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PLANNING DEPARTMENT

TOWN HOUSE
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SOMERS, NY 10589

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
OCTOBER 12, 2011

ROLL:

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

ABSENT: Mr. Goldenberg and Mr. Currie

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.

APPROVAL OF AUGUST 24, 2011 MINUTES

Chairman DeLucia noted that Planning Board Secretary Marilyn Murphy prepared and submitted for the Board's consideration the approval of the draft minutes of the Planning Board meeting held on August 24, 2011 consisting of thirty (30) pages.

Chairman DeLucia asked if there were any comments or questions from members of the Board on the draft minutes of August 24, 2011.

Ms. Gannon replied that she raised two questions but they have been fully resolved to her satisfaction.

The Chair asked if there was a motion to approve the August 24, 2011 draft minutes, as amended.

On motion by Ms. Gannon, seconded by Ms. Gerbino, and unanimously carried, the minutes of August 24, 2011 as amended, were approved.

Chairman DeLucia noted that the DVD of the August 24, 2011 Planning Board meetings is made a part of the approved minutes and is available for public viewing at the Somers Public Library. The text of the approved minutes is also on the Town's website www.somersny.com and is available for public review at the Planning & Engineering office at the Town House.

PUBLIC HEARING

METROPCS NEW YORK, LLC AT LINCOLN HALL SCHOOL CO-LOCATION OF A WIRELESS TELECOMMUNICATION FACILITY FOR AMENDED SITE PLAN APPROVAL AND SPECIAL USE PERMIT 115 ROUTE 202 [TM: 16.15-1-1]

Chairman DeLucia said that this is the Public Hearing on the application of MetroPCS New York, LLC for Amended Site Plan Approval and Special Use Permit under Somers Town Code Wireless Ordinance Section 170-129 for property located at Lincoln Hall, 115 Route 202, Lincolndale, N.Y. to co-locate a wireless telecommunications facility with 6 panel antennas on a proposed 15' extension of the existing 95' tall tower with associated unmanned equipment to be located within a proposed expansion of the existing fenced compound at grade in an R-120 Residential Zoning District, a lower impact area. The Chair noted that MetroPCS, having an office at 5 Skyline Drive, Hawthorne, N.Y, seeks to provide wireless service along portions of Route 118, Route 202, Route 139, Lovell Street and the Heritage Hills area, as well as the surrounding local roads in the vicinity of the premises. She mentioned that the total acreage of the project is 0.005 acres on approximately 447 acres. The Chair said that the owner of the existing tower is Crown Castle of New Castle, Delaware who has authorized MetroPCS, represented by Anthony B. Gioffre III, Esq., of the law firm Cuddy & Feder LLP of White Plains, N.Y., to act as the Applicant

by Letter of Authorization dated April 18, 2011 signed by Lewis Bingham, Property Specialist. The Chair explained that Verizon, Omnipoint (T-Mobile), Sprint and AT&T are currently operating wireless telecommunications facilities on the existing tower at this site. The Chair mentioned that the applicant is also represented by Engineers Valore 11c, LLC of Schwenksville, PA; Nicole Piretti, Environmental Consultant, EBI Consulting; and Christopher Olson, Senior Radio Frequency Engineering Consultant. She noted that this application was last discussed at the August 24, 2011 Planning Board meeting whereby the applicant's attorney indicated that the compound will have to be expanded to house MetroPCS and the Board then directed the applicant to provide a key map so that the Board has an adequate understanding of the visual impact of increasing the height of the existing tower by 15 feet, revise the site plans, address the outstanding issues and comments of the Consulting Town Engineer and the Board. The Chair said that the Board also moved to schedule a Public Hearing for this evening.

The Chair acknowledged for the record receipt of the following: a letter dated September 30, 2011 received October 3, 2011 from Anthony B. Gioffre III, Esq. of Cuddy & Feder LLP submitting revised site plans, survey maps, Visual EAF Addendum prepared by EBI Consulting, a letter dated August 24, 2011 from Paul J. Ford and Company determining that the existing tower has been designed and constructed without a hinge point such that it cannot collapse upon itself in the unlikely case of failure, and additional documentation and comments requested by staff and the Board; a memo dated October 5, 2011 from Town Planner Sabrina Charney Hull, AICP, with her project review comments and recommendations; a memo dated October 5, 2011 from Consulting Town Engineer Joseph C. Barbagallo, P.E., BCEE with a summary of review comments for discussion; and a revised memo dated October 7, 2011 received October 11, 2011 from the Conservation Board with 4 concerns and recommendations.

The Chair asked the applicant's representative to give a brief presentation regarding this recent submission for the benefit of the public.

Anthony Gioffre, the applicant's attorney, noted that MetroPCS is an FCC licensed provider of wireless communication services. Attorney Gioffre noted that this application is needed to provide coverage to the areas that were just identified by Chairman DeLucia which is an area that is currently

underserved by MetroPCS. He said that he investigated whether or not MetroPCS could co-locate lower on the existing tower without expanding. Attorney Gioffre stated that is not feasible for coverage reasons and he provided documentation and propagation data that identifies that it would lead to a 71% decrease in coverage in this area of town. Attorney Gioffre commented that the location of the tower is not visible from most areas and the modest extension of the tower would provide coverage to this area.

Attorney Gioffre said that the Board at their last meeting requested that the applicant identify the area of the bike path to the north. He mentioned that this is a proposed bike path; however, he was able to take photos and show the location of the proposed bike path. Attorney Gioffre submitted sketches to the Board of the proposed location of the bike path and its proximity to the tower. He showed that the tower is not visible from the locations shown on the sketch.

Attorney Gioffre noted that he provided an affidavit that was requested by Consulting Engineer Barbagallo in regard to the original application that was filed with Site Plans, prepared by Valore, llc, February 4, 2011 and revised April 29, 2011, that the supplemental submission, dated September 30, 2011, includes revised Site Plans which were prepared by Infinigy Engineering, dated February 4, 2011, and revised through September 22, 2011. Attorney Gioffre advised that Infinigy has replaced Valore, llc, as the engineer for the MetroPCS application.

Attorney Gioffre said that he would like to clarify something the Chair said about expansion and noted that the compound is approximately 50'X50' with the proposed modest modification which is needed to support the exterior equipment cabinets. He mentioned that it will only be an 11 ½'X18' compound expansion and given the size of the property this is a modest compound expansion.

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

Town Planner Hull said that the Bulk Requirement table on plan S-1 Should be revised as follows:

a. Provide reference to the appropriate Town Code sections within 170-129.
b. The table should reflect what is there today and then what is being proposed by the applicant in relation to the tower setback, the dwelling setback. etc.
c. The bulk requirement table should treat the pole and the compound separately. Given the expansion of the compound to accommodate the applicant's equipment, the setbacks on the north side of the compound will change.
d. The variance regarding the dwelling setback should be referenced to the bulk requirements.
e. A height variance will be required. The applicant will need to demonstrate how much higher than 25' higher than the tallest tree within the vicinity of the pole the tower is proposed to be. Documentation to this point must be submitted.
f. The lot coverage of the accessory buildings is changing due to this application.

Town Planner Hull stated that these changes are minor and can easily be made.

The Chair said that Town Planner Hull has commented that if the Board determines that there is no significant visual impact, this action can be classified as a Type II Action under SEQRA.

On Motion by Chair DeLucia, seconded by Ms. Gannon, and unanimously carried, the Board made a motion that pursuant to 6 NYCRR Part 617 regulations pertaining to SEQRA, and Chapter 92 of the Code of the Town of Somers, the Board determines that the proposed activity to be a Type II Action as not having a significant impact on the environment and therefore no further environmental review is necessary.

The Chair said that Town Planner Hull also comments that a height variance will be required to demonstrate how much higher than 25' of the tallest tree within the vicinity of the pole tower is proposed to be and that documentation to this point must be submitted. The Chair asked if there is a consensus of the Board to refer the applicant to the Zoning Board of Appeals (ZBA) with a positive recommendation from the Planning Board that the height and setback variances be granted.

On motion by Ms. Gannon, seconded by Ms. Gerbino, and unanimously carried, the Board moved to make a positive recommendation to the Zoning Board of Appeals to grant the height and setback variance to MetroPCS @ Lincoln Hall School.

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

Consulting Engineer Barbagallo referenced his memo dated October 5, 2011 and noted that the majority of his concerns have been addressed. He said that a letter provided by Paul J. Ford indicates that the existing tower was not designed with a hinge point, hence is unable to fall upon itself in the event of structural failure. He said that the collapse radius is identified to be equal to the total height of the tower. Consulting Engineer Barbagallo mentioned that the Planning Board should be aware that the nearby water tank is within both the existing and proposed fall radius of the tower.

Consulting Engineer Barbagallo stated that he has no problem moving forward without further modification or structural review of the tower.

The Chair asked who will be responsible if the tower falls on the water tank.

Consulting Engineer Barbagallo replied that the tower owner will be responsible if the tower falls.

The Chair asked the applicant to respond to the comments made by the Conservation Board in their memo just received today.

Attorney Gioffre referenced the Conservation Board's memo dated August 19, 2011 and revised October 7, 2011, *The Board would appreciate the applicant providing a site plan the shows the location of the buildings. The distance from the cell tower to the cottages/dwellings and school. The plans should exhibit the location of wetlands and streams in the nearby vicinity.* Attorney Gioffre responded that the plan identifies the location of the structures and in the submission dated September 30, 2011 there is no delineation required by the Department of Conservation. He said that the delineation is not relevant because this is an existing structure and the applicant is co-locating on that structure.

Attorney Gioffre replied to the CB comment *the applicant states that the site is 447 acres, but they only lease a small section of the property around the cell tower not the entire acreage, which should be reflected on the plans submitted.* He said this application speaks for itself and identifies the area the co-locator will be using.

Attorney Gioffre said that the CB noted that *variances should be required from the inception of this project as the applicant states that it does not meet Town Code. Dwelling setbacks are 500 feet, the existing plans show 345 feet, and the documentation states 350 feet.* He indicated that the Planning Board will make a recommendation to the Zoning Board of Appeals who grant the variances.

Attorney Gioffre noted that the CB states that *the cell tower location does not exhibit a turn around area for trucks and cars. Currently the lawn is being used for that function. The applicant should construct a turn around at the site for vehicular traffic.* He opined that the turn around will bring more disturbance to the area and will only be visited once or twice a month.

The Chair said that the Board will now commence with the Public Hearing.

The Chair asked Planning Board Secretary Murphy if prior to this public hearing, has the legal notice been published, the adjoining property owners notified and the property posted.

Planning Board Secretary Murphy stated that the legal notice was published in the Journal News on September 30, 2011, the adjoining property owners were notified via mail on September 30, 2011and the sign stating the date, time and place of the Public Hearing was posted on the property on September 22, 2011.

The Chair asked for the record if the Secretary received any communication regarding this Public Hearing.

Planning Board Secretary Murphy replied that Marge Davis of the Planning and Engineering office showed an adjoining property owner the plans for MetroPCS @ Lincoln Hall and once she realized it was a co-location she did not have a problem with the application.

The Chair asked if anyone present wished to be heard regarding this application. She said let the record show that no one is present who wished to be heard and no communication has been received in objection to the proposal.

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

Ms. Gerbino commented that the Site Plan clearly marks the location and delineation of the student housing, hand court, basketball court and tract.

Mr. Keane asked about the electrical power that will be used. He said that it is conceivable because of the total load that will be used by the 3 locators on the pole that a different type of service will be required. He questioned if the voltage will be pole mounted or underground or both. Mr. Keane opined that the electrical service will have a visual impact on the tower. He was doubtful because of the age of the tower that a visual analysis was performed. He indicated that by the tower adding another 15-feet is a structural issue and the issue of voltage and the type of equipment being used by NYSEG. Mr. Keane commented that this has not been addressed in a satisfactory way and he would like to understand what NYSEG is going to do.

Town Consulting Engineer Barbagallo indicated that the structural issue has been addressed. He said that he will ask the applicant to provide an analysis of the voltage and if it will have to be upgraded and to provide documentation that existing utility infrastructure has sufficient capacity to accommodate additional loads from proposed equipment. Town Consulting Engineer Barbagallo asked that the applicant describe how the utilities will be provided to the tower and new compound area, along with any visual mitigation that may be required.

Attorney Gioffre said that it is premature to investigate that type of analysis but his understanding is that this applicant will be using the existing utility infrastructure. He indicated that there will be underground utilities to mitigate the impact. Attorney Gioffre opined that there will not be any sufficient visual adverse impact. He said that he will coordinate with Engineer Barbagallo on the voltage issue.

Ms. Gerbino noted that the cell tower on Route 100 was visually impacted after the fact.

Attorney Gioffre mentioned that he is confident after the review by the ZBA that he will be able to answer the Planning Board's concerns.

Ms. Gannon said that the plan shows proposed underground utilities.

Mr. Keane mentioned that if the utility changes the utilization voltage, the equipment will change before it gets to the underground service. He said that if the utilities are overhead it will change the visual impact.

The Chair asked if there was a consensus to close the Public Hearing, that all outstanding comments are addressed, the need for height and setback variances are granted prior to the signing of the site plan, and that a conditional resolution either for the Chairman's signature, or for the Board's review at the next Board meeting on October 26, 2011.

On motion by Mr. Foley, seconded by Ms. Gerbino, and unanimously carried, the Board moved to close the Public Hearing and have Town Planner Hull prepare a Conditional Resolution of Approval for the Chairman's signature for MetroPCS @ Lincoln Hall School.

PUBLIC HEARING

MITCHELL CONSERVATION SUBDIVISION
[TM: 16.09-1-9]

Chairman DeLucia said that this is the Public Hearing on the application of Gary and Ann Mitchell for a four-lot Preliminary Conservation Subdivision Approval, Steep Slopes, Stormwater Management and Erosion and Sediment Control and Tree Removal Preservation Permits. The Chair mentioned that the property is owned by Gary and Ann Mitchell and is located at 201 Tomahawk Street, NYS Route 118, on the west side of the street, south of the Route 118 intersection with Green Tree Road in the R-40 Residential Zoning District. She noted that the south side of the site abuts the Town of Somers Koegel Park. The Chair indicated that the proposal would divide a 7.10 acre parcel into four single-family residences lots fronting on a new Town roadway 800 linear feet long and 25-feet wide within a 50-foot-wide right-of-way consisting of an existing residence and

outbuildings on one 0.94 acre lot, two new lots on 0.94 acres, and the remaining lot on 3.29 acres serviced by individual septic systems, wells and driveways. The Chair explained that although this property is less than 12 acres, the Town Board at its regular meeting held on November 18, 2010 adopted an amendment to Town Code Article IIIA Conservation Zoning §170-13.2 Authorization, which was filed by the New York Secretary of State to authorize the Planning Board to proceed with the Conservation Subdivision because of the benefits to the Town and the applicant.
The Chair commented that this application was last discussed at the August 24, 2011 Planning Board meeting whereby, after the Board determined that the Proposed Action is an Unlisted Action and there was no objection to the Board being Lead Agency from any involved and interested agencies, the Planning Board assumed the role of Lead Agency. She said that the Board also directed the applicant to submit a revised Stormwater Pollution Prevention Plan (SWPPP), revised drawings, revised EAF and address the comments made by staff and the Board.

The Chair acknowledged for the record receipt of the following: a letter dated and received on September 28, 2011 from applicant's representative Timothy S, Allen, P.E. of Bibbo Associates, submitting a copy of the plans last revised September 21, 2011, SWPPP last revised September 22, 2011 and revised EAF dated September 27, 2011, and responding to comments made in memoranda from the Consulting Town Engineer dated August 19, 2011, the Town Planner dated August 18, 2011, and the Conservation Board dated June 24, 2011; a memo dated October 5, 2011 from Consulting Town Engineer Joseph C. Barbagallo with discussion comments; a memo dated October 5, 2011 from Town Planner Sabrina Charney Hull with review comments and recommendations; and a revised memo dated October 7, 2011 received on October 11, 2011 from the Conservation Board with concerns regarding the common driveway.

The Chair asked the applicant's representative to give a brief presentation on the revised submission. She said that the applicant's representative may want to respond to the Conservation Board's memo received today.

Matthew Gironda, the applicant's engineer, said that the proposal is for four lots with the existing house remaining on Lot 1 and will be served by the existing driveway with the remaining proposed lots served by a common driveway. Engineer Gironda indicated that each lot will be served by a private well and an individual septic system. He explained that the SWPPP

has been prepared to handle additional runoff from the proposed impervious surface.

Engineer Gironda responded to the Conservation Board memo dated October 7, 2011, *As this project proposes a common driveway for the entrance into the subdivision the Board was concerned about the following:*

- *Who will maintain the common driveway.*

Engineer Gironda said that a Homeowners Association is proposed and will be responsible for maintaining the common driveway.

- *Will emergency vehicles be able to gain entrance into the subdivision.*

Engineer Gironda said that the common driveway was designed in accordance with Town Code and can handle emergency vehicle access.

Town Planner Hull advised that plans have been submitted to the Fire Prevention Bureau.

Timothy S. Allen, applicant's co-engineer, explained that the Town Code has recently been changed and this application complies with the changes.

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

Consultant Engineer Barbagallo mentioned that the calculations of Runoff Reduction volume (RRv), appear correct, soils remain incorrectly identified as HSG B. He asked that the calculation worksheet on pages 70-73 of the SWPPP list proper HSG identification.

Consulting Engineer Barbagallo said that on the Preliminary Site Plan he asked the applicant to revise the existing and proposed well setbacks to account for 200' separation distance required in the direct line of drainage and revise the septic locations. He mentioned that the septic systems on Lots 3 and 4 are greater than 25 feet but less than 100 feet from the proposed infiltration basin. Consulting Engineer Barbagallo explained that this meets the New York State Department of Conservation (NYSDEC) and Westchester County Department of Health (WCDOH) minimum setbacks, it is in conflict with Subchapter §18-39 (c) (4) of the NYC DEP Rules and

Regulations, April 2010 edition. He said that the applicant shall provide documentation from the NYCDEP confirming the currently proposed location of filtration basin is acceptable.

Consulting Engineer Barbagallo said that the applicant shall submit documentation that no view impediments exist along the roadway north of the proposed driveway. He mentioned that a note shall be added to the Site Plan that prior to the release of bonds the applicant shall confirm site distances based upon construction conditions and this should be a condition of approval.

Consulting Engineer Barbagallo said that the applicant shall address how screening will be provided within the area of disturbance, and represent the existing screening that will remain in the areas that will be undisturbed, for consideration by the Planning Board. He noted that the applicant shall demonstrate that stormwater pipes have been sized to accommodate inflow from bio-retention areas, as well as all applicable drainage area. Consulting Engineer Barbagallo also requested that the applicant define the subsurface soils/rocks that will be encountered during stormwater pipe trenching and consider these materials in developing the construction sequence plan. He asked that the applicant revise the proposed driveway Profile to be consistent with Town Code requirements.

The Chair indicated that most of these issues can be made conditions in the Resolution.

Engineer Gironda said that a Landscape Plan has been prepared and the pipe sizing has been completed and calculated to handle the 100-year storm. He noted that the issue with the infiltration basin and setbacks from the proposed septic systems are in accordance with the DEP Code which reads to the greatest extent practicable. He opined that the applicant does have options but if the DEP holds to the 100’ setback some reconfiguration of the house and septic system on Lot 4 and reshaping of the infiltration basins to provide the 100’ setback will occur. Engineer Gironda said that he will investigate to get the driveway grades to 12% as requested by Consulting Engineer Barbagallo.
The Chair asked Town Planner Hull to share her project review comment memo to the Board for the benefit of the public.

Town Planner Hull said that the applicant should provide a physical demarcation between Lot 4 and the proposed conservation parcel so that encroachment into this area does not occur. She noted that the applicant has provided concrete monuments; however, these monuments will not stop encroachment. She suggested the applicant provide language to be incorporated into the deed/title of Lot 4 and should provide a fence to deter encroachment.

Engineer Gironda said that signs have been proposed identifying that beyond Lot 4 is a conservation parcel. He mentioned that concrete monuments have been proposed to delineate the rear property line.

Engineer Allen opined that fencing is not a proposal he likes.

Ms. Gerbino opined that fencing is a distraction to the historical property as well as to the private property owner.

Town Planner Hull said that the bio-retention structures on each lot are the responsibility of each individual lot owner. She noted that the SWPPP states that these facilities will be the responsibility of the Homeowners Association. Town Planner Hull indicated that the maintenance responsibility for these practices must be clarified. She opined that these structures would be better served if they were to be maintained by a Homeowner's Association.

Ms. Gannon requested clarification on the responsibilities of the Homeowner's Association.

Town Planner Hull requested that the applicant submit documentation on the responsibilities of each individual lot owner versus the Homeowners Association. She noted that the responsibilities of the lot owner should be spelled out on the deed.

Mr. Keane suggested that the bio-retention facilities on each lot be the responsibility of each lot owner and if the owner does not take proper action the HOA will take action to resolve any problem with the bio-retention facility.
Engineer Gironda said that responsibility to properly maintain the bio-retention basin can be incorporated into the deed.

Ms. Gerbino said that there should be language in the deed that the Town of Somers can enforce action to properly take care of the bio-retention facility.

Town Planner Hull stated that legal instruments will have to be submitted as part of final approval.

Town Planner Hull said that the Landscape Planting warranty should be added to the Landscape Plan.

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

The Chair said that the Board will now commence with the Public Hearing.

The Chair asked Planning Board Secretary Murphy if prior to this public hearing, has the legal notice been published, the adjoining property owners notified and the property posted.

Planning Board Secretary Murphy stated that the legal notice was published in the Journal News on September 30, 2011, the adjoining property owners were notified via mail on September 30, 2011and the sign stating the date, time and place of the Public Hearing was posted on the property on September 29, 2011.

The Chair asked if anyone present wished to be heard regarding this application. She said let the record show that no one is present who wished to be heard and no communication has been received in objection to the proposal.

The Chair indicated that the applicant has demonstrated that the environmental concerns have been mitigated to the maximum extent practicable and that a negative declaration be prepared. She said that Town Planner Hull has no objection to closing the Public Hearing and directing her to prepare a draft negative declaration and draft conditional resolution for approval on the application for the Mitchell Preliminary Conservation Subdivision Approval for the Board's consideration at the October 26, 2011 Board meeting.

The Chair said that Consulting Engineer Barbagallo and the Board agree

to close the Public Hearing and direct Town Planner Hull to prepare a draft Negative Declaration and draft Conditional Resolution of Approval.

On motion by Ms. Gerbino, seconded by Ms. Gannon, the Board moved to Close the Public Hearing and direct Town Planner Hull to prepare a draft negative declaration and draft conditional resolution for approval on the application for the Mitchell Preliminary Conservation Subdivision Approval for the Board's consideration at the October 26, 2011 Board meeting.

At this time Consulting Engineer Barbagallo left the meeting

PROJECT REVIEW

PEARCE LOT LINE CHANGE
[TM: 5.16-2-4,5]

Chairman DeLucia noted that this is the project review of the application of Walter and Marianne Pearce who are the owners and applicants of two lots, Lot 5 and Lot 4, and who are proposing a lot line change under §150-15 Abbreviated Approval Process of the Code of the Town of Somers. The Chair explained that the properties are located on Lovell Street (Lot 4) and Franklin Drive (Lot 5) in an R-40 Residential Zoning District. She said that there will be an exchange of 0.1286 acres. The Chair noted that according to a letter dated August 31, 2011 by applicants' representative Joseph C. Riina, P.E. of Site Design Consultants, the applicants reside at 1 Franklin Street on Lot 5, on 0.9573 acres and will be 1.0859 acres, an increase of 0.1286 after the lot line exchange. She noted that Lot 4 is vacant fronting on Lovell Street and is 1.9812 acres and will be 1.8526, a decrease of 0.1286 acres after the lot line exchange. The purpose of the exchange is to preserve areas currently used by the owners and to give a more regular shape to the properties and a more consistent setback off the rear of the residence. The Chair stated that there are no negative environmental impacts or constraints on either property and is simply an exchange of land area.

The Chair acknowledged for the record receipt of the following: a letter dated August 31, 2011 received September 2, 2011 from applicant's representative Joseph C. Riina, P.E. of Site Design Consultants of Yorktown Heights enclosing a project application, short form EAF, Affidavits of Ownership, Surveys, and Proof of Paid Taxes; a memo dated

September 27, 2011 from Town Planner Sabrina Charney Hull with a project description and project review; and a memo dated October 5, 2011 from Consulting Town Engineer Joseph C. Barbagallo commenting that he has no objection to the proposed lot line exchange providing all applicable fees are posted by the applicants.

The Chair asked the applicants' representative to give a brief presentation regarding this application.

Ms. Gannon disclosed that one of the properties adjacent to the east portion of the lot is now formerly Heritage Hills and although she is a resident of Heritage Hills, Condo 21, her condo is not near or adjacent to this property and she does not have any interest in this project except hearing what the applicant has to say.

Mr. Keane also disclosed that he is a resident of Heritage Hills and cannot see this property from his Condo.

Mr. Foley stated that none of the Planning Board members living in Heritage Hills occupy units contiguous to this site.

Joseph Riina, the applicant's engineer, said that the applicant is asking to waive the submission requirements for the soil mapping and submission of a Stormwater Pollution Prevention Plan (SWPPP). He indicated that there is no disturbance related to this application as it is simply an exchange of land. Engineer Riina reviewed the plan with the Board and noted that the exchange of land will make both lots more regular in shape and will not affect the conformity of either lot.

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

Town Planner Hull said that the applicant is requesting that the Board waive the submission requirements for the soil mapping and submission of a Stormwater Pollution Prevention Plan (SWPPP). She stated that she has no objection to waiving the submission requirements but the Planning Board has to determine if that is satisfactory.

Town Planner Hull said that there are no environmental constraints on either of these properties with no construction being proposed as referenced in the Town's Geographic Information System. Town Planner Hull mentioned that the proposed action does not appear to cause any non-conformity with the Code of the Town of Somers. She requested that Title Insurance and deeds for both properties be submitted to ensure that there are no restrictions contained within those documents.

Town Planner Hull informed the Board that there is a house on the southern lot and the only set-back being changed is the rear setback. She indicated that the plans currently indicate the setback distances.

Town Planner Hull said that this application is a Type II action under SEQRA because there is no disturbance or proposed construction. She noted that the applicant requested that this project be reviewed under §150-15 Abbreviated Approval process of the Code of the Town of Somers. She explained that unless there is an objection raised during the Public Hearing, she has no objection to the application proceeding in accordance with §150-15.

Town Planner Hull stated that she has no objection to the Planning Board scheduling a Public Hearing for this project.

The Chair mentioned that Town Planner Hull commented that she has no objection to waiving submission requirements for the soils mapping and submission of a Stormwater Pollution Prevention Plan. She asked if there is a consensus of the Board to make that comment a motion.

On motion by Ms. Gannon, seconded by Mr. Foley and unanimously carried, the Board moved to waive the submission requirements for the soils mapping and Stormwater Pollution Prevention Plan.

The Chair noted that Town Planner Hull commented that this project can be considered a Type II Action. She asked if there is a motion that under the New York State and Town of Somers Environmental Quality Review regulations the Board determines that the proposed activity to be a Type II Action and therefore no further environmental review is necessary.
On motion by Ms. Gannon, seconded by Ms. Gerbino and unanimously carried, the Board moved to determine that the proposed activity is a Type II Action and therefore no further environmental review is necessary.

The Chair indicated that Town Planner Hull also commented that she has no objection to the Board scheduling a public hearing and to also preparing a draft conditional resolution of approval for this project for the November 9, 2011 Board meeting.

On motion by Ms. Gannon, seconded by Ms. Gerbino, and unanimously carried, the Board moved to schedule a Public Hearing on the application of Walter and Marianne Pearce for a lot line change for Wednesday, November 9, 2011 at 7:30 p.m. at the Somers Town House.

On motion by Ms. Gannon, seconded by Mr. Keane, and unanimously carried, the Board directed Town Planner Hull to prepare a draft conditional resolution of approval for the November 9, 2011 Board meeting.

The Chair directed the applicant to submit copies of the recorded deeds and title insurance for both properties and revise the plans.

Engineer Riina said that the existing residence on Lot 5 does not have a Title Report but there is a deed to the property. He mentioned that he put a call in to the applicant's attorney to get a title report on the vacant property.

TIME-EXTENSION

WRIGHT'S COURT SITE PLAN [HALLIC PLACE]
[TM: 17.11-1-5, 18]

Chairman DeLucia said that this is a request by letter dated and received on September 12, 2011 from Adam L. Wekstein, Esq. of the law firm Hocherman Tortorella & Wekstein, LLP under Section 170-114K of the Somers Zoning Ordinance for a second one year time extension to the period of Conditional Site Plan Approval, Special Exception Use Permit for the Groundwater Protection Overlay District and Stormwater Management and Erosion and Sediment Control Permits for Wright's Court, Hallic Place Development, LLC by Resolution No. 2009-17 approved on November 18, 2009. The Chair said that according to Attorney Wekstein's letter, his client's professional team anticipate meeting all conditions of the Resolution by the current deadline and are seeking the extension to ensure that the Planning Board's approvals do not lapse because of an unanticipated delay in obtaining a permit or authorization from an outside agency.

The Chair indicated that the applicant's representative was present to give a brief presentation on any other issues he felt is necessary to relay to the Board.

Adam Wekstein, the applicant's attorney, explained that since the submittal of the letter requesting a time-extension the applicant received approval from the Westchester County Health Department and the NYS Department of Environmental Conservation that the Notice of Intent under the Stormwater General Permit has been filed. Attorney Wekstein noted that the Town Attorney has signed off on the legal instruments required by the Planning Board.

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

Ms. Gannon asked what items are still outstanding.

Attorney Wekstein responded that the legal instruments need a description from the surveyor and that has to be circulated for signature. He said that the applicant does not have control of the owner of the Il Forno site and there is a condition for the easement between the two sites. Attorney Wekstein mentioned that a bond has to be posted and approved by the Town Attorney and Town Board.

The Chair asked if there was a consensus of the Board for a motion to grant the request.

On motion by Mr. Keane, seconded by Mr. Foley, and unanimously carried, the Board moved to grant Hallic Place Development, LLC for Wright's Court a one year time-extension from November 18, 2011 to and including November 18, 2012 to obtain the requisite approvals and meeting the remaining condition of the approved Resolution in a timely fashion.

TIME-EXTENSION

MERRITT PARK ESTATES SUBDIVISION
[TM: 5.20-1-1]

Chairman DeLucia said that the time-extension for Merritt Park Estates Subdivision was not listed on the agenda because of late timing, a Resolution No. 2011-07 Granting of Resolution in Support of Granting

Future Time Extensions to Mancini Building Corp. for Merritt Park Estates Subdivision which was not prepared because of a lack of direction to the Town Planner at the June 8, 2011 Planning Board meeting. Town Planner Hull has prepared and submitted for our review and approval Resolution No. 2011-07.

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

Mr. Foley said that he was not at the meeting where the Board discussed the resolution granting the support of future time extensions. He indicated that he has never seen a resolution granting future time extensions. Mr. Foley noted that this resolution purports what the Board will do in the future. He stressed that the perspective nature of this resolution is troubling to him. Mr. Foley asked what is wrong with the procedure for time-extensions that the Board has been following.

Town Attorney Eriole advised that nothing about the resolution is automatic. He said that the applicant has to demonstrate that progress is being made regarding the construction of the infrastructure. He said that what precipitated the request was that the applicant would like to have confidence that the application can continue. Town Attorney Eriole noted that he is not sure what impact the Resolution will have on the Board's discretionary review and if this will help the applicant there is no reason not to grant the resolution.

Mr. Foley stated that what Attorney Eriole is saying is that the Resolution is not doing anything and if the Board is bound by the Resolution he has a problem with the Resolution.

Attorney Eriole advised that the Board is not bound by the Resolution but the project is considered by the Board to be a positive project and they want the project to move forward. He explained that the applicant feels that such a Resolution will help them execute on their end and for that reason the Resolution has a function for the applicant.

The Chair explained that at the June 8, 2011 Planning Board meeting Town Planner Hull commented that "the Board consider adopting the Resolution to allow construction of the infrastructure as long as it is conditioned upon the applicant requesting a time-extension with evidence demonstrative

continuing progress with construction of the infrastructure". Town Planner Hull further commented that the Board may want to consider such resolution with such language she provided.

Attorney Wekstein said that what is different about this Resolution is that the applicant does not want to get half way through the infrastructure and the Board stops the project. He noted that the language basically says the Board can look and make a determination that substantial construction has occurred. Attorney Wekstein advised that the Resolution is not binding but gives the applicant comfort.

Mr. Foley said that he is still not comfortable about the Resolution even though he appreciates that the project is evaluated to be beneficial.

Mr. Keane noted that underlying facts should not be lost and first is that the Town benefits substantially and second the Lake Lincolndale homeowners benefit by cleaning up the phosphorous problems at the lake.

Ms. Gerbino said that the Board wondered why we keep giving the applicant time-extensions and the benefits to the Town were discussed. She mentioned that economic considerations were discussed and the Board wanted to assure the applicant that the Board will continue to support the time-extensions.

Mr. Foley said that he never saw a document where the Board is making certain pledges. He said that the Resolution is attempting to bind future member of the Planning Board. Mr. Foley said that the Board agrees that the Resolution in not binding and he questioned if the Resolution is not binding why is the Board authorizing the Resolution.

Attorney Eriole advised that the Board acted on this Resolution and the reason why is that the project is deemed a good project and is viable. He explained that without the vote of confidence from the Board the project might suffer.

Mr. Foley opined that there are other ways to accomplish this and all the members including himself feel Merritt Park is a good project and past extension requests have been 100% legitimate and are based on reasons beyond the applicant's control and there is no reason why future requests

will not conform to that pattern. Mr. Foley said that he is not in favor of the Resolution but he is just one Board member.

Town Planner Hull noted that Mr. Foley will probably never be comfortable with this type of Resolution but the rest of the Board supports the Resolution.

Mr. Keane said that most time-extensions have been granted solely because of agency delays which are outside the control of the applicant. He mentioned that the law has recently changed in regard to time-extensions.

The Chair said that §150-13.m is in reference to expiration of conditional approval.

The Chair asked if there is a motion to approve Resolution No. 2011-07.

On motion by Ms. Gannon, seconded by Ms. Gerbino, (Mr. Foley voting nay) and carried, the Board moved to approve Resolution No. 2011-07.

The Chair indicated that the Board also received a 5th request for a 90-day time-extension by letter dated October 10, 2011 and received on October 11, 2011 from applicant's representative Geraldine N. Tortorella, Esq. of the law firm Hocherman Tortorella & Wekstein. She explained that this 5th additional 90-day time extension will be to the period of Conditional Final Subdivision Approval from October 11, 2011 to and including January 9, 2012 and is being requested in order for the signing of the legal instruments from the Heritage Hill Entities for infrastructure improvements.

The Chair asked the applicant's representative to give a brief presentation regarding this 5th request for a time extension.

Adam Wekstein, the applicant's attorney, explained that the signed legal agreement from Lake Lincolndale Property Owners Association for off-site work has been received, but the signed legal agreements from Heritage Hills Condo 29 and Heritage Hills Society has not been received and they have raised additional questions about the construction.

Ms. Gannon said that she appreciates that the applicant has explained the rationale for the request for a time-extension.

The Chair asked if there were any comments or questions regarding this request and no one replied.

On motion by Ms. Gannon, seconded by Mr. Keane, and unanimously carried, the Board moved to grant a 5th 90-day time extension to Mancini Building Corp. for Merritt Park Estates Subdivision to the period of Conditional Final Subdivision Approval from October 11, 2011 to and including January 9, 2012.

The Chair said that this concludes our agenda and the business of the Board.

There being no further business, on motion by Ms. Gannon, seconded by Mr. Foley, and unanimously carried, the meeting adjourned at 9:30 P.M. and the Chair noted that the next Planning Board meeting will be held on Wednesday, October 26, 2011 at 7:30 P. M. at the Somers Town House.

Respectfully submitted,

Marilyn Murphy
Planning Board Secretary