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5 **SOMERS PLANNING BOARD MINUTES**
6 **JUNE 23, 2010**
7

8
9 **ROLL:**

10
11 **PLANNING BOARD**

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

16 **ALSO PRESENT:** Town Planner Charney Hull
17 Consulting Town Engineer Barbagallo
18 Environmental Engineer Johnston
19 Town Attorney Joseph Eriole
20 Planning Board Secretary Murphy
21

22 **ABSENT:** Ms. Gerbino and Mr. Currie
23

24 The meeting commenced at 7:35 p.m. Planning Board Secretary
25 Marilyn Murphy called the roll. Chairman DeLucia noted that a
26 required quorum of four members was present in order to conduct the
27 business of the Board.
28

29 **APPROVAL OF MAY 26, 2010 MINUTES**
30

31 Chairman DeLucia noted that Planning Board Secretary Murphy
32 prepared and submitted for the Board's consideration the approval of
33 the draft minutes of the May 26, 2010 Planning Board meeting
34 consisting of twenty-one (21) pages.
35

36 The Chair asked if there were any comments or questions from
37 members of the Board and no one replied.
38

39 The Chair asked if there was a motion to approve the May 26, 2010
40 draft minutes.

1 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and
2 unanimously carried, the minutes of May 26, 2010 were approved.
3 The Chair noted that the DVD of the May 26, 2010 Planning Board
4 meeting is made a part of the approved minutes and is available for
5 public viewing at the Somers Public Library. The text of the approved
6 minutes are also on the Town's website www.somersny.com and is
7 available for public review at the Planning & Engineering office at the
8 Town House.

9
10 The Chair noted that the Planning Board will not have a meeting in
11 July and the next meeting of the Board is Wednesday, August 11,
12 2010.

13 14 **PROJECT REVIEW**

15 16 **HOMELAND TOWERS, LLC/NEW CINGULAR WIRELESS PCS** 17 **(AT&T) SITE PLAN AND STEEP SLOPES PERMIT** 18 **[AMATO PROPERTY] 121 ROUTE 100** 19 **[TM: 38.17-1-5] CARRYOVER**

20
21 Chairman DeLucia said that this is the project review of the
22 application of Homeland Towers, LLC/New Cingular Wireless PCS,
23 (AT&T) for Site Plan Approval and Steep Slopes and Stormwater
24 Management and Erosion and Sediment Control Permits for property
25 owned by Michael P. Amato and Alice T. Amato located at 121 Route
26 100 in the R-80 Residential Zoning District and Westchester County
27 Agricultural District. The Chair noted that the Zoning Board of
28 Appeals (ZBA) is currently reviewing this application for a Special
29 Exception Use Permit and area variances for the installation of a
30 wireless telecommunications facility and related equipment on the
31 premises consisting of a 140' tall monopole. She explained that the
32 ZBA is Lead Agency under SEQRA in a coordinated review with the
33 Planning Board. The Chair said that Manuel Vincente is the
34 managing member of Homeland Towers, LLC, a New York limited
35 liability company with a main office located in White Plains, New York
36 and is represented by Robert D. Gaudio, Esq. of Snyder & Snyder,
37 LLP, and AT&T is represented by Neil J. Alexander, Esq. of Cuddy &
38 Feder, LLP.

39

1 The Chair mentioned that this application was last discussed at the
2 May 26, 2010 Planning Board meeting whereby the Board directed
3 staff to send the ZBA its status report of the May 26, 2010 meeting for
4 their information and directed the applicants to provide additional
5 information and respond to comments of Town Planner Hull and
6 Consulting Town Engineer Barbagallo. The Chair indicated that this
7 application was carried over to the June 9, 2010 agenda; however,
8 due to the Town's wireless consultant HDR being unable to submit its
9 report for the June 9, 2010 meeting, it was adjourned and carried
10 over to this June 23, 2010 meeting.

11
12 The Chair acknowledged for the record receipt of the following: a
13 copy of letter to ZBA Chairman Marx dated May 27, 2010 enclosing
14 copies of a revised site plan pursuant to Town Planner Hull's May 19,
15 2010 memo to the Planning Board; a memo dated May 27, 2010 from
16 Landscape Architect Stacey Calta, RLA of HDR to Town Planner
17 Hull, AICP with a Scope of Work Outline; a memo dated June 1, 2010
18 from Town Planner Hull to the ZBA summarizing the May 26, 2010
19 Planning Board meeting; three memoranda all dated June 9, 2010
20 from the Conservation Board with concerns and recommendations
21 regarding the number of required variances and proximity to adjacent
22 nursery school, the site plan, full EAF, visual impact and Landscape
23 Plan, Stormwater Pollution Prevention Plan, erosion control, silt
24 fencing, etc.; a memo from the Conservation Board revising their
25 June 9, 2010 memo and a June 23, 2010 memo regarding variances,
26 etc.; the Town's wireless consultant HDR's Visual Impact Analysis
27 Report dated June 10, 2010; a memo dated June 17, 2010 to the
28 Planning Board from Consulting Town Engineer Joseph C.
29 Barbagallo, P.E., BCEE of Woodard & Curran commenting that his
30 office will continue its review upon receipt of a revised submittal
31 requested in his June 14, 2010 memo and not received; and a memo
32 dated June 18, 2010 to the Planning Board from Town Planner
33 Sabrina Charney Hull, AICP, and, an additional memo dated
34 June 22, 2010 with her project review and recommendations and
35 attaching a draft SEQR Negative Declaration and Notice of
36 Determination of Non-Significance for the Board's review and
37 consideration.

38
39 The Chair stated that there will be an open forum during presentation
40 by staff and the applicant's representatives.

1 Robert Gaudioso, the applicant's attorney, reiterated the procedural
2 aspects and said that revised plans have been submitted based on
3 comments from the Town Planner and the applicant's engineer met
4 with Consulting Town Engineer Barbagallo and will make revisions to
5 the plan based on comments during that meeting. Attorney Gaudioso
6 said that he responded to the Department of Environmental
7 Conservation (DEC) comment letter and confirmed with the US Army
8 Corps of Engineers that the Army Corps of Engineers has no
9 jurisdiction. He stated that he will submit the confirmation from the
10 Army Corps of Engineers. Attorney Gaudioso indicated that he
11 received the HDR Report and discussed it with the ZBA. He
12 indicated that he agreed with the majority of additional materials that
13 were requested and he will provide the additional material with the
14 most important being the relocation of the access drive outside of the
15 root zone of the existing large trees. Attorney Gaudioso stated that
16 the plans will be revised shortly and will incorporate the revisions on
17 landscaping, the access drive and incorporate the Town Planner and
18 Consulting Town Engineer's comments.

19
20 The Chair noted that most of the Board attended or watched the ZBA
21 meeting on television and are familiar with the HDR Report. She said
22 that Mr. Musso does not have to detail his report; however, the Board
23 will ask questions.

24
25 Mr. Keane commented that the Board is doing a SEQRA review
26 which begins with a described action. He stressed that in the
27 absence of an adequately described action a determination of
28 significance thereafter will be faulty on its face because it did not
29 address the entire action. Mr. Keane noted that the last action
30 described by the applicant is on the Environmental Assessment Form
31 dated May 24, 2010. He commented that the description is brief
32 saying that the applicant intends to construct a 140' Homeland
33 Towers antenna support structure to allow the installation of five
34 wireless telecommunication facilities on a 35 sq. ft. lease parcel
35 which is part of a large parcel of land. Mr. Keane said that New
36 Cingular Wireless will install 12 panel antennas on the antenna
37 support structure and related equipment on a 250' concrete
38 equipment pad within the 3,500 sq. ft. leased area. Mr. Keane noted
39 as part of the SEQRA process a Determination of Significance must
40 be made by the Lead Agency under Section 617.7C. which sets

1 fourth the criteria for the Determination of Significance. He explained
2 that the Determination of Significance must be made to determine
3 whether the Unlisted Action may have a significant adverse impact on
4 the environment. Mr. Keane said that the impacts that may
5 reasonably be expected to result from the proposed action must be
6 compared against the criteria of Section 617.7C and mentioned the
7 criteria that must be used to compare against the proposed action.
8 He opined that the long form of the EAF is a good guide including the
9 visual EAF addendum.

10
11 Mr. Keane noted that the purpose of the comparative evaluation is to
12 determine whether or not to require an Environmental Impact
13 Statement (EIS) for the proposed action. He explained that the
14 threshold for requiring an EIS is that the action may include the
15 potential for at least one significant adverse environmental impact.
16 Mr. Keane explained that if an EIS is not required the Lead Agency
17 must determine either that there will be no adverse environmental
18 impacts or that the identified adverse environmental impacts will not
19 be significant. He said that according to the 2010 version of the
20 SEQRA Handbook prepared by the NYSDEC in making a legally
21 sufficient determination regarding significance the Lead Agency must
22 do three things: one, identify all the relevant environmental impacts;
23 two, thoroughly analyze the potential impacts; and three, provide a
24 written explanation of its reasoning in concluding that the proposed
25 action may cause or will not cause a significant adverse
26 environmental impact according to Section 617.7C.

27
28 Mr. Keane noted that the information and reasoning in the
29 Determination of Significance should be presented in a logical,
30 comprehensive, understandable manner. He said that a legally
31 sufficient Determination of Significance implies that the Lead Agency
32 has in its possession and can demonstrate that it has considered at
33 least the following: one, the entire action, and two, environmental
34 assessment form and any information provided by the applicant
35 including the underlying application. Mr. Keane said that
36 the criteria for determining significance is input from involved
37 agencies, interested organizations or other groups of people and the
38 general public. Mr. Keane noted that the reasoning used by the Lead
39 Agency in concluding that no adverse environmental impacts will be
40 caused is essential in justifying a Negative Declaration. He said that

1 the Lead Agency is encouraged to review its files on previous
2 significant determinations involving similar projects on geographic
3 locations. Mr. Keane said that according to the DEC it is important to
4 remember that each Determination of Significance an agency makes
5 may provide guidance for future determinations. He indicated that to
6 some degree the determination sets precedents and reflects
7 community values, and existing resource inventory that provides
8 information about significant environmental factors should be
9 considered.

10
11 Mr. Keane said that additionally, with respect to the visual impacts in
12 the Determination of Significance, the DEC Handbook recommends
13 the use of the DEC Guidance Policy, known as "Assessing and
14 Mitigating Visual Impacts", which was developed to provide direction
15 to the department's staff for evaluating visual and aesthetic impacts
16 generated from proposed facilities. Mr. Keane explained that the
17 policy and guidance defines what visual and aesthetic impacts are,
18 describes when a visual assessment is necessary, provides
19 guidelines on how to review a visual assessment and how to
20 differentiate state from local concerns and defines avoidance,
21 mitigation and offset measures that eliminate, reduce, or compensate
22 for negative visual impacts. Mr. Keane said that implicit in the
23 SEQRA process is the idea that impacts must be mitigated and is the
24 intent and purpose of the SEQRA Law. He explained that as SEQRA
25 has developed procedurally over the years a portion of the process
26 stands out and that is the applicant constantly changes the original
27 action especially by providing impact mitigation to lower the threshold
28 of impact below significant to avoid preparing an EIS and qualify for a
29 Negative Declaration of Significance. He reiterated that there are
30 three factors that must be addressed before making a legally
31 sufficient Determination of Significance.

32
33 Mr. Keane opined that despite all the reports and paper blizzard
34 provided by the applicant there still remains a number of
35 inadequacies in the file to support a legally sufficient Determination of
36 Significance by the Lead Agency. He mentioned that the ZBA is the
37 Lead Agency for this project. Mr. Keane opined that the Planning
38 Board should make its determination of the relevant factors
39 necessary to eliminate those inadequacies as an Involved Agency.
40 He said that when that is done it will become clear to what the

1 inadequacies are and why. Mr. Keane suggested that the Planning
2 Board put in writing its findings and provide that to the ZBA. He said
3 that some of the factors to be considered are: one, what is the real
4 action; and two, did the ZBA or the Planning Board follow the
5 available impact analysis guidance which has been available since
6 2000. He asked what is the focus visual impacts and what is the
7 mitigation and is there evidence that the mitigation is adequate and
8 appropriate and does the mitigation meet the SEQRA threshold
9 of maximum extent practicable for visual impacts and the Towns
10 threshold of maximum extent reasonably possible. He said that the
11 two do not seem to be the same because of the different wording.
12 Mr. Keane indicated a question that should be asked is the suggested
13 landscaping provided in the documentation from the applicant
14 meaningful to the actual visual impacts given the long term growth
15 rate of the proposed vegetation. He said for example the applicant is
16 talking about planting a 12' tree that grows at a rate of 2 feet per year
17 and at that rate it will take a long time for that tree to have a
18 meaningful impact on screening the cell tower. Mr. Keane asked if
19 the applicant has provided meaningful factual data that can be used
20 to make a reasoned elaboration of why the mitigation is functionally
21 adequate for the impacts presented. Mr. Keane said that he hopes
22 this frames the context of where the Board is now and Part 2 of the
23 EAF.

24
25 Mr. Goldenberg opined that the applicant, which may be proven by all
26 the papers that have been provided, has used overkill. He said that
27 he is concerned when he looks at drafts prepared by the applicant
28 which has everything in the document and the applicant is saying that
29 the Board should agree with it. He mentioned that the draft by the
30 applicant mentions an incident that occurred on Route 100 where a
31 member of the ZBA made a statement that he spoke to somebody
32 who told him there was a gap in coverage and they could not get a
33 response when dialing 911. Mr. Goldenberg said that this same
34 statement was used for the cell tower at the Towne Centre.

35
36 Attorney Gaudio said that Mr. Goldenberg has the facts wrong and
37 should read the information more carefully. He said that the
38 statement in the document was made by a member of the public who
39 testified at the first ZBA meeting that she had an accident on Route
40 100 and was unable to call her father to come help her.

1 Attorney Gaudioso read the portion of the Resolution that Mr.
2 Goldenberg spoke about, *In fact, one Town resident at the first*
3 *hearing discussed her support for the Facility in light of a prior*
4 *accident she had in the area and her inability to make an emergency*
5 *phone call.*

6
7 Mr. Goldenberg also said that the wording minimal opposition to the
8 cell tower is a concern because a proposed cell tower at Heritage
9 Hills met with much opposition. He opined that there may be minimal
10 opposition for the cell tower at the Amato property on Route 100
11 because no one knows about it.

12
13 Attorney Alexander, representing AT&T, asked that the Board just
14 discuss AT&T service.

15
16 Ms. Gannon asked how it came to be that the applicant was asked to
17 draft a Resolution.

18
19 Attorney Gaudioso stated that the ZBA requested that the applicant
20 draft a resolution for their consideration. He said that it is a common
21 practice for the applicant to provide a resolution.

22
23 The Chair said that she watched the ZBA meeting and did not hear
24 the request for the applicant to provide a Negative Declaration and
25 Resolution.

26
27 Attorney Gaudioso said that he received a written request from the
28 ZBA to provide the draft Resolution and Negative Declaration. He
29 advised that he is here tonight for the Planning Board as an involved
30 agency to provide their comments on the SEQRA application and
31 provide their comments to the ZBA.

32
33 Town Attorney Eriole stated that Attorney Gaudioso correctly stated
34 the Planning Board's role as an Involved Agency is to provide
35 comments to the ZBA as the Resolution will be acted on by the ZBA.
36 He opined that it is reasonable for the Planning Board to ask where
37 the request to submit the draft resolution came from. Town Attorney
38 Eriole said that the request may have come from the ZBA Chair and
39 not in an open meeting. He indicated that it is not unusual for an

1 applicant to prepare a resolution for review and comment by the
2 involved Boards.

3
4 Attorney Gaudioso said that the ZBA Chair sent a request in writing
5 which was copied to the ZBA Secretary for the applicant to prepare
6 the draft resolution and Negative Declaration.

7
8 Mr. Keane said that the draft resolution should not cloud the issue
9 and the Board should focus on what they want to contribute to the
10 evaluation of the documents.

11
12 Town Attorney Eriole advised that the Board communicate to the
13 applicant its comments on the environmental review of this project
14 and provide those comments to the ZBA as Lead Agency. He said
15 that the obligation of the Lead Agency is to make its findings and they
16 can choose whether or not to incorporate the Planning Board's
17 comments. He stressed that it is not productive or legally material to
18 continue to challenge the applicant on what they may have said or
19 withheld. He said that the real purpose is if the Board feels it is
20 relevant to make that observation and communicate it to the ZBA so
21 they can act accordingly.

22
23 Mr. Keane focused on the Visual Resource Evaluation by B&E
24 Associates and noted that there are several pictures known as VP5,
25 VP6 and VP1. He said that from his perspective most of the other
26 photos you can't see the pole; therefore they are not relative to the
27 views that call out for mitigation. Mr. Keane said that VP5 is a view
28 looking northwest from the 7-Eleven on Route 100, VP6 is a view
29 from the junction of Route 100 and Route 35 and VP1 is looking
30 directly up the Amato driveway looking to the west, which call for
31 mitigation. Mr. Keane said that the problem with VP5 is that it shows
32 the leaf-off condition and that probably is the worst condition for that
33 particular view. He mentioned that the leaf-on condition is not shown.
34 Mr. Keane commented that VHB a Landscape Architectural firm,
35 took a picture from the parking lot of 7-Eleven but the only question is
36 did they use the same lens on the camera as B&E Associates. He
37 noted that if they did not use the same lens it is inappropriate as they
38 did not use the correct visual context for it. Mr. Keane explained that
39 the technical data states that you should use a 50 millimeter lens to
40 simulate the view that the human eye will have. He mentioned that

1 when you look at the leaf-on condition it looks like the utility pole is
2 further away; so it does not portray it the same way.

3
4 Attorney Gaudioso said that the same company, B&E, photographed
5 the poles and used the same methodology. He noted that the original
6 B&E Report from May 2009 included the methodology from all the
7 viewpoints with the leaf-on condition. Attorney Gaudioso said that
8 Mr. Keane is not looking at the complete record as B&E provided a
9 report in May 2009 with all the viewpoints and in December 2009 the
10 balloon test was redone with the leaf-off and that was submitted in
11 January 2010 with the same viewpoints. He said that the VHB
12 Report incorporates renderings from B&E from the prior analyses with
13 additional renderings as requested by the Planning Board. Attorney
14 Gaudioso mentioned that he submitted another copy that was of
15 better quality. He mentioned that he submitted three different sets of
16 renderings based on two different balloon tests using the same
17 methodology.

18
19 Mr. Keane said that photograph 19 is the only picture that has the
20 same view as VP5.

21
22 Attorney Gaudioso said that the May 2009 visual analysis shows the
23 leaf-on condition and additional renderings in the VHB Report have
24 been provided to the Board. He noted that all the renderings
25 requested by the Planning Board to supplement the original analysis
26 have been submitted.

27
28 Mr. Keane said his question is whether the same focal length for the
29 lens was being used.

30 Town Attorney Eriole advised that this is a continuing concern of Mr.
31 Keane and the comments of the consultants should be addressed by
32 the applicant.

33
34 Mr. Keane said that the issue is if the Board uses VP5 with that view
35 and the leaf-off condition the pole is visible. He mentioned a
36 statement from Mr. Decker from B&E that conflict. He noted that the
37 big issue is what has been done to deal with what the view portrays
38 as far as screening which is part of mitigation. Mr. Keane said that the
39 May 2009 renderings do not show the pole with leaf-on conditions.

1 Attorney Gaudioso provided the Board with an additional set of
2 renderings with VP5 showing the view looking from the 7-Eleven on
3 Route 100 and with the leaf-off and leaf-on condition.

4
5 Mr. Keane said looking at the documentation as far as screening and
6 mitigation there is quite a lot of information on the view from 7-
7 Eleven. He noted that the technical literature shows how a screening
8 evaluation should be done. He explained that trees can be placed
9 between the point of view and the object you are trying to view. He
10 stated that this was not done in the VHB Report and if this was done
11 it would figure out mitigation. He questioned if trees planted on the
12 hill next to the pole will work given the growth rate of the trees. He
13 mentioned that a 12 foot tree growing at 2 feet per year will take 25-
14 years to grow 50 feet. Mr. Keane said that the Board does not know
15 where the trees should go in regard to screening and this does not
16 exist in any of the reports. He said that the applicant and Town
17 consultants should be following the DEC guidance. Mr. Keane
18 stressed that the view from 7-Eleven has not been treated using the
19 DEC guidance to determine that all the right things were done. He
20 noted that screening is only one thing but painting schemes are also
21 important. He commented that only one scheme has been provided
22 and that is the one used at the Towne Centre and he is not sure if
23 that will work at the Amato location.

24
25 Mr. Keane said that his issue is that no one has defined what
26 maximum extent practicable and maximum extent reasonably
27 possible is in regard to mitigation. He said for example Sabre
28 Industries is the only provider for cell towers.

29
30 Mr. Keane mentioned that until the VHB May 2009 Report there has
31 been no effort to address the duration of view. He noted that the
32 experts are not in agreement on how many vehicles travel up and
33 down Route 100 during the day.

34
35 Attorney Gaudioso said that you have to look at the criteria which is
36 the duration and there is nothing in the literature that says 5 seconds
37 is too long and 100 seconds is too short. He noted that he looked at
38 the number of vehicles he thought was a reasonable number.

39

1 Mr. Keane commented that no one knows the benchmark for the
2 duration of view which is subjective. He opined that the applicant's
3 expert minimized it by saying that it is not impactful.

4
5 Attorney Gaudioso stated that the Town's expert also stated that the
6 duration of view was not impactful.

7
8 Mr. Keane asked how the determination was made by the experts
9 that the traffic issue was not significant.

10
11 Town Attorney Eriole interjected that the issue of the photographs,
12 mitigation, traffic, and comments of the Board should be transmitted
13 to the ZBA as part of the coordinated review with the request that the
14 ZBA consider the issues before taking action on the project. He
15 indicated that the applicant will challenge any insufficiency that the
16 Planning Board made and the ZBA will as Lead Agency do what they
17 see fit.

18
19 Mr. Keane said that he wants to understand if the reports adequately
20 follow the DEC and other technical guidance and show evidence of
21 that, and that mitigation has been addressed as noted in the technical
22 literature and if not, what should they do if they haven't; and the
23 guidelines for the duration of view and if the facts that exist in the file
24 actually purport with the conclusions that were made.

25
26 Ms. Gannon said that Mr. Keane is only one Board member and they
27 are his comments and not the voice of the entire Board. She asked
28 for a response from Mr. Musso and Ms. Calta to Mr. Keane's
29 concerns.

30
31 Attorney Gaudioso noted that he provided three elevation drawings
32 that were the worst case scenarios. He said that he did not believe
33 that 7-Eleven or driving up Route 100 was the worst case scenario.
34 He mentioned that Mr. Musso requested an additional profile and he
35 has agreed to provide it. Attorney Gaudioso indicated that he
36 provided visual renderings which discussions say are better than the
37 hypothetical profiles but he will provide the profiles. He said that the
38 landscaping will be reoriented to take into account the profile from 7-
39 Eleven. Attorney Gaudioso stated that he submitted a number of
40 color schemes, brown, blue, brown/blue model scheme, and multi-

1 colored scheme. He said that he will do any type of tree as there are
2 many different manufacturers. Attorney Gaudioso noted that the
3 applicant favors the Sabre tree as he feels it is the best looking,
4 aesthetically pleasing pole.

5
6 Town Attorney Eriole said that the applicant should put on the record
7 anything he objects to.

8
9 Attorney Gaudioso commented that he does not think it will be
10 functionally effective to put landscaping on the Route 100 right-of-
11 way. He said that it is very narrow and is plowed by the Highway and
12 State Highway Department and will be right in the path of the snow
13 plowing. Attorney Gaudioso stressed that plantings will not survive
14 there. He noted that if you plant a reasonable size plant it will be
15 functional but a 12 foot tree will not be functional. Attorney Gaudioso
16 indicated that photographs show existing 65-75 foot trees in front of
17 the facility which will be supplemented and an 89 foot tree line behind
18 the facility that will provide screening. He indicated that there is a
19 second layer of deciduous trees which provide intermediate
20 screening. He said that along Route 100 there are trees. He
21 explained that if you are in the 7-Eleven parking lot there is a gap
22 between two trees because of the telephone line that runs north and
23 south across Route 100 and directly under the line there are no trees.
24 Attorney Gaudioso said that because the lines are overhead no trees
25 can be planted. He opined that planting two trees in that area is not
26 functional and he will continue to review this with the ZBA.

27
28 Mr. Keane said that he does not remember the Planning Board
29 requesting vegetation along the edge of Route 100. He noted that a
30 proper screening analysis will show what trees can be on the property
31 for screening especially in the leaf-off condition. Mr. Keane
32 mentioned that the applicant has not done a screening profile of VP5
33 which has to be provided. He indicated that this is critical information.

34
35 Attorney Gaudioso clarified the point about the screening profile of
36 VP5 because the Town Planner's memo dated June 1, 2010 which
37 was based on the Planning Board's May 26, 2010 meeting,
38 specifically asked the applicant to look at planting in that location.
39 *The Planning Board asked that mitigation be considered at several*

1 *different locations which include: adjacent to the road, between the*
2 *road and the tower, and at the wireless compound. Attorney*
3 Gaudioso states this is the reason that the applicant analyzed the
4 location and the reason it was in HDR's report.

5
6 Attorney Gaudioso said that the question is if it has been mitigated to
7 the greatest extent possible and that is the ultimate conclusion that
8 the Lead Agency should make in their good critical judgment. He
9 stressed that it is not fair to ask the applicant or the consultants to
10 make that judgment and if the Lead Agency abdicated its decision
11 making power to a consultant or an involved agency they would be
12 overturned. He said that he tried to supply the evidence that supports
13 the applicant's case and the Planning Board will provide its
14 comments to the Lead Agency, consultants will provide their
15 expertise on technical matters, but at the end of the day the ultimate
16 question has to be decided by the Lead Agency.

17
18 Ms. Gannon said that the proposed action is the construction of the
19 tower but it has not been decided if the tower will be a monopole or a
20 Sabre tree. She noted that it is difficult to talk about mitigation when
21 you are not sure what will be mitigated. Ms. Gannon stated that there
22 is no definitive statement if the tower will be a monopole or a tree and
23 the Lead Agency will make this decision.

24
25 Mr. Foley said that the applicant is being flexible when giving the
26 choice of the monopole or tree.

27
28 Ms. Gannon explained that most discussions have been about the
29 Sabre tree but the monopole has not been ruled out.

30
31 The Chair indicated that the ZBA will not decide on a monopole or
32 Sabre tree until they hear from the Planning Board.

33
34 Town Planner Hull advised that the Planning Board should decide on
35 their preference for a monopole or a Sabre tree.

36
37 Mr. Foley stated his preference is for a tree pole which is aesthetically
38 more pleasing than a monopole.

39

1 Mr. Goldenberg asked if there is any difference in usage between the
2 two poles.

3

4 Attorney Gaudioso indicated that the tree pole offers more vertical
5 and horizontal space for more antennas and co-location and usage
6 as infrastructure with the monopole (unipole) having all the antennas
7 inside but the monopole does not have as much space for the
8 business end of the equipment.

9

10 The Chair opined that the tree looks like a bottle brush.
11 The Chair asked Consulting Town Engineer Barbagallo to summarize
12 his memo to the Planning Board for the public's benefit.

13

14 Consulting Town Engineer Barbagallo said that he had a meeting
15 with the applicant's project engineer to review the outstanding
16 engineering items. He noted that he has not received a revised site
17 plan or documents that address his engineering comments. He
18 opined that the application is incomplete because he had not
19 received comments on the SPPP or revised plans.

20

21 Attorney Gaudioso indicated that all the changes have been made to
22 the documents pertaining to Consulting Town Engineer Barbagallo's
23 review but Mr. Musso requested that the access drive be realigned
24 and that the landscaping be changed; therefore, that changes
25 Consulting Town Engineer Barbagallo's review.

26

27 Town Planner Hull said that the draft resolution that was prepared by
28 the applicant says that site plan approval will be resolved after the
29 environmental determination but this is a coordinated review. She
30 noted that the ZBA will make the environmental determination and
31 grant the Special Exception Use Permit and then the Planning Board
32 will issue Site Plan Approval. Town Planner Hull explained that the
33 information that the Consulting Town Engineer is reviewing may
34 change in relation to Site Plan approval and that may affect the
35 environmental determination. She said for example the change in the
36 location of the access way and the drip line of the trees affecting the
37 root system. Town Planner Hull indicated that the Board should
38 discuss this later on.

39

1 Attorney Gaudioso stated that the ZBA makes an environmental
2 determination and he copied every document including the Site Plan
3 application that has been submitted to the Lead Agency to the
4 Planning Board. He noted that by the time the ZBA is ready to make
5 the environmental determination there is a reasonable amount of
6 documentation to make that decision. Attorney Gaudioso said that
7 the Planning Board has the process of Site Plan approval and can
8 make minor modifications that will not change the environmental
9 determination. He said that site plan approval happens after the
10 issuance of the SEUP.

11
12 Town Planner Hull opined that the Planning Board needs more
13 information before the ZBA makes its environmental determination.

14
15 The Chair said that she wished that the ZBA and the Planning Board
16 had a joint meeting to discuss the review of this project.

17
18 Attorney Gaudioso opined that a joint meeting is an excellent idea.
19 He mentioned that the ZBA meeting is scheduled for July 20, 2010.

20
21 Town Planner Hull said that the Planning Board will send their
22 comments to the ZBA and hope that they endorse the Planning
23 Board's comments and incorporate those comments into the work
24 they are doing to make their environmental determination. She
25 opined that a joint meeting will help the ZBA meet that goal.

26
27 The Chair said that Michael P. Musso, P.E., Senior Project Engineer
28 of HDR Architecture and Engineering, P.C., is present to give
29 comments and recommendations regarding HDR's letter report dated
30 June 10, 2010. She noted that Stacey Calta, RLA, Visual Resources
31 Analyst of HDR is also present to give her comments and
32 recommendations.

33 Mr. Musso indicated that he presented the HDR report at the ZBA
34 meeting on June 9, 2010. He said that he looked at site plan issues,
35 health and safety issues associated with the proposed facility (radio
36 frequency admissions), structural and foundation analysis and
37 technical coverage information. He mentioned that towards the end
38 of the report he gave a summary of findings and recommendations.
39 Mr. Musso said that he submitted additional leaf-on and leaf-off photo
40 simulations. He explained that the B&E Associates submittal that

1 Attorney Gaudioso provided tonight is part of the bigger submittal that
2 will come together. He noted that the new submittal will include
3 samples of artificial tree branches and a cross-section using the DEC
4 criteria from the critical view at 7-Eleven. Mr. Musso indicated that a
5 written feasibility in reference to trees along the Route 100 corridor on
6 the DOT right-of-way and on the owner's property will be provided.
7 He said that Sabre Industries is one vendor of the stealth tree
8 configuration but there are other vendors. Mr. Musso acknowledged
9 that the stealth tree is one that he reviewed most frequently with
10 positive feedback from municipal clients. He noted that when
11 reviewing catalogs from different vendors there is not much difference
12 but the Sabre tree has been used locally and has worked very well.

13
14 Mr. Musso indicated that the VHB Report received on May 13, 2010
15 was the last large submittal from the applicant. He mentioned that
16 the photo simulations were all done by Joe Deker of B&E Associates
17 and he reviewed the methods used and a 50 millimeter lens was
18 used. Mr. Musso explained that the photos in the back of the VHB
19 Report were taken by them during their site reconnaissance. He
20 indicated that VHB did not create any photo simulations.

21
22 Mr. Musso gave the Board an overview of the two configurations that
23 are being considered. He noted that each provider occupies one
24 space on the pole and that with the concealment monopole
25 everything is nested within. Mr. Musso acknowledged that the
26 applicant has to update the EAF as 6 antennas may be considered
27 instead of 12 antennas. He explained that on the stealth tree all
28 antennas can be located at one height level, leaving space at lower
29 levels for future co-location. Mr. Musso said that with the
30 concealment pole the antennas take up two height levels.

31
32 Mr. Musso introduced Stacey Calta, landscape architect, who is the
33 author of Section 5 of the VHB report which went into detail on the
34 Visual Impact Assessment. He explained that she reviewed what
35 was submitted and the appropriateness of what was submitted by the
36 applicant.

37
38 Landscape Architect Calta said that she requested the additional
39 worst-case view depicted along Route 100 in the open area
40 beginning just before the 7-Eleven travelling north to the wooded area

1 before the Amato property. Landscape Architect Calta said that she
2 also asked for additional landscaping closer to Route 100 to provide
3 mitigation. She said that she has been out to the site and took her
4 own photographs of the existing trees on the site. She indicated that
5 the trees on site are 65 feet in height which is approximately half the
6 height of the tower. Landscape Architect Calta showed the Board
7 pictures of trees taken at the site looking down at 7-Eleven and noted
8 that the tower is barely visible. She pointed out the line of sight and
9 noted that she requested an additional cross-section of this area.
10 Landscape Architect Calta showed the Board colored zones showing
11 the main points of the visual impact, intersection of Route 35 and
12 Route 100, along Route 100 moving north from the edge of the tree
13 line on the southern property to where the trees start on Route 100,
14 along the applicant's driveway and the building to the North.
15 Landscape Architect Calta mentioned that she requested that the
16 proposed landscaping be reorganized. She noted that her major
17 comment on the Landscaping Plan is in reference to the driveway
18 and grading and since the trees will be used as screening mitigation
19 she would like the plan to be revised to ensure that the screening
20 provided is satisfactory.

21
22 Landscape Architect Calta pointed out the site with the existing 65
23 feet tall trees and the planting zones. She pointed out where the
24 proposed landscape elements should be placed.

25
26 Mr. Keane mentioned that it is difficult in the absence of a screening
27 profile to determine the amount of screening and type of screening
28 that may be warranted as far as mitigation. He said that now without
29 the screening profile you will just be guessing where to put mitigation.
30 Mr. Keane noted that placing trees along the line of sight would
31 attempt to do mitigation to the maximum extent practicable.

32 Landscape Architect Calta explained that there is an existing row of
33 trees half way up the site and that is already providing mitigation.
34 She advised that plantings to be effective would have to be at the
35 elevation of Route 100 and that would have to have Department of
36 Transportation (DOT) approval. She noted that the applicant's
37 property is lower than the road and therefore planting would not make
38 a significant difference.

39

1 Ms. Gannon mentioned the VHB Report that states *these items*
2 *verify that there are no significant duration of views - at least in terms*
3 *of "per trip" which traveling on the area roadways.* She asked that
4 Landscape Architect Calta expand on how this conclusion was
5 reached.

6
7 Landscape Architect Calta said that there is no written timing on what
8 is and is not significant. She noted that she drove the route twice,
9 once northbound and once southbound. She explained that the
10 southbound trip where you first see the tower at the cemetery and
11 driving 45 MPH it took only 49.8 seconds to when you first see the
12 tower to the intersection.

13
14 Town Planner Hull noted that this is the first tower to be located in an
15 area zoned for residential use and is further designated as a "higher
16 impact location" by Somers Code. She said that the location causes
17 an issue of significance and this should be factored into the drive
18 time. Town Planner Hull commented that this action will have an
19 effect on how future action in residential zones will be treated.

20
21 Mr. Foley said that the tower should be hidden to the maximum
22 extent possible.

23
24 Town Planner Hull stated that the record is showing that this is not a
25 significant view.

26
27 Ms. Gannon noted that the applicant is saying that there is no
28 significant duration of views. She opined that the applicant did not
29 minimize the significance of the area.

30
31 Mr. Keane said that the time of an individual view also has to include
32 the number of people actually viewing it. He noted that if there are
33 200,000 people viewing it that is a more significant impacted view
34 than one person looking at it for 15 minutes.

35
36 Landscape Architect Calta said that another point is the angle of
37 view. She noted that the route of traffic of Route 100 does not look
38 directly at the tower.

39

1 Mr. Keane opined that the northbound view is critical. He said that
2 the situation is subjective. Mr. Keane mentioned that the location of
3 the cell tower is at the Gateway to Somers. He said that the question
4 is how much screening should be used and how far do the trees
5 reach in comparison to the pole.

6

7 Landscape Architect Calta stated that the trees on site are of
8 significant size and maturity but the tower is taller than the trees.

9

10 Ms. Gannon asked about the effect of the trees behind the proposed
11 pole and the fact that the pole is setback on the property does that
12 lessen the impact.

13

14 Landscape Architect Calta said that the tower is visible when looking
15 at the tree simulation on VP5. She commented that if trees were not
16 behind the site you would see a more prominent amount of the pole.

17

18 Ms. Gannon asked about the assessment of the background trees
19 behind the proposed tower.

20

21 Landscape Architect Calta noted that she did not look at all the
22 species but tree growth slows down when a tree gets to 50 years old.

23

24 Mr. Keane stated that there is an appropriate need to determine the
25 combination of screening, the use of color camouflaging and the
26 painting of the pole.

27

28 Mr. Musso mentioned that he put together an objective table in his
29 report between the concealment pole and the stealth tree. He
30 reviewed the overall height, co-location potential, form and structure
31 and suggested the concealment pole at this site. Mr. Musso stated
32 the reason is that you cannot hide a tree and at the critical view at the
33 Gateway to Somers there are quite a few utility poles.

34 Mr. Keane said that camouflage schemes should be provided that are
35 reflective of the specific view. He indicated that samples of paint
36 schemes should be provided before a decision is made.

37

38 Landscape Architect Calta commented that she has reviewed
39 different options, poles that are blue, brown, blue/brown mottling.
40 She recommended that the pole be brown or green to blend in with

1 the trees. She mentioned the blue pole and noted that there are
2 different shades of blue and blue color will not always match the blue
3 in the sky.

4
5 The Chair mentioned Town Planner Hull's comment from her June
6 18, 2010 memo; *The report does not address the fact that this is the*
7 *first tower in a 'high impact area' in the Town of Somers. This is an*
8 *extremely important fact and as such, siting of this tower may set*
9 *precedent for future towers in residential areas of the Town.*

10 *In general, the report does not identify whether or not the Applicant*
11 *has provided mitigation "to the maximum extent practicable". This is*
12 *a critical issue, specifically in relation to visual and aesthetic impacts.*
13 Town Planner Hull asked if the Board agrees Mr. Keane's comments
14 should be forwarded to the ZBA. She said that the applicant must
15 commit to providing all the information in a timely fashion. Town
16 Planner Hull suggested that there be a joint meeting at the July 20,
17 2010 ZBA meeting.

18
19 Town Attorney Eriole advised that the Planning Board as an Involved
20 Agency should provide comments to the ZBA.

21
22 Ms. Gannon asked Mr. Musso if he feels that the applicant has
23 provided mitigation to the maximum extent practicable and if he does
24 then he should provide the reasons.

25
26 Attorney Gaudio stressed that mitigation has been provided to the
27 maximum extent practicable is for the ZBA to decide. He said that
28 consultants can provide their expertise on technical issues.

29
30 Mr. Foley said that there is another way to ask the question: are there
31 reasonable measures that could be identified that would have a more
32 beneficial visual impact in terms of hiding the structure that have not
33 been proposed or offered by the applicant.

34 Landscape Architect Calta said that she asked the applicant to re-
35 order the trees to put them in a location to have the greatest impact
36 for screening.

37
38 Mr. Musso said that the applicant should answer if more screening
39 can be done on Route 100 and if not, why. He said that the
40 landscaping proposal around the tower is reasonable.

1 Attorney Gaudioso said that Consulting Town Engineer Barbagallo's
2 characterization that a lot of information has not be provided is not
3 true.

4

5 Mr. Keane noted that discussion this evening and the HDR Report
6 indicates that there is not sufficient information to conclude if the
7 maximum amount of mitigation has been provided. He said that the
8 Board would like the factual information to backup the adequacy of
9 mitigation.

10

11 Consulting Town Engineer Barbagallo said when considering the
12 feasibility of Route 100 a berm can be used to change the elevation
13 and accomplish the goals.

14

15 Mr. Keane stressed that the Planning Board can comment to the ZBA
16 on the adequacy and viability of the information and decide if it rises
17 to the level of maximum extent practicable.

18

19 Ms. Gannon asked that the comments that will be provided to the
20 ZBA be summarized.

21

22 Town Planner Hull said that there is an issue with the screening
23 evaluation for VP5 as it is necessary to decide the location of the
24 screening and it should be treated in accordance with the DEC
25 Manual. She noted that Sabre Technologies is the only company that
26 has been referenced in supplying the tree pole. She mention that
27 there is no documentation as to why Sabre has been selected over
28 other companies.

29

30 Ms. Gannon interjected that Mr. Musso suggested the Sabre tree
31 pole. She opined that it is not productive to put forward for
32 consideration items that are non issues.

33 Mr. Keane noted that he favors the concealment pole using the
34 mottling coloring and this should be decided before a SEQRA
35 determination because it is part of mitigation. He stressed that in the
36 absence of the screening profile the viability of placing trees comes
37 into question. He said that the ZBA should be advised that its file has
38 adequate information in regard to the maximum extent practicable for
39 screening, camouflage and duration of view. He mentioned that the
40 ZBA's reasoned elaboration should incorporate a reference to all the

1 mitigation in the file so that it has a proper connection. Mr. Keane
2 said that one particular view along Route 100 jumps out at you, not
3 necessarily 7-Eleven, but that is the only picture that has been
4 provided.

5
6 Landscape Architect Calta stated that she provided additional
7 pictures along Route 100.

8
9 Mr. Keane said that the ZBA should look at leaf-off and leaf-on
10 conditions and photo simulation superimposing a cell tower in the
11 picture based upon the technical criteria. He noted that when this is
12 done you can look at leaf-off and leaf-on conditions using the
13 screening profile and this methodology should be used. He indicated
14 that the VP5 view has not been done.

15
16 Ms. Gannon explained that Town Planner Hull's memo will be a
17 reminder to the ZBA to address the issues in order for them to make
18 a defensible decision.

19
20 The Chair directed staff to send a memo to the ZBA with the Planning
21 Board comments, staff comments and Mr. Musso's and Ms. Calta's
22 comments and recommendations.

23

24 **PROJECT REVIEW**

25

26 **HOMELAND TOWERS, LLC\NEW CINGULAR WIRELESS PCS,**
27 **LLC (AT&T) SITE PLAN AND WETLAND PERMIT**
28 **SANTARONI PROPERTY 2580 ROUTE 35**
29 **[TM: 37.13-2-3] CARRYOVER**

30

31 Chairman DeLucia said that this is a carry-over from the June 9, 2010
32 agenda of the project review of the application of Homeland
33 Towers/New Cingular Wireless PCS, LLC (AT&T) for site plan
34 approval and Wetland Permit for property located at 2580 Route 35
35 owned by Umberto and Carol Santaroni for the installation of a
36 wireless telecommunication facility in an R-120 Residential Zoning
37 District. She noted that this application is presently before the ZBA
38 for a Special Exception Use Permit and area variances. The
39 applicants are in the process of substantially revising the site plan
40 and therefore this matter will be carried over to the next agenda.

PROJECT REVIEW**MITCHELL PRELIMINARY SUBDIVISION
[TM: 16.09-1-9]**

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

The Chair noted that this application was last discussed at the May 12, 2010 Planning Board meeting whereby the applicant's representative Timothy Allen of Bibbo Associates gave a brief presentation on the revised plans and related materials and also responded to staff's memos and action letter. She explained that at that meeting, although the property is less than 12 acres, there was a discussion regarding whether a Conservation Subdivision could be considered. The Board then directed Town Planner Hull to prepare a draft memo to the Town Board with reasons for recommending that they consider a conservation subdivision for the Planning Board's consideration for approval.

The Chair acknowledged for the record receipt of the following: a covering letter dated and received on June 14, 2010 from applicant's representative Bob Howe, Senior Designer, Bibbo Associates, submitting a Preliminary Subdivision Plat and Construction Plan drawings, Soil Data Results and responding to comments in memoranda and discussions from the Town Planner, Consulting Town Engineer and Conservation Board: a letter dated and received

1 June 23, 2010 from Westchester County Planning Board with same
2 comments as their letters dated September 20, 2008, February 5,
3 2009 and April 21, 2010; and a memo dated June 17, 2010 from
4 Consulting Town Engineer Barbagallo with his review comments and
5 discussion.

6

7 The Chair asked the applicant's engineer to give a brief presentation.
8 Tim Allen, the applicant's engineer, mentioned that at the last
9 meeting the Planning Board considered a Conservation Subdivision.
10 He noted that Consulting Town Engineer Barbagallo requested
11 further testing to make sure that the stormwater systems are viable
12 on the subdivision. He indicated that the test was performed and he
13 is confident that the request can now be made to the Town Board to
14 consider a Conservation Subdivision. Engineer Allen commented
15 that at the last meeting benefits were discussed to cluster this
16 proposed 4-lot subdivision. He said that the reduction of the roadway
17 length will result in less impervious surface and if a Cluster
18 Subdivision is approved and the existing home remains the applicant
19 has agreed to restrict the existing home as an affordable house.
20 Engineer Allen noted that if the Town Attorney finds the request
21 favorable he requests that the Planning Board refer the
22 recommendation to the Town Board.

23

24 Town Attorney Eriole advised that New York State Town Law
25 authorizes the Town Board with respect to a specific application can
26 authorize Cluster developments. He noted that it was the consensus
27 of the Planning Board that the applicant seek relief from the Town
28 Board with respect to this specific application which will not require
29 environmental impact review. Town Attorney Eriole explained that
30 Town Planner Hull submitted to him a draft memo which he reviewed
31 and commented on but unfortunately his e-mail with his comments
32 did not go through. He advised that the memo to the Town Board
33 from the Planning Board asking them to consider a Conservation
34 Subdivision is an acceptable avenue to be pursued.

35

36 Town Planner Hull said that she will prepare the draft memo to the
37 Town Board asking their consideration to adopt a one-time local law
38 or ordinance by which it specifically authorizes the Planning Board to
39 review and approve the proposed subdivision as a Cluster
40 Subdivision pursuant to NYS Town Law. She noted that she will

1 submit the draft memo via e-mail to the Planning Board for their input
2 with a cut-off date in time to submit the memo to the Town Board for
3 their July meeting.

4
5 Consulting Town Engineer Barbagallo said that his staff and the
6 Department of Environmental Protection (DEP) witnessed deep hole
7 tests on the site in the proposed locations of the stormwater basins
8 and infiltrator units to prove out the subdivision. He indicated that he
9 met with the applicant's engineer on June 3, 2010 to review the
10 engineering comments related to the preliminary approval of the 4-lot
11 Conventional Subdivision. Consulting Town Engineer Barbagallo
12 stated that based on the June 14, 2010 submittal he finds that the site
13 has the characteristics to support the 4-lot Conventional design in
14 accordance with the applicable codes. He mentioned that the
15 applicant wants to pursue a Cluster Subdivision and he will offer
16 comments when that plan is received. Consulting Town Engineer
17 Barbagallo stated that he supports the action of sending a memo to
18 the Town Board to consider a Conservation Subdivision.

19 20 **PROJECT REVIEW**

21 22 **SUSSMANN MOBIL STATION** 23 **APPLICATION FOR AMENDED SITE PLAN, WETLAND** 24 **AND STEEP SLOPES PERMITS [TM: 17.18-1-2]**

25
26 Chairman DeLucia said that this is the project review of the
27 application of Route 100 Realty LLC for amended Site Plan Approval,
28 Wetland and Steep Slopes Permits and Groundwater Protection
29 Overlay District Special Exception Use Permit for an expansion of an
30 existing 880 square foot convenience store and a reconfiguration of
31 the parking area and new stormwater management basin. The
32 Chair stated that the owners of the property are Paul and Juliette
33 Fourgeot Sussmann.

34
35 The Chair said that the name Sussmann Mobil Station should be
36 removed from the plans and application should be amended using
37 the new name Route 100 Realty LLC.

38
39 Chairman DeLucia said that the property is located at the Mobil
40 Gasoline Service Station at 291 NYS Route 100 on a .8660 acre in

1 the Neighborhood Shopping (NS) Zoning District and Groundwater
2 Protection Overlay District. She mentioned that a significant portion
3 of the site is located within a 100-foot wetland buffer which includes
4 an adjacent pond and stream that drains directly to the Muscoot
5 Reservoir. The Chair indicated that the applicants previously
6 submitted three development schemes illustrating various scenarios
7 with a Traffic and Parking Evaluation by John Collins Engineers, P.C.
8 She explained that under Scheme A, the existing 880 square foot
9 convenience store would be expanded to 3,200 square feet. She
10 said that under Scheme B, the convenience store would be expanded
11 to 2,660 square feet, and under Scheme C it would be expanded to
12 2,772 square feet. The Chair indicated that the applicants were
13 directed to work with Scheme A as the worst case scenario regarding
14 circulation, traffic, parking and safety to present to the Board.

15
16 The Chair noted that this application was last discussed at the April
17 14, 2010 Planning Board meeting whereby the Board's Traffic
18 Consultant Michael A. Galante, Executive Vice President of Frederick
19 P. Clark Associates, Inc., gave his review comments and report on
20 the traffic access and internal circulation and on reports by applicant's
21 consultants and comments from members of the Board and staff
22 regarding this project. The Chair noted that at that meeting, the
23 Board determined that the Proposed Action is an Unlisted Action
24 under SEQRA, declared its intent to be Lead Agency and circulated a
25 Notice of Intent to all involved agencies on May 4, 2010. She said
26 that by letter dated and received on May 11, 2010 the Westchester
27 County Planning Department had no objection to the Planning Board
28 assuming Lead Agency status for this project. The Chair noted that
29 by letter dated May 27, 2010 and received June 1, 2010 New York
30 City Department of Environmental Protection had no objection and
31 had recommendations and comments. She commented that the
32 Board has not received communications from other involved agencies
33 and 30 days have expired for a response as to whether they agree or
34 dispute with the Planning Board serving as Lead Agency. Therefore,
35 the Planning Board declares itself as Lead Agency.

36
37 The Chair acknowledged for the record receipt of the following: a
38 letter dated May 14, 2010 from Westchester County Department of
39 Health commenting on the Notice of SEQR Action and Part 1 of the
40 Full EAF; a memo from the Conservation Board with 5 concerns and

1 recommendations; a letter dated June 12, 2010 from applicant's
2 representative Timothy S. Allen, P.E. of Bibbo Associates submitting
3 revised Project drawings and revised Stormwater Pollution
4 Prevention Plan and responses to comments; a letter dated and
5 received today June 23, 2010 from Westchester County Planning
6 Board referring to previous letters with comments which remain the
7 same; a memo dated June 17, 2010 from Consulting Town Engineer
8 Barbagallo with his project review comments; and a memo dated
9 June 17, 2010 from Town Planner Hull with her project review
10 comments.

11
12 The Chair asked the applicant's representative to give a brief
13 presentation regarding the revised submission and related materials.

14
15 Tim Allen, the applicant's engineer, said that at the last meeting the
16 traffic consultant said that there are not any significant issues
17 regarding traffic and hopefully those concerns have been answered.
18 He mentioned that the focus is now on stormwater. He noted that he
19 received Consulting Town Engineer Barbagallo's memo and he will
20 respond to those concerns and hopefully a Public Hearing can be
21 scheduled. He explained that the plan has not changed much as
22 scheme A, the larger building, is the applicant's choice. Engineer
23 Allen noted that yesterday he observed the gas tanker at 4:30 a.m.
24 and mentioned that Mrs. Sussmann said that she will do her best to
25 make sure the gas delivery takes place during off peak hours.

26
27 The Chair asked the hours of the gas station.

28
29 Mr. Sussmann, applicant, said that the station closes at midnight and
30 opens at 5:00 a.m.

31 Mr. Keane said that he observed the gas tanker at 8:30 a.m.

32 The Chair indicted that the Board needs to decide which Scheme the
33 applicant is to submit to the Board. As a reminder, at the April 14th
34 meeting Engineer Allen said that Scheme A (3,200 S.F.) and Scheme
35 C (2,772 S.F.) are the only schemes the applicant wants to pursue
36 and reminded the Board that there will be stormwater treatment to the
37 system where it does not exist today. She said that Mr. Keane noted
38 that the Board cannot decide which scheme until you see all the
39 stormwater practices that need to be employed and said that this

1 project is located in an environmental challenge with its proximity to
2 the stream and reservoir stem.

3

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

5

6 Mr. Goldenberg opined that the Board decided on Scheme A.

7

8 Engineer Allen said that he was proving out Scheme A to make sure
9 that it will work but the Board is still reviewing two schemes.

10

11 Mr. Keane said that the Board is looking at the worst case scenario
12 and reviewing the viability of a reduced size building and fitting in all
13 the stormwater management practices.

14

15 Engineer Allen noted that this project is being reviewed in terms of
16 the Department of Conservation (DEC) Code and how the Town will
17 view this project as a re-development project and a retrofit in terms of
18 stormwater.

19

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

22

23 Consulting Town Engineer Barbagallo said that this is his first memo
24 on this project which he organized into categories. He noted that
25 under Existing Conditions he asked that additional detail be provided
26 on the existing groundwater treatment and monitoring network
27 currently in place, an update of the status of site remediation activities
28 with the DEC. He also asked that a description of the groundwater
29 levels in the vicinity of the southern portion of the property be
30 provided. Consulting Town Engineer Barbagallo requested additional
31 detail on the existing septic configuration, including how the sanitary
32 manholes are tied into the existing leachate pits. He asked that the
33 wetland verification section be signed and certified by the DEC.

34

35 Consulting Town Engineer Barbagallo said that under the proposed
36 Stormwater Management and Erosion and Sediment Control section
37 of his memo that infiltration practices be located at least 100 feet
38 horizontally from any water supply well. The sand filter area is
39 proposed within 100 feet of the on-site existing water well. He asked
40 for a mitigation plan for the proposed work within the 100' of the

1 watercourse. He mentioned the proposed gravel trench to collect
2 snow melt from areas planted for snow melting shall be expanded to
3 all areas where snow melt is anticipated within a direct line of
4 drainage to the watercourse.

5
6 Consulting Town Engineer Barbagallo noted that under the Septic
7 Section of his memo he asked the applicant to show the proposed
8 area for the additional septic system required to support the existing
9 use or provide documentation from the Westchester County
10 Department of Health (WCDOH) approving the use of the existing
11 septic system to accommodate the proposed building addition.

12
13 Consulting Town Engineer Barbagallo said that under the Proposed
14 Retaining Wall Design section of his memo he asked for drainage to
15 be provided behind the proposed retaining walls and that the
16 Planning Board consider any requirements related to the aesthetics
17 of the proposed stone rubble retaining walls. He noted that the
18 applicant shall clarify the proposed Quality Assurance/Quality Control
19 (QA/QC) procedure during construction and post-construction to
20 document the wall was built in accordance with the Site Plan. He
21 said that a final certification that the wall was installed as designed
22 will be necessary.

23
24 Consulting Town Engineer Barbagallo said that under Temporary
25 Services During Construction he asked that details be provided on
26 the location of the proposed temporary structure for the gasoline
27 service that will be used to support operations during construction.

28
29 Consulting Town Engineer Barbagallo mentioned under
30 Miscellaneous Comments that he requested that details of the
31 decommissioning process for the groundwater remediation and
32 monitoring network be provided.

33
34 Mr. Keane said that the concern is about contaminants that exist and
35 based on their metabolizing over time and the migration of those
36 contaminants into the sand filter and into the stream.

37
38 Engineer Allen noted that the concern is with the removal of the soil
39 and if there are contaminants in the soil. He indicated that once the

1 soil is deemed clean it can be removed. Engineer Allen stated that
2 the applicant is working on the decommissioning of the site.

3
4 Mr. Keane asked if there is a possibility that contaminants in the sand
5 filter will end up in the stream resulting in a pollutant discharge
6 problem. He asked if a barrier within the sand filter can be created to
7 stop this from happening,

8
9 Consulting Town Engineer Barbagallo said that he is asking for
10 information on how the soil will be removed. He noted that once the
11 data is submitted he will address the soil and water aspects.

12 Mr. Goldenberg asked if Engineer Allen has any problems with
13 Consulting Town Engineer Barbagallo's memo and Engineer Allen
14 stated that it will be worked out.

15
16 Engineer Allen reminded the Board that he submitted all the
17 monitoring points and that a lot of data has been provided. He
18 explained that ultimately the site has to be decommissioned by the
19 DEC. He noted that he will respond to Consulting Town Engineer
20 Barbagallo's and Town Planner Hull's comments.

21
22 The Chair asked Town Planner Hull to share her project review
23 memo to the Board for the benefit of the public.

24
25 Town Planner Hull said most of the issues from her last memo have
26 been addressed but during the April 14, 2010 Planning Board
27 meeting, the applicant indicated that they would be able to procure a
28 letter from Mobil Oil regarding the delivery schedule restrictions that
29 were discussed at the Planning Board meeting.

30
31 Mr. Keane said that the letter should not come from Mobil but
32 whoever delivers the gas.

33
34 Town Planner Hull mentioned that the applicant should address the
35 concerns of the Westchester County Department of Health, the
36 Conservation Board and the NYCDEP.

37
38 Mr. Keane said that because mitigation will have to be done because
39 of the incursion into the buffer he suggested that consideration be
40 given for mitigation off-site.

1 Engineer Allen disagreed about mitigation because imperviousness is
2 not increasing substantially. He explained that there will be a new
3 retrofitted stormwater basin.

4
5 Mr. Keane stated that in terms of functionality of the buffer the
6 concern is where mitigation can take place and he is suggesting
7 mitigation be considered off-site.

8
9 Engineer Allen summed up the discussion by saying that all memos
10 from staff, Westchester County, Department of Environmental
11 Protection (DEP), Department of Health (DOH) and the Conservation
12 Board (CB) will be addressed.

13
14 Mr. Foley said that he talked about this issue in April but has not
15 heard anything since and he mentioned that this is a prior non-
16 conforming use. He stressed that you cannot have a gasoline station
17 in a Groundwater Protection Overlay District according to Town Law.
18 He said that this station pre-existed the law and is a prior non-
19 conforming use. Mr. Foley stated that the Town Code states that you
20 cannot enlarge a prior non-conforming use. He said that you can't
21 enlarge the building or change it in a way to increase the non-
22 conformity. Mr. Foley noted that he has a fundamental problem with
23 this application and said that the Board spent hours analyzing traffic,
24 and stormwater but until he is convinced that he is wrong about this
25 issue he does not know why the Board is still reviewing this project.

26
27 Engineer Allen said he will defer to Town Counsel but he remembers
28 Town Attorney Baroni saying that this is an expansion of retail not the
29 expansion of the gas station.

30 Mr. Foley argued that what is prohibited in the Groundwater
31 Protection Overlay District is gasoline, service, and filling stations.
32 auto repair and service.

33
34 Engineer Allen noted that the Code is antiquated on what this really is
35 and this is a retail function.

36
37 Town Attorney Eriole said in behalf of Town Attorney Baroni an
38 opinion has been expressed that the extension of the retail use is an
39 acceptable use.

40

1 Mr. Foley said that he would like to see the opinion from Town
2 Counsel in writing and Town Attorney Eriole said he will make sure
3 the Board receives the formal opinion.

4 Mr. Keane asked about the size of the building.

5
6 Engineer Allen said that Scheme A is 3,200 square feet;
7 Scheme B, the convenience store would be expanded to 2,660
8 square feet; and under Scheme C it would be expanded to 2,772
9 square feet.

10

11 Mr. Keane noted that the Board has been giving the Sussmann's the
12 benefit of the doubt by going with the larger building unless it can be
13 proven that it will not be the right way to go. He said that as far as
14 stormwater the size of the building will not make a lot of difference
15 with what gets discharged into the sand filter.

16

17 Consulting Town Engineer Barbagallo said that the size of the
18 building is immaterial.

19

20 The Chair stated that according to Mrs. Sussmann that the office and
21 bathroom is to be "downstairs" and if so, there is no plan showing this
22 and should be submitted on revised plans. She said that the office
23 will add square footage to the building and may need another parking
24 space.

25

26 The Chair suggested that the applicant reduce the building 5' on the
27 Route 100 side which would give additional parking spaces, or
28 reduce the total size of the building. She asked Consulting Town
29 Engineer Barbagallo what his thoughts are about this proposal.
30 Consulting Town Engineer Barbagallo indicated that a smaller
31 building will help with circulation issues and straightening out the
32 north/south line adjacent to the building will create an extra few feet
33 for turning. He opined that there are merits with a smaller building
34 that will provide additional functionality. He commented that if the
35 building is smaller there will be less parking.

36

37 Ms. Gannon said that she does not see how reducing the building 5'
38 on the Route 100 side will help.

39

1 Town Planner Hull said that a smaller building will help with
2 circulation and parking.

3

4 Mr. Keane said that the concern is the northwestern most pump and
5 the most southerly position that is closest to the building if there is a
6 car there the tractor cannot get out. He opined that changing the size
7 of the building will not have any effect on this issue.

8

9 Engineer Allen noted that at the Public Hearing Architect Van Lent
10 will talk about the aesthetics of the building and how it will look
11 relative to Route 100.

12

13 Mr. Keane mentioned that cones will be used to move the tractor in
14 and out of the station and the cones will also be used when filling the
15 propane tank.

16

17 The Chair said that her position is safety, health and welfare. She
18 noted that she does not like the idea of using cones.

19

20 Paul Sussmann, applicant, said that for 22 years his station has been
21 in this location and there has not been any safety issues.

22

23 The Chair directed the applicant respond to the NYC DEP's May 22,
24 2010 letter, revise the plans and respond to staff's memoranda and
25 the Board's comments. She noted that if the applicant responds to
26 staff and the Board comments and revised the plans this application
27 will be scheduled for the August 11, 2010 Planning Board meeting.

28

29 **PROJECT REVIEW**

30

31 **KAUFFMAN WETLAND PERMIT**

32 **[TM: 17.12-2-2.11]**

33

34 Chairman DeLucia said that this is the project review of the
35 application of Rodd Kauffman for a Wetland and Stormwater
36 Management and Erosion and Sediment Control Permits for property
37 located at 13 Route 116 near IBM in a R-40 Residential Zoning
38 District consisting of approximately 2.754 acres. The Chair
39 mentioned that the applicant, who is the owner of the property,
40 proposes to construct an in-ground pool and drainage at the rear of

1 the existing house in the regulated wetland buffer. She explained
2 that this application was submitted on February 10, 2010 and was
3 last discussed at the March 10, 2010 Planning Board meeting
4 whereby the Board determined that the proposed activity to be a
5 Type II Action and that no further environmental review is necessary
6 and scheduled a site walk for Saturday, March 20, 2010. She noted
7 that on that date, Consulting Town Engineer Barbagallo conducted
8 the site walk with members of the Board and submitted a memo
9 dated March 26, 2010 with 4 items that were observed for
10 consideration.

11
12 The Chair acknowledged for the record receipt of the following: a
13 covering letter dated and received on June 14, 2010 from Timothy S.
14 Allen, P.E. of Bibbo Associates enclosing revised plan drawings; and
15 a memo dated June 17, 2010 from Consulting Town Engineer
16 Barbagallo with review comments and recommendations.

17
18 The Chair asked the applicant's representative to give a brief review
19 of the recent submission for the benefit of the public.

20
21 Tim Allen, the applicant's engineer, said that there is a ditch that runs
22 in and down across Deans Bridge Road through the Route 116
23 corridor. He noted that the ditch generally runs dry. Engineer Allen
24 indicated that he moved the pool away from the wetland setback and
25 provided a green buffer along the edge of the pool. Engineer Allen
26 explained that the area facing the wetland will be lawn.

27
28 The Chair asked about the shed on the property. She said that
29 because the shed is on blocks that means it is temporary.

30
31 Engineer Allen said that he spoke to Mr. Kauffman and he will
32 remove the shed if it is required but he noted that if it is an issue with
33 the Building Inspector the shed will be removed.

34
35 The Chair asked Consulting Town Engineer Barbagallo to summarize
36 his memo to the Board for the benefit of the public.

37
38 Consulting Town Engineer Barbagallo said that there are engineering
39 details that still have to be worked out but Engineer Allen wants to

1 make sure that the revised location of the pool meets with the Boards
2 approval before he provides the engineering details.

3
4 Mr. Keane said with the pool pushed up closer to the house
5 addresses some of the wetland mitigation issues.

6
7 The Chair said if the plans are revised in accordance with Consulting
8 Town Engineer Barbagallo's June 17, 2010 memo to the Board and
9 the Board's comments a Public Hearing will be scheduled for August
10 11, 2010.

11
12 Engineer Allen asked if a draft resolution of approval can be ready for
13 the August 11, 2010 Planning Board meeting and the Board agreed.

14
15 The Chair said that there is a consensus of the Board to schedule a
16 Public Hearing.

17
18 On motion by Mr. Goldenberg, seconded by Ms. Gannon, and
19 unanimously carried, the Board moved to schedule a Public Hearing
20 for the Kauffman Wetland Permit for Wednesday, August 11, 2010 at
21 7:30 p.m. at the Somers Town House.

22 23 **REQUEST FOR BUILDING PERMIT**

24 25 **ROSEMARY ZAPPI SUBDIVISION**

26
27 The Chair said that the Planning Board will consider a
28 recommendation to the Town Board to grant one building permit for
29 Tax Lot 28.09, Block 1, Lot 8.2 to the Rosemary Zappi Subdivision
30 pursuant to a request by letter dated May 18, 2010 from applicant's
31 representative Jim Zappi, P.E., and enclosing As-Built and Drainage
32 drawings. She noted that the property is located at 9 Kniffen Road.
33 The Chair explained that the Board received a memo dated June 14,
34 2010 from Principal Engineering Technician Steven Woelfle, signed
35 by Mr. Woelfle and Highway Superintendent Thomas Chiaverini,
36 stating that a field inspection of the roadway was made on June 14,
37 2010 and that the required binder course of 250 L.F. has been
38 installed on the traveled way of the Kniffen Road extension and the
39 drainage system affecting the roadway involved has been installed.

1 Also, shoulders have been rough-graded and mulched, and curbing
2 has been placed on both sides of the roadways.

3

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

6

7 The Chair said that there is a consensus of the Board to send a
8 memo to the Town Board recommending that the building permit be
9 granted.

10

11 On motion by Mr. Keane, seconded by Ms. Gannon, and
12 unanimously carried, the Board moved to send a memo to the Town
13 Board that the Planning Board at its June 23, 2010 meeting
14 unanimously recommends that the Town Board grant a building
15 permit for Tax Map Sheet 28.09, Block 1, Lot 8.2 to Rosemary Zappi
16 Subdivision.

17

18 The Chair issued a reminder that the Planning Board will jointly meet
19 with the ZBA at the ZBA's July 20, 2010 meeting at 7:30 p.m. at the
20 Town House to discuss Homeland Towers.

21

22 There being no further business, on motion by Ms. Gannon,
23 seconded by Mr. Foley, and unanimously carried, the meeting
24 adjourned at 12:00 P.M. and the Chair noted that the next Planning
25 Board meeting will be held on Wednesday, August 11, 2010 at 7:30
26 P.M. at the Somers Town House.

27

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31

Respectfully submitted,

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Marilyn Murphy
Planning Board Secretary

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