers at a higher height.

Consulting Engineer Barbagallo asked if the fall zone analysis will be done on the higher height. He said that the visual analysis will be hard to do at this time.

Attorney Gaudioso said that the fall zone can be designed to be a certain distance based on the height of the tower.

The Chair asked Town Planner Hull to summarize her memo for the benefit of the public.

Town Planner Hull explained that HDR has reviewed the applicant's visual impact analysis, identified missing submission information and has provided specific landscaping recommendations. She said that unfortunately, HDR's report did not compare the applicant's submission to the requirements of the Somers Town Code and there was no professional opinion provided regarding the quality of the applicant's submission, in accordance with the Town's July 13, 2011 scoping document. She indicated that she spoke to HDR and they are working on addressing this comment.

Town Planner Hull suggested shifting the pole west/northwest as that would allow distancing the pole from Route 35 and will provide more land area to provide screening for the pole. Town Planner Hull stated that the Planning Board should provide recommendation to the Zoning Board of Appeals (ZBA) regarding any issues that have arisen from HDR'S report, and any other issues and the Board's preference regarding the pole treatment (concealment pole, monopole or monopine).

Town Planner Hull said that she will provide a memo to the ZBA stating the Board's concerns and preferred treatment of the pole for their next meeting.

Town Planner Hull explained that the applicant met with the Department of Environmental Protection (DEP) to review configurations on this site. She opined that further analysis may have to be done before the Board decides the location for this tower.

Attorney Gaudioso indicated that the DEP requested that the distance be maximized from the stream to the impervious surface. He said that he tried to minimize the impact to steep slopes, the number of trees to be removed and minimize the area of disturbance.

Attorney Gaudioso handed out two site detail sketch plans prepared by Tectonic, one demonstrating relocation of the pole 15' to the west and the second demonstrating the pole 15' to the west and 5' to the north from where it is currently proposed. He provided a verbal depiction to the Board on why these locations are not feasible.

The Chair noted that Mr. Keane sent an e-mail to the Board saying that he will not be present at the meeting tonight but wanted to provide his input. She asked that everyone be patient since this memo gives in detail what she believes the Board and others may be able to agree with. She also asked that the applicants and their representatives look at this as constructive and that we work together in a fair and balanced spirit.

Mr. Keane said that the Board should bear in mind, constantly, that Somers is saddled with a bifurcated (ZBA & PB) cell tower approval process, which does not work well with SEQRA. The ZBA is the lead agency under SEQRA. And SEQRA is a singular regulation that only sees a singular lead agency, which addresses a singular application. Therefore, the ZBA, from a SEQRA perspective, must treat the application as a whole, even though, under the bifurcated process, the ZBA has been addressing the areas that it has Town responsibility for, waiting for the Planning Board to address its areas of responsibility and provide a response to the ZBA, as lead agency, to make-up a complete file. Therefore, the Planning Board, in its role, under SEQRA needs to concentrate on providing the ZBA with input relating to its Town responsibilities and the ZBA will do its part for its responsibilities, making a complete file for the lead agency to draw factual

information from and to make conclusions thereon under SEQRA, the most important of which is the "Determination of Significance." At this point, the Planning Board should not only make comment on environmental issues but also site plan issues that play into environmental issues. The following are some of the issues:

1) *Re-position the pole to the best site plan location, environmentally (visual impacts).*

2) *Evaluate pole at new position, especially visual impacts.*

3) *Contrast with applicant's desired location.*

4) *Identify the mitigation needed for the applicant to justify placing the pole in the applicant's desired position.*

5) *Determine whether the applicant has met the maximum extent practicable (MEP) threshold for the applicant's desired position.*

The following also underlay the issues identified in 1-5 above and become an important part of the fabric for decisions.

1) *In light of the entirety of Somers Code for Wireless Telecommunications Facility §170-129.1 and §170-129.10. The applicant, notwithstanding the mountain of paper provided this far, has not provided the necessary and appropriate information to allow the relevant Somers Boards to perform their duties, satisfy relevant state regulations (SEQRA) and make rapid, thoughtful, quality decisions on the application of Homeland Towers for a site at 2560 Route 35, Somers, NY.*
2) *Assuming that the applicant is an experienced developer of wireless Telecommunications facilities (which he is) and has extensive, experienced consultants in pertinent fields of specialized knowledge (which he has), the applicant has not met both the minimum and special application standards called for under Somers Code §170-129.8 (T), Application procedure, and Somers Code §170-129.9 (D), Site Plan Review.*

3) *The applicant's proposed physical site of a 135' cell tower with associated equipment in a residential zone creates adverse*

visual impacts to the neighborhood and the Town, absent the employment of mitigation measures. From the information provided to the Town, thus far, the applicant has not met the Special Permit Standards of §170-129.7, particularly §170-129.7 (D). (J) (K) pertaining to the use of "Best Available Technology," "Visual Mitigation," and Landscaping".

4) The applicant has provided a Visual Impact Analysis at the insistence of the Planning Board. At the same time, in order to obtain specific, relevant information about visual impacts, save time and money for both parties, the Zoning Board of Appeals and Planning Board provided a scope of the information necessary to carryout each board's duties, including the visual impact analysis under SEQRA and Town Codes. The applicant did not follow the scope and did not provide sufficient, relevant information, especially regarding visual mitigation, for either the Zoning Board to make a "determination of significance" under SEQRA or for the Planning Board to make visual impact site plan decisions.

The ZBA's expert, HDR, in addressing visual impacts confirms the applicant's failure to provide the necessary information. The Town Planner confirms the lack of alternatives for the Planning Board's consideration. It is recommended that the applicant, again, meet with the Town and its consultants to establish a detailed punch list of items to be addressed in establishing a complete file for both SEQRA requirements and Town requirements.

The Chair said that Mr. Keane recommends that the applicant and his representatives, members of the Board and its consultants meet to establish the necessary information. She noted that cooperatively, we should be able to come to some compatible solution for the Planning Board's October 12, 2011 meeting and move the application forward in a positive direction.

The Chair commented that the tower will be approved in the best interest of the Town, the Board and applicant by working together. She stated that her position has always been to be fair.

The Chair said that if the applicant is willing to have a meeting the Board can set a date with the ZBA before the Planning Board's next meeting on October 12, 2011. She noted that the ZBA is scheduled to meet on October 18, 2011.

Attorney Gaudioso stated that it is not a matter of not being willing to meet but the timing of the request is questionable. He said that he disagrees with Mr. Keane's memo and noted that at the last meeting he asked Mr. Keane what was missing from the scope and he did not offer anything. Attorney Gaudioso said that he will not go to an open ended meeting with no agenda and no lists of items. He said that he would reconsider if there is something specific or relevant as he proceeds through the process.

Town Planner Hull said that one of the biggest concerns is that there is not enough room where the pole is placed, the access driveway and the roadway in order to put vegetation in between to mask the lower portion of the pole. She suggested configurations that included moving the pole out of the compound and further to the north beyond the existing stone wall and reconfiguring the access driveway placement.

Attorney Gaudioso confirmed that location was reviewed but there were comments involving the removal of the stone wall and disturbance of the steep slopes. He indicated that two significant trees would have to be removed.

Ms. Gannon said that every evaluation of the eastward view of Route 35 in the reports may be overly optimistic because the photograph that is the standard does not show the same removal that was done at the request of ZBA member Guyot.

Attorney Gaudioso said that no screening will be taken out and in addition the compound is below the grade.

Attorney Gaudioso explained that if the tower is moved outside the compound you still have to get to the tower to construct the base with a cement truck, use a crane and bucket truck and maintain the tower. He noted that four good sized trees will also have to be removed.

Greg Lahey, applicant's engineer, said that working with the DEP it was stressed that the amount of impervious surfaces be minimized for this

project. He noted that originally there was a concrete retaining wall that was changed to a soil reinforced wall which is 6' high to keep in conformance with the Code. Engineer Lahey mentioned that if the pole is moved to the south it is problematic because it will be closer to the wetlands and elevation will be lost.

Consulting Engineer Barbagallo asked for documentation stating that the pole cannot be moved to the northwest or southwest. He asked if relocating the access road further to the east can be reviewed.

Attorney Gaudioso said that it will be shown on the plan. He noted that relocating the access road was discussed and is in the HDR Report. He explained that the access drive is almost a right angle off Route 35 and a picture was taken looking down the belly of the access drive and that is not a natural viewpoint. Attorney Gaudioso stressed that if you move the access drive you bring it right up against the wetland line and given the direction of Route 35 you will look down the access drive for a much longer time. He said that this also was addressed in the HDR Report.

Town Planner Hull said that the Board can decide if Attorney Gaudioso's verbal response is adequate or if the Board wants the applicant to show the number of trees and the impacts with a formal submission. She explained that this is part of the record and to determine if the current location of the pole is the most appropriate location and that the Board tried to minimize the visual impacts.

Attorney Gaudioso said that if the Board looks at Page 29 of the VHB Report it discussed the issue of moving the tower.

Ms. Gerbino said that she thinks the removal of the stonewall will help with the visual impact of the pole.

Attorney Gaudioso said that his biggest fear is the removal of trees which would open up the visibility from the east.

Mr. Goldenberg asked Attorney Gaudioso what will happen if the ZBA agrees with Mr. Keane's memo.

Attorney Gaudioso said that Mr. Keane's memo does not raise any specific items that are missing; it speaks in conclusions and generalities.

Town Planner Hull indicated that the Board can ask her consultant to give their opinion on moving the tower from a visual perspective.

Neil Alexander, representing AT&T, said that there has been a long process with a lot of submitted material and it is important to realize that there is no argument in regard to need. He said that there have been numerous visual aspects and whether every view and model is perfect no one can say. He indicated that the important visual resources are protected by the proposed design on this site. He said that there is only one static view that is the problem and the Board is at the end of the process. Attorney Alexander asked the Board to consider in Executive Session "What is the gain by doing anything more at this juncture".

Town Attorney Eriole asked the Board to go into Executive Session to discuss pre-litigation.

The Chair indicated that there was a consensus of the Board to go into Executive Session.

At this point the Board returned from Executive Session.

Stacey Calta, landscape architect, summarized her report by saying that she reviewed the application based on what was asked for in the scope. She noted that it was verified that there is a gap for coverage with the tower providing service in that gap. Ms. Calta indicated that all the radio frequency reports were reviewed and were satisfactory. She noted that her report also considered the DEC policy on assessing and mitigating visual impacts and comments were provided on requested changes. Ms. Calta mentioned that 12 comments on the visual aspect were provided with view point 4 being the concern. She noted that sketches were provided showing the existing trees that will be removed and trees that will remain and trees that will be planted. Ms. Calta indicated that an additional tree on the northside of the driveway and a planter box in front of the compound provide additional screening. Ms. Calta indicated that she will review additional locations for the pole if the Board wants. She noted that a matrix of the different options such as the monopole, concealment pole and monopine were provided. She commented that the Landscape Plan states how the trees should be protected and what trees will be removed and those that will remain. Ms. Calta also said that she noted which trees do not take well with construction and what soils are on the site. She said that

the structural aspects of the tower with the extension as well as the fall zone were discussed. Ms. Calta stated that the report shows HDR findings and recommendations.

Ms. Gannon mentioned that in the report Sabre trees states that a full bark application is added to the pole which has been done many times in the northeast so climate is not a concern.

Ms. Calta explained that she contacted different tree manufacturers and that was a response from Sabre tree.

The Chair asked if another manufacturer can be used instead of Sabre tree. She said that she would like to see something different and will look into different manufacturers.

Attorney Gaudioso said that he does not have to use Sabre tree. He noted that HDR recommended Sabre tree as one of the better looking trees. He reminded the Board about the joint meeting with the ZBA when numerous specimens were reviewed and the decision was that the Sabre tree looked the best. Attorney Gaudioso indicated that he is willing to look at another product if the Board can suggest one. He stressed that Sabre is a reliable company and the product (pine tree) looks natural for this area. He mentioned that in viewpoint 4 HDR showed a different manufacturer (EEI). Attorney Gaudioso said that he would have no objection to using EEI if that is the Board's preference.

Ms. Gannon noted that there was discussion on the planter box but she wondered if a rendering would be provided so the Board can see how it would look in context.

Attorney Gaudioso said that the planter box will be shown on the revised plans.

The Chair asked the Board to decide on the comments they would like to send to the ZBA.

Town Attorney Eriole said that the comments from the consultants should be sent to the ZBA.

Ms. Gerbino asked that the ZBA consider the Board's insight from the last meeting and this meeting. She said that the Planning Board suggested a configuration that included moving the pole further to the north beyond the stone wall and reconfiguring the access driveway placement and access.

The Chair said if the Board recommends the applicant construct the tower to handle the future 15'-20' extension that the related fall zone be calculated and factored into the design of the tower with the fall zone not going beyond the property line.

Attorney Gaudioso suggested that the Consulting Town Engineer make a recommendation if the fall zone should remain at 65' or go to 75'. He said that he will provide the structural analysis as part of the building permit process.

Ms. Gannon said it would be good planning to recommend the future extension. She explained that it would be the burden of a future applicant to show that it will not make a significant visual impact.

Consulting Engineer Barbagallo said that the fall zone analysis needs to be completed so that the tower falls on the property.

Town Planner Hull opined that the extension is not a good idea because if you put in the foundation *they will come.*

Mr. Foley favors the arrangement that the site is prepared for a possible extension.

The Chair said it was a consensus of the Board to recommend to the ZBA the applicant construct the tower to handle the future 15'-20' extension and that the related fall zone be calculated and factored into the design of the tower with the fall zone not going beyond the property line.

The Chair indicated that the consensus of the Board was to recommend to the ZBA that the tower be constructed as a monopine.

Mr. Foley said that the ZBA should be convinced that the variables, pole location, driveway placement and driveway orientation are selected to produce the best possible outcome.

The Chair asked the applicant to conduct the appropriate environmental and visual analyses on Site Plan Detail 11 that Consulting Engineer Barbagallo suggested so a fair determination regarding the best pole configuration can be made.

Town Planner Hull indicated that the configuration suggested by Consulting Engineer Barbagallo would leave a greater buffer area between the project and Route 35. She advised that the Planning Board should recommend to the ZBA to determine how much buffer is remaining and screening along the road side to keep existing trees or to plant new trees if necessary due to construction. She said that the Planning Board should make a recommendation to the ZBA to develop this further.

The Chair said that there was a consensus of the Board to recommend to the ZBA to develop Consulting Engineer Barbagallo's sketch to make sure a fair determination regarding the best pole configuration is made.

Attorney Gaudioso stated that the applicant will address all Consulting Engineer Barbagallo's concerns and will revise the plans.

Consulting Engineer Barbagallo said that if the soil analysis comes back that there is colloidal soil, different measures during construction will have to be followed.

The Chair indicated that there was a consensus of the Board to have Town Planner Hull prepare a memo to the ZBA with the Planning Board's comments and recommendations.

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PROJECT REVIEW

NACLERIO SITE PLAN, STEEP SLOPES AND STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL PERMITS [TM: 4.20-1-7]

Chairman DeLucia said that this is the project review of the application of Vincent and Juliane Naclerio for Site Plan Approval and Steep Slopes, Tree Removal, and Stormwater Management and Erosion and Sediment Control Permits for property located at 75 Route 6 in the Neighborhood Shopping

(NS) Zoning District. The Chair noted that the applicants were issued a Notice of Violation by letter dated March 23, 2010 for altering the existing grade by importing fill and disturbing approximately 16,000 SF without obtaining the required Site Plan approval pursuant to Somers Town Code §170-114A.(1). She explained that the applicants would like to continue grading and filling the rear portion of the property between the existing building and the wetland control area to provide a level yard around the existing building. The Chair indicated that this application was received on September 17, 2010 and last discussed at the June 8, 2011 Planning Board meeting whereby the Board declared its intent to be Lead Agency and determined that the proposed action is an Unlisted Action under SEQRA and Town Code and circulated a Notice of Intent to all involved and interested agencies together with Part I of the Full Environmental Assessment Form and a copy of the plans. She noted that there was no objection within 30 days from the date of the notice from the Westchester County Planning Board, the NYCDEP and the Westchester County Health Department and the 30 days have expired to object from any other agency. The Chair mentioned that the Somers Planning Board assumes the role and declares itself as Lead Agency. She said that the applicant is represented by Richard Williams, P.E. of Insite Engineering, Surveying & Landscape Architecture, P.C. of Carmel, New York.

The Chair acknowledged for the record receipt of the following: a cover letter dated and received on August 23, 2011 from Insite Engineering by Jeffrey J. Contelmo, P.E. enclosing Site Plan drawings last revised August 16, 2011 with responses to comments by Town Planner Hull, Consulting Engineer Barbagallo, and the Conservation Board (CB); a memo dated July 8, 2011 received on July 11, 2011 from the CB with 1 concern and recommendation that clean fill be used and a comment that “the applicant and his engineer appear to have performed their due diligence on this site plan”; a memo dated September 9, 2011 from Consulting Engineer Barbagallo noting that all items in his previous memo have been addressed, partially addressed or addressed with conditions; and a memo dated September 6, 2011 from Town Planner Hull with her project review comments.

The Chair asked the applicant’s representative to give a brief presentation regarding this application.

Richard Williams, P.E., applicant's engineer, summarized his revisions to the plan and gave an explanation of the septic systems on site. He noted that one septic system is located on the side of the building that takes waste water from the kitchen and basement sink and the second septic system is located in the rear of the building and takes waste water from the remainder of the structure. Engineer Williams indicated that both septic systems are on file with the Westchester County Health Department and were constructed in 1953. He explained that notes have been added to the drawing that an evaluation of the septic system during construction will be provided. Engineer Williams reminded the Board that there was imported fill on top of the septic system; however, the site plan proposes to restore the original grades. He explained that once the grading is complete and the original grade restored the system will be evaluated to make sure that the initial importation of the fill for the restoration of the grades did not do any damage to the existing systems. Engineer Williams indicated that the Tree Removal Permit has been submitted with three regulated trees proposed to be removed. He said that more detail on the stone wall that will be installed as part of the tree well has been provided. Engineer Williams explained that a stone diaphragm has been added along the toe of the proposed fill slope which will assist in slowing down the velocity of storm water runoff and dissipate the flow before it enters the wetland down stream. Engineer Williams mentioned that notes have been added to specify that any fill that is imported into the site meets the same NYSDEC standards that were already used to test the original imported fill. He mentioned that notes were also added to the drawings to address comments received from the Health Department and NYCDEP regarding the existing systems and making sure they are evaluated.

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

Consulting Engineer Barbagallo indicated that the applicant has addressed most of his concerns and some will be conditions of approval. He mentioned that his new comment is to provide a construction detail for the proposed stabilized construction entrance shown on drawing sheet "S-2". He said that this can be addressed prior to the Chairman signing the Site Plan. Consulting Engineer Barbagallo said that another condition that will be addressed prior to the Chairman signing the Site Plan is that the applicant shall depict the proposed tree line along the northwestern limits of the proposed disturbance. He said that the applicant's engineer shall

provide a certification that the septic system was not damaged by the filling operations with this condition being addressed prior to the bond release.

The Chair asked Town Planner Hull to share her memo to the Board for the benefit of the public.

Town Planner Hull noted that the Zoning Conformance Table currently indicates that the building is 3,626 SF and that the office space and residential space are each 1,813 SF and asked what is the size of the building and if it has changed from previous approvals, an explanation should be provided. She mentioned that the Zoning Conformance Table represents that 7 spaces are required for the office use. She said that the formula 1 space/250 SF, results in 8 parking spaces (assuming 1,813 SF of floor area), making a total of 10 spaces that are required. Town Planner Hull explained that these spaces both for the residential and the commercial use should be demarcated on the plan. She said that three additional trees have been identified, and the tree removal permit application has been submitted. Town Planner Hull stated that the plans only identify one of the two trees that were previously removed; however, the second stump should be labeled as previously removed.

Town Planner Hull said that she has no objection to the Planning Board setting a public hearing for this project, provided the applicant can satisfactorily address the outstanding items prior to the public hearing.

The Chair asked if there were any comments from the Board.

Ms. Gerbino asked what the explanation is for the difference in the building size.

Engineer Williams said that he cannot speculate on the previous application. He explained that he used the gross floor area as defined in the Zoning Code which measures to the exterior face of the stone walls which comes to 1,800 SF. He commented that the second floor has dormers measuring 912 SF and he will adjust the plan accordingly. He noted that his description matches the Assessor's records and the survey. Engineer Williams said this will not affect the parking count because it is a residential unit which requires 2 parking spaces regardless of square footage.

The Chair noted that Town Planner Hull and Consulting Engineer Barbagallo have no objection to the Board setting a Public Hearing for this project provided the applicant can satisfactorily address the outstanding items prior to the Public Hearing.

On motion by Ms. Gannon, seconded by Ms. Gerbino, and unanimously carried, the Board moved to schedule a Public Hearing on the Naclerio application for Site Plan approval and permits and a draft Resolution be prepared for the Board's review on Wednesday, October 26, 2011 at 7:30 P.M. at the Somers Town House.

PROJECT REVIEW

THE GREEN AT SOMERS AMENDED SITE PLAN, WETLAND, STEEP SLOPES AND STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL PERMITS [TM: 4.20-1-3.1]

Chairman DeLucia mentioned that this is the project review of the application of The Green at Somers Amended Site Plan Approval, Wetland, Steep Slopes, Tree Removal Permit and Stormwater Management and Erosion and Sediment Control Permits for applicant/owner National Golfworx New York Realty, LLC by Richard P. VanBenschoten. The Chair noted that the property is located at 57 Route 6 Birdsall Road, the golf driving range, on approximately 11.074 acres in the Neighborhood Shopping (NS) Zoning District. She said that the applicant proposes to construct a mixed use development consisting of four three-story buildings of approximately 8,400 SF (footprint) area which are proposed to be a combination of retail and residential uses and one separate building of approximately 4,000 SF for restaurant use and associated parking with public sewer and water. The Chair said that also proposed are a total of 74 dwelling units of which 40-48 will be affordable. She noted that there is a Department of Environmental Conservation (DEC) regulated wetland with an existing watercourse on the northern portion of the property and a Town regulated wetland on the eastern end of the property. The Chair said that a small piece of the property on the northern border is located within the Town of Carmel in Putnam County.

The Chair acknowledged for the record receipt of the following: a cover letter dated July 26, 2011 received August 2, 2011 submitting Site Development Plans dated July 22, 2011, a Full Environmental Assessment

Form (EAF) dated June 7, 2011, and related documents for The Green at Somers; a memo from the Somers Bureau of Fire Prevention dated August 11, 2011, received August 12, 2011, requesting building floor plans, a site plan indicating locations of fire hydrants, fire lanes, sprinkler systems, Siamese connections, etc., and suggested that fire hydrants be color coded; a Town Board Resolution dated August 12, 2011 received August 15, 2011 unanimously adopted at a combined Work Session/Regular Meeting reserving comment; a memo dated September 9, 2011, received September 12, 2011 from the Conservation Board with 10 concerns and recommendations; a memo dated September 9, 2011 from Consulting Town Engineer Joseph C. Barbagallo, P.E., BCEE with 27 discussion comments based on the engineering review of documents received; 4 wetland mitigation comments; 3 sewer and water main comments; and 3 miscellaneous comments and a memo dated September 8, 2011 from Town Planner Hull, AICP giving a project description, history and review of Code Amendment of NS zoning district and plans and documents with 40 comments.

The Chair asked the applicant's representative to give a brief presentation regarding the application.

Linda Whitehead, the applicant's attorney, noted that this application is located on Route 6 and is currently a golf driving range. She said that there was a previous application by Jim Zappi as the contract vendee referred to as the North End at Somers. Attorney Whitehead explained that application has been terminated and the application is now being made on behalf of the owner with the project being re-named The Green at Somers.

Attorney Whitehead noted that Engineer Holt looked at the previous application to see what improvements could be made. She commented that the previous plan had larger buildings and now the proposed buildings are below the 10,000 SF limit of the NS Zone. Attorney Whitehead mentioned that the total impervious area on the site has been reduced. She said that currently 70 units are proposed with between 40-48 being affordable units.

Attorney Whitehead explained that half of the units have to be affordable in order to get approval for the third story buildings. She noted that the applicant will be responding to Town Planner Hull's and Consulting Engineer Barbagallo's memos and will revise the plans.

Dan Holt, the applicant's engineer, said that there is a proposal for four mixed use buildings with the fifth proposed building a possible restaurant. He explained that access into the site will be off of Route 6 with a loop road just for the residential portion of the property. Engineer Holt noted that fire trucks and emergency vehicles will be able to negotiate the loop road. He mentioned that the parking meets Town Code but he would like to discuss shared parking at a later time. Engineer Holt explained that there is a sewer collection system on the property which will go to a pump station and assuming that the application receives the district extension the system will connect to the force main across Route 6. He explained that the water main will also cross Route 6 and into the property to service the residential and commercial uses. Engineer Holt mentioned that the stormwater will be collected in catch basins, drain inlets, treatment structures, etc. He noted that the water from the top of the site will drain and filter into the ground overflow through the normal piping system and into the stormwater basin at the bottom of the driveway. Engineer Holt mentioned that there is a bio-filtration system in the middle of the site. He said that there will be an infiltration system within the road system with the roof and driveway surfaces draining into the infiltration system. Engineer Holt indicated that the bio-infiltration systems address the new requirements under the General Permit Requirements under the enhanced phosphorus removal process. He mentioned that the 100-year storm event will be reviewed after development.

The Chair asked Consulting Engineer Barbagallo to summarize his memo for the benefit of the public.

Consulting Engineer Barbagallo said that the applicant shall revise the EAF to reflect the proper slope disturbances. He mentioned that the Notice of Intent (NOI) indicates that the project will create 2.4 acres of impervious surfaces, information provided in the SEQRA EAF however states that the project will result in 2.68 acres of impervious surfaces. Consulting Engineer Barbagallo asked that the documents be consistent with the current proposed Site Plan. Consulting Engineer Barbagallo noted that the applicant shall depict limits of disturbance on the revised Site Plan drawings and shall include a note specifying total disturbance in acres. He said that the applicant shall provide construction details for all proposed sediment and erosion control features. Consulting Engineer Barbagallo indicated that the applicant shall also provide construction details for all proposed stormwater management practices, including wetlands, bio-

retention filters, and bio-swale. He said that all construction details shall be consistent with the design requirements of the NYSDEC Stormwater Design Manual latest edition. Consulting Engineer Barbagallo noted that the project narrative included within the SWPPP states that construction inspections shall be performed at proper intervals by the construction manager. He said that site plans specify minimum vertical and horizontal separations between proposed water service, stormwater and wastewater piping, but does not note separation from existing stormwater piping on the property. He noted that site plan drawings shall be modified to specify minimum separation of water service to existing stormwater piping. Consulting Engineer Barbagallo said that the applicant shall depict any trees to be removed on the revised Site Plan. He also requested that the applicant add a step to the proposed construction sequence for the construction of the stabilized entrance. He said that the applicant is proposing the use of silt sacks but they are not an approved protection application for new inlet drains during construction. Consulting Engineer Barbagallo indicated that the applicant shall perform infiltration tests in the exact location of the proposed infiltration system and show on the drawings the exact location of the percolation tests performed on site. He said that the installation of temporary sediment traps is frowned upon and he would like to see a revision that makes this not necessary. Consulting Engineer Barbagallo stated that the location of soil stockpiles should be relocated outside the wetland buffer setback. He requested that the applicant revise the SWPPP to include all required components.

Consulting Engineer Barbagallo noted that the applicant is required to follow a “five step process” in stormwater design as detailed in Chapter 3. He said that watershed boundaries as depicted on drawing sheet, “Watershed Map Developed Condition” are unable to be distinguished. He mentioned that the applicant shall revise both pre and post development watershed maps to more clearly depict watersheds and shall identify design points and flowpath considered in hydrological calculations. He indicated that the applicant shall depict the location of proposed bio-swale on the revised Site Plan. Consulting Engineer Barbagallo stated that the applicant shall provide a landscaping plan to indicate all landscaping improvements proposed with the project.

Consulting Engineer Barbagallo noted that under wetland mitigation the applicant shall prepare a Wetlands Mitigation Plan in accordance with the requirements of NYSDEC and Somers Town Code to address disturbances

and additional inflow to the nearby wetlands. He said that in the event that on-site wetland mitigation proves to be not possible, provide a detailed description of the off-site mitigation that is being proposed. Consulting Engineer Barbagallo commented that Town Code specifies that a wetland permit application must feature wetlands delineation within the prior 12 months; therefore, the applicant must clarify the date of the most recent wetland delineation.

Consulting Engineer Barbagallo said that under his sewer and water main comments the applicant is proposing to connect the sanitary system into the existing 8" force main located on Route 6, the applicant must also connect into the existing 6'' force main. He noted that a waste water analysis and calculation shall be provided to demonstrate that the existing sanitary system has the adequate capacity to handle the anticipated flows from the proposed development. He commented that details shall be provided for the pump station including sizing, invert elevations and that the applicant shall coordinate with the Somers Realty project to explore a combined pump station. Consulting Engineer Barbagallo stated that this application will have to be brought into the sewer district and will require action from the Westchester County Legislature.

Consulting Engineer Barbagallo said that under his miscellaneous comments details shall be provided and included on the plan on how the applicant proposes to provide gas and electric connections to the proposed development. He indicated that a geotechnical analysis of the site soils with recommendations for building foundations and the placement of fill is appropriate. Consulting Engineer Barbagallo requested a traffic analysis for the proposed development.

Attorney Whitehead stated that when the Planning Board is comfortable with the location of the buildings a traffic study will be submitted.

Ms. Gerbino asked how the site held up with all the rain and hurricane. She asked what type of basement's are planned.

Engineer Holt said that the site was wet but the driving range was able to open one day after the hurricane. He indicated that the floor elevations of the buildings are designed over the 100-year flood plain.

The Chair asked Town Planner Hull to share her memo to the Board for the benefit of the public.

Town Planner Hull said that her bigger issues are that the Zoning Analysis Table be placed on the Site Plan and Town Code section references for all dimensioning categories as listed in the first column of the Zoning Analysis Table be provided. She indicated that set back distances should be placed on the Site Plan, not on a separate plan and the square footage of each of the buildings should be indicated on the plan. She asked that the landscape buffers and soil boundaries should be depicted on the Site Plan. Town Planner Hull said that a discussion should take place on mitigation.

Town Planner Hull suggested changes to the EAF. She mentioned that this action may be considered a Type 1 action due to the development of more than 50 residential dwelling units or may be considered an Unlisted Action under SEQRA.

Attorney Whitehead said that she would like to talk about shared parking which is in the Code for mixed uses. She explained that any reduction that can be given will result in parking coming out of the wetland buffer which will reduce the impervious surface on the site. Attorney Whitehead asked if the Planning Board is amenable to the concept of shared parking.

Town Planner Hull advised that the applicant should show that without shared parking the parking will not fit and what the impacts will be. She suggested the applicant submit a Conventional Parking Plan and an alternative shared parking plan.

Attorney Whitehead said that true shared parking does not require showing a Conventional Parking Plan and then the shared parking. She stressed that the Town Code states that if there is an overlap of parking that can be used for retail during the day and residential at night and there is not the need for the maximum parking for both uses shared parking can be used.

Attorney Whitehead explained that the drawings show a full first floor on every building as retail. She said that some interpretation of the Code says that as long as you have some retail the whole first floor does not have to be retail and that some residential can be brought down to the first floor. She indicated that the Town Board expressed concern with empty retail spaces and the applicant would not like to have retail on all the buildings

first floors. She indicated that this will reduce the height of the buildings and decrease parking. Attorney Whitehead said that she is concerned about the marketability of retail space.

Town Planner Hull said that past interpretation says that the first floor has to be stores but she asked if there is an interest in allowing some residential. She suggested that the applicant show why this is a good idea but at this time she does not agree that residential should be allowed instead of retail.

Mr. Currie disagreed with Town Planner Hull and said that he rather have housing than empty stores.

Mr. Goldenberg asked if the units will be rentals and if so, is there a Town Code that limits the number of people that can live in a rental apartment. Attorney Whitehead said the thinking at this time is that the units will be rentals but that could change and there is no Town Code that limits the number of people that can live in a rental apartment.

Town Planner Hull asked if the buildings will be 3 or 4 stories and Attorney Whitehead replied that the buildings will be 3 stories. Town Planner Hull said that it is important to identify on the plan which buildings have parking.

Mr. Goldenberg mentioned a previous application where there was a concern in regard to Fire Department services. He noted that the applicant donated property so a new firehouse could be built. He stressed that in discussions with the Fire Department he was told that services are increasing at such a rate that paid firefighters are a possibility because of coverage to such a large area. Mr. Goldenberg asked if there has been any discussion with the Fire Department on how the fire trucks will service this project. He also mentioned that the applicant may have trouble joining the sewer district.

Attorney Whitehead referenced the memo from the Bureau of Fire Prevention and said that the memo never mentions a concern about service to this development.

Attorney Whitehead stated that the applicant wants to work with the Board on the concept of having some stormwater basins that are mitigation

wetlands within the buffers. She said that if you look at the drainage and topography on the site it works.

The Chair directed the applicant to revise the drawings, the EAF, and address the outstanding issues and comments provided in staff's memoranda and the Board's comments.

There being no further business, on motion by Mr. Goldenberg, seconded by Mr. Currie, and unanimously carried, the meeting adjourned at 10:30 P.M. and the Chair noted that the next Planning Board meeting will be held on Wednesday, October 12, 2011 at 7:30 P. M. at the Somers Town House.

Respectfully submitted,

Marilyn Murphy
Planning Board Secretary