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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  
OCTOBER 26, 2011**

**ROLL:**

**PLANNING BOARD**

**MEMBERS PRESENT:**

Chairman DeLucia, Ms. Gerbino, Mr. Keane,  
Mr. Foley, Mr. Goldenberg, Ms. Gannon 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 SEPTEMBER 14, 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 September 14, 2011 consisting of twenty-six (26) pages.

Chairman DeLucia asked if there were any comments or questions from members of the Board on the draft minutes of September 14, 2011 and no one replied.

The Chair asked if there was a motion to approve the September 14, 2011 draft minutes.

On motion by Ms. Gannon, seconded by Mr. Currie, and unanimously carried, the minutes of September 14, 2011 were approved.

Chairman DeLucia noted that the DVD of the September 14, 2011 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 is also on the Town's website [www.somersny.com](http://www.somersny.com) and is available for public review at the Planning & Engineering office at the Town House.

## **PUBLIC HEARING**

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

Chairman DeLucia said that this is the Public Hearing on the application of Vincent and Juliane Naclerio, as owners, for Amended Site Plan Approval, 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 owners 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 Section 170-114.A.(1). She mentioned that the owners 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 said that this application was received on September 17, 2010.

The Chair explained that at the June 8, 2011 Planning Board meeting the Board 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. The Chair said that there was no objection within the 30 days from the date of the notice from the Westchester County Planning Board, the New York City Department of Environmental Protection (NYCDEP) and the Westchester County Health

Department and the 30 days have expired to object from any other agency. She noted that the Somers Planning Board declared itself as Lead Agency for the environmental review. The Chair mentioned that the owners are represented by Jeffrey J. Contelmo, P.E. of Insite Engineering & Surveying & Landscape Architecture, P.C. of Carmel, New York.

The Chair said that the application was last discussed at the September 14, 2011 Planning Board meeting, after a discussion of the outstanding issues, the Board scheduled a Public Hearing for this evening and also directed Town Planner Hull to prepare a draft Negative Declaration and draft Conditional Resolution of Approval for consideration for adoption.

The Chair acknowledged for the record receipt of the following: a cover letter dated and received on September 28, 2011 from Insite Engineering by Jeffrey J. Contelmo, P.E., enclosing Site Plan drawings last revised September 22, 2011 and responses to comments in memoranda by Town Planner Hull and Consulting Engineer Barbagallo; a memo dated October 21, 2011 from Consulting Engineer Barbagallo noting that all outstanding engineering comments, as identified in his previous September 9, 2011 review memo have been addressed, with some partially addressed; and a memo dated October 21, 2011 received October 24, 2011 from the Conservation Board (CB) with two concerns and recommendations. She said that the CB did not have a quorum for their October meeting.

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

Richard Williams, the applicant's engineer, said that he is seeking conditional Site Plan Approval, Tree Preservation, Steep Slopes and Stormwater Management and Erosion and Sediment Control Permits. He explained that the purpose of the application is to seek permission for imported fill and to continue to fill in the property to create a level and usable rear yard. Engineer Williams noted that the property is located at 75 Route 6 and is a one acre parcel in the Neighborhood Shopping Zone.

Engineer Williams showed the Board the plan and explained the location and mentioned that there is one structure on the property and a vacant commercial space on the first floor and a two bedroom apartment on the second floor of the building. He said that the parking lot and driveway are gravel with the balance of the site consisting of lawn area. Engineer

Williams noted that to the north of the property and off site is a NYS Department of Environmental Conservation (DEC) Wetland. He stated that the wetland was flagged by an environmental consultant and validated by NYSDEC with a copy of the signed validation map submitted to the Board. Engineer Williams said that no work is proposed within the wetland or the 100' Town of Somers wetland buffer area.

Engineer Williams commented that there was a Site Plan violation issued on March 23, 2010 for fill on the property. He explained that trees fell down on the property and Mr. Naclerio hired a contractor who offered to remove the trees and bring in fill to level off the rear portion of the property. Engineer Williams said that the applicant did not realize that he needed Site Plan Approval for this action which led to the violation.

Engineer Williams indicated that the applicant would like to continue to fill the property, decrease and stabilize the existing slope. He explained that improvements consisting of a stone diaphragm located along the toe of the slope and a grading plan that directs runoff away from the slope to a stabilized slope consisting of boulders and rip-rap. Engineer Williams stated that the existing well on the property will be abandoned according to Westchester County Health Department regulations. He noted that erosion control has been provided according to NYS Standard Specifications.

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

Consulting Engineer Barbagallo said that all of his comments have been addressed and he has no objection to the Planning Board proceeding with a Conditional Resolution of Approval provided that the applicant submits data for any additional imported fill material consistent with requirements established by General Notes Comment No. 9 which is found on the Site Plan drawings. He noted that a certification that the septic system was not damaged by the filling operations be provided and that the requirements for bond releases enumerated in the Town Code be satisfied.

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 October 16, 2011, the adjoining property owners were notified via mail on October 16, 2011 and the sign stating the date, time and place of the Public Hearing was posted on the property on September 19, 2011.

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

Planning Board Secretary Murphy replied that there was no communication in reference to the Public Hearing on the Naclerio Site Plan.

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

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

Ms. Gannon noted that the WHEREAS clause indicating the site walk on the property was eliminated from the Resolution and asked that it be included in the Resolution.

On motion by Ms. Gannon, seconded by Ms. Gerbino, and unanimously carried, the Board moved to close the Public Hearing.

The Chair indicated that Town Planner Hull had prepared and submitted for the Board's consideration for adoption a draft SEQRA Unlisted Action, Negative Declaration and Notice of Determination of Non-Significance.

The Chair asked if there were any comments from the applicant's representative and the Board as to the draft Negative Declaration and no one responded.

On motion by Chair DeLucia, seconded by Ms. Gannon, and unanimously carried, the Somers Planning Board as Lead Agency determined that the proposed Unlisted Action will not have a significant effect on the environment and adopts the Negative Declaration and that a draft Environmental Impact Statement will not be prepared.

The Chair stated that Town Planner Hull also prepared and submitted a draft Resolution No. 2011-06 for the Board's consideration for adoption.

The Chair asked if there were any comments or questions from the applicant's representative and the Board.

Mr. Foley said that the second WHEREAS clause on Page 2 of the Resolution should be changed to *1.01 acres* which will change the square footage. He suggested changing the language on Page 1, line 11 of the Resolution to read *the initial importation of fill which was associated with the violation.*

On motion by Ms. Gannon, seconded by Mr. Currie, and unanimously carried, the Board moved to adopt Resolution No. 2011-06 Granting of Conditional Amended Site Plan Approval and related permits, as amended, to Vincent and Juliane Naclerio for the Naclerio property for the Chairman's signature.

## **DECISION**

### **MITCHELL CONSERVATION SUBDIVISION**

**[TM: 16.09-1-9]**

Chairman DeLucia said that this is a decision of the Planning Board 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 noted 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. The Chair mentioned that the south side of the site abuts the Town of Somers Koegel Park. She indicated that the proposal is to divide a 7.10 acre parcel into four single-family residences with a private driveway to be maintained by a homeowners association and served by individual septic systems and wells. She noted that this application was last discussed at the October 12, 2011 Planning Board meeting whereby the Board held a Public Hearing at which time no one was present who wished to be heard and no communication was received in objection and proceeded to close the Public Hearing. The Chair said that the applicant demonstrated that the environmental concerns have

been mitigated to the maximum extent practicable and directed Town Planner Hull to prepare and submit a draft negative declaration and draft conditional resolution for the Board's consideration for approval for this evening.

The Chair acknowledged for the record receipt of the following: a draft SEQRA Unlisted Action, Negative Declaration and Notice of Determination of Non-Significance and draft Conditional Preliminary Conservation Subdivision Approval Resolution No. 2011-08 prepared and submitted to the Planning Board by Town Planner Hull; a memo dated October 21, 2011 from Consulting Town Engineer Barbagallo with comments for discussion; a letter by e-mail dated and received October 13, 2011 with comments from Cynthia Garcia, Project Manager, NYC Environmental Protection, SEQRA Coordination Section to Town Planner Hull which was forwarded to the Board for any comment; a memo dated October 18, 2011 received October 19, 2011 from Town Clerk Kathleen R. Pacella to the Planning Board advising that at the October 13, 2011 Work Session/Regular Meeting the Town Board reviewed the Mitchell Subdivision and had no comment at that time; a memo dated and received on October 18, 2011 from the Bureau of Fire Prevention commenting that at its meeting on October 13, 2011 the updated site plan was reviewed and would like the common driveway leading to the house to be made wider, 20 feet would be ideal, and would also like to have a snow removal agreement in place to allow for emergency access; and a memo dated October 7 received October 11, 2011 from the Conservation Board regarding the common driveway and access to the entrance by emergency vehicle, school bus and delivery truck.

The Chair asked the applicant's representative to respond to the comments contained in the recently received memoranda. She said that the responses could amend the draft Resolution and Negative Declaration.

Timothy S. Allen, the applicant's engineer, said that the most critical memo was from the Bureau of Fire Prevention where they suggest that *the common driveway leading to the houses be made wider, 20 feet would be ideal, and would also like a snow removal agreement in place for this subdivision to allow for easy emergency access.* Engineer Allen explained that the Town is working toward less driveway as opposed to more driveway. He noted that the Town recently changed the Code and he

questioned why the Bureau of Fire Prevention would like a wider driveway when the Code was changed for less driveway.

Ms. Gerbino asked if the Fire Prevention Bureau was involved and went along with the change of width for driveways.

Engineer Allen explained that the Town Code defined common driveways and he assumed the Fire Prevention Bureau was aware and participated in the change. He said that the request for a snow removal agreement for the Mitchell Subdivision is not a problem.

The Chair indicated that the Bureau of Fire Prevention memo said that they would *like* the driveway wider but are not demanding that the driveway be wider. She opined that it is up to the Planning Board to agree or disagree.

The Chair asked how the Board feels about the recommendation to widen the driveway 20 feet.

Mr. Currie wondered what the reasoning is behind the suggestion to widen the driveway.

Town Attorney Eriole advised that since the proposed driveway is Code compliant the Board should use their discretion.

Ms. Gerbino said that there is an older house next to this subdivision and there is an issue of disturbing the foundation of that house and the question of health, safety and welfare.

Mr. Keane noted that this is a conservation subdivision and consistent with that is the narrowing of the roads and the current stormwater practices.

The Chair asked if there were any comments from the applicant's representative and the Board as to the draft Negative Declaration. Engineer Allen said that this is technically a five lot subdivision.

The Chair noted that Town Planner Hull in her memo dated October 25, 2011 said that one area that should be discussed is how the deed restricted conservation parcel will be handled as it is directly referenced in the resolution.

On motion by Ms. Gannon, seconded by Mr. Goldenberg, and unanimously carried, the Board moved that the Somers Planning Board as Lead Agency determined that the Proposed Unlisted Action will not have a significant effect on the environment and adopts the Negative Declaration as amended and that a draft Environmental Impact Statement will not be prepared.

The Chair asked if there were any comments or questions from the applicants' representative and the Board as to the draft Resolution No. 2011-08, and in particular, the language on page 5 lines 14 through 16.

Town Planner Hull in the fourth WHEREAS paragraph on page 5 of the Resolution, *The applicant has expressed a willingness to cooperatively work with the Westchester Land Trust to ensure that the deed restricted conservation parcel is properly maintained and managed as such.* She asked the Planning Board how this should be treated.

Engineer Allen said that the intention is to dedicate the property to the Town as part of Koegel Park. He suggested using the wording *other entity*.

The Chair asked the Town Planner and Engineer Allen to work together on the language in the fourth WHEREAS paragraph on Page 5 of the Resolution.

Town Planner Hull said that she wants the Department of Protection (DEP) comments sent by e-mail on October 13, 2011 incorporated into the Resolution. She noted that the Resolution should be amended to add those conditions. Town Planner Hull explained that Cynthia Garcia of the DEP requested several changes and Engineer Allen agreed those changes can be added as conditions.

Engineer Allen stated that Mr. Mitchell is donating 2 ½ acres of his property to the Town and is asking that the recreation fee be waived.

The Chair said that the Town Board will have to make the decision on waiving recreation fees.

Town Planner Hull said that the Resolution can indicate that recreation fees will be assessed unless the Town Board waives the recreation fee.

Mr. Foley suggested changing the wording in the box on the first page of the Resolution and modifying the description, change Tree to *Tree Preservation* and adding the word *Stormwater Management* and Erosion and Sediment Control Permits and granting the approval to *Gary and Ann Mitchell for the Mitchell Conservation Subdivision*.

Engineer Allen requested that he review the Negative Declaration and Conditional Resolution prior to the Chair's signature.

On motion by Ms. Gannon, seconded by Mr. Currie, and unanimously carried, the Board moved to approve Resolution No. 2011-08 Granting of Conditional Preliminary Conservation Subdivision Approval and related permits as amended to Gary and Ann Mitchell for the Mitchell Conservation Subdivision for the Chairman's signature.

## PROJECT REVIEW

### **HOMELAND TOWERS, LLC\NEW CINGULAR WIRELESS PCS, LLC (AT&T) FOR SITE PLAN APPROVAL, TREE REMOVAL, STEEP SLOPES, WETLAND, AND STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL PERMITS [SANTARONI PROPERTY] [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, Wetlands Protection, Steep Slopes Protection and Stormwater Management and Erosion and Sediment Control, for the installation of a proposed wireless telecommunications facility consisting of a 130-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 owned by Umberto and Carol Santaroni. She said that the leased area consists of approximately 3,500 square feet and falls within the Muscoot Reservoir drainage basin of the New York City Water Supply Watershed. The Chair mentioned that the Somers Fire Department equipment has been added to the proposal.

The Chair noted that this application is currently before the Zoning Board of Appeals (ZBA) as Lead Agency in a coordinated review with the Planning

Board as an Involved Agency under SEQRA for a Special Use Permit and area variances.

The Chair 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. Gaudio, Esq. of Snyder & Snyder, LLP and AT&T is represented by Neil J. Alexander, Esq. of Cuddy & Feder, LLP.

The Chair mentioned that the application was last discussed at the September 14, 2011 Planning Board meeting whereby at the request of the Zoning Board of Appeals (ZBA) to provide them with the Planning Board's comments and recommendations together with their pole preference favorable for the location, it was the consensus of the Board to recommend to the ZBA that the tower be constructed as a monopine, and that, among other things, the applicant construct the tower to handle the future 15'-20' extension and the related fall zone be calculated and factored into the design of the tower with the fall zone not going beyond the property line, that the applicant consider alternate access driveway designs, and to provide visual mitigation for the tower so a fair determination regarding the best pole configuration can be made. The Chair noted that the applicant was also directed to address all of staff's concerns and to revise the plans.

Chairman DeLucia acknowledged for the record receipt of the following: a copy of a letter dated and received October 11, 2011 addressed to ZBA Chairman Paul Marx and members from Robert D. Gaudio, Esq. of Snyder & Snyder with responses to comments received from the Town Planner by memo to the ZBA dated September 16, 2011, the Consulting Town Engineer by memo to the Planning Board dated September 9, 2011, the Town's consultant HDR dated September 6, 2011 and ZBA's September 20, 2011 Public Hearing comments, and enclosing 8 copies of the following:

- Letter from Tectonic Engineering & Surveying, P.C., dated October 5, 2011 specifically addressing issues raised in Town Planner Hull, Consulting Engineer Barbagallo and HDR comments;
- Revised Site Plan by Tectonic, last revised October 6, 2011 with comments;
- Revised Environmental Mitigation Report dated October 7, 2011;

- Revised Stormwater Pollution Prevention Plan, prepared by Tectonic revised October 2011;
- Letter to NYC DEP from Tectonic, revised October 6, 2011 relating to revised variance application submittal;
- Letter from Sabre Industries, dated September 19, 2011 with comments that the proposed 130' tower will have a fall zone radius of 44 feet and in relation to a future 20' extension to 150 feet, an increase to 64' which is less than the approximate distance to Route 35;
- Sketch plan of Alternative Access Plan prepared by Tectonic and submitted and presented to the ZBA at the September 20, 2011 meeting with a discussion summary;
- Letter from Sabre Industries dated October 7, 2011 recommending the trunk of the monopine be painted "Sherwin Williams SW7645 Thunder Grey with a dull/matte finish as the best option"; and
- Twelve responses to HDR comments pertaining to the VHB July 2011 report and that a revised VHB report is not necessary.

The Chair stated that the applicant's attorney closes the letter by stating that all relevant outstanding issues have been addressed and requesting the ZBA to issue a Negative Declaration and grant the necessary approvals at the October 18, 2011 Public Hearing.

The Chair explained that by memo dated October 21, 2011, Town Planner Hull advised the Planning Board that the ZBA at their October 18, 2011 meeting granted the Special Exception Use Permit for the wireless tower and directed the applicant to work with the Planning Board regarding the alternate access driveway designs to be addressed through Site Plan Approval.

The Chair said that the Board also acknowledges receipt of the following: a memo dated August 19, 2011 revised October 7, 2011 from the Conservation Board who reviewed the application at their meeting on September 27, 2011 and have 9 concerns and recommendations; and a memo dated October 21, 2011 from Consulting Town Engineer Barbagallo with his review discussion comments.

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

Robert Gaudio, the applicant's attorney, said that the Zoning Board of Appeals (ZBA) granted the Negative Declaration, Special Use Permit, variances with the pole designed as a monopine with a 20' extension. He indicated that the limited fall zone will include consideration of a future extension. Attorney Gaudio indicated that the ZBA discussed the access drive and he explained that the width of the access drive is dictated by specifications from the Department of Transportation (DOT). He stated that the applicant is willing to work with the Planning Board and come up with a revised width and Tree Planting Plan. Attorney Gaudio explained that the tree planting will help minimize the visibility of the pole from the 1 to 3 second viewpoint along Route 35. He said that the DOT will have to approve the narrower access drive. Attorney Gaudio mentioned that the alternate access drive will be narrowed to 16' with an apron length of 86' and additional trees will be planted in the additional 8' next to the access drive. He noted that planting boxes will also be used to minimize the impact of the pole. Attorney Gaudio mentioned that he will also submit the code compliant access drive plan to the DOT as well as the alternate access plan for their review and decision. Attorney Gaudio said that he will submit a sketch of the access road to the Planning Board before submitting to the DOT. He suggested that this be a condition of approval. He mentioned that the fence has been changed from a chain link fence with vinyl slats to a wood board fence which will look better in the environment.

Town Planner Hull said that if the Planning Board agrees to the narrower access drive it will be helpful to have that recommendation from the Planning Board to the DOT.

Ms. Gannon asked if the extension is put on the tower will the narrower driveway provide enough access to bring in the equipment for the extension.

Attorney Gaudio explained that 16' is as narrow as the applicant would want to go. He provided the Board with an alternative sketch of the narrower access drive.

Mr. Keane asked if the plan for the narrower access drive was made part of the ZBA Negative Declaration.

Attorney Gaudio said that the narrower access drive is not a part of the ZBA's Negative Declaration. He noted that in answer to Ms. Gannon's question, the narrow access drive can handle the construction equipment.

Attorney Gaudioso explained that the Landscaping Plan states that if plants die in the planter box they must be replaced.

Mr. Keane said that without reviewing the ZBA's Negative Declaration the Planning Board is working in a vacuum. He opined that Town Codes were disregarded especially about the visual impacts and were not discussed at any length at the ZBA level. Mr. Keane said that from a Site Plan perspective the Planning Board can make sure that Town Code has been adhered to, especially the cone of vision.

Attorney Gaudioso said that the ZBA directed the applicant to work with the Planning Board regarding the alternate access drive to be addressed through Site Plan approval. He indicated that the main point of the access drive was dictated by the visibility of viewpoint 4.

Town Planner Hull noted that she attended the ZBA meeting where discussion took place on the disturbance to the wetlands to the south and the ZBA only wanted to make a wider curb on the northern part and to shorten the apron. She stated this is part of the ZBA's Determination of Significance.

The Chair asked if the driveway will be paved or gravel. She asked if porous asphalt can be used.

Attorney Gaudioso said that the apron per DOT will be blacktopped and the rest will be gravel. He noted that he has no objection to using porous asphalt.

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

Consulting Engineer Barbagallo said that the applicant shall provide the designation of specific soil types within the proposed limit of disturbance §144-7.B. (2) and in addition the applicant shall provide a grain size analysis within the limits and depths of disturbance. He explained that this information shall be used to design appropriate erosion control measures along the disturbed steep slopes adjacent to a regulated wetland. Consulting Engineer Barbagallo noted that this has not been addressed. He explained that the purpose of understanding the grain size distribution of soils to be disturbed is to verify that the site does not contain colloidal

soils that cannot be treated with typical erosion controls. He said that given the proximity to wetlands and understanding the soil types remains necessary.

Consulting Engineer Barbagallo stated that the applicant has provided a letter from the tower designer which states that the fall radius for the tower, as currently proposed is 44 feet. He noted that the fall radius differs from representation in previous submittal of 64 feet. Consulting Engineer Barbagallo said that it is stated that the fall radius of the tower with a 20 foot extension will be 64 feet and he asked that it be confirmed that the tower design has been modified to limit the fall radius to 64 feet under the 20 foot tower extension condition. He indicated that this confirmation shall be signed and sealed by a professional engineer.

Attorney Gaudioso said that on October 11, 2011 he submitted a letter from Sabre confirming that they will design the pole to have a fall zone of 44' and if the 20' extension is added it will be a 64' fall zone. He explained that prior to the issuance of a building permit the structural calculations will be submitted documenting the 44' fall zone.

Consulting Engineer Barbagallo stated that the applicant shall address and comply with all comments and requirements from the Department of Environmental Protection (DEP) in reference to their letter dated December 30, 2009 and from the Westchester County Planning Board regarding the Special Use Permit and area variances, dated December 15, 2009. He commented that a letter received from the NYCDEP indicated that the current submittal by the applicant is not complete. Consulting Engineer Barbagallo explained that a determination of non-significance is necessary from the Zoning Board of Appeals before the application is considered complete by the NYC DEP.

The Chair asked if Town Planner Hull had any comments and she replied that she had no comments at this time.

The Chair asked if there were any comments or questions from staff and Board members.

Ms. Gannon said that she remains concerned about the view as you head east bound as it does not show the trees that are removed. She questioned that under Site Plan review will anything be planted on the northern side of the pole. Ms. Gannon mentioned that she is interested in

seeing the detail and constraints under which the Board will function under Site Plan review.

Attorney Gaudioso suggested reviewing the Landscape Plan which shows the trees that will be saved and the change to the wood fence.

Mr. Keane opined the view as the Board wanted was not adequately represented.

Attorney Gaudioso asked what other concerns does the Board have based on the application as a whole. He requested that the Board schedule a Public Hearing on the application.

Ms. Gerbino said the concern is the big pole that will be close to the road and once the negative declaration is reviewed that will answer a lot of questions.

The Chair directed the applicant to address all of the outstanding issues mentioned in Consulting Engineer Barbagallo's October 21, 2011 memo to the Board and comments from Town Planner Hull and the Board and revised the plans accordingly. She noted that this application is adjourned to Wednesday, November 9, 2011 or sooner, since there will only be one meeting in November. The Chair indicated that if the information is complete at the November Planning Board meeting a Public Hearing on the application can be scheduled for December.

## **DISCUSSION**

### **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]**

The Chair said that this is a discussion requested by the applicant on the application of The Green at Somers Amended Site Plan and permits. She explained that the discussion includes a recommendation to the Town Board regarding §170-20.4.B. (affordable dwelling units) in the Neighborhood Shopping (NS) District of the following:

1. Allow an increase in FAR and 50% of residential affordable.

2. Authorize the Planning Board to reduce the required number of parking spaces (shared parking).
3. Allow an increase in maximum height to 3 stories.

The Chair noted that in addition, the applicant would like to place residential units on the first floor.

The Chair explained that this is a discussion and not a project review as the applicant is seeking a recommendation to the Town Board. She mentioned that Town Consulting Engineer Barbagallo's memo will not be summarized this evening.

Linda Whitehead, the applicant's attorney, said that the reason for the discussion is that there are a few items that have been incorporated into the plan which require Town Board approval. She explained that Town Planner Hull wanted to see if the Planning Board is in support of those items in order to make a recommendation to the Town Board. Attorney Whitehead mentioned that the first issue is to allow an increase in FAR and make residential units 50% affordable housing. She noted that another issue is to allow an increase in the maximum height to 3 stories. Attorney Whitehead mentioned that zoning was written to allow the increase in the maximum height to 3 stories for the prior application.

Town Planner Hull stated that the Town Board talked about the zoning change to allow the increase in the maximum height to 3 stories but it was not actually approved.

Attorney Whitehead clarified the issue by saying that the Town Board adopted the amendment to the Zoning Code to make the 3 stories possible.

Attorney Whitehead indicated that she is asking the Planning Board to allow the applicant to take advantage of the bonus of making 50% of the units affordable which will allow a greater FAR. She said that the topography of the area is relevant to this site in terms of what the 3 stories will look like.

Town Planner Hull said that the Town Supervisor would like the Planning Board to make a recommendation to the Town Board on the direction of this application to give them guidance.

Attorney Whitehead explained that the current plan takes advantage of the increase in the FAR with the elevation showing 3 story buildings.

Mr. Keane said that the view from the road and the context of the buildings are very important.

Town Planner Hull noted that the topography of the site will determine how the 3 stories will visibly impact the area. She mentioned tools such as Google Earth which can show the placement of buildings using the estimated elevations and will provide a visual comparison that is computer generated. Town Planner Hull stated that the Town Board and Planning Board will benefit when trying to visualize the visual impact.

Attorney Whitehead indicated that what the County has in reference to computer generated placements of buildings is not available at this time. She said that the two important issues are the distances from the road to the closest building. She indicated that the 3 story buildings are set back further on the site.

Daniel Holt, the applicant's engineer, presented the proposed plan and discussed the location and elevation of the buildings.

Attorney Whitehead explained to the Board that because this application is in the Neighborhood Shopping Zone (NS) the design guidelines ask for dormers and architectural elements.

Town Planner Hull suggested that the applicant use a computer generated simulation. She said that being able to depict visually what the buildings will look like is helpful to the Planning Board.

Attorney Whitehead said that she is disappointed because she thought she was here this evening to get a recommendation from the Planning Board to the Town Board and now the suggestion is to provide a computer generated simulation.

Ms. Gannon said that the perception of bulk from a distance and from various views can the Board make a mental calculus given the proposed site plan and renderings and can the Board make a recommendation based on what is before them.

Attorney Whitehead advised that the increase in the FAR is closely tied to the 3 story buildings.

The Chair noted that she is not ready to recommend to the Town Board that there will be 3 story buildings on this site.

Attorney Whitehead asked for clarification on what the Board wants to see before it makes its recommendation to the Town Board. She asked if computer generated simulation is necessary or can elevations and schematics of what the buildings will look like from the road with landscaping be substituted instead.

Town Planner Hull said that she supports computer generated simulation.

Mr. Keane noted that 3 dimensional drawings can be used with a view from one end of the project and then the other end of the project looking from east to west.

Attorney Whitehead said that if it is feasible to do a computer generated simulation within a reasonable time and cost the applicant will provide that simulation.

Town Planner Hull mentioned *Goggle Earth* and said that the buildings can be shown in the front and back of the development.

Attorney Whitehead said that a power point presentation can be made showing the buildings and elevations on the site.

Town Planner Hull mentioned the shared parking aspect of this application and said that shared parking is recommended in the Town Code. She asked that the ten spaces in the garages (show footprint) be demonstrated.

Attorney Whitehead said that she submitted a letter from the applicant's traffic engineer that used the standard methodology developed by the Urban Lance Institute on shared parking.

The Chair noted that the applicant would like to place residential units on the first floor.

Attorney Whitehead said that the market for retail is limited. She noted that there will be apartments over stores but the applicant would like to place

residential units on the first floor and reduce the number of stores. She showed the Board an elevation drawing showing the apartments on the first floor.

Town Planner Hull said that the proposed shopping center across the street is different in nature than the retail proposed on this site.

Mr. Foley stated that there is no provision in the Code that allows apartments on the ground floor even with 50% affordable units.

Attorney Whitehead said that it is the interpretation of the Code in references to apartments over stores and the question is does the entire first floor have to be stores.

The Chair stated that the 1994 Master Plan specifically states apartments over stores.

Attorney Whitehead said that in other places those very words have been defined to say as long as there are some stores on the first floor it does not have to be all stores. She said that the applicant may ask the Town Board if this can be amended in the Town Code.

Rick Van Benschoten, owner, said that when speaking to several brokers they have said that maybe a nail salon would work but other than that you will have empty retail space.

Town Attorney Eriole said that apartments on the first floor with retail is an interpretation of the Town Code.

Attorney Whitehead said that there are options such as retail on the first floor with apartments above or have the code modified.

Town Attorney Eriole advised that if the Board felt that some apartments on the first floor is a good idea it is either a ZBA interpretation of the present Code or if the applicant wants the code to be clarified it can petition the Town Board for that clarification.

Mr. Keane said that the Planning Board could say that it is a good idea that 25% of the first floor is retail with the remainder residential.

Attorney Whitehead noted that the Planning Board could recommend that the Code be amended to allow the first floor retail with apartments in the court yard buildings or that 50% of the buildings have apartments over the stores.

Attorney Whitehead asked if a Special Meeting or Work Session can be held on this application before the December meeting and the Board agreed.

There being no further business, on motion by Ms. Gannon, seconded by Mr. Goldenberg, and unanimously carried, the meeting adjourned at 11:00 P.M. and the Chair noted that the next Planning Board meeting will be held on Wednesday, November 9, 2011 at 7:30 P. M. at the Somers Town House.

Respectfully submitted,

Marilyn Murphy  
Planning Board Secretary







