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**SOMERS PLANNING BOARD MINUTES
MAY 12, 2010**

10 **ROLL:**

11
12 **PLANNING BOARD**

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

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

21
22 The meeting commenced at 7:40 p.m. Planning Board Secretary
23 Marilyn Murphy called the roll. Chairman DeLucia said that a
24 required quorum of four members of the Board were present and
25 called the meeting to order.

26
27 Chairman DeLucia noted that Planning Board Secretary Murphy
28 prepared and submitted for the Board's consideration the approval of
29 the draft minutes of the April 14, 2010 Planning Board meeting
30 consisting of forty (40) pages.

31
32 The Chair asked if there were any comments or questions from
33 members of the Board.

34
35 Ms. Gerbino said that she was not present at the April 14, 2010
36 meeting but she watched the Planning Board meeting and therefore
37 she can vote on the minutes.

38
39 Ms. Gannon made a correction on Page 3, line 33 and added the
40 wording *fundamentally wrong* and she also mentioned that Secretary

1 Murphy checked with Michael Galante of Frederick P. Clark and
2 changed the word *dols* on Page 5, line 12 to *valve*.

3
4 Chairman DeLucia added a sentence to Page 9, line 15, *Mrs.*
5 *Sussmann said if that is what the Board wants she will provide a*
6 *letter from Mobil Oil in reference to the fuel deliveries.*

7
8 The Chair asked if there was a motion to approve the April 14, 2010
9 draft minutes, as amended.

10
11 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and
12 unanimously carried, the minutes of April 14, 2010, as amended,
13 were approved.

14
15 The Chair noted that the DVD of the April 14, 2010 Planning Board
16 meeting is made a part of the approved minutes and is available for
17 public viewing at the Somers Public Library. The text of the approved
18 minutes are also on the Town's website www.somersny.com and is
19 available for public review at the Planning & Engineering office at the
20 Town House.

21
22 **PROJECT REVIEW**

23
24 **VIEIRA HOLDING CORP.**
25 **APPLICATION FOR AMENDED SITE PLAN APPROVAL**
26 **[TM: 16.16-1-12]**

27
28 Chairman DeLucia noted that this is the project review of the
29 application of Vieira Holding Corp. for amended site plan approval for
30 property located at 1 Maple Avenue to eliminate Site Plan violations
31 issued to the applicant on January 4, 2008 relating to imported fill and
32 grading on the property that were not given Planning Board approval.
33 She said that the applicant appeared before the Somers Town Court
34 and was directed to submit an amended Site Plan for Planning Board
35 approval. The Chair explained that on February 16, 2010 the
36 applicant submitted an incomplete application and on February 18,
37 2010 Town Planner Hull notified the applicant to resubmit a complete
38 application. She indicated that the applicant then submitted another
39 incomplete revised Site Plan application and related materials under
40 covering letter dated March 15, 2010 received on April 2, 2010.

1 The Chair acknowledged for the record receipt of the following: a
2 letter dated April 21, 2010 from Acting Commissioner Edward
3 Buroughs, AICP, of Westchester County Planning Board finding that
4 this application is a matter for local determination; a memo dated
5 April 28, 2010 from the Conservation Board requesting the applicant
6 submit current plans in order to compare with the original site plan
7 received to complete the evaluation; a memo dated May 7, 2010 from
8 Consulting Town Engineer Barbagallo commenting that the
9 documents submitted do not constitute a complete site plan
10 application, and having additional comments; and a memo dated
11 May 7, 2010 from Town Planner Hull, AICP giving her project review
12 and recommendations and also commenting that a detailed site plan
13 should be provided and that the Planning Board should conduct a site
14 walk.

15

16 The Chair mentioned that a letter dated May 12, 2010 with
17 attachments was received from Eileen Christiano and Rebecca
18 Isaacs, residents of The Willows.

19

20 The Chair asked staff to share their memo with the Board for the
21 benefit of the public. She said if agreeable, the Board may also
22 interject their comments and questions with staff and the applicant's
23 representative in an open discussion.

24

25 Town Planner Hull said that her first three comments relate to the
26 application. She said that the Zoning District is NS, although the use
27 is non-conforming and the existing building size and the number of
28 parking spaces should be identified. Town Planner Hull noted that
29 the application did not include a Site Plan rather the applicant
30 provided an updated topographical survey and the 1971 approved
31 Site Plan. She mentioned that she had discussion with Town Counsel
32 Stephen Lewis in regard to the submission and Attorney Lewis felt
33 that because the applicant submitted a topographic survey and court
34 documented paper work he was making a good faith effort. Town
35 Planner Hull said that Attorney Lewis knows that a Site Plan is
36 needed but he wanted the applicant to come before the Planning
37 Board so the Board can direct the applicant to complete a Site Plan.

38

39 Town Planner Hull noted that under *Plans and Materials* she gives
40 the history of the court violations and the determination of why the

1 applicant is before the Planning Board and that is to submit an
2 amended Site Plan for the Board to compare to the 1971 application
3 and determine if there have been changes and for the Board to
4 approve the Site Plan if that is what they decide. Town Planner Hull
5 mentioned her comment on the existing septic system which is
6 located on the southwestern portion of the lot, adjacent to the existing
7 building. She said that on the 1971 Site Plan there are indications
8 that there should be no parking or storage of contractor vehicles in
9 this area. She stated that on May 5, 2010 a site visit revealed
10 contractor vehicles and parking within this area. She said that this
11 will have to be addressed in the applicant's Site Plan. Town Planner
12 Hull said that she shows a table that does a comparison that
13 constitutes the differences between the 1971 Site Plan and the 2010
14 Topographic Survey which identifies four areas of differences. She
15 indicated that this may not be a fair comparison because she
16 compared a Site Plan to a Topographic Survey.

17
18 Town Planner Hull indicated that the main reason the applicant was
19 in Court is a violation that was issued by the former Town Engineer
20 regarding the importing and spreading of fill on the property. She
21 said that the applicant denies the importing and spreading of fill on
22 the property. Town Planner Hull explained that the applicant states
23 that the fill has been removed; however, a cursory review shows a
24 difference in the topography. She said that the applicant's surveyor
25 did note a difference in elevation but indicated that is due to the berm
26 constructed at the Willows. Town Planner Hull stressed that without
27 a Site Plan it is difficult to determine if a violation did exist or how to
28 rectify that violation. She said that if the Planning Board schedules a
29 site walk the Board should walk the outside of the property. Town
30 Planner Hull opined that a site walk should not be scheduled until a
31 Site Plan is submitted and there is a complete application and the
32 Board has more information.

33
34 Consulting Town Engineer Barbagallo said that with an incomplete
35 application it is very difficult to do the type of review that can provide
36 meaningful engineering input. He indicated that when the Site Plan is
37 provided a description of the stormwater management on site relative
38 and comparison back to the 1971 Site Plan should be provided as it
39 is important to evaluate the changes and the stormwater
40 requirements that will be incorporated into the new Site Plan. He

1 noted that the identification of the existing septic system location is an
2 important element and all the parking areas should be identified.
3 Mr. Goldenberg referenced Town Planner Hull's memo dated May 12,
4 2010 to the Town Board.

5
6 Town Planner Hull explained that in accordance with Town Code an
7 applicant who is currently in violation cannot make an application to a
8 Board without receiving the waiver for the application processing.
9 She said that six-months ago the Town Board granted that waiver
10 from the Restrictive Processing Law. She said that because it has
11 taken so long for the applicant to appear before this Board due to the
12 submission of incomplete information the 6-month waiver is due to
13 expire. Town Planner Hull said that it is alright to discuss this
14 application and she has asked that the Town Board grant an
15 extension.

16
17 Mr. Goldenberg asked what happens if the Town Board does not
18 grant the time-extension.

19
20 Mr. Keane suggested that the Town Board relook at this issue and
21 make a new decision. He mentioned that the memo states this office
22 is requesting the time-extension and he asked why the Town Planner
23 is advocating on behalf of the applicant.

24
25 Mr. Foley said that the applicant should be requesting the time-
26 extension for the waiver of the Application Processing Restrictive
27 Law.

28
29 Ms. Gerbino said that reading the material she found that the
30 applicant states that he never received a copy of the Notice of
31 Violation issued January 4, 2008. She mentioned that there is a
32 signature from Stephen A. Vieira signing for the Notice of Violation.

33
34 Stephen Vieira, applicant, said that he said that to the best of his
35 knowledge he had no violations on this property.

36
37 The Chair said that the EAF submitted by Mr. Vieira also says that
38 there are no violations on his property. She asked that a copy of the
39 Deed and Title Report be submitted.

40

1 Town Attorney Eriole advised that the application has to be complete
 2 to the satisfaction of the Board and staff. He noted that the applicant
 3 is here now because the Court determined that Site Plan approval
 4 should be part of the deposition of the case. He stressed that there is
 5 an outstanding violation pending in Court and the current period of
 6 time extended by the Town does not expire until tomorrow so it is
 7 appropriate to hear this application. Town Attorney Eriole said that
 8 the applicant should follow up on the time-extension for the waiver
 9 of the Application Processing Restrictive Law.

10
 11 Town Attorney Eriole said that he understands Mr. Goldenberg's
 12 concern about hearing this application but the Board is only directing
 13 the applicant to provide a complete application.

14
 15 Mr. Keane asked that the memo from Town Planner Hull to the Town
 16 Board dated May 12, 2010 be retracted as it is the applicant's
 17 responsibility to request the waiver and the Board agreed.

18
 19 Town Planner Hull said that she will retract her letter to the Town
 20 Board and send a follow-up letter to Mr. Vieira saying that he should
 21 pursue the time-extension with the Town Board. She asked Mr.
 22 Vieira if he intends to submit a complete application and Mr. Vieira
 23 did not respond.

24
 25 Mr. Foley said that Town Planner Hull's memo to the Town Board is
 26 informative but the request for a time-extension should be from the
 27 applicant and not the Town Planner. He noted that it is up to the
 28 Town Board if they want to grant a time-extension. Mr. Foley
 29 suggested that the last paragraph be changed and that the applicant
 30 request the six-month waiver.

31
 32 Town Planner Hull asked if the Planning Board could direct her to
 33 retract her letter to the Town Board. She asked if the letter should be
 34 retracted in its entirety or just the last paragraph.

35
 36 Town Attorney Eriole said that the letter to the Town Board comes
 37 from the Town Planner and not the Planning Board. He noted that
 38 the issue is that the request for a waiver should be from the applicant,
 39 as it is his obligation to pursue the time-extension.

40

1 The Chair said that it is the consensus of the Board that Town
2 Planner Hull retract her letter to the Town Board and write a letter to
3 the applicant and request that he ask for the time-extension for the
4 waiver.

5
6 Mr. Vieira said that he does not have a copy of a Site Plan as it is the
7 same as the Topo map that he provided. He noted that his property
8 has existed for 30-years and he needs direction as to what should be
9 on the Site Plan.

10
11 Town Planner Hull explained to Mr. Vieira that information in her
12 memo as well as information in the Consulting Town Engineer's
13 memo has to be added to the Site Plan as it is not on the
14 Topographic Survey.

15
16 The Chair stated that the 1971 Site Plan is Mr. McNamee's plan.

17
18 Town Attorney Eriole said that the applicant has to know what
19 constitutes a Site Plan and a Site Plan application in order to comply.
20 He indicated that if Mr. Vieira submits the information requested by
21 staff and the Board and if he does not submit the requested Site Plan
22 and information it will be the Board's decision what to do next. He
23 noted that the Town and the Court are trying to resolve the issues.

24
25 Mr. Vieira said that what he understands is that he will have to
26 provide an Archaeological Study, wetlands and steep slopes
27 evaluation, drainage study and listing of parking lots to complete the
28 Site Plan application. He opined that his property has not changed in
29 30-years.

30
31 The Chair explained that Mr. Vieira has to follow the process.
32 Mr. Foley mentioned that Mr. Vieira is before the Planning Board as a
33 result of proceedings from the Town Court with the proposed remedy
34 that Mr. Vieira submits a Site Plan to the Planning Board. He said
35 that if Mr. Vieira feels that the submission of a Site Plan is too
36 onerous a task he suggested that Mr. Vieira go back to the Town
37 Court and explain what has changed and try to get another remedy
38 from Town Court. Mr. Foley explained that the Planning Board can
39 only deal with a Site Plan and if Mr. Vieira feels that he needs relief

1 from the Site Plan he is before the wrong Board and should go back
2 to the Town Court.

3 Town Attorney Eriole said that if the remedy suggested by the Court
4 is not what Mr. Vieira wants to go with that is Mr. Vieira's decision.
5 He stated that the Planning Board is not asking for anything that it
6 would not ask of any other applicant.

7

8 Mr. Vieira stated that it is not his choice to appear before the Planning
9 Board. He noted that he has lived in Somers for 35-years and raised
10 his family here. He mentioned that two years ago when he bought
11 the property it was a junkyard and he spent over \$100,000 cleaning
12 up the property.

13

14 The Chair said that if Mr. Vieira wants to make any change to his
15 property in the future he will need a Site Plan.

16

17 Ms. Gannon asked if the Town Attorney is aware of the requirements
18 of the Planning Board as it pertains to the applicant.

19

20 Town Planner Hull said that she copied Town Counsel on her memos
21 so he is aware of the proceedings and she will inform him on the
22 status of this application.

23

24 The Chair suggested scheduling a site walk of the property.

25

26 Town Planner Hull reiterated that a site walk should not be scheduled
27 until a full application is submitted. She mentioned that she walked
28 the site and that is how she came up with the differences that she
29 described in her memo.

30

31 Town Attorney Eriole said that there is nothing prohibiting the Board
32 from conducting the site walk before the site plan application is
33 submitted but it may be premature.

34

35 The Chair directed that this matter be placed on a future agenda
36 when the applicant submits a complete application and responds to
37 the comments of the staff and the Board.

38

39 **PROJECT REVIEW**

40

1 MITCHELL PRELIMINARY SUBDIVISION

2 [TM: 16.09-1-9]

3 Chairman DeLucia said that this is the project review of the
 4 application of Gary and Ann Mitchell for Preliminary Subdivision
 5 Approval, Steep Slopes, Stormwater Management and Erosion and
 6 Sediment Control and Tree Preservation Permits for property known
 7 as the Mitchell Subdivision owned by Gary and Ann Mitchell. She
 8 explained that the property is located at 201 Tomahawk Street, NYS
 9 Route 118, on the west side of the street, south of the Route 118
 10 intersection with Green Tree Road in the R-40 Residential Zoning
 11 District. The Chair noted that the site also abuts the Town of Somers
 12 Koegel Park. She said that the proposal would divide a 7.1 acre
 13 parcel into four single-family residence lots fronting on a new Town
 14 roadway terminating in a 90-foot diameter cul-de-sac consisting of an
 15 existing residence and outbuildings on one 0.94 acre lot, two new lots
 16 on 0.94 acres, and the remaining lot on 3.29 acres serviced by
 17 individual septic systems, wells and driveways.

18
 19 The Chair mentioned that this application was last discussed at the
 20 April 28, 2010 Planning Board meeting whereby the applicant's
 21 representative Timothy Allen of Bibbo Associates gave a brief
 22 presentation on the revised plans and related materials submitted on
 23 April 7, 2010 and also responded to staff's memos and action letter.
 24 She said that at that meeting, although the property is less than 12
 25 acres, there was a discussion regarding whether a Conservation
 26 Subdivision could be used. The Board then directed Town Planner
 27 Hull to prepare a draft memo to the Town Board with reasons for
 28 recommending that they consider a Conservation Subdivision for the
 29 Planning Board's consideration for approval. She commented that
 30 Town Planner Hull has not yet drafted the memo to the Town Board
 31 and therefore the Board will discuss the legal aspects at this meeting.

32
 33 The Chair acknowledged for the record receipt of the following: a
 34 letter dated May 2, 2010 received on May 7, 2010 from NYC
 35 Department of Environmental Protection (DEP) acknowledging
 36 receipt of the applicant's supplemental environmental assessment
 37 form (EAF) and plans with comments; a memo dated May 7, 2010
 38 from Consulting Town Engineer Barbagallo commenting that his
 39 previous memo dated April 23, 2010 has not been addressed by the

1 applicant; and a memo dated May 7, 2010 from Town Planner Hull
 2 with project review comments.

3 The Chair asked Town Planner Hull to share her memo of
 4 May 7, 2010 to the Board for the public's benefit and then Consulting
 5 Town Engineer Barbagallo share his memo to the Board for the
 6 public's benefit. The Chair indicated that there will be an open
 7 discussion during the presentations with staff, the Board and
 8 applicant's representatives.

9

10 Tim Allen, the applicant's engineer, said that at the last meeting there
 11 was discussion on how this application should be handled. He noted
 12 that it was the consensus of the Board that this application be
 13 handled as a Conservation Subdivision. He stressed that the
 14 applicant deserves to know which direction this application will be
 15 going in. He mentioned that Town Attorney Baroni sent him an e-mail
 16 suggesting the applicant go to the Zoning Board of Appeals (ZBA) for
 17 an area variance.

18

19 The Chair said that the discussion should be if the applicant wants
 20 the Planning Board to recommend to the Town Board an amendment
 21 to the Town Code or that the applicant go to the ZBA for an area
 22 variance.

23

24 Town Planner Hull explained that at the last meeting it was advised
 25 that she prepare a draft memo to the Town Board asking for
 26 consideration of this project to something other than a Conservation
 27 Subdivision but along those lines. She mentioned that the applicant
 28 was supposed to address stormwater issues with the Consulting
 29 Town Engineer in order to make sure that this project can move
 30 forward as a Conventional 4-lot subdivision. Town Planner Hull
 31 commented that issues were raised by Planning Board members in
 32 reference to the proper procedure. She noted that Town Law 278 is
 33 in relation to Cluster Development and then relates to local Town
 34 Code provision for Conservation Subdivision. She explained that the
 35 element of this project that limits it from moving forward as a
 36 Conservation Subdivision is an area requirement of 12 acres and the
 37 applicant has only 7 acres. Town Planner Hull said that she
 38 submitted this information to the Town Attorney for a legal
 39 interpretation because she felt that the Board directed her to go down
 40 a road that was not legally appropriate. She opined that the Town

1 Attorney agreed that the memo should not go to the Town Board but
2 to the ZBA as the applicant should seek an area variance because
3 there are specific benefits for the Town to have this application
4 proceed as a Conservation Subdivision. Town Planner Hull indicated
5 that the Town Attorney advised that the Planning Board make a
6 positive recommendation to the ZBA for an area variance. Town
7 Planner Hull mentioned discussion that the Planning Board would like
8 to recommend to the Town Board to change the 12 acre minimum
9 requirement of the Conservation Subdivision Law. She advised that
10 more consideration be given to going that route because recently
11 the Conservation Subdivision Regulations were changed to require a
12 minimum amount of land because the Conservation Subdivision
13 Regulations were not being implemented as intended prior to the 12
14 acre minimum requirement change. She said that the Planning
15 Board should discuss with the Town Attorney the appropriate avenue
16 for this application. Town Planner Hull stressed that the applicant still
17 has to prove the ability to do a Conventional Subdivision via the
18 Consulting Town Engineer's concerns.

19
20 The Chair mentioned that she did some research on the laws. She
21 noted that she sent an e-mail to Town Attorney Eriole; *The Planning*
22 *Board is not certain whether the Town Board or the ZBA can legally*
23 *change the 12 acre threshold for the Mitchell Subdivision application.*
24 *As noted in the Municipal Planning Primer: the ZBA, page 22, "The*
25 *distinction between the Zoning Board's legitimate function to "vary" or*
26 *"modify" the terms of a Zoning Ordinance(i.e. to grant variances) and*
27 *the municipal legislative body's power to amend a zoning ordinance*
28 *may, at times, seem not so clear. It helps to remember that a*
29 *variance is a relief mechanism that may be used only in limited*
30 *circumstances and in accordance with specific tests that have been*
31 *spelled out in State law. A variance provides limited relief from zoning*
32 *regulations that as applied to a specific parcel of land, are determined*
33 *to be too restrictive."* The Chair noted that she attached for review
34 and guidance notes she gathered in reference to this application for a
35 Conservation Subdivision.

36
37 Engineer Allen mentioned that one of the tests for a variance is
38 hardship; but the balance has to be the good versus evil, and what is
39 needed is balance. He opined that the Planning Board can make the
40 case that there is a great benefit with the park being larger, the roads

1 smaller, reduction of impervious surface and the footprint of the
2 development is smaller.
3 Town Attorney Eriele said that the application cannot be approved as
4 a Conservation Subdivision because it does not meet the threshold of
5 a 12 acre minimum and as a result there are three ways to resolve
6 this issue. First, is to seek an area variance.

7
8 Mr. Foley interjected that he does not think this facet of the Ordinance
9 is susceptible to a variance.

10
11 Town Attorney Eriele said that second, that State Town Law sets
12 forth the cluster development and authorizes Town Boards to
13 approve by Ordinance or Local Law the establishment of these types
14 of subdivisions. He explained that a specific application like this one,
15 the Town Board can pass an Ordinance that based on the Planning
16 Board's recommendation pursuant to Town Law Section 278 is
17 approved as a Cluster Subdivision; or third, the Town Board can
18 change or amend the Code.

19
20 Town Attorney Eriele stated that Town Attorney Baroni has indicated
21 that the applicant should choose a course of action. He said that the
22 Planning Board's recommendation whether the applicant seeks relief
23 at the Town Board or the ZBA the Planning Board will weigh in on a
24 planning perspective and the wisdom of that choice. Town Attorney
25 Eriele said once the applicant makes a decision then the Board will
26 discuss what their recommendation will be.

27
28 Mr. Foley opined that the Board does not have to make a
29 recommendation.

30
31 Engineer Allen said that he wants the Planning Board's direction.
32 He opined that the easiest way would be for the applicant to go to the
33 ZBA for relief.

34
35 Mr. Keane opined that Town Law is more broadly written pertaining to
36 Cluster Development than is Somers Conservation Law because of
37 the three triggers that have to be met in order for conservation zoning
38 to come into being.

39

1 Town Attorney Eriole said that if the applicant decides to seek a
 2 variance from the ZBA, the Planning Board should make a
 3 recommendation.

4 Mr. Keane stated that there are compelling reasons that the Town
 5 Board considers making an exception to the 12 acre threshold for the
 6 Mitchell application:

- 7
- 8 1. Dedication of acreage for addition to Town Park property
- 9 2. Adding Affordable Housing
- 10 3. Reduction of roadway length
- 11 4. Substitution of private driveways for town road
- 12 5. Reduction in overall impervious surface
- 13 6. Reduction of impervious surface
- 14 7. Reduction in total land disturbance
- 15 8. Elimination of erosion potential in sensitive steep slope areas
- 16 9. Minimization of disturbance on steep slopes
- 17 10. Reduction in total vegetation disturbed or removed
- 18 11. Improvement in stormwater treatment and water quality
- 19

20 Mr. Keane asked if there are any consequences if this application is
 21 referred to the ZBA rather than the Town Board.

22

23 Town Attorney Eriole said that if the ZBA grants this application it
 24 may set a precedent because other applicants can rely on recent
 25 precedents set by the ZBA.

26

27 Consulting Town Engineer Barbagallo referred to the letter from the
 28 DEP dated May 5, 2010 which raised potential issues in regard to the
 29 Conventional Subdivision. He mentioned the re-flagging of the
 30 wetland.

31

32 Mr. Goldenberg said that he is concerned that the DEP comments
 33 may effect the Board's recommendation to the Town Board.

34

35 Engineer Allen said that he is reasonably confident that the
 36 Conventional Subdivision will work but he will provide more
 37 information to the Consulting Town Engineer. He noted that he
 38 agrees that the DEP should walk the site for watercourses but he
 39 does not want to re-flag the wetland. He explained that the DEP has
 40 only reviewed the Conventional Plan and has not seen the

1 Conservation Plan. Engineer Allen mentioned that after he meets
2 with Consulting Town Engineer Barbagallo and addresses his issues
3 the Board can decide which way they want to go. Engineer Allen said
4 that he agrees with the Town Planner and does not want Code
5 changes.

6
7 Town Planner Hull noted that if the Board decides to request a Code
8 change she advised keeping the 12 acre threshold and a clarifier that
9 states as otherwise determined by the Planning Board based on
10 specific benefits to the Town.

11
12 The Chair explained that the amendment will say on a case to case
13 basis.

14
15 Town Attorney Eriole stated that there is a key point in the difference
16 to an amendment to the Code and an Ordinance that allows this
17 action and the big difference is an investigation into the
18 environmental and other impacts in changing the Code and as a
19 general matter become much more onerous to the applicant. He said
20 that if the Board decides on the Town Board route he suggests that it
21 be related to this specific application.

22
23 Ms. Gannon said that the most recent information she has from Town
24 Attorney Baroni was on May 3, 2010 suggesting that the proper
25 course for the applicant is for the Planning Board to refer the
26 applicant to the ZBA for an area variance. She asked if there is any
27 other correspondence on Town Attorney Baroni's mindset on this
28 issue.

29
30 Town Attorney Eriole said that Town Attorney Baroni had a
31 conversation with the Town Planner and Chair where he restated the
32 position that the applicant should apply to the ZBA for an area
33 variance as the best course. He mentioned that the Chair contacted
34 him for his opinion and he shares Attorney Baroni's position that the
35 referral to the ZBA is the best and fastest option. He noted that he is
36 not taking any position on if the ZBA will grant the area variance.
37 Town Attorney Eriole stated that he responded to the Chair with more
38 specific course of action on the other alternatives with the applicant
39 going to the Town Board and requesting the approval of an
40 Ordinance specific to this application as being the best solution.

1 Mr. Foley asked if Town Attorney Baroni is convinced that the
2 acreage in this application is susceptible to an area variance.
3 Town Attorney Eriole said that Town Attorney Baroni is convinced
4 that this application meets the criteria for an area variance.

5
6 Mr. Keane noted that the statement from Town Attorney Baroni is
7 based on facts provided by the Town Planner. He said that the
8 question should be what are the legal areas of approach that can be
9 utilized in order to accomplish getting to the goal that the Board wants
10 to attain as opposed to can the applicant use Section 278 to cluster
11 this subdivision without going through a Code revision.

12
13 Town Planner Hull mentioned that Town Attorney Baroni is copied on
14 the information pursuant to this application and can make an
15 informed decision.

16
17 Town Attorney Eriole said if the question was asked that the applicant
18 does not want to go to a code revision the only other way is a
19 variance.

20
21 Mr. Foley commented that on a proposed variance application the
22 acreage will go from 12 acres to 7.1 acres. He mentioned his
23 concern if an applicant with a 4 acre lot asks for an area variance.

24
25 Engineer Allen said that the Planning Board has to refer this
26 application to the ZBA with a recommendation.

27
28 Town Attorney Eriole said that the size of the variance in square feet
29 or acreage is only one aspect of a variance application and there are
30 always ways to distinguish applications. He opined that both
31 approaches are reasonable and could yield success.

32
33 Mr. Keane asked which approach has the least risk.

34
35 Town Attorney Eriole said that if you approach the Town Board this is
36 not a typical way to approve a cluster subdivision and the applicant
37 runs the risk that this is not something the Town Board wants to do.

38
39 The Chair explained that if an application comes before the Board
40 with less than 12 acres but has benefits for the Town, the Planning

1 Board refers the application to the Town Board and asks that they
 2 consider making an exception to the 12 acre threshold. She
 3 indicated that another alternative is that the Planning Board can refer
 4 the application to the ZBA with recommendations.

5
 6 Ms. Gannon said that a scenario is that the applicant receives
 7 approval from the Planning Board and asks the Town Board to
 8 consider an Ordinance and if the Town Board gives a positive vote
 9 the applicant returns to the Planning Board after the Ordinance is
 10 created. Ms. Gannon questioned that if the applicant gets a negative
 11 decision from the Town Board what happens to the application does it
 12 now go to the ZBA or back to the Planning Board to consider the
 13 Conventional Plan.

14
 15 Town Attorney Eriole advised that a rejection of the Ordinance
 16 proposal from the Town Board would not prevent the applicant from
 17 pursuing the remedy from the ZBA.

18
 19 Mr. Goldenberg said that the applicant is asking for a
 20 recommendation from the Planning Board and his position is that the
 21 Planning Board recommends the application to the Town Board.

22
 23 Ms. Gannon reminded the Board that they are not in a position to
 24 move forward on this determination until Consulting Town Engineer
 25 Barbagallo determines that this application meets the criteria for a
 26 Conventional Subdivision.

27
 28 Consulting Town Engineer Barbagallo asked if the recommendation
 29 includes a lot count.

30 Engineer Allen asked the Board to draft a recommendation and in the
 31 interim he will work with Consulting Town Engineer Barbagallo so he
 32 can determine that this is a viable 4-lot subdivision.

33
 34 The Chair said that there is a consensus to direct Town Planner Hull
 35 to draft a memo to the Town Board with the Board's reasons for
 36 recommending that they consider a Conservation Plan layout for this
 37 subdivision which, in addition to other benefits to the Town and the
 38 applicant, would reduce the construction of an unnecessary roadway
 39 and the potential for polluted storm water runoff and achieving
 40 permanent open space preservation.

1 Town Planner Hull said she will make sure that the Town Board has a
2 clear understanding on the Ordinance for this specific application.

3

4 **PROJECT REVIEW**

5

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

10

11 Chairman DeLucia mentioned that this is the project review of the
12 application of Homeland Towers, LLC/New Cingular Wireless PCS
13 LLC (“AT&T”), collectively referred to as the “Applicants”, for Site Plan
14 approval and Steep Slopes permit for property located at 121 Route
15 100 owned by Michael P. Amato and Alice T. Amato for the
16 installation of a wireless telecommunications facility in an R-80
17 Residential Zoning District. The Chair explained that on May 11,
18 2010 the Board received a letter by e-mail from Attorney Robert D.
19 Gaudioso representing Homeland Towers requesting that this
20 application be adjourned until a future date and commenting that they
21 anticipate making a substantial re-submission of revised plans,
22 documents and materials for review by the Planning Board and its
23 consultants to allow for a more productive discussion between the
24 applicant and the Planning Board.

25

26

27 **PROJECT REVIEW**

28

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

33

34 Chairman DeLucia said that this is the project review of the
35 application of Homeland Towers, LLC/New Cingular Wireless PCS
36 LCC (“AT&T”), collectively referred to as the “Applicants”, for Site
37 Plan approval and Wetland Permit for property located at 2580 Route
38 35 owned by Umberto and Carol Santaroni for the installation of a
39 wireless telecommunications facility in an R-120 Residential Zoning
40 District.

1 The Chair explained that on May 11, 2010 the Board received a letter
2 by e-mail from Attorney Robert D. Gaudioso representing Homeland
3 Towers requesting that this application be adjourned to a future date
4 and commenting that they are in the process of substantially revising
5 the site plan pursuant to the comments of the NYS Department of
6 Environmental Protection (DEP). She said that they believe that the
7 adjournment will allow for a more productive discussion between the
8 applicant and the Planning Board.

9

10 **SCHEDULE PUBLIC HEARING**

11

12 **AMAWALK POINT ROAD/CALANDRUCCI STEEP SLOPES**
13 **PERMIT REDUCTION OF PERFORMANCE BOND**

14

15 Chairman DeLucia said that the Board will schedule a Public Hearing
16 to consider the request by letter dated January 27, 2010 from Joseph
17 Zuzzolo, P.E. of Halcyon Construction Corporation for the reduction
18 of Site Improvement Performance Bond No. 08891060 posted
19 October 29, 2007 from the original bond amount of \$299,870 to
20 \$51,251 for roadway improvements of Amawalk Point Road in
21 accordance with Somers Town Code Section 150-16.G. The Chair
22 explained that on September 21, 2005 by Resolution No. 2005-23 the
23 Planning Board granted Conditional Approval to Ann and Thomas
24 Calandrucci for Steep Slopes and Tree Preservation Permits and
25 Waiver of the Road Specifications. She noted that Amawalk Point
26 Road is to be maintained as a private road. The Chair mentioned
27 that the lot is situated on the north side of NYS Route 35 and on the
28 north side of the unimproved Amawalk Point Road in an R-80
29 Residential Zoning District and is designated on the Town Tax Maps
30 as Sheet 36.12, Block 2, Lot 3. She noted that Ann and Thomas
31 Calandrucci propose to construct a single family house on the
32 existing residential lot.

33

34 The Chair mentioned that on March 19, 2010, Steven Woelfle,
35 Principal Engineering Technician, sent a copy of a memo attaching
36 the letter request of Mr. Zuzzollo, itemizing the roadway cost estimate
37 indicating the required improvements completed and the amount of
38 reduction, a roadway checklist prepared by Mr. Woelfle dated March
39 12, 2009, a copy of the permit for the roadway construction, a copy of
40 the Resolution requiring the posting of a Performance Bond, and if

1 needed, As-Builts, inspection reports, notification and certifications on
 2 file.

3

4 The Chair asked if there were any comments or questions from
 5 members of the Board regarding this reduction.

6

7 Mr. Goldenberg said that the request for the reduction of the bond is
 8 on the recommendation of the Principal Engineering Technician. He
 9 asked why the Board is acting on the Principal Engineering
 10 Technician recommendation instead of the Consulting Town Engineer
 11 making the recommendation.

12

13 The Chair explained that the Principal Engineering Technician
 14 originally sent the request for the bond reduction to the Town Board
 15 and was told to make the request to the Planning Board.

16

17 Mr. Keane said that the question is what are the Principal
 18 Engineering Technician's qualifications as opposed to the Consulting
 19 Town Engineer's qualifications. He asked if the Town Board
 20 authorized Consulting Town Engineer Barbagallo to handle the bond
 21 reductions. He said that Mr. Goldenberg's point is that a professional
 22 engineer should be signing off on the bond reduction.

23

24 Mr. Goldenberg opined that a professional engineer should sign off
 25 on the reports. He said that in the past when the Engineering
 26 Technician made the inspections they were signed off by a
 27 professional engineer. Mr. Goldenberg said that he would like to ask
 28 the Town Board to authorize a professional engineer to sign off on
 29 work for the Town. He opined that the Town is at a disadvantage if it
 30 does not have someone with professional engineering qualifications.

31

32 Consulting Town Engineer Barbagallo said that he has not been
 33 authorized by the Town Board to make the inspections on this bond
 34 reduction. He said that there is a path forward that does not make
 35 him put his eyes on everything that is done in the field. He said that
 36 his responsibility is to oversee and direct and that standard can be
 37 utilized using Mr. Woelfle as the eyes and ears of the Town working
 38 under his direction.

39

1 The Chair asked why Principal Engineering Technician Woelfle was
2 making the recommendation to reduce the bond and not Consulting
3 Town Engineer Barbagallo. She indicated that the Principal
4 Engineering Technician told her that he did the inspections and
5 agrees it is ready for a bond reduction. She noted that on March 12,
6 2009 Steve Woelfle, Principal Engineering Technician, signed the
7 checklist for the road specifications under the guidance of former
8 Professional Engineer Gagné. She indicated that we now have a
9 Consulting Town Engineer with different duties and responsibilities.

10
11 Consulting Town Engineer Barbagallo said that he is authorized to
12 work on applications that are before the Planning Board that have
13 established escrow accounts, environmental permits that reach the
14 threshold of Planning Board permits and other Town activities that
15 have to be authorized by the Town Board. He mentioned that these
16 activities have a dollar value and that he needs the approval of the
17 Town Board to review this performance bond reduction and he will
18 seek this approval.

19
20 Ms. Gerbino said that she is familiar with Amawalk Point Road
21 and when you drive along Route 35 in a westward manner it looks
22 like a normal roadway; however, when you drive eastward it looks
23 abnormal. She indicated that she is not an engineer but would
24 appreciate a professional engineer looking at the road. She said that
25 her concern is this huge wall that holds up the private road.

26
27 Mr. Keane said that the huge wall is probably part of the drainage
28 requirements. He noted that when you look at the cost estimate
29 and then the checklist for road acceptance it is unclear as to whether
30 the cost estimate relates only to the road itself, the catch basins,
31 culverts, etc. that are all part of moving stormwater off the road,
32 directing and controlling the stormwater. Mr. Keane said that he does
33 not see a connection between any other drainage facilities that are on
34 site. He indicated that these may be part of the erosion and sediment
35 control bond. He mentioned that Ms. Gerbino's concern would
36 probably not be incorporated in the road checklist.

37
38 Consulting Town Engineer Barbagallo said that the revised Code will
39 clarify what is done and what needs to be done. He said that he can
40 make a reconsideration of the checklist with an update of the road

1 acceptable criteria and he suggested a project criteria for any bonded
2 improvements. He indicated that he will be in an oversight role by
3 directing the inspections that the Principal Engineering Technician will
4 conduct and he will review those reports and he can certify those
5 inspections. Consulting Town Engineer Barbagallo said he will
6 schedule the values of the project of which the bond is based on.

7
8 Mr. Keane said that what has to happen is that you have to address
9 the checklist for road acceptance and what it incorporates.

10
11 Town Planner Hull asked if the Board wants to schedule a Public
12 Hearing on the bond reduction and in the meantime Consulting Town
13 Engineer Barbagallo will speak to the Supervisor about a licensed
14 engineer doing the reviews.

15
16 The Chair asked if there was a consensus of the Board to schedule
17 the public hearing for Wednesday, June 9, 2010.

18
19 On motion by Ms. Gannon, seconded by Mr. Foley, and unanimously
20 carried, the Board moved to schedule a Public Hearing to consider
21 under Section 150-16.G. of the Code of the Town of Somers the
22 reduction of the Amawalk Point Road/Calandrucci Performance Bond
23 No. 08891060 from the original bond amount of \$299,870 to \$51,251
24 for roadway improvements on Wednesday, June 9, 2010 at 7:30 p.m.
25 at the Somers Town House.

26
27 There being no further business, on motion by Ms. Gannon,
28 seconded by Mr. Goldenberg, and unanimously carried, the
29 meeting adjourned at 9:45 P. M. Chairman DeLucia noted that the
30 next meeting of the Planning Board will be held on Wednesday,
31 May 26, 2010 at 7:30 P. M. at the Somers Town House.

32
33
34
35 Respectfully submitted,

36
37
38 Marilyn Murphy
39 Planning Board Secretary
40

1
2