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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 13, 2010

ROLL:

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

ABSENT: Mr. Currie

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

The meeting commenced at 7:35 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 25, 2010 MINUTES

Chairman DeLucia noted that Planning Board Secretary Murphy prepared and submitted for the Board's consideration the approval of the draft minutes of the August 25, 2010 Planning Board meeting consisting of twenty-five (25) pages.

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

The Chair asked if there was a motion to approve the August 25, 2010 draft minutes.

On motion by Mr. Goldenberg, seconded by Ms. Gannon, and unanimously carried, the minutes of August 25, 2010 were approved.

The Chair noted that the DVD of the August 25, 2010 Planning Board meeting 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 are 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

WINDSOR FARMS SUBDIVISION
A/K/A MEADOW RIDGE HOMES
REDUCTION OF PERFORMANCE BOND

Chairman DeLucia noted that this is a Public Hearing to consider the request by letter dated August 2, 2010 from Jim Zappi, P.E. for a $47,912 reduction of the Performance Bond for work completed for the Windsor Farms Subdivision in accordance with Chapter 150-16.G. of the Code of the Town of Somers. The Chair explained that the original total bond amount was $1,327,961and the current reduced bond amount is $221,016 and the requested bond reduction amount is $47,912 leaving a bond balance of $173,104. She said that a memo from Consulting Town Engineer Barbagallo verified that there was an appropriate level of oversight from a Professional Engineer to support the bond reduction recommended by Steven Woelfle, Principal Engineering Technician. The Chair mentioned that the property is located on Windsor Road off of U.S. Route 6. She commented that this request was last discussed at the September 22, 2010 Planning Board meeting whereby the Board scheduled a Public Hearing for this evening.

The Chair asked Planning Board Secretary Murphy if prior to the Public Hearing was the required legal notice published.

Planning Board Secretary Murphy stated that the legal notice was published in the North County News for their October 3, 2010 issue.

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

Ms. Gannon asked Chair DeLucia to state the final amount of the bond reduction as the memo from Principal Engineering Technician Woelfle has a different amount.

The Chair explained that the original memo is not correct as there was an error in the math calculation which resulted in the bond amount being reduced to $173,104.

Ms. Gerbino asked what the condition of Windsor Road is especially the gutters. She said that she is concerned about the run-off from the Windsor Farms Subdivision.

Consulting Town Engineer Barbagallo explained that the binder course is in place and the remaining bond is held for the finishing of the paving. He commented that the main Windsor Road not the subdivision road has to be paved. Consulting Town Engineer Barbagallo noted that the drainage has to be improved. He explained that the bond is to make sure that the subdivision is constructed in accordance with the approved plan and that has been verified. Consulting Town Engineer Barbagallo said that he will take a look at the condition of the main Windsor Road.

The Chair asked if anyone present wished to be heard on this request for a bond reduction and no one responded.

The Chair indicated that there was a consensus of the Board to close the Public Hearing and to send a memo to the Town Board.

On motion by Mr. Goldenberg, seconded by Ms. Gannon, and unanimously carried, the Board moved to close the Public Hearing and send a memo to the Town Board recommending that the Windsor Farms Subdivision performance bond in the original amount of $1,327,961 reduced to the current bond amount of $221,016 less the requested reduction amount of $47,912 for work completed be reduced to $173,104.

PROJECT REVIEW

BVS ACQUISITION CO., LLC AMENDED SITE PLAN, STEEP SLOPES, WETLAND AND STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL PERMITS [AKA CHASE BANK]

Chairman DeLucia mentioned that this is the project review of the application of BVS Acquisition Co., LLC Amended Site Plan Approval, Steep Slopes, Wetland and Stormwater Management and Erosion and Sediment Control Permits for a proposed Chase Bank for property located in the Somers Commons Shopping Center at 80 Birdsall Road, U.S. Route 6, Baldwin Place in the Community Shopping (CS) Zoning District. The Chair explained that BVS Acquisition Co., LLC, the owner and the applicant, received Amended Site Plan Approval to permit demolition of a former gas station and construction of a Bank of America branch on the property which was conditionally granted by the Planning Board by Resolution No. 2008-13 on October 15, 2008. The Chair said that Bank of America did not proceed with the construction and on September 2, 2010 BVS submitted a new application for an amendment to the approved Site Plan proposing to construct a Chase Bank on the property. The Chair noted that the applicant is represented by the law firm of Hocherman, Tortorella & Wekstein, LLP and Bohler Engineering. She said that this application was last discussed at the September 22, 2010 Planning Board meeting whereby the applicant was directed to revise the proposed Site Plan and Landscape Plan and respond to the comments made by Town Planner Hull, Consulting Town Engineer Barbagallo and the Board.

The Chair acknowledged for the record receipt of the following: a letter dated October 1, 2010 received on October 4, 2010 from attorney Noelle V. Crisalli of Hocherman, Tortorella & Wekstein enclosing revised Site Plan Drawings and Landscape Plan and addressing comments raised by the Town Planner, Consulting Town Engineer and members of the Board; a memo dated and received on September 27, 2010 from the Architectural Review Board (ARB) commenting that at its September 23, 2010 meeting the ARB discussed the Site Plan submission and looked forward to meeting with the representatives to review all the items prior to final approval by the Planning Board; a letter dated and received on September 27, 2010 from Acting Commissioner Edward Buroughs, AICP, of Westchester County Planning Board commenting on recommended key features for the Board

to consider, such as Route 6 frontage, pedestrian access to the proposed bank, connecting pedestrian sidewalk system, questioning need to increase the number of light poles, employing the use of permeable paving surfaces for some of the parking area to reduce stormwater volume and total runoff; and additional comments; a letter dated September 27,2010 received on September 29, 2010 from Cynthia Garcia, SEQRA Coordination Section of NYC Department of Environmental Protection commenting that the applicant demonstrate there has not been any subsurface contamination from existing underground storage tanks and that appropriate sediment and erosion control measures are implemented during construction; a memo dated October 8, 2010 received on October 12, 2010 from the Conservation Board listing 6 concerns and recommendations such as clarifying before any construction activity commences the status of the underground storage tanks, sidewalks, correcting the EAF, etc.; a memo dated October 8, 2010 from Consulting Town Engineer Barbagallo with discussion comments regarding traffic and stormwater issues; and a memo dated October 8, 2010 from Town Planner Hull with her review comments.

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

Adam Wekstein, the applicant's attorney, said that he is here to answer some of the significant comments that have been made and he requested an extension of the BVS Site Plan which expires on October 15, 2010. Attorney Wekstein explained that this is a revised Site Plan of a bank that was previously approved. He opined that in terms of substance the new plan is not very different from the approved plan. He said that there are issues such as traffic circulation that have changed from the previous Site Plan. Attorney Wekstein indicated that his goal is to have the Board move toward a Public Hearing.

Town Planner Hull noted that she and Consulting Town Engineer Barbagallo met with the applicant and their representatives to discuss the main issues. She indicated that her main concern is the traffic circulation and the change in the entrance directly off Somers Commons Boulevard and the addition of a right turn only lane going into the Shopping Center. Town Planner Hull said that another issue is the condition of the contaminated soil if there is any and how that will be taken care of and that there is no surface contamination from the existing underground storage tanks. Town Planner Hull explained that her comment on the number of

lighting poles is a carryover from the Westchester County Department of Planning referral letter which identifies the inclusion of a greater number of lighting poles than previously proposed.

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

Consulting Town Engineer Barbagallo noted that based on his review, of the traffic circulation on-site and his understanding of the Planning Board's concerns during the previous review, he believes that the most efficient way to circulate traffic is to utilize one-way circulation consisting of a two-lane entrance on the south side of the property and egress points on the two eastern boundaries. He said the main ingress that he is referring to has a one-way circulation through the project site. Consulting Town Engineer Barbagallo said that he questions the two entrance points as they are only 300 feet apart and explained that there was a lot of discussion on the traffic circulation at the meeting yesterday. He indicated that the discussion revolved around the idea that no car will back up onto Route 6 with the dual entrance. Consulting Town Engineer Barbagallo indicated that the applicant's traffic consultant presented information relative to traffic counts and he noted that there is a low volume of cars travelling from Route 6 into the Shopping Center. He noted that the data was from 2007 and the traffic consultant has agreed to update the data and provide a better means of ingress. He asked that documentation in relation to queuing be provided to make sure that cars will not back up from the ATM lane and block traffic. Consulting Town Engineer Barbagallo said another focus is stormwater and the applicant agreed to provide documentation on stormwater for this site and provide a comparison of the performance of the proposed system against higher regulatory standards for a re-development project. He said that the applicant will also provide all applicable on-site test data. Consulting Town Engineer Barbagallo said that he wants to make sure that stormwater is not being infiltrated into contaminated soil. He noted that the applicant states that to the best of his knowledge there is no contaminated soil on the site.

Attorney Wekstein said that the traffic has always been a two-way circulation and the applicant's preference is the entrance coming off Route 6. He mentioned that Consulting Town Engineer Barbagallo suggested a slight modification to the entrance. He noted that the traffic expert

sketched the modification so the Board can see what it looks like and it will be incorporated into the revised plan if it makes sense to the Board. Attorney Wekstein said that no contamination has been found on site but when the oil tanks are removed there will be sampling and if contamination is found it will be treated until the soil is clean.

John Harter, the applicant's traffic engineer, said that his office worked on the Commerce Bank application for this site and provided traffic counts for the three peak hours Monday through Saturday. He provided the Board with the traffic report from Atlantic Traffic & Design Engineers that was done in March 2007 and was used for the Commerce Bank application. Mr. Harter said that what is important about the data is that traffic turning right into the Shopping Center heading east bound on Route 6 that only 2-5% turn right at the access point. He noted that the trips were between 5 and 11 cars making right turns at the peak hours. Mr. Harter said that is a car every six minutes which is a very low volume driveway.

The Chair asked if the Planned Hamlet on Route 6 has been considered in the traffic study.

Engineer Harter stated that the traffic study is based on existing volume. He said that he is not aware of any applications that will change the volume going into the driveway. He mentioned that new counts will be provided.

Mr. Keane explained that the traffic volume will be changed internally not from Route 6.

Town Planner Hull commented that the Planned Hamlet specifically The Mews and pedestrian traffic that may be generated by the sidewalk activity was discussed at the meeting yesterday.

Mr. Keane explained that the interconnection with The Mews and the Shopping Center will result in the traffic being internal to the full movement entrance.

Engineer Harter said that he will provide counts as it relates to the full movement driveway.

Engineer Harter indicated that the traffic volume for the bank is low volume. He mentioned that ITE publishes data and a bank with drive-thru use for

trip generation is also low. He mentioned that for the three peak hours there will be approximately 50 vehicles per hour. Mr. Harter stated that Chase is looking for a full movement driveway with two exit lanes. He mentioned that there was discussion on the need for the right out lane and he felt it is important because of the volume that will go to the western signalized access. Mr. Harter said that a concern was the width of the driveway. He indicated that the crossing for pedestrians' is10 feet and one parking space in the North Parking Row closest to the access from the main Shopping Center will be land banked. He indicated that he will comment on the queuing when he provides the new traffic counts. He commented that the design accommodates eight vehicles stacked at one time but the data shows five as a maximum. He opined that eight vehicle stacking will accommodate the demand.

Mr. Keane said that the issue is the internal circulation and the frequency of vehicles entering from the internal driveway. He noted that it is important to know what the duration of the average car is as it sits conducting its transaction. He said that he believes that the transaction takes more than 1 to 3 minutes and now you have cars trying to get into the queuing lines and traffic backed up into the Shopping Center. He noted that he would like to see the logical progression of cars that will be queued up and how many cars will enter and how many cars will leave and if there will be more than 8 vehicles and if so, for how long. He opined that this many create a traffic problem at the peak time.

Engineer Harter said that the best way to study the problem is his research of 12 banks in New York which he observed and looked at their peaks and the maximum queuing. He noted the study revealed the maximum queue during a five minute period which is a good way to gauge the queuing demand. He indicated that if you estimate the transaction time it becomes a very complicated issue and is not accurate. Engineer Harter stated that Chase indicates that 55% will use the drive-thru which equates to 30 cars per hour.

Mr. Goldenberg suggested comparing the traffic counts at the Chase Bank at the Jefferson Valley Mall which is on Route 6 and is a similar situation. He mentioned that you can determine how long the transactions take.

Consulting Town Engineer Barbagallo asked about the max queuing of five

and he questioned if that is in an individual line using five cars with two in each line.

Engineer Harter explained that five is the total demand with vehicles being served and cars waiting.

Mr. Foley asked why an exit lane is needed on the driveway.

Engineer Harter said that if there is an in only entrance there is a concern that there will be a dead end aisle. He mentioned that the two entrances will provide good circulation and will limit dead end parking.

Mr. Keane said that he recognizes that BVS has an approved plan but some of the changes are the traffic data. He asked for the data justification because he is concerned that the Board will be creating a problem by reapproving a design when the problems can be fixed now. Mr. Keane asked that a narrative be provided explaining how everything fits together.

Consulting Town Engineer Barbagallo asked that data be provided on the vehicles existing the site at all exit points. He said that the traffic study for the approved project the Planned Hamlet should be reviewed to take into account the future east bound volume on Route 6.

Engineer Harter said he will provide arrows at each driveway showing the vehicles entering at drive-thru at the peak hours and demonstrate using the worst peak hours and provide the volumes.

Kristin DeLuca, the applicant's engineer, said that the Board had a concern that all regulations from the Department of Environmental Conservation (DEC) and Department of Environmental Protection (DEP) are being followed and she stated that the site complies with the regulations. She noted that the disturbance area is over 5,000 SF which triggers a DEC Permit. Engineer DeLuca explained that the disturbance is not over an acre; therefore, this development will not require any post construction stormwater management treatment. She mentioned that the proposed treatment will be rain gardens, leaching pools and the Baysaver sediment unit that will collect debris. Engineer DeLuca said that since the impervious area is being reduced 25% of the water quality volume will be treated for the entire disturbed area. She explained that 75% of the water quality volume will be treated within the leaching pools.

Consulting Town Engineer Barbagallo said that the Board has to know what level of treatment will be accomplished with the stormwater units that are in place and compare them to the redevelopment and other guidelines to show that they are doing more than what they need to do.

Mr. Keane said that his reading of Section 9 of the Redevelopment Guidelines, states that the first thing that has to be done is to justify that you cannot provide treatment using Chapter 4, 5 and 6 methodologies in the Stormwater Manual. He explained that if you can justify that treatment cannot be provided you can move to the 25% reduction of the water quality volume.

Engineer DeLuca explained that if you are decreasing the impervious area you are allowed to treat 25% of the water quality volume with an accepted practice. She said that dry wells are an accepted practice of the DEC and if the Baysaver unit, a non-standard practice, is used that will have to make up the additional percentage.

Mr. Keane said that the narrative must state what will be done conventionally and indicate why it cannot be done with the conventional methodology and then demonstrate why the other methods are being used. He said that will show how you conform to the Stormwater Manual.

Engineer DeLuca stated that she will provide all the calculations with the backup documents with each Code Section. She opined that the project meets the acceptable practices of the DEC, rain garden and leaching pools. She said that all the stormwater practices are above and beyond what is required by the DEC, DEP and Town.

Mr. Keane asked that if there is contamination in the underground tanks how will that be handled. He stated that the process has to be identified.

Engineer DeLuca said that the contamination issue will have to be addressed after the tanks are removed. She noted that testing and sampling will be done and it is understood that there has to be a clean site.

Engineer DeLuca said that the height of the light poles have been reduced and when that happens there is not much of a spread. She explained that the higher the pole the fixture can get a better spread throughout the parking lot. She indicated that there are a total of 9 poles on the site

mounted at 16 feet above grade. Engineer DeLuca explained that in order to meet the NYS ATM Safety Act requirements the number of poles on this site is 9. She indicated that the lighting will go inward toward the site.

Consulting Town Engineer Barbagallo said that there seems to be lighting extending out to Route 6 on the eastern side of the site and he would like that light to be reflected inward.

Engineer DeLuca agreed to revisit the lighting extending onto Route 6.

Town Planner Hull mentioned that the applicant asked that a Public Hearing be scheduled.

On motion by Mr. Goldenberg, seconded by Mr. Foley, and unanimously carried, the Board moved to schedule a Public Hearing on the application of BVS Acquisition Co., LLC/Chase Bank for Amended Site Plan Approval, Steep Slopes, Wetland and Stormwater Management and Erosion and Sediment Control Permits for Wednesday, November 10, 2010 at 7:30 P.M at the Somers Town House.

On motion by Mr. Keane, seconded by Ms. Gerbino, and unanimously carried, the Board moved to grant a six-month time-extension to BVS Acquisition Co. LLC/ Bank of America Site Plan from October 15, 2010 to April 15, 2011.

The Chair directed the applicant to revise the plans and address the comments of Town Planner Hull, Consulting Town Engineer Barbagallo and the Board.

DECISION

HOMELAND TOWERS, LLC/NEW CINGULAR WIRELESS PCS SITE PLAN, WETLAND AND STEEP SLOPES PERMIT [AMATO PROPERTY] [TM: 38.17-1-5] 121 ROUTE 100

Chairman DeLucia said that this is the decision of the Planning Board on the application of Homeland Towers, LLC/New Cingular Wireless PCS, LLC (AT&T) for Site Plan Approval, Steep Slopes, Wetland, and Stormwater Management and Erosion and Sediment Control Permits for

property owned by Michael P. Amato and Alice T. Amato located at 121 Route 100 in the R-80 Residential District and Westchester County Agricultural District. The Chair explained that the Zoning Board of Appeals, acting as Lead Agency, at its meeting held on September 21, 2010, issued a Negative Declaration of Environmental Significance and conditionally granted the applicants a Special Exception Use Permit and area variances for the installation of a wireless communication facility and related equipment on the premises and has directed the applicants to appear before the Planning Board to obtain Site Plan Approval. The Chair noted that the application was last discussed at the September 22, 2010 Planning Board meeting whereby the Board directed Town Planner Hull to prepare a draft resolution for Site Plan Approval for the Board's consideration.

The Chair acknowledged for the record receipt of the following: a memo dated October 8, 2010 prepared and submitted by Town Planner Sabrina Charney Hull, AICP, attaching draft Resolution No. 2010-7 for Site Plan Approval and related permits for consideration by the Planning Board; and a memo dated October 8, 2010 received on October 12, 2010 from the Conservation Board with 3 items to be answered by the applicant.

The Chair noted that the CB in their memo dated October 8, 2010 states *that on page Z-8 the notes do not follow the project outline. According to the documentation submitted, there is a section of hydric soils that is being protected on the property, which appears to be a stream. According to this recent submission, the applicants are going to perform construction activity in the hydric soils area, i.e., constructing a road, deep ripping, compaction, etc. This activity involves the same hydric soil area that the applicants are proposing to "protect". The applicants should amend their notes to say that they are not protecting the hydric soils. The applicant is planning to disturb these hydric soils and had made no effort to protect them. How does the applicant plan to mitigate the disturbance of these sensitive hydric soils.*

Attorney Gaudioso said that there is some confusion because the stream is a 24 inch pipe which conveys a regulated stream and there are no hydric soils. He indicated that during construction there will be a construction plate over the area for protection.

The Chair asked Town Planner Hull to review the resolution for comments and/or questions from members of the Board and the applicants' representatives.

Town Planner Hull said that she received comments regarding the inclusion of the word "Management" after Stormwater and that has been corrected, as well as adding Alice Amato throughout the resolution.

The Chair asked if there were any comments or questions.

Attorney Gaudioso said that the resolution was comprehensive, extensive and very well done and he had no comments or changes.

The Chair said that there was a consensus of the Board to approve the draft resolution as amended for the Chairman's signature.

Mr. Keane said that he opposed the application because the Zoning Board of Appeals (ZBA) has effectively preempted the Planning Board's ability to do very much at all in reference to this application. He noted that in the Negative Declaration and the Resolution there are still outstanding issues that haven't been selected by the ZBA and the ZBA should have made certain determinations and they did not from a visual perspective and have left open color and final landscaping which should have been made in the Negative Declaration. He opined that the Negative Declaration is replete with reversible error and he cannot support this application or resolution.

The Chair said that she is disappointed that the ZBA took over the jurisdiction of Site Plan Approval. She noted that the ZBA did the Site Plan which left the Planning Board with very little to say about the location of the tower or the visual impacts. She indicated that the consultants preferred the concealment pole but the ZBA chose something else. The Chair indicated that she is disappointed with the process but does not want to go through this process again as it would not be productive or in the best interest of the Town.

Ms. Gerbino commented that she as a member of the Planning Board is also disappointed that she did not participate in the decision on Site Plan.

On motion by Ms. Gannon, seconded by Ms. Gerbino, and carried (Mr. Keane and Mr. Goldenberg voting nay), the Board moved to approve

Resolution No. 2010-07 Granting of Conditional Site Plan Approval, Steep Slopes, Wetland and Stormwater Management and Erosion and Sediment Control Permits, as amended, to Homeland Towers, LLC/New Cingular Wireless PCS, LLC (AT&T) for a wireless telecommunications system at 121 Route 100, the Amato property, for the Chairman's signature.

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 28, 2010 from Adam L. Wekstein, Esq. of the law firm Hocherman, Tortorella & Wekstein, LLP under §170-114.K. of the Somers Zoning Ordinance for a one-year time extension to the period of 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 which was approved on November 18, 2009. The Chair said that according to Attorney Wekstein's letter, the request is made due to his client's professional team still attempting to obtain requisite permits and authorizations from outside agencies to fulfill the conditions of the Resolution, including approvals from the New York City Department of Environmental Protection (NYCDEP), Westchester County Department of Health (WCDOH) and the New York State Department of Transportation (NYSDOT).

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

Mr. Goldenberg said that he will vote against the extension because he voted against the Site Plan for this application. He noted that there are cases in front of the Board that have no intentions of moving forward as that is the reason for all the time-extensions. He mentioned that there has not been any evidence that something has been tried or there has been a delay because of certain reasons.

Mr. Foley explained that there is one extension for one-year unless there are extraordinary circumstances.

Ms. Gannon said that she has no problem recommending approval of the time-extension because she does not believe the applicant's attorney would represent something that is not true.

Mr. Keane stated that the Board does not rubber stamp extensions but decides on the facts that exist relative to the particular applications. He indicated that the Code allows the time-extensions to be stopped at a certain point unless there is a good reason.

Mr. Foley explained that he is voting no on the time-extension because in the future he wants to see more elaboration in terms of what has been done in an attempt to attain the required permits and demonstrate that the delay is on the part of the approving agencies.

Ms. Gerbino asked if the Board wants to see a contact letter from the agency that is reviewing the project.

Mr. Foley said that a contact letter is not what he is requesting. He wants the reason for the time-extension to be demonstrated in a paragraph that the applicant has done everything in a timely manner to receive approvals and list the reasons for the delay that are beyond the applicant's control.

Town Planner Hull noted that if there is not a full description when an applicant is requesting a time-extension she will request the applicant to make a full description for the reason for the extension.

The Chair indicated that there was a consensus of the Board to grant the request.

On motion by Ms. Gerbino, seconded by Ms. Gannon, (Mr. Goldenberg, Mr. Foley voting nay) and carried, the Board moved to grant Hallic Place Development, LLC for Wright's Court a one-year time-extension from November 18, 2010 to November 18, 2011 to obtain the necessary requisite permits and authorizations from outside agencies, including approvals from NYCDEP, WCDOH and the NYSDOT.

TIME-EXTENSION

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

Chair DeLucia noted that this is a request for a time-extension correction on the application of Merritt Park Estates Subdivision. She explained that Town Planner Hull received an e-mail from the applicant's Attorney Geraldine Tortorella of the law firm of Hocherman, Tortorella & Wekstein, LLP commenting that the Planning Board granted a one-year time-extension of Final Approval from October 11, 2010 to October 11, 2010 that goes beyond the time frame allowed in Town Law and the Somers Subdivision Regulations, §150-13.M. The Chair explained that on October 8, 2010 the Board received a memo from Town Planner Hull stating that the Planning Board does not have the authority to issue a time frame exceeding two additional periods of 90 days each. She asked if there was a consensus of the Board for a motion to grant a 180-day time extension.

Mr. Foley said that he has a problem granting a 180-day time-extension. He noted that the Code states two periods of 90-days not up to 180-days. Mr. Foley opined that the Code does not contemplate a single extension of 180-days.

Town Attorney Eriole advised that State Law allows more than a 90-day time-extension granted at one time and allows more than two 90-day time-extensions. He said that the Code should match Town Law and the Board may want to consider that modification. He stated that Case Law has upheld the 180-day time-extension. Town Attorney Eriole said that the safest course is to limit the time-extension to 90-days.

Town Planner Hull stated that because of the State Law she is going to make a recommendation to the Town Board to amend the Town Code to mirror Town Law.

Mr. Keane stated that the Board can grant a 90-day time-extension with the likelihood they will grant an additional 90-day time-extension if the circumstances remain the same.

On motion by Ms. Gannon, seconded by Mr. Goldenberg, and unanimously carried, the Board moved to correct the one-year time-extension issued for the Merritt Park Estates Subdivision at the September 22, 2010 meeting of the Planning Board and grant a 90-day time-extension to Mancini Building Corp. for the Merritt Park Estates Final Subdivision Approval from October 11, 2010 to January 10, 2011.

PLANNING BOARD CALENDAR

Chairman DeLucia said that this is the consideration of the Board to adopt the Planning Board's Meeting Calendar for 2011.

Ms. Gerbino asked why there is no meeting in July.

The Chair said that July tends to be vacation month for staff and the Board members and it is difficult to have a quorum for meetings.

Ms. Gannon said that when the Board is looking at issues such as shot-clock, time-extensions and having 30 days to identify an application is incomplete it is difficult to skip a month.

Mr. Keane said that vacations should not be justification not to have a meeting.

Town Planner Hull mentioned that if she is unable to attend a meeting she will provide her memos so the Board can continue their work.

The Chair noted that if there is no meeting in July and something comes up the Board can schedule a Special Meeting.

Mr. Keane recommended having one meeting on July 27, 2011 and one meeting on August 24, 2011 and the Board agreed.

On motion by Mr. Keane, seconded by Mr. Foley, and unanimously carried, the Board moved to adopt the Planning Board Meeting Calendar for 2011, as amended.

There being no further business, on motion by Mr. Keane, seconded by Ms. Gerbino, and unanimously carried, the meeting adjourned at 10:00 P.M. and the Chair noted that the next Planning Board meeting will be held on Wednesday, October 27, 2010 at 7:30 P. M. at the Somers Town House.

Respectfully submitted,

Marilyn Murphy
Planning Board Secretary