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4 **SOMERS PLANNING BOARD MINUTES**
5 **JANUARY 13, 2010**
6
7

8 **ROLL:**
9

10 **PLANNING BOARD**

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

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

21 The Meeting commenced at 7:30 p.m. Planning Board Secretary
22 Marilyn Murphy called the roll. Chairman DeLucia said that a
23 required quorum of four members of the Board being present called
24 the meeting to order.
25

26 The Chair thanked the Board for reappointing her to be Chairman of
27 the Planning Board for the year 2010. She said that in accordance
28 with Tow Law Section 271, the Planning Board may designate a
29 member to serve as chairperson in her absence. Chairman DeLucia
30 noted that she is recommending that Board member John Keane be
31 designated to serve as chairman in her absence. She asked if there
32 were any other recommendations and no one replied.
33

34 On motion by Chair DeLucia, seconded by Ms. Gannon, and
35 unanimously carried, the Board moved to designate Board member
36 John Keane to serve as chairman in her absence.
37

38 Chairman DeLucia introduced and welcomed new Planning Board
39 attorney, Joseph P. Eriole, Esq., who has joined the law firm of
40 Stephens, Baroni, Reilly and Lewis located in White Plains who

1 represents the town in legal matters. The Chair also welcomed
2 Joseph C. Barbagallo, P.E., BCEE, the Planning Board's new
3 consulting engineer to the town and Senior Vice President of
4 Woodard & Curran, an integrated engineering, science and
5 operations firm located in White Plains. The Chair mentioned that
6 Engineering Technician Steve Woelfle has passed the test for
7 Principal Engineering Technician.

8
9 Chairman DeLucia noted that Planning Board Secretary Murphy
10 prepared and submitted for the Board's consideration the approval of
11 the draft minutes of the November 18, 2009 Planning Board meeting
12 consisting of twenty-six (26) pages.

13
14 The Chair asked if there were any comments or questions from
15 members of the Board.

16
17 Ms. Gannon noted on page 24, line 24 of the November 18, 2009
18 minutes, it says that *Town Planner Hull asked the Planning Board if*
19 *they want to send a memo to the Town Board asking for a Code*
20 *change*. She mentioned that the question was left as a loose end
21 and was not followed up on and if it is appropriate the discussion can
22 be rejoined.

23
24 Town Planner Hull explained that the Town Code identifies the
25 Zoning Board of Appeals as the entity responsible for issuing the
26 Special Exception Use Permit and therefore is the Lead Agency on
27 the project according to discussion with the Department of
28 Environmental Conservation (DEC).

29
30 The Chair suggested that that the words *the Board did not respond*
31 be added to the sentence.

32
33 Mr. Foley said that the issue may be mute because the DEC called
34 for joint participation by the Planning Board and the ZBA.

35
36 Ms. Gerbino said that her recollection is that the Board asked the
37 Town Board to change the agency that issues the Special Exception
38 Use Permit for the wireless cell tower.

39

1 Mr. Foley opined that if the Planning Board made a recommendation
2 to be Lead Agency on Special Exception Use Permits it would not be
3 honored by the Town Board.

4
5 The Chair suggested that the Town Attorney and the Town
6 Consulting Engineer work together on this issue.

7
8 Mr. Keane said that the Town Board did not make a recommendation
9 on changing the Code or approving the current process.

10
11 Mr. Foley said that a dispute was resolved regarding Lead Agency on
12 a cell tower application.

13
14 Mr. Keane opined that the dispute on the cell tower Lead Agency was
15 only temporary and only for a particular issue and it is appropriate to
16 reconstitute the Board's concerns officially and finally get the issue
17 resolved at the Town Board level.

18
19 Ms. Gannon opined that the agreement spoke to the circumstances
20 and how the Code is written at this time and that is how the issue on
21 Lead Agency was resolved.

22
23 The Chair asked if there was a motion to approve the November 18,
24 2009 draft minutes, as amended.

25
26 On motion by Mr. Knapp, seconded by Ms. Gannon, and
27 unanimously carried, the minutes of November 18, 2009, as
28 amended, were approved.

29
30 The Chair noted that the DVD of the November 18, 2009 Planning
31 Board meeting is made a part of the approved minutes and is
32 available for public viewing at the Somers Public Library. The
33 approved minutes are also on the Town's website
34 www.somersny.com and are available for public review at the
35 Planning & Engineering office at the Town House.

36
37 **PROJECT REVIEW**

38
39 **FRANZESE WETLAND PERMIT APPLICATION**
40 **[TM: 17.12-2-36]**

1 *Mr. Knapp recused himself and did not participate in this application.*
2

3 Chairman DeLucia said that this is the project review of the
4 application of Jill R. Franzese and Maurice P. Franzese, III for a
5 wetland permit for property located at 37 Route 116, Purdys in an R-
6 40 Residential Zoning District amounting to 0.29 acres (lot size
7 55X205). The Chair noted that the property is situated on the north
8 side of Route 116 approximately 150 feet from the intersection of
9 Entrance Way West. She indicated that the applicants propose a
10 renovation and alteration of an existing two bedroom single family
11 residence and to realign an intermittent stream channel with
12 associated piping. The Chair noted that the applicant/sponsor is
13 Architect Joseph Paivia, R.A. She commented that the engineer on
14 this project is Donald R. Knapp who is a member of the Planning
15 Board and therefore will remove himself from participating. The Chair
16 said that the application was submitted on December 10, 2009.
17

18 Mr. Goldenberg recused himself from the application because he said
19 that he has to be impartial and it is difficult when a member of the
20 Planning Board is acting on behalf of the applicant.
21

22 Mr. Foley also recused himself because he opined it is difficult to sit
23 in judgment of an application when a fellow Board member is acting
24 as the applicant's engineer. He noted that he can be impartial about
25 the application but that is not the point. He said that there is a
26 fundamental problem with a Board member representing an applicant
27 before a Board which he is a member.
28

29 The Chair indicated that Mr. Knapp will not be making the
30 presentation and has recused himself and has left the room and will
31 not be part of any discussion. She asked Town Attorney Eriole how
32 this will effect this application.
33

34 Town Attorney Eriole said that there is no point blank obligation of
35 any member of this Board recusing themselves on an application. He
36 explained that if a Board member for any reason cannot be impartial
37 they should recuse themselves. He advised that it is appropriate for
38 Mr. Knapp to recuse himself on this application but no one else has to
39 recuse themselves.
40

1 Ms. Gerbino also said that she was uncomfortable when she became
2 aware that Mr. Knapp was the engineer on this project but she is also
3 aware of her right to sit on the Board because the applicant has a
4 right to be heard.

5
6 Ms. Gannon agreed with Ms. Gerbino and said that she feels it is not
7 a sound practice to have Board members in the employ of applicants
8 that are before the Board. She asked that this issue be addressed
9 with the Town Board to see if it is appropriate or not. Ms. Gannon
10 indicated that she can be impartial on the application and does not
11 have to recuse herself.

12
13 Town Attorney Eriole said that to give the Board comfort he explained
14 that it would be akin to a new Board member being put on the Board
15 having in the past represented an applicant whose application was
16 still pending. He agreed that there is an obligation to the applicant to
17 be heard. Town Attorney Eriole said that if a Board member can be
18 impartial there is no reason to recuse themselves. He noted that
19 addressing this as a policy issue is a different question. Town
20 Attorney Eriole said that if any member of the public raises this issue
21 as a concern that will have to be considered.

22
23 The Chair commented that there will be a Public Hearing and if
24 anyone from the public has any objection they can comment at the
25 Public Hearing.

26
27 Mr. Keane mentioned that a quorum of members must be present to
28 hear the application.

29
30 Town Attorney Eriole explained that the four remaining Board
31 members must be present when this application is before the Board.
32 He mentioned that there is a Code provision that prohibits a sitting
33 Board member from appearing before a Board. He indicated that the
34 word *appearance* in a legal context when it is applied to an attorney
35 means acting on behalf of. Town Attorney Eriole said that it is not
36 clear what the word *appearance* is meant to mean in all statutory
37 context. He advised that using the word *appear* meaning *make the*
38 *argument and presentation* then what transpired tonight complies with
39 the letter of the law. He advised that the issue should be looked at
40 more closely even under the current law as how this Town wants to

1 interpret the word *appear*. He said that this will not prejudice the
2 application from going forward only if Mr. Knapp's name can be on
3 the application.

4
5 Mr. Goldenberg asked that the word *appearance* instead of *appear*
6 and the appearance of impropriety be researched. He noted that
7 Case Law says the appearance of impropriety.

8
9 Town Attorney Eriole understands what Mr. Goldenberg requested
10 but he will research what it means to appear on behalf of an
11 applicant.

12
13 The Chair indicated that she requested that Mr. Knapp redo the
14 application and have the application be submitted by the architect.
15 She said that this was done in fairness to the applicant because he
16 would have to start all over with a new engineer.

17
18 The Chair acknowledged for the record receipt of the following: an
19 application for Environmental Permit, Short Form EAF and related
20 documents; first floor plan showing additions and alterations
21 approved by the Building Department on October 13, 2009;
22 Foundation Garage/Basement Plan of additions and alterations
23 showing Westchester County Department of Health with comment
24 "No objection to proposed addition/2BR remains, see Architect's
25 letter dated November 4, 2009" and signed on November 9, 2009;
26 and a memo to the Planning Board dated January 8, 2010 revised
27 January 11, 2010 with review comments from the Town Consulting
28 Engineer.

29
30 The Chair asked the applicant's representative to give a brief
31 presentation regarding this application for the benefit of the public.
32 Joseph Paivia, the applicant's architect, indicated that the property is
33 located at 37 Route 116. He noted that originally he was retained by
34 the applicant to do repair and renovations to the existing structure.
35 He said that the Building Department has reviewed the architectural
36 plans and Westchester County Health Department has granted
37 approval. He explained that the application complies with all the
38 regulations in regard to what is acceptable with renovations of this
39 nature. Architect Paivia said that the house predates the requirement
40 where the Health Department allows expansion of the residence.

1 The Chair noted that the house was built before 1930.

2

3 Architect Paivia mentioned the existing stream that runs through the
4 property comes within 10 inches of the foundation of the garage.

5 Architect Paivia noted that the proposal is to move the stream
6 approximately 9 to 11 feet. He explained that the reason moving the
7 stream is necessary is because the stream has created a negative
8 impact on the foundation whereby the hydrostatic pressure has taken
9 away soil from the foundation and what was a sound structure has
10 washed out the corner of the garage and now the garage is
11 structurally failing. Architect Paivia stated that the only way to fix the
12 problem is to reroute the stream in the manner that is proposed.

13

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

16

17 Town Consulting Engineer Barbagallo mentioned his memo last
18 revised January 17, 2010 and noted that the configuration shown on
19 the plans was worked out with the Engineering Department
20 previously, and that the submitted materials reflect the configuration
21 agreed to between the Town and the applicant. He requested that a
22 description of the project be put into the written record and the limit of
23 disturbance be provided so a final determination on the need for
24 potential permits can be made. Town Consulting Engineer
25 Barbagallo asked that construction level details be provided due to
26 the sensitivity to building in the stream. He said that it is important to
27 describe in detail the manner in which sediment during those
28 conditions will be evaluated and dependent upon the final evaluation
29 on the limit of disturbance will dictate whether a stormwater
30 management and erosion and sediment control permit will be
31 needed.

32

33 Architect Paivia asked if the project description relates to the project
34 in relation to the stream.

35

36 Town Consulting Engineer Barbagallo stated that the description
37 relates to the relocation of the stream under the wetland application
38 and he asked how erosion will be controlled and the transport down
39 stream be shown and the sequence of how it will be done. He
40 mentioned that due to the proximity to the reservoir he would like

1 confirmation from the NYS Department of Environmental Protection
2 (DEP) to determine any regulatory jurisdiction of the stream.

3
4 The Chair asked if there were any comments or questions from
5 members of the Board.

6
7 Mr. Keane asked what constitutes the applicant's mitigation in
8 reference to Section 167-9.B. of the Town Code when a stream or
9 wetland buffer is disturbed.

10
11 The Chair asked Mr. Franzese his occupation.

12
13 Maurice Franzese, the applicant, noted that he is a field engineer and
14 does mitigation work for Westchester County. He said that he has
15 not made a decision on wetland mitigation. Mr. Franzese said that he
16 incurred significant damage during Hurricane Floyd. He noted that
17 the retaining walls along the stream are old cinderblock. He
18 mentioned that there was a partial collapse on the corner of the
19 stream. Mr. Franzese noted that when the realignment was done on
20 Route 116 it increased the sheet flow coming down his driveway and
21 ends up in the stream. He explained that he is proposing to increase
22 the buffer to make it more environmentally sound. He said that the
23 perk area will allow the water to perk prior to entering the stream.

24
25 Mr. Keane stated that velocity in volume has to be dealt with.

26
27 Mr. Franzese said that Engineer Knapp made initial flow calculations
28 based on the stream with the pipe being at 18 inches but was
29 oversized to 30 inches.

30
31 Mr. Keane asked if the Department of Transportation (DOT) has been
32 contacted. He encouraged Mr. Franzese to contact them.

33
34 Mr. Franzese indicated that he is not hopeful that DOT will offer help.
35 He said that the only reason to relocate the stream is for preventative
36 maintenance. He said that he is ambivalent as to if it goes into a pipe
37 or not. He noted that he would like to remove the concrete that is
38 going over the stream but he was advised that he cannot touch half of
39 the concrete covering. Mr. Franzese said that his hope is to make
40 the house more environmentally responsible and to clean up the site.

1 He mentioned that the significant issue for him is the realignment of
2 the driveway because it is impractical not to have a turnaround in the
3 driveway. He stated that it is an unsafe situation backing out of the
4 driveway. Mr. Franzese indicated that his garage has to be rebuilt
5 and he would like to make his house more usable by enclosing the
6 front porch.

7
8 Mr. Keane said that a mitigation plan must be provided. Mr. Keane
9 asked if all the plans have been stamped and certified.

10
11 Town Consulting Engineer Barbagallo told the applicant to call him
12 and he will work with him.

13
14 The Chair directed that the applicant address the Town Consulting
15 Engineer's concerns, the Article 15 issues, provide a Mitigation Plan
16 and revised plans. She mentioned that after these directives have
17 been provided the application will be placed on the next available
18 agenda.

19
20 Town Consultant Engineer Barbagallo stated that he will issue an
21 Action Letter to the applicant.

22
23 **IERVOLINO STEEP SLOPES PERMIT**
24 **[TM: 27.17-1-21]**

25
26 Chairman DeLucia said that this is the project review of the
27 application of Christopher Iervolino for a steep slopes permit, who is
28 the owner of the property located at 9 Farese Way situated on the
29 east side of Farese Way and 650 feet from the intersection of
30 Watergate Drive for the construction at the rear of the property of a
31 20' X 40' in-ground swimming pool with retaining walls, walkway and
32 5' wide concrete stairs within the greater than 35% steep slopes area.
33 The Chair mentioned that the 2.816 acre property is in the R-80
34 Residential Zoning District. She noted that the applicant is
35 represented by William McGimpsey, P.E. of McGimpsey &
36 Associates, Mahopac, NY. The Chair explained that the application
37 is incomplete; however, she permitted it to be placed on the agenda
38 in order for the applicant to receive the Board's and staff's comments
39 for guidance prior to submitting a complete application.

40

1 The Chair acknowledged for the record receipt of the following:
2 application and short form environmental assessment form and
3 related documents received on November 18, 2009; a memo dated
4 December 17, 2009 from the Conservation Board with concerns and
5 recommendations and a memo to the Planning Board dated January
6 8, 2010 revised January 11, 2010 from Town Consulting Engineer
7 Joseph C. Barbagallo with review comments for the Board's
8 consideration.

9

10 The Chair asked the applicant's representative to give a presentation
11 on this application for the benefit of the public.

12

13 William McGimpsey, the applicant's engineer, noted that the plan is to
14 build an in-ground swimming pool at the back of the residence. He
15 mentioned that there is a 35% steep slope at the back of the property
16 which drops down towards Tomahawk Street. Engineer McGimpsey
17 indicated that he looked at several locations to construct the pool in
18 order to get the best mix for the property and minimize excavation to
19 balance the cut and fill. He indicated that there is a retaining wall that
20 runs along the back of the house which acts to hold back the entire
21 house. Engineer McGimpsey noted that excavation into the rock is a
22 concern. He explained that the pool is currently located 20-feet from
23 the retaining wall. He said that he provided cross-section in order to
24 show the relationship to the slopes.

25

26 Engineer McGimpsey noted that he met with the Engineering
27 Department several times for Town input to come up with a plan to
28 address concerns.

29

30 The Chair asked Town Engineering Consultant Joseph Barbagallo to
31 summarize his memo to the Board for the benefit of the public.

32

33 Town Engineering Consultant Barbagallo said that he has been filled
34 in on the details of the applicant's meeting with the Engineering
35 Department by Principal Engineering Technician Steve Woelfle. He
36 mentioned that he provided general comments as the application
37 relates to Chapter 148-8.C. and 93 of the Town Code that requires
38 additional items. Town Engineering Consultant Barbagallo said that
39 he realizes the application is not complete because the applicant just
40 wanted to appear before the Board to gauge a sense of the Planning

1 Board's concerns prior to submitting a complete application. He
2 mentioned that from a general perspective he is interested in the
3 regulatory status on the on-site spring and questions if that is deemed
4 to be a regulated water course by the DEP and he requested that a
5 wetland consultant review the water course. Town Engineering
6 Consultant Barbagallo also asked that the manner in which the pool
7 drawdown will occur during winterization be described. He explained
8 that after the site walk has occurred he will provide a more detailed
9 review and specific comments on the complete application. He said
10 that a Geotechnical Engineering Report has been submitted and will
11 require modifications.

12

13 The Chair mentioned the Soil Survey. Engineer McGimpsey said that
14 the soil will all be removed.

15

16 The Chair said that the Geotechnical Report mentions that more
17 precise determinations of groundwater levels would require the
18 installation of groundwater observation wells and water level readings
19 taken over an extended period of time. She asked how long it would
20 take to provide the water level readings. The Chair commented that
21 the report states that it is for design purposes only.

22

23 The Chair asked if there were any comments from members of the
24 Board as the applicant is asking for guidance.

25

26 Mr. Keane said that the issue is if the groundwater is impacting the
27 ability to form a foundation to keep the water in the pool in place.
28 He noted that stormwater discharging from the house and how it is
29 directed around and away from the pool and if the stormwater gets
30 infiltrated into the ground upslope above the house and percolates
31 down by the house and toward the pool how will that be dealt with.

32

33 Engineer McGimpsey said that he is proposing to put gravel
34 underneath the pool to allow the flow to go by natural methods to go
35 down the slope. He commented that Town Consulting Engineer
36 Barbagallo suggested piping but he will discuss that further with him.

37

38 Mr. Keane asked if the design is to direct flow away and around and
39 under the pool from upslope.

40

1 Town Consulting Engineer Barbagallo said that the reference was a
2 recommendation in the Geotech report for an under drain system for
3 groundwater control. He noted that the under drain system is not for
4 stormwater infiltration.

5
6 Mr. Keane said that the issue is how well the water drains from the
7 house elevation down through and past where the pool will be
8 located.

9
10 Town Consulting Engineer Barbagallo said that he requested under
11 Section 93-6 the requirement to provide a Stormwater Pollution
12 Prevention Plan (SWPPP). He noted that the SWPPP has not been
13 provided therefore there are no comments at this time.

14
15 Mr. Keane mentioned that the stormwater may have some effect on
16 the water table.

17
18 Town Consulting Engineer Barbagallo commented that the
19 application has not developed to that point in order to supply an
20 answer.

21
22 Mr. Keane opined that it has to be demonstrated that there will not be
23 any significant impact of both groundwater and stormwater from
24 above. He said that time may be needed to do testing for a plan to
25 deal with the issue. He mentioned that conceptually the plan to
26 construct the pool is feasible by making sure that it is done safely and
27 appropriate engineering factors have been employed.

28
29 The Chair noted as described in Town Consulting Engineer
30 Barbagallo's memo that the pool is located approximately 40-feet
31 from the existing house and relocating the pool closer to the existing
32 residence will reduce the disturbance to regulated steep slopes
33 and increase the separation to the on-site spring. She said that she
34 would like to see a plan showing the pool closer to the residence.

35
36 Engineer McGimpsey said his concern is getting too close because of
37 the rock excavation while maintaining safety and security. He
38 explained that his proposed location for the pool was decided in order
39 to minimize the impact to trees. He noted that the final location for
40 the pool should be the one that least impacts the trees.

1 The Chair mentioned that a Tree Preservation Permit application will
2 have to be submitted.

3

4 Ms. Gerbino asked how the rock will be excavated and Engineer
5 McGimpsey stated that has not been decided yet.

6

7 The Chair stated that the applicant's backyard is entirely in the steep
8 slopes area.

9

10 Town Consulting Engineer Barbagallo said that the final plan should
11 find the balance for structural stability and the plan that has the least
12 impact on the wetlands.

13

14 Mr. Keane asked about wetlands on the property and Town
15 Consulting Engineer Barbagallo said that he wants to know the
16 regulatory status of the on-site spring. He said that once the status of
17 the spring is determined it may trigger other requirements.

18

19 The Chair suggested a site walk be scheduled in March.

20

21 The Chair advised that when the Board is in receipt of all the
22 requested and required documents, and all of the outstanding issues
23 are adequately addressed to the satisfaction of the Town Engineering
24 Consultant, and the submission is complete then the application will
25 be placed on a future agenda.

26

27

28 **HOMELAND TOWERS, LLC/CINGULAR WIRELESS PC**

29 **SITE PLAN AND STEEP SLOPES APPLICATION**

30 **AMATO PROPERTY 121 ROUTE 100**

31 **[TM: 38.17-1-5]**

32

33 Chairman DeLucia noted that this is the project review of the
34 application of Homeland Towers, LLC/New Cingular Wireless PCS
35 LLC (AT&T) collectively referred to as the applicants, for Site Plan
36 and Steep Slopes Permit for property owned by Michael P. Amato
37 and Alice T. Amato located at 121 Route 100 for the installation of a
38 wireless telecommunications facility consisting of a 140 foot
39 monopole with antennas mounted thereon, with related equipment at
40 the base thereof in the R-80 Residential Zoning District and the

1 Westchester County Agricultural District. The Chair mentioned that
2 the application for Site Plan Approval was submitted on December 8,
3 2009. She explained that the Zoning Board of Appeals (ZBA) is Lead
4 Agency under SEQRA in a coordinated review with the Planning
5 Board. The Chair noted that Homeland Towers is presently before
6 the ZBA for a special exception use permit, height variances, rear
7 yard variance, and a side yard variance. She said that the applicants
8 are represented by Robert D. Gaudio, Esq. of Snyder & Snyder,
9 LLP for Homeland Towers and Neil Alexander, Esq. of Cuddy &
10 Feder, LLP for New Cingular.

11
12 The Chair acknowledged for the record receipt of the following: under
13 cover letter to the Planning Board from Snyder & Snyder, LLP dated
14 December 7, 2009 and received on December 8, 2009, an application
15 for site plan approval with related documents, under cover letter to
16 the ZBA from Snyder & Snyder, LLP, an application for special
17 exception use permit, height variance, rear and side yard variances
18 with related documents; a memo dated December 16, 2009 received
19 on January 11, 2010 from the Conservation Board with concerns and
20 recommendations; a letter to the ZBA dated December 30, 2009
21 received on January 4, 2010 from the NYC DEP by Marilyn
22 Shanahan, SEQRA Coordination Section with comments; a memo
23 dated January 11, 2010 from Town Consulting Engineer Joseph
24 Barbagallo with his project review and comments; and a memo dated
25 January 12, 2010 from Town Planner Hull with her project review and
26 numerous comments.

27
28 The Chair asked the applicant's representative to give a brief
29 presentation regarding this application.

30
31 Robert Gaudio, the applicant's attorney, said that the application is
32 for a public utility wireless facility. He noted that the application has
33 been filed with the Zoning Board of Appeals (ZBA) and is proceeding
34 on a coordinated SEQRA review. Attorney Gaudio indicated that
35 the application for Site Plan and Steep Slopes was filed on December
36 7, 2009 and he is before the Board for the first time on this
37 application. He said procedurally some important things are that the
38 proposal is for a 140-foot monopole tower; however, as part of the
39 process with the ZBA he showed visual renderings showing different
40 tower designs including a monopole design with all the antennas and

1 cables contained within the pole similar to what has been approved
2 on three prior applications. He said that a stealth tree design has
3 also been shown as an alternative. Attorney Gaudio mentioned
4 that balloon tests were performed and site walks have occurred. He
5 noted that the property is staked showing the facility which is
6 approximately 3,500 SF and is located in the back corner of the
7 property in order to take advantage of the screening and elevation
8 issues at the site. He indicated that if the Board feels it is necessary
9 to have another site walk he is willing to conduct the site walk.

10 Attorney Gaudio said that he received the Town Planner and Town
11 Consulting Engineers reports and he will respond to those reports.

12
13 The Chair asked Town Consulting Engineer Barbagallo to summarize
14 his memo to the Board for the benefit of the public.

15
16 Town Consulting Engineer Barbagallo said that in his memo dated
17 January 11, 2010 he identified documents that he reviewed and
18 noted that documents recently submitted on January 7, 2010 have
19 not been reviewed at this time. He mentioned that based on his
20 review there will be a requirement for a Stormwater Management and
21 Erosion Control Permit due to the magnitude of disturbance. He said
22 that the applicant should comply with the comments and
23 requirements from the Department of Environmental Protection (DEP)
24 stated in their letter to the Board dated December 30, 2009. Town
25 Consulting Engineer Barbagallo commented that while reviewing the
26 application he determined that the Planning Board should consider
27 requesting the applicant to prepare a Master Plan for the Town to
28 demonstrate the location of any anticipated cell towers throughout the
29 Town that are required to provide Town wide coverage. He said that
30 the Master Plan will serve to comply with the standards established in
31 the Code to minimize the total number of wireless and attached
32 wireless telecommunications facilities throughout the Town in order to
33 preserve the Town's natural resource and scenic beauty referenced
34 in Section 170-129.1. A. (3). Town Consultant Engineer Barbagallo
35 said that on a more specific basis he disagrees with the applicants
36 request for waiver from Site Plan requirements Section 144-7 D.(8).
37 He noted that the proposed facility will have an impact on the
38 stormwater runoff from the site and therefore, an analysis of the
39 storm loads to be accommodated by the proposed drainage system
40 are required, in addition to demonstrating compliance with Local

1 Stormwater Law. He mentioned that the Code points out that the
2 facility shall be at least 1 ½ times the height of such facility from all
3 property lines of adjoining parcels. He stated that a variance is being
4 sought in this regard. He asked that the applicant include all areas
5 proposed to be re-graded in the area of disturbance, including but not
6 limited to all disturbed areas associated with the proposed swale and
7 the basin. Town Consulting Engineer Barbagallo also requested the
8 erosion and sediment control map and that an inspection schedule for
9 the proposed basin be provided and after these items along with the
10 documents submitted on January 7, 2010 are reviewed he will have
11 additional comments.

12
13 Mr. Keane asked about the visual renderings of the alternatives.

14
15 Attorney Gaudioso said that the visual alternative renderings of the
16 monopole dated March 2009 were submitted to the Board on August
17 4, 2009.

18
19 The Chair asked Town Planner Sabrina Charney Hull, AICP, to
20 review her memo with comments to the Board for the benefit of the
21 public. She also mentioned that the applicants' representatives, staff
22 and the Board interject their comments as an open discussion while
23 Town Planner Hull is going over her memo.

24
25 Town Planner Hull said that the section, lot and block numbers
26 should be included on all of the drawings. She noted that in
27 reference to the specific waiver that the applicant requested she has
28 no objection to 144-7.A. (8) –Deed Restriction or covenants and
29 under 144-7.B. (7-9) the applicant indicates that there are no
30 archaeologically, historically sensitive lands or aquifers. She indicated
31 that there is a conflict with the information because the color
32 constraints map wetlands and steep slopes drawing includes a note
33 contrary to this fact. She mentioned that the EAF does not reflect the
34 note as indicated on the drawing and the applicant should clarify this
35 issue.

36
37 Attorney Gaudioso said that while it may appear in conflict both are
38 correct. He noted that the land is archaeologically sensitive but there
39 is no impact on archaeological sources. He indicated that a Phase I
40 Archaeological Study was submitted to NYS Office of Historic

1 Preservation and they provided a “no effect” letter. Attorney
2 Gaudioso stated that he will provide the Phase I Archaeological Study
3 for the record.

4
5 Town Planner Hull asked that the note clarify the statement.

6
7 Town Planner Hull indicted that the applicant requested a
8 Landscaping waiver but before that can be decided the Planning
9 Board should conduct a site walk to determine how the pole fits within
10 its current setting. She said that she has no objection to the lighting
11 waiver as no lighting is proposed. Town Planner Hull said that under
12 waiver 144-7.D. (8) stormwater calculations should be provided along
13 with a SWPPP.

14
15 Attorney Gaudioso stated that he has no objection to providing
16 engineering details once the location of the site is determined.

17
18 Town Planner Hull requested an updated boundary line survey of the
19 property. She asked that the applicant provide further justification
20 regarding the variances being sought, particularly the rear yard
21 variances for the facility and the equipment. She noted that given the
22 location of the property she questions why the applicant is asking for
23 the rear yard variance.

24
25 Attorney Gaudioso noted that he will make the variance argument to
26 the ZBA. He indicated that he submitted the legal reasoning why the
27 variance is being sought and will elaborate more on the reasons.
28 Town Planner Hull said that given the 14,201 SF of disturbance that
29 is proposed, the applicant is required to submit a stormwater pollution
30 prevention plan and erosion and sediment control plan. She
31 mentioned that the area is a high impact area and is a residential
32 zone. Town Planner Hull mentioned correspondence that states that
33 the tower cannot be located in a low impact area.

34
35 The Chair asked if there was information that the tower could not be
36 put on the Pepsi property.

37
38 Attorney Gaudioso stated that the tower cannot be placed on the
39 Pepsi property.

40

1 Town Planner Hull said that the applicant has provided coverage
2 mapping for the proposed wireless facility. She explained that
3 coverage maps have been included for various heights of the tower
4 (100', 120' and 140') at both 850MHz and 1900MHz. She
5 recommended that an existing coverage map without the proposed
6 tower be provided and then demonstrate the coverage that will occur
7 from site N-576, relating this coverage to the coverage that will occur
8 from proposed site N-575. She indicated that this will enable the
9 review of this application in relation to the cumulative impacts
10 received from several towers. Town Planner Hull agreed that a
11 Master Plan will be helpful to determine the need and the height the
12 towers should be.

13
14 Attorney Gaudioso said that the application package included the
15 existing coverage without the proposed tower. He stated that the
16 Town has hired a radio frequency consultant. He noted that the base
17 of the tower has been designed as per Code to allow for future co-
18 locaters. Attorney Gaudioso commented that the applicant is AT&T
19 and they have shown the existing coverage that they have in Town
20 based on the proposed site. He noted that the applicant cannot
21 speak for other carriers. Attorney Gaudioso stressed that drive test
22 data with AT&T licensed frequencies has been submitted to the
23 Town. He stated that these issues are being resolved under the
24 Special Exception Use Permit (SEUP).

25
26 Mr. Foley asked if other cell phone providers have gaps along the
27 same cell gap area as AT&T.

28
29 Attorney Gaudioso mentioned that he has a Verizon cell phone and
30 during the last balloon test he was stuck in the ice storm along the
31 corner of Route 35 and Van Rensselaer and there was no cell phone
32 coverage.

33
34 Ms. Gerbino said that the cell phone outage exists along the
35 Northway and the State addressed this issue by installing temporary
36 towers in the winter. She asked if there are alternatives to what is
37 being considered because the State has resolved the issue on the
38 Northway.

39
40 Attorney Gaudioso opined that he does not believe that installing

1 temporary towers has been resolved in an acceptable way. He
2 opined that the states option is not necessarily the environmentally
3 sensitive option. Attorney Gaudioso said that the
4 Telecommunications Act of 1996 was put in place to facilitate the
5 installation of wireless service facilities. He noted that this application
6 is specific to this site and not the Northway.

7
8 Mr. Goldenberg said that he is concerned that some of the
9 statements made by the applicant are in conflict with one another.
10 He referred to the statement that the Town does not have any
11 property that is not recreational and therefore the proposed property
12 was chosen because there is no alternative. He said that the Town
13 Supervisor made a statement that this is the case and speaking to
14 colleagues on the Board the Supervisor has denied this statement.

15
16 Attorney Gaudioso said if there are misunderstandings about property
17 that is available and if his company's reputation is going to be
18 impugned, the Supervisor should be brought in so she can state
19 which properties are available and he will analyze the properties.
20 Attorney Gaudioso noted that he waited through two Town Board
21 meetings to see if any Town properties would be available. He
22 mentioned that the ZBA raised the issue with the Town Board and the
23 ZBA consultant followed up to see if any Town properties would be
24 available. Attorney Gaudioso stressed if there is a Town property
25 available that is not encumbered by deed restrictions, please provide
26 the section, block and lot and address and he will analyze it in good
27 faith as has been done with every alternative site that any Board has
28 asked the applicant to look at.

29 Mr. Goldenberg said that Attorney Gaudioso is now on the record as
30 the Town Supervisor is on the record with her correspondence.

31
32 Mr. Goldenberg said a memorandum was sent that comes up with a
33 conclusion that *by the Planning Board granting Site Plan Approval*
34 *and a Steep Slope Permit that the Town will not only create a benefit*
35 *not only to AT&T but permitting it to comply with a statutory mandate*
36 *to provide seamless wireless service but also to the neighborhood by*
37 *providing emergency contact services and greater efficiency to local*
38 *businesses, residents and public service entity. Any potential impact*
39 *on the community created by the proposal is shown to be minimal*
40 *and no significance adverse effect.* Mr. Goldenberg asked where the

1 proof of this is and if test has been done to see if residents will have
 2 an advantage with AT&T proposal.

3
 4 Attorney Gaudioso stated that statement and conclusion is based on
 5 the record that has been submitted over the past year. He said that if
 6 the Board disagrees it can state its opinion and have a vote on the
 7 application. He commented that the Board should look through the
 8 record as there are documents on each issue.

9
 10 Mr. Goldenberg noted that the statement is saying that the advantage
 11 is more to the residents of Somers than to AT&T.

12
 13 Attorney Gaudioso stated that the criteria is not that the advantage is
 14 more for the residents than AT&T. He stressed that AT&T is a public
 15 service and helps during times of emergency. He stressed that
 16 everyday in the United States over 200,000 emergency 911 calls are
 17 made on cell phones. He noted that Congress is stating that this is a
 18 benefit and in December 2009 the President declared December
 19 2009 as critical infrastructure month and cell phone towers are critical
 20 infrastructures. He said that cell towers are a critical public service as
 21 defined by the Courts.

22
 23 Mr. Goldenberg asked what the distance is from the new cell tower
 24 that has been approved at the Town Centre and if this new tower can
 25 provide service for everybody.

26
 27 Attorney Gaudioso stated that documents have been provided
 28 showing information on this issue and the ZBA consultant is looking
 29 at these issues. He noted that AT&T already has a site closer which
 30 is across the street from the Mexican Shack.

31
 32 Mr. Keane said that he has an issue with the visual resource
 33 evaluation dated December 13, 2009. He noted that the conclusion
 34 in the document and just viewing the balloon is that there is no visual
 35 impact. He mentioned picture VP-6 dated May 5, 2009 that shows
 36 multiple pictures of a monopole or antenna array and a simulated tree
 37 which is shown at the intersection of Route 100 and Route 35. He
 38 mentioned that the monopole is shown with leaves on the trees. Mr.
 39 Keane explained that two evaluations were submitted and the visual
 40 resource analysis should be the same as the one dated December

1 13, 2009 so the Board can get a better sense of what the applicant is
2 trying to convey.

3
4 Attorney Gaudioso explained that the second visual analysis was
5 done just for the purpose of an expanded viewshed analysis. He
6 noted that the ZBA consultant in the past has asked for a one mile
7 view point analysis and then the ZBA consultant requested a 1.5 mile
8 view point analysis.

9
10 Mr. Keane asked that the pictures with the leaves off and leaves on
11 for the four monopoles be produced on the most recent photos
12 submitted with the Visual Resource Evaluations and clarify what is
13 meant by unobstructed and obstructed. He also would like each
14 picture where the balloon is visible and along Route 100 where it is
15 looking northwest toward the site and across the street from the 7
16 Eleven Store be shown with the leaf on and leaf off.

17
18 Attorney Gaudioso said that once there is feedback on the preferred
19 design he will have additional renderings prepared. He asked if the
20 Board has a preferred design so that the applicant can expand on
21 that design.

22
23 Town Planner Hull asked if what was learned with the Town Centre
24 application can be applied to this tower.

25
26 Mr. Keane said that one of the obligations of the applicant is to use
27 the best available technology for camouflaging the pole. He opined
28 that the stealth technology and the external antennae will not work in
29 the proposed setting. Mr. Keane recommended panoramic pictures
30 to visually depict the tower in its appropriate location as this will give
31 the Board a better idea. He said that an issue is how long the tower
32 will be visible along the north and south bound travel lanes to an
33 individual traveling on Route 100 and crossing over Route 35.
34 He stated that this information is needed in order for the Board to go
35 through the SEQRA process.

36
37 Attorney Gaudioso asked what the Board is talking about when it
38 asks how long the tower is visible; is it when a car is traveling 40
39 MPH in the back seat or front seat.

40

1 Mr. Keane said that is not what he meant. He noted that if the tower
2 stays in view for a reasonable period it should be dealt with
3 differently.

4

5 Mr. Foley asked if there was an offer to the Town to provide a master
6 plan design service at no cost to the Town.

7

8 Attorney Gaudioso stated that Homeland Towers made an offer a few
9 years ago to provide that service but it was not in conjunction with
10 this application.

11

12 Mr. Foley asked who was party to that communication.

13

14 Attorney Gaudioso said that Mr. Vincente and the Town Supervisor
15 were involved in the communication in reference to the master plan
16 design services.

17

18 The Chair asked if this was in writing or oral and Attorney Gaudioso
19 replied that it was in writing and orally.

20

21 Mr. Foley asked if the discussion with the Supervisor was in regard to
22 the Town's interest in having the tower placed on Town property.

23

24 Attorney Gaudioso said that there were two different discussions. He
25 indicated that one discussion was on Homeland Towers reviewing an
26 inventory of Town property and providing those services to the Town
27 at no cost and if it would be possible to place a Homeland Towers on
28 Town property pursuant to a lease agreement. He explained that
29 when he appeared before the Zoning Board Mr. Burke asked if the
30 applicant looked at the Angle Fly Preserve area. He stated that the
31 applicant had not looked at the Angle Fly area but if the Town was
32 interested the applicant would analyze the property for the tower.

33 Attorney Gaudioso said that the ZBA consultant would follow up with
34 the Supervisor and make that request. He said that it is his
35 understanding that the request for the tower located at the Angle Fly
36 Preserve was discussed at various Town meetings. Attorney
37 Gaudioso said that Mr. Vincente was told by the Supervisor that there
38 were deed restrictions on the property and when he asked if there
39 were other Town properties that would be feasible the Supervisor
40 said that she did not believe that there were other Town properties.

1 He said that he documented this to the ZBA to tell them that there
2 were no available Town owned properties. Attorney Gaudioso stated
3 that if there are any Town owned properties available he would be
4 happy to investigate both from a technical, leasing, construction and
5 zoning standpoint.

6
7 Mr. Foley asked if there is an offer of master plan design services
8 conducted free of cost at this time and Attorney Gaudioso replied that
9 offer is off the table.

10
11 Mr. Foley asked if it is Homeland Towers position that someone from
12 Town said that town owned property is off limits.

13
14 Attorney Gaudioso said that the affidavit that was submitted was clear
15 but he will not have a she said he said argument. He stressed that
16 cut to the chase if there is town owned property that is available it will
17 be investigated.

18
19 Mr. Foley said that he is interested in the accuracy of various
20 statements that the applicant testified to in an affidavit.

21
22 Attorney Gaudioso opined that the affidavit is accurate.

23
24 Mr. Foley said that the affidavit stated that *pursuant to my discussion*
25 *with the Supervisor the Town did not express any interest in moving*
26 *forward with Homeland Towers services or the use of municipal*
27 *property.* He commented that this tells him a conversation was held
28 with the Town Supervisor where she states that town owned
29 properties are off limits.

30
31 Attorney Gaudioso said that he will submit the prior submissions that
32 were sent to the Supervisor but they are not relative to this
33 application. He said what is relative is if there is an alternative site to
34 offer it and it will be investigated.

35
36 Mr. Foley stressed that the accuracy of the applicant's sworn
37 statement is relative to this application.

38
39 Attorney Gaudioso reiterated that he believes the affidavit is accurate.

40

1 Mr. Foley mentioned that the Department of Transportation (DOT)
2 has property on Route 100, south of Route 35, and he asked if there
3 was any inquiry in regard to this property.
4

5 Attorney Gaudioso stated that there were discussions in reference to
6 the property on Route 100 with the DOT and review is ongoing. He
7 commented that the initial investigation does not look like it will work
8 from a technical standpoint but all options will be further investigated.
9

10 Mr. Foley asked what was wrong with the property technically.
11

12 Attorney Gaudioso replied that the property may not be in the right
13 spot and does not propagate correctly but it will be further evaluated.
14 He noted that this site will not require rezoning which makes it an
15 interesting alternative.
16

17 Ms. Gerbino said that once a site is leased for a cell tower that owner
18 gets revenue. She opined that because of the condition of the State
19 she finds it hard to believe the State would turn down revenue.
20

21 Mr. Goldenberg said that a letter dated December 10, 2009 was sent
22 to the Supervisor from Mr. Vincente which says *that you also advise*
23 *that you do not believe that there is any available Town owned land*
24 *that was not parkland or preserve land in the vicinity for the two*
25 *locations for a potential site.* He asked if there was any response from
26 the Supervisor.
27

28 Attorney Gaudioso said that the only response he received was this
29 evening in a memo from the Supervisor and he felt that the applicant
30 did everything to try an elicit if there was any Town owned property
31 available. He stated that to be prudent the applicant submitted a
32 sworn affidavit to clarify the issue and sent a letter to the Supervisor
33 to confirm the discussion and there was no response from the
34 Supervisor until the memo this evening. Attorney Gaudioso stated
35 that this is not good communication for the applicant to find an
36 alternative site.
37

38 Mr. Goldenberg questioned why the applicant stopped looking for
39 alternative properties when the applicant knows what sites are good
40 for this proposal.

1 Attorney Gaudioso explained that the issue of The Preserve came up
2 when the ZBA said that they do not know if that location is a better
3 site or not. He mentioned that years ago the applicant approached
4 the Joint Water Works and they turned the applicant down and a few
5 years ago an offer was made to the Town to inventory the Town
6 property and that got no response. He noted that the Pepsi property
7 and the Billingsley property were researched. Attorney Gaudioso
8 mentioned that a balloon test was held at the Billingsley property.
9 He indicated that the applicant looked at County parkland such as
10 Ladson Park and that was not available. He commented that the
11 Code requires the lower impact location and that is the Pepsi
12 property. He said that the applicant has gone above and beyond the
13 Code for SEQRA purposes to look at numerous alternative locations.

14
15 Mr. Goldenberg opined that this has to be looked into because it is
16 hard to believe that a municipality is not interested in revenue.

17
18 Attorney Gaudioso explained that it is not clear cut because
19 municipalities have large operating budgets and the amount of
20 revenue is not as substantial as you may think. He noted that a
21 municipality may not be wrong for not offering a property as it may
22 have other interests in mind and may want to develop the area for
23 other purposes and the location may be in a sensitive area. He said
24 that if there was a property on Route 35 that was available he would
25 know about it and would have run the analysis. Attorney Gaudioso
26 said that if the affidavit is wrong provide the information on the
27 property that is available.

28
29 Mr. Foley suggested that a letter be sent to the Joint Water Works
30 and explain to them what is going on an elicit a response to use their
31 commercial like property.

32
33 Attorney Gaudioso indicated that the Joint Water Works has been
34 approached multiple times. He indicated that Sprint and Homeland
35 Towers were both denied by the Joint Water Works.

36
37 Ms. Gerbino said that she is concerned because the residents might
38 not be notified about the project as there is no property owner listed
39 on the notice.

40

1 Attorney Gaudioso stated that there is a sign on the property
2 referencing the application.

3

4 Attorney Gaudioso stressed that the affidavit was not meant to be
5 misleading but to document the record. He said that if his
6 understanding is wrong he will look at the property if it exists.

7

8 Mr. Foley indicated that he would like to see the DOT property and is
9 surprised that it is not a primary site. He said that he is concerned
10 that the Amato site seems to be the chosen site and has progressed
11 to the point that it is being seriously considered when better options
12 have not been ruled out yet.

13

14 Attorney Gaudioso said that there are two ways to look at this at this
15 stage and first is will they give us a lease and second is to provide a
16 plot off a map and run propagation models and that is being done.
17 He mentioned that the site cannot be studied from an engineering
18 standpoint because he cannot get on the property to study it.

19

20 Attorney Gaudioso explained that the Code has two priorities, one is
21 a lower impact and the other is a higher impact priority. He said that
22 the lower impact priority is the Corporate Research Office (CRO)
23 District and in this area it is essentially the Pepsi property and that
24 property has been reviewed for the better part of five (5) years. He
25 opined that under the Code the applicant looked at better options
26 such as the Billingsley property (did not meet the 80,000 SF lot size
27 requirement, or setbacks). He indicated that the Amato property has
28 good elevation and meets the 80,000 SF requirement and the 500
29 foot setback under the Code. Attorney Gaudioso stressed that if
30 there is a better alternative the applicant will continue to look up to
31 a point.

32

33 Mr. Keane said that from a SEQRA standpoint the existing
34 community or neighborhood character from a possible impairment
35 from an aesthetic perspective and the cumulative impacts should be
36 considered. He noted that all the other towers have to be reviewed
37 as well as to what is happening in Town from a community
38 perspective visually and from community character. He said that
39 Town Consulting Engineer Barbagallo and Town Planner Hull's

1 memos should be sent to the ZBA so they can incorporate them into
2 their consideration as Lead Agency.

3
4 Town Attorney Eriole advised that cell towers are a highly regulated
5 area of law and with the Board's permission he will submit comments
6 on these issues.

7
8 The Chair asked if the Master Plan will be provided to the Board and
9 Attorney Gaudioso said no he will not provide the Master Plan but will
10 submit the documents where the Master Plan services were offered
11 to the Town a few years ago. He stated that the Code does not
12 require that the applicant show future cell towers.

13
14 Mr. Keane said that what has to be incorporated into the cumulative
15 impacts is the Master Plan.

16
17 Ms. Gerbino said that Attorney Gaudioso stated that Route 35 is a
18 dead area and she asked what other areas are dead for cell phone
19 use.

20
21 Attorney Gaudioso said that maps have been submitted showing
22 AT&T's coverage and where AT&T does not have adequate
23 coverage.

24
25 Town Consulting Engineer Barbagallo stated that the Code
26 specifically requires that you minimize the number of towers across
27 Town. He asked how compliance will be demonstrated according to
28 that provision of the Code.

29
30 Attorney Gaudioso said that has been addressed by looking at the
31 maps and the portion of the Town that is not covered. He
32 commented that there is a site to the North across the street from the
33 Mexican Shack, sites to the west down Route 35 that provide
34 coverage to a point on Route 35 and coverage to the east towards
35 the Goldens Bridge area and sites to the south. He explained that
36 now you are left with an area up and down Route 100 and the Route
37 35 corridor. He said that there are two poles at reasonable heights
38 130 and 140 feet which cover that portion of the Town. He stressed
39 that if there is a tower at Baldwin Place that is not relevant to this
40 application. Attorney Gaudioso referred the Board to the case on the

1 Omnipoint Tarrytown decision. He said that if you want to minimize
2 the number of towers you have to increase the height of the towers
3 but the Code has a very restrictive height limitation.

4
5 Town Attorney Eriole said that because of this application being
6 before the Planning Board for the first time he will review what the
7 applicant has to comply with and resolve some of the issues.

8
9 Mr. Goldenberg asked if it is incumbent on the Board to provide
10 coverage for every cell company that has a dead zone without regard
11 for the number of cell towers.

12
13 Town Attorney Eriole said that in general there is an implication in the
14 Federal Legislation that says yes that the Board must provide
15 coverage to companies that have a dead zone. He advised that he
16 does not want to give the Board a quick answer but would like to
17 review the issues and report back to the Board.

18
19 Mr. Keane said that he would like Section 170-129, Section 171-14,
20 171-44, Section 167, 156 and 93 dealt with by the applicant.

21
22 Ms. Gannon said that the document referred to by Mr. Keane with the
23 leaf-off views was part of the January 8, 2010 package and the Board
24 did not have the benefit of the Town Consulting Engineer's comments
25 and she does not feel that this is a full and complete discussion. She
26 said that there is a memo addressed to Paul Marx, the ZBA
27 Chairman, from the Town Supervisor, in regard to a coordinated
28 review; *please consult the Planning Board regarding necessary*
29 *consultants and joint recommendation to the Town Board.* She
30 asked if this has been addressed what should the Board be looking at
31 in terms of consultants that may be needed to better evaluate the
32 site.

33
34 Ms. Gerbino asked if the Planning Board has to use the same
35 consultant as the ZBA.

36
37 Mr. Keane stated that the Planning Board has not addressed the
38 issue of a consultant to the Board.

39

1 Ms. Gerbino said that Town Planner Hull mentions the archaeological
 2 sites that are on this property. She noted that this site is listed as
 3 significant on the States list of archeological sites through the State of
 4 New York. Ms. Gerbino asked how this aspect should be addressed
 5 in terms of SEQRA.

6
 7 Attorney Gaudioso states that the State Historic Preservation Office
 8 (SHPO) pursuant to the National Preservation Act has reviewed the
 9 Phase I Archaeological Report and issued a letter stating that there is
 10 no effect. He said that the report studied the history of the area and
 11 the states records, performed field test and submitted the report to
 12 SHPO.

13
 14 Mr. Keane noted that the review is going toward defining SEQRA
 15 action and making a determination of significance and the Board
 16 needs the appropriate information to make these determinations
 17 under a coordinated review.

18
 19 Attorney Gaudioso mentioned No. 12 of Town Planner Hull’s memo,
 20 *The EAF, Part B Question 3 a, b, and c should be clarified. What will*
 21 *be done with the soil once it is removed?*

22
 23 Town Planner Hull said the question was answered when Attorney
 24 Gaudioso said that the soil will be removed from the site.

25
 26 Town Planner Hull said that there may be wetlands to the north and
 27 south that has been piped and a buffer to the north and this should be
 28 clarified. She noted that local wetland mapping depicts wetland and
 29 streams on this property and she asked where the 100-foot wetland
 30 buffer plays from the northern property onto this property.
 31 The Chair directed that the applicant respond to staff’s memos and
 32 the Board’s comments and staff provide an action letter to the
 33 applicant.

34
 35 **DECISION**

36
 37 **OPENGATE PARKING LOT EXTENSION**
 38 **[TM: 17.06-1-3]**
 39

1 Chairman DeLucia said that this is the Planning Board's decision on
 2 the application of Opengate for amended Site Plan approval to
 3 expand the existing 8 parking spaces to provide an additional 20
 4 spaces to be relocated and constructed of a porous asphalt
 5 pavement with associated drainage. She noted that the property is
 6 located at 28 Warren Street in the R-40 single family residential
 7 zoning district. The Chair explained that this application was last
 8 discussed at the December 9, 2009 meeting whereby the Board
 9 waived the public hearing due to the scale of the improvements on
 10 the development and use of the site and also waived the requirement
 11 for a tree survey due to the removal of a few trees. The Chair
 12 mentioned that the Board directed Town Planner Hull to prepare a
 13 draft of the EAF Part 2-Project Impacts and Their Magnitude which is
 14 the Planning Board's responsibility as Lead Agency, and has also
 15 prepared a draft Negative Declaration and draft Resolution of
 16 Approval for the Board's review, all of which Town Planner Hull has
 17 provided to the Board for their review and consideration this evening.

18
 19 The Chair asked Town Planner Hull if the Board had to go over Part 2
 20 and Town Planner Hull said that is up to the Board.

21
 22 The Chair said that it is the consensus of the Board that it is not
 23 necessary as they reviewed Part 2 and it does not rise to the level of
 24 significance under SEQRA.

25
 26 The Chair acknowledged for the record receipt of the following: a
 27 memo dated December 17, 2009 from the Bureau of Fire Prevention
 28 with no objections; a letter dated December 23, 2009 from the NYC
 29 Department of Environmental Protection (DEP) with two (2)
 30 comments; and a Notice of SEQRA Actions-Parking Lot Expansion at
 31 the Opengate Inc. Campus dated December 10, 2009 with an
 32 Unlisted Action determination under SEQRA as per Chapter 92 of the
 33 Code of the Town of Somers in conjunction with Article 24 of the NYS
 34 Environmental Conservation Law and circulated to the Interested
 35 Agencies with Part I of the Full Environmental Assessment Form
 36 dated December 1, 2009, a location map and a copy of the
 37 Preliminary Site Plan with 30 days notice. She noted that the 30 days
 38 have expired with no objections.

39

1 The Chair asked if there is a consensus that as Lead Agency, the
2 Board finds that sufficient information has been provided and
3 adequately addressed and that an Environmental Impact Statement
4 is not required, and that a Negative Declaration is warranted.

5
6 On motion by Ms. Gerbino, seconded by Mr. Goldenberg, and
7 unanimously carried, the Board moved that the Planning Board as
8 Lead Agency in the project review of the application of Opengate, Inc,
9 for conditional amended Site Plan Approval and Stormwater
10 Management and Erosion and Sediment Control for expansion of the
11 parking lot, and after discussion and evaluation of the Full EAF, has
12 determined that under SEQRA 617.7 (b) the proposed action will not
13 have a significant effect on the environment and therefore a draft
14 Environmental Impact Statement will not need to be prepared, that
15 the Board has considered the whole criteria for determining
16 significance, and that the prepared draft Negative Declaration is
17 hereby adopted and the file made available to the public, therefore
18 ending the SEQRA process.

19
20 The Chair said that Town Planner Hull has prepared draft Resolution
21 No. 2010-01 for the Board's review and approval.

22
23 The Chair explained that Town Planner Hull will begin with an open
24 discussion with members of the Board, Town Attorney, Town
25 Consulting Engineer and the applicant's representatives in reviewing
26 the draft Resolution.

27
28 The Chair asked the applicant's representative if he reviewed the
29 draft documents submitted by Town Planner Hull.

30
31 Barry Naderman, the applicant's engineer, said that he reviewed the
32 documents submitted by Town Planner Hull and had one concern on
33 the language of condition 9 of the Resolution. He said that the
34 condition reads: *That a stone bed incorporating a shoulder with*
35 *openings be provided in the event that the lot surface becomes*
36 *sealed or paved over.* He explained that he faxed former Town
37 Engineer Gagné a few options of what can be accomplished because
38 he does not like the concept of the curb having a two-foot wide stone
39 shoulder as the curb would have breaks in the corner of the parking
40 lot. Engineer Naderman showed the Board the options that he sent

1 to former Town Engineer Gagné. He requested that he discuss with
2 Town Consulting Engineer Barbagallo what he considers a better
3 solution.

4
5 Town Consulting Engineer Barbagallo said that he would like to
6 review the alternatives in more detail.

7
8 The Board directed the language on Condition 9 to read *That the*
9 *applicant work with the Town’s consulting Town Engineer to design*
10 *the curb detail in relation to the stone bed, to the satisfaction of the*
11 *consulting Town Engineer.*

12
13 The Chair indicated that there was a consensus of the Board to
14 approve Resolution No. 2010-01, as amended.

15
16 On motion by Mr. Knapp, seconded by Mr. Goldenberg, and
17 unanimously carried, the Board moved to approve Resolution No.
18 2010-01 granting Conditional Amended Site Plan Approval and
19 Stormwater Management and Erosion and Sediment Control Permit
20 for expansion of the Parking Lot to Opengate, Inc., as amended for
21 the Chairman’s signature.

22
23 **TIME-EXTENSION**

24
25 **ROSEMARY ZAPPI FINAL SUBDIVISION**
26 **[TM: 28.09-1-8]**

27
28 Chairman DeLucia explained that a request by letter dated December
29 3, 2009 from the applicant James Zappi for a second time-extension
30 of 90 days from January 20, 2010 to April 20, 2010 for the Rosemary
31 Zappi Final Subdivision Approval for property located at 9 Kniffen
32 Road in an R-80 Residential Zoning District. The Chair noted that the
33 applicant states that he has been working on the mortgage release
34 with the bank for the newly created lot and due to the poor economic
35 climate, banks are moving slowly.

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

39

1 On motion by Mr. Goldenberg, seconded by Ms. Gannon, and
2 unanimously carried, the Board moved to grant a second time-
3 extension of 90-days from January 20, 2010 to April 20, 2010 to the
4 applicant for the Rosemary Zappi Final Subdivision approval.

5
6 **REFERRAL**

7
8 **ROAD NAMES FOR THE ANGLE FLY PRESERVE**

9
10 Chairman DeLucia said that this is a referral from the Town Board by
11 Resolution unanimously adopted by the Town Board at a regular
12 meeting held on November 12, 2009 and dated November 13, 2009
13 for proposed road names per memo dated October 19, 2009 from the
14 Somers Land Trust as follows: Reynolds Road - roadway leading to
15 the condos, Tatham Lane-roadway leading to the Tatham House.

16
17 The Chair asked if staff or members of the Board have any other
18 name for the roadway or consent to the names so mentioned.

19
20 Town Planner Hull mentioned that the Fire Prevention Bureau
21 suggested that since the roads are dead ends, they really should not
22 be called a "Road" or a "Lane", but a Court.

23
24 On motion by Mr. Knapp, seconded by Mr. Keane, and unanimously
25 carried, the Board moved to send a memo to the Town Board that at
26 its January 13, 2010 meeting, the Planning Board, by unanimous
27 consent and with no objection by the Town Planner and Town
28 Consulting Engineer, recommends that the Town Board adopt the
29 two proposed names as mentioned in their Resolution dated
30 November 13, 2009.

31
32 There being no further business, on motion by Mr. Keane,
33 seconded by Ms. Gannon, and unanimously carried, the meeting
34 adjourned at 11:00 P.M.

35
36 Chairman DeLucia noted that the next meeting of the Planning Board
37 will be held on Wednesday, January 23, 2010 at 7:30 P. M. at the
38 Somers Town House.

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Respectfully submitted,

Marilyn Murphy
Planning Board Secretary

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