

1
2
3

4
5 **SOMERS PLANNING BOARD MINUTES**
6 **MARCH 24, 2010**
7

8
9 **ROLL:**

10
11 **PLANNING BOARD**

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

15
16 **ALSO PRESENT:** Town Planner Charney Hull
17 Town Consulting Engineer Barbagallo
18 Town Attorney Eriole
19 Planning Board Secretary Murphy

20
21 **ABSENT:** Ms. Gerbino

22
23 The Meeting commenced at 7:35 p.m. Planning Board Secretary
24 Marilyn Murphy called the roll. Chairman DeLucia stated that a
25 required quorum of four members of the Board were present and
26 called the meeting to order.

27
28 **PROJECT REVIEW**

29
30 **SOMERS REALTY PLANNED HAMLET FINAL**
31 **SUBDIVISION APPROVAL**

32 **[TM: 4.20-1-13, 14, 15 AND P/O 12]**

33 Chairman DeLucia said that this is the project review of the
34 application of Somers Realty Corp. for the Somers Realty Planned
35 Hamlet Subdivision for final subdivision approval. She noted that the
36 property is located on Route 6 adjacent to the Somers Commons
37 Shopping Center and Mahopac Avenue in the Planned Hamlet PH
38 Zoning District owned by applicant Somers Realty Corp. The Chair
39 explained that the applicant is represented by Linda B. Whitehead,
40 Esq., of the law firm of McCullough, Goldberger and Staudt, LLP.

1 She mentioned that this application was last discussed at the
2 December 9, 2009 Planning Board meeting whereby the Board
3 reviewed documents provided by the applicant and draft Resolution
4 No. 2009-18 Granting Conditional Preliminary Subdivision Approval
5 prepared by Town Planner Sabrina Charney Hull which the Board
6 approved, as amended. The Chair stated that this evening the Board
7 will review the application for final subdivision approval.

8
9 The Chair acknowledged for the record receipt of the following: a
10 letter dated March 4, 2010 and received on March 11, 2010 from the
11 NYC Department of Environmental Protection (NYCDEP) determining
12 that the application for approval of a Stormwater Pollution Prevention
13 Plan (SWPPP) is incomplete and requested additional information; a
14 letter dated and received on March 19, 2010 from Keane Coppelman
15 Engineers, P.C. responding to NYCDEP and enclosing improved
16 plans and revised SWPPP to obtain approval; a cover letter dated
17 and received on March 19, 2010 from Peter J. Gregory, P.E. of
18 Keane Coppelman Engineers, P.C. submitting the application for
19 Final Subdivision Plat Approval responding to the modifications and
20 conditions set forth in Resolution No. 2009-18 for Preliminary
21 Subdivision Plat Approval with supporting materials and plans for the
22 Board's review; a memo dated March 24, 2010 from William
23 Premuroso, Chief Fire Inspector, with a comment that the placement
24 for the two fire hydrants to be installed is acceptable to the Somers
25 Bureau of Fire Prevention; and a memo dated March 19, 2010 from
26 Town Planner Hull attaching a copy of Resolution No. 2009-18
27 conditionally granting Preliminary Approval subject to modifications
28 and conditions being fulfilled at the time of application for Final
29 Subdivision Plat Approval and for the Board's discussion this
30 evening.

31
32 The Chair asked Attorney Whitehead who is representing the
33 applicant to give a summary of this application for the benefit of the
34 Board and the public. She also requested that the applicant's
35 engineering consultant give a summary for the benefit of the Board
36 and the public. She said that if there were consultants who would like
37 to make a presentation to come forward and give their name and
38 designation. The Chair stated that there will be an open discussion
39 with Town Planner Hull and Board members and staff while the
40 presentations are being given.

1 Attorney Whitehead said that a letter was submitted to the Board with
2 the supporting documentation for Final Subdivision Approval based
3 upon Preliminary Subdivision Approval that was granted on
4 December 9, 2009. Attorney Whitehead mentioned that there have
5 been a number of meetings between the applicant's engineer, the
6 Town Consulting Engineer and the Town Planner. She stated that
7 most of the conditions of Preliminary approval have been satisfied but
8 there are a few items that will be finalized shortly. Attorney
9 Whitehead explained that the County Sewer District was just voted on
10 resulting in a lot of things that could not be accomplished until that
11 was finalized. She said that a Title Certificate will be submitted
12 shortly. Attorney Whitehead mentioned that the deed for the
13 proposed street has not been submitted because the Town does not
14 want to have the road dedicated until the loop road has been
15 completed. Attorney Whitehead explained that after meeting with the
16 Town Supervisor, Town Attorney and Town Planner it was decided
17 that for funding purposes the Town will have to take title to the road
18 now so she e-mailed the proposed deed to Town Planner Hull. She
19 noted that the plans have been modified in accordance with the
20 resolution and meetings with the Town Consulting Engineer and the
21 Plat is at the Department of Health waiting to be signed. Attorney
22 Whitehead said that the applicant's engineer will take the Board
23 through the conditions in the resolution.

24
25 Peter Gregory, the applicant's engineer, said that he will summarize
26 the outstanding conditions in the Preliminary Subdivision Resolution
27 No. 2009-18.

- 28
29 1. *That the Applicant shows the gas main on the drawings.*

30
31 Town Consulting Engineer Barbagallo asked how the gas will be
32 brought into the site to support the broader development and Lot 1.

33
34 Engineer Gregory explained that the approximate location of the gas
35 main is along the north side of Route 6 in the pavement section and
36 has been shown on the drawings and the location of the gas main
37 valve boxes has been determined by a field survey. Engineer
38 Gregory noted that the gas line location was determined from plans
39 prepared for the improvements to Somers Sewer District 1 Project.

1 He mentioned that he has been in touch with NYSEG and Con
2 Edison as far as bringing in the utilities and it was decided to bring
3 the gas and electric into the development via Route 6 on the south
4 side of the proposed roadway. Engineer Gregory commented that
5 the affordable housing complex will be responsible to bring the
6 individual connections from Route 6 to serve their property.

7
8 Town Planner Hull asked if the affordable housing complex will switch
9 in the future or will they maintain their individual connection.

10
11 Engineer Gregory said the affordable housing complex will maintain
12 their own individual connection.

13
14 Attorney Whitehead explained that the affordable housing complex
15 has the gas and electric right at their property line and they will
16 connect to it.

- 17
18 2. *Provide the road profile for the entire road "A" and show*
19 *utilities in profile and provide the existing Somers Commons*
20 *driveway profile to Route 6. The existing profile must clearly*
21 *identify the limits proposed under this application and include*
22 *the drainage system to the detention basin. The drainage*
23 *system design must identify those areas that will need to*
24 *connect to this leg of the system in the future and the*
25 *specific volume provisions that have been incorporated in*
26 *the stormwater detention and water quality design volumes*
27 *shown. The proposed detention basin outlet pipe must*
28 *discharge as depicted on the approved Master Plan and the*
29 *tributary basin it is part of noted.*

30
31 Engineer Gregory said that a road profile for the entire length of Road
32 "A" including proposed utilities has been prepared as well as a profile
33 of the existing Somers Common driveway to Route 6. Engineer
34 Gregory noted that the road profile prepared for Road "A" identifies
35 the limits of work proposed under this application. He explained that
36 a note indicating the extent of Phase I road construction has been
37 added to "Road A Profile". He mentioned that a drainage profile of
38 the storm drain between the cul-de-sac and the detention basin can
39 be found on "Road A and Drainage Profile". Engineer Gregory said
40 that the road plan and profile have been revised to indicate the future

1 stormwater connection points and their associated contributing flows.
2 He explained that the location of the detention basin outlet pipe has
3 been revised to be depicted on the approved Master Plan and a note
4 indicating that the basin is part of tributary basin "B1" has been added
5 to the "Road Construction Plan".

6
7 Town Consulting Engineer Barbagallo said that relative to Road "A"
8 that it be delineated to show which side is being done now and which
9 side will be done in the future and put it on the plat.

10
11 Engineer Gregory said that there are existing drainage and water
12 utilities that have been shown on the plat but he will put the drainage
13 and water utilities on the profile.

14
15 Mr. Goldenberg asked if there are any problems with State agencies
16 regarding this project.

17
18 Engineer Gregory indicated that the Department of Transportation
19 (DOT) coordinates with NYSEC and Con Edison on the utilities.

20
21 *3. Provide a clear written statement on the improvement plan*
22 *and/or the development table revised to show the future*
23 *tributary areas along with the percent impervious coverage to*
24 *be collected and treated for each basin proposed. For*
25 *example, provide additional information for the future parking lot*
26 *to the south of the main road. Identify the future status of*
27 *proposed basin, for example which lot and improvements will*
28 *this basin support under the future build scenario. This basin*
29 *shall be sized to accommodate the future tributary lot*
30 *improvements and so noted on the site plan in accordance to*
31 *the approved Master Plan.*

32
33 Engineer Gregory indicated that a Master Plan Conformance drawing
34 indicating areas of impervious coverage with their associated tributary
35 basins has been prepared and is being submitted for review. He
36 noted that the purpose of the plan is to demonstrate conformance
37 with the approved Master Plan with respect to location and sizing of
38 the stormwater treatment facility. Engineer Gregory mentioned that a
39 development table has been provided allocating impervious cover by
40 design point contributing area. Engineer Gregory said that a note has

1 been added indicating that the stormwater wet pond has been
2 designed, along with future bio-retention and infiltration practices, to
3 accommodate the future tributary lot improvements associated with
4 the development within watershed B1, which is represented on the
5 Master Plan Conformance drawing. He said that in addition, a note
6 indicating that prior to any further subdivision of Lot 2, the owner shall
7 provide the Town of Somers with an updated stormwater analysis
8 based upon modifications to the applicable regulations which may
9 require resizing of stormwater basins and/or reductions in impervious
10 surface, and shall amend the Somers Realty Planned Hamlet Master
11 Plan, if necessary, has been added to the subdivision plat. Engineer
12 Gregory noted that The Mews will be addressing their own
13 stormwater that is being generated on their site. He explained that
14 the Somers Planned Hamlet applicant will be addressing the
15 stormwater that is being generated by the new roadway in watershed
16 "B" which will be conveyed and treated in a stormwater wet pond
17 labeled as basin B1.

18
19 Mr. Keane said that what was agreed upon is to keep track of the
20 individual sub-developments to the Master Plan ensuring that it never
21 exceeds the calculations done for the overall Master Plan. He
22 commented that in the interim the DEC has come out with new
23 compliance targets and design calculations that change things as the
24 Master Plan was done with the old criteria.

25
26 Engineer Gregory said that the calculations meet the new criteria and
27 further subdivision will have to reevaluate the watershed to make
28 sure of compliance.

29
30 Attorney Whitehead explained that the regulations may require
31 additional area for stormwater. She said that when the next phase is
32 contemplated it will be re-looked at.

33
34 Attorney Whitehead said that the DEP does not understand SEQRA
35 as their only issue now is a SEQRA issue and the note which has
36 been added to the revised plans should address their concern. She
37 noted that a meeting has been scheduled with the DEP attorneys to
38 help them understand the Master Plan and how it relates to SEQRA.
39 Town Consulting Engineer Barbagallo said that he reviewed the
40 sweeps in the Green area (Lot 1) on the map as well as the drainage

1 to support the temporary road in accordance with Chapter 10 and he
2 is comfortable with the proposal. He said that it is Note 3 on the Plat.

3
4 Mr. Goldenberg asked if things change in the next few years will it
5 disturb the Master Plan.

6
7 Town Planner Hull explained that the note on the plat indicates that
8 stormwater will be re-visited if changes affect the Master Plan. She
9 noted that the concern is the mixed use development and that you do
10 not squeeze one use over another and lose the nature of the
11 intended zone.

12
13 Attorney Whitehead advised that the change in the Master Plan will
14 be if the users are inconsistent to what was approved in the Master
15 Plan.

16
17 Town Consulting Engineer Barbagallo suggested that the percentage
18 of impervious coverage that will be installed be placed on the
19 Development Chart.

- 20
21 4. *That a note is added on the improvement plan that*
22 *identifies the existing Somers Commons driveway which*
23 *is intended to be dedicated to the Town of Somers and*
24 *that specific elements do not conform to the design*
25 *standards and as such a waiver to such standards will be*
26 *required. The adjustment of the road to properly sit inside*
27 *the ROW shall be considered.*

28
29 Engineer Gregory said that a note identifying the existing Somers
30 Commons driveway to be dedicated to the Town of Somers has been
31 added to the "Road Construction Plan". He noted that the note also
32 indicates two specific elements which do not conform to Town design
33 standards, namely minimum length of vertical curve and maximum
34 permissible grade within 60' of the intersection and that a waiver to
35 such standards will be required. Engineer Gregory mentioned that in
36 order that the road properly sits inside the R.O.W. the westerly
37 R.O.W. property line has been adjusted to allow for the installation of
38 a sidewalk and shoulder area. Engineer Gregory said that a portion
39 of the existing traffic island located at the driveway entrance will be
40 relocated outside the Town R.O.W.

1 Town Consulting Engineer Barbagallo said that the removal of the
2 curb is not shown on the plat and that has to be done to make the
3 plat consistent.

4

5 5 *That the final subdivision plat shows all of the existing*
6 *stonewalls on the property.*

7

8 Engineer Gregory said that the surveyor has provided the locations of
9 the existing stonewalls on the final plat provided herewith.

10

11 6. *That the Applicant obtains Town Board approval for the*
12 *roadway name.*

13

14 Engineer Gregory mentioned that the applicant has obtained Town
15 Board approval for the roadway name, "Clayton Boulevard." He
16 noted that the approval was granted on March 11, 2010 and he has
17 been advised the Resolution is in the process of being prepared and
18 he will provide a copy as soon as it has been received.

19

20 7. *That the standard subdivision plat notes, including*
21 *references to the Planned Hamlet Master Plan*
22 *Maintenance Agreements, Health Department approval*
23 *Block, name of water and sewer districts serving the lots,*
24 *are included on the plan as part of the final submission.*

25

26 Engineer Gregory explained that the standard plat notes, including
27 references to the Planned Hamlet Master Plan Maintenance
28 Agreement, Health Department approval block, and the name of
29 water and sewer districts serving the lots have been included on the
30 plat for final application.

31

32 8. *Add language pertaining to "part of lot 12" to the list of*
33 *Town tax information posted on the drawings.*

34

35 Engineer Gregory said that the language pertaining to "part of lot 12"
36 has been added to the list of Town tax information posted on the
37 drawings.

38

39 9. *That the lot #1 area discrepancy between the two*
40 *drawings sheets be corrected.*

1 Engineer Gregory noted that the lot #1 area discrepancy has been
 2 corrected.

3
 4
 5
 6
 7
 8
 9

- 10. *The sidewalk is currently depicted as ending at the ROW line which will create a maintenance problem in the future. The ROW shall be increased to accommodate the utilities and sidewalks for maintenance purposes, to the satisfaction of the Town Engineer.*

10 Engineer Gregory commented that in order to properly address the
 11 maintenance concerns regarding the sidewalks, the pavement width
 12 and island width have been modified. He explained that by reducing
 13 the pavement and island width, a 5'-0" separation distance between
 14 the R.O.W. line and the edge of sidewalk is maintained. He noted
 15 that a utility trench is no longer proposed as part of this application.
 16 Engineer Gregory said that the R.O.W. width remains unchanged and
 17 in conformance with the approved Master Plan. He mentioned that
 18 an issue that was just brought to his attention is that the sidewalk is
 19 very close to the R.O.W. line and he will review it to make sure that
 20 the sidewalk is not too close to the property.

21
 22
 23
 24
 25

- 11. *Revise the road cross section to show where the water hydrant, gas main, electrical and cable conduits will be installed.*

26 Engineer Gregory explained that the road cross sections have been
 27 updated to indicate where the fire hydrant, sewer, and water mains
 28 will be installed and are on the detail sheets.

29
 30
 31
 32
 33
 34

- 12. *Obtain review and approval by the Water Superintendent and the Bureau of Fire Prevention for the hydrant placement with respect to the street curb and the sidewalk.*

35 Engineer Gregory noted that the Improvement plans have been
 36 submitted to both the Water Superintendent and the Bureau of Fire
 37 Prevention on March 18, 2010 for the review and approval of hydrant
 38 placement with respect to the street curb and sidewalks.

39

1 Attorney Whitehead mentioned that a memo was submitted by the
2 Bureau of Fire Protection dated March 24, 2010 saying that the
3 placement for the two fire hydrants to be installed is acceptable. She
4 mentioned that the Water Superintendent has given a verbal approval
5 but that has to be in writing.

- 6
7 *13. A note should be added to the plat indicating that the*
8 *pump station lot will be dedicated to the sewer district*
9 *after the pump station is completed.*

10
11 Engineer Gregory said that a note indicating that the pump station will
12 be dedicated to the sewer district has been added to the plat.

- 13
14 *14. The plans must demonstrate a transition pavement*
15 *section in relation to areas where on street parking will*
16 *not occur and the typical road section label should be*
17 *corrected.*

18
19 Engineer Gregory noted that in areas where on street parking will not
20 occur has been revised to reflect a transition pavement section and
21 the typical roadway section has been updated to reflect the revised
22 width and is labeled correctly. He indicated that a 30' wide pavement
23 section is now being shown. He mentioned that the lanes have been
24 reduced from 16" on both sides of the medium to 15'.

- 25
26 *15. Include a line of bollards at the edge of the temporary*
27 *cul-de-sac pavement.*

28
29 Engineer Gregory mentioned that a temporary timber guide rail has
30 been proposed at the edge of the temporary cul-de-sac in lieu of
31 bollards.

- 32
33 *16. Submission of written evidence of having obtained*
34 *approval by the Westchester County Department of*
35 *Health for the realty subdivision and sewer and water*
36 *main extensions.*

37
38 Engineer Gregory said that the Improvement Plan along with a copy
39 of the final plat has been resubmitted to the Westchester County
40 Health Department and all their comments have been addressed. He

1 noted that he expects that the final plat will be approved and signed
2 by the Health Department shortly.

- 3
4 *17. That the applicant demonstrates acceptance of the*
5 *subject property into the Peekskill Hollow Sewer District*
6 *from the Westchester County Board of Legislators.*
7

8 Attorney Whitehead said that she is proud to report that last Monday
9 the Westchester Board of Legislators approved the acceptance of the
10 subject property into the Peekskill Sanitary Sewer District. She noted
11 that she provided the Board of Legislators website indicating the
12 approval. She explained that the Health Department could not
13 approve the plans until the application was taken into the sewer
14 district.

15
16 Ms. Gannon asked about the water tank or a partial in-ground tank
17 built into a berm, as it is written that the applicant with in-put from the
18 Town Engineer has agreed to provide an on-site reserve water
19 storage system until such time as a water main loop or above ground
20 storage tank is provided...

21
22 Attorney Whitehead explained that what was agreed to is that the
23 declaration will be recorded after the subdivision map is filed so it will
24 not impact the affordable housing site. She advised that the tank will
25 have to be provided before any further residential development takes
26 place.

- 27
28 *18. Submission of written evidence of having obtained*
29 *approval by the Westchester County Department of*
30 *Environmental Facilities for the sewer main connection.*
31

32 Attorney Whitehead noted that a Department of Environmental
33 Facilities report recommending the sewer main extension has been
34 submitted.

- 35
36 *19. That the Applicant demonstrates NYCDEP approval for*
37 *the water district extension and the sewer district*
38 *extension as may be necessary.*
39

1 Attorney Whitehead said that the applicant is in the process of
 2 confirming exactly what approvals, if any, are necessary from
 3 NYCDEP for the district extensions and will promptly make an
 4 application if determined necessary. She noted that Engineer
 5 Gregory spoke to the DEP and no approval is necessary for the water
 6 district extension but the sewer district extension, which really is the
 7 main extension, the DEP is not sure if any approvals are necessary.
 8 She explained that The Mews will need a permit from the DEP for the
 9 actual sewer connection.

10
 11 *20. That the Applicant obtains coverage under the NYSDEC*
 12 *General Permit No. GP-0-08-001.*

13
 14 Attorney Whitehead indicated that the Notice of Intent is prepared but
 15 will not be sent until the plans are finalized by the Planning Board,
 16 Town Consulting Engineer and the DEP.

17
 18 *21. That the Applicant pays the Town of Somers Stormwater*
 19 *Management and Erosion and Sediment Control Permit*
 20 *Fee.*

21
 22 Attorney Whitehead stated that the Stormwater Management and
 23 Erosion and Sediment Control Permit fee has been paid.

24
 25 *22. That the Applicant demonstrates approval from the*
 26 *NYCDEP for the Stormwater Pollution Prevention Plan*
 27 *(SWPPP).*

28 Attorney Whitehead said that the Improvement Plan along with a
 29 revised SWPPP have been resubmitted to the NYCDEP in order to
 30 obtain approval for the stormwater plan. She noted that the DEP has
 31 indicated that they do not have a problem with the SWPPP but are
 32 struggling with a SEQRA issue which she hopes to resolve shortly.

33
 34 Attorney Whitehead advised that most items in the Preliminary
 35 Subdivision Resolution have been satisfied with a few minor revisions
 36 on the plans and Health Department and DEP approvals.

37
 38 Mr. Goldenberg asked where does the Planning Board go from here.

39

1 Attorney Whitehead said that procedurally the applicant will need
2 Final Subdivision Approval from the Planning Board. She noted that
3 the Planning Board is not required to hold a Public Hearing on Final
4 Subdivision Approval nor does Town Code require a Public Hearing.
5 She explained that the Planning Board can grant Conditional Final
6 Subdivision Approval which means that the Chair cannot sign the Plat
7 until all conditions are met.

8
9 The Chair said that she is concerned about the DEP.

10
11 The Chair asked if there were any comments or questions from the
12 Board members.

13
14 Town Attorney Eriole advised that he agrees with Attorney
15 Whitehead's statement that a Public Hearing is not required for Final
16 Subdivision Approval and that the Board has discretion on whether to
17 hold a Public Hearing. He said that the Board can authorize the
18 preparation of a Conditional Resolution of Approval.

19
20 Mr. Keane asked for a summary of the items that are outstanding.

21
22 Attorney Whitehead summarized the items that have to be completed
23 that came out of the discussion this evening:

- 24
25 3. Provide the road profile. Applicant agreed to distinguish the
26 road to be installed now and in the future and identify utilities
27 in the common drive.
28 4. The Applicant will add percentage of impervious coverage to
29 the development table.
30 5. Applicant has agreed to relocate a portion of the existing
31 traffic island at the driveway entrance outside the Town
32 R.O.W. and that it is represented on the Plat prior to
33 approval.
34 6. Resolution from Town Board to be provided.
35 10. Applicant shall adjust road to center between R.O.W. so
36 that clearance is provided on both the North and South side
37 of the road and demonstrate that the reduction in pavement
38 width will not have an adverse impact on turning into the site.
39 12. Written approval from the Water Superintendent.
40 16. Approval by Westchester County Health Department.

1 Town Engineering Consultant Barbagallo continued with items in
 2 relation to the Health Department, the Town has to sign the
 3 application form and he has to prepare the letter on roads and
 4 drainage.

- 5
- 6 19. Confirmation from the DEP on whether any approval is
- 7 needed and if it is to obtain the approval.
- 8 20. Notice of Intent to be sent when the signoffs are in place.
- 9 Will be the last piece to be provided.
- 10 22. DEP Approval.

11

12 The Chair explained that the Board can waive the Public Hearing for
 13 the following reasons according to Section 150-13F. (2) & (3). She
 14 noted that under (2) ...The Planning Board deems the final
 15 subdivision plat to be in substantial agreement with the preliminary
 16 subdivision plat...the Planning Board shall waive the requirement for
 17 such public hearing and under (3) If...submitted more than six
 18 months preliminary approval was granted on December 9, 2009,
 19 therefore, it does not apply; final subdivision application was
 20 submitted on March 19, 2010.

21

22 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and
 23 unanimously carried, the Board moved to waive the Public Hearing
 24 on the application of Somers Realty Corp. for Somers Realty Planned
 25 Hamlet Subdivision in accordance with Somers Town Code Section
 26 150-13F. (2).

27 The Chair directed Town Planner Hull to prepare a draft Conditional
 28 Final Subdivision Resolution of Approval for the April 14, 2010
 29 Planning Board meeting.

30

31 **REFERRAL**

32

33 **PROPOSED CODE CHANGES SECTION 150-16 AND**
 34 **A174 SECTION III**

35

36 Chairman DeLucia said that a referral from the Town Board by
 37 Resolution dated February 12, 2010 unanimously adopted by the
 38 Town Board at its Regular meeting held on February 11, 2010 on the
 39 proposed code changes, namely, Section 150-16 and A174 Section

1 III- Performance Bond Reduction and Return to the Planning Board
2 and Engineering Consultant for the Board's review and comment.

3
4 Town Planner Hull explained that discussions were held with the
5 Town Supervisor, Town Attorney, Principal Engineering Technician
6 and Planning Board members on the need to change the Code of the
7 Town of Somers in relation to language specified for performance
8 bond reduction and return (Section 150-16 and A174 Section III).

9 Town Planner Hull noted that as a result of the meeting she sent a
10 memo to the Town Board requesting change to the language in the
11 performance bond reduction and return. She noted that she
12 submitted a tracked change version of the existing code language for
13 the Board's review and comment.

14
15 Town Planner Hull said that under A174 it says to *Report to the*
16 *Planning Board from the Town Board with recommendation to*
17 *release performance bond if accepted. Public hearing by the*
18 *Planning Board to reduce the performance bond by 90%.* She
19 explained that this is the process in the Code but was not necessarily
20 being used. She said that the recommendation is to remove those
21 conditions from the Code. Town Planner Hull indicated that the Code
22 states that *acceptance of documents by the Planning Board* should
23 be changed to the *Town Board*. She noted that there has been
24 confusion if the Planning Board releases the performance bond by
25 making recommendation to the Town Board. Town Planner Hull
26 stated that these recommendations will streamline the procedure.

27
28 Mr. Keane said that language was never discussed at the meeting
29 and the end result is inconsistent with what was discussed at the
30 meeting. He opined that several people in the meeting
31 misunderstood what the meeting was all about.

32 Mr. Keane asked who called the meeting on the changes to the Town
33 Code and Town Planner Hull said that the meeting was called by the
34 Principal Engineering Technician.

35
36 Mr. Keane said that the underlying aspect is that the Town Engineer
37 did not follow Town Code for twenty years. He commented that all
38 that had to happen is that the Town Code be followed thus this
39 discussion would not have happened. He opined that the changes
40 suggested by Town Planner Hull further confuse the procedure. Mr.

1 Keane mentioned that the Town Supervisor wanted to change the
2 amount of time that the bond is in place. He explained that the
3 process says that the applicant has to provide a list of what is
4 complete and a letter stating why the applicant wants to reduce the
5 bond and the amount it should be reduced by. He explained that the
6 Engineer goes out and verifies that the work has been properly
7 completed and if so, the Planning Board makes a recommendation to
8 the Town Board who decides whether or not to reduce the bond.

9
10 Mr. Keane stated that there are two things; one is the reduction of the
11 bond and the other is the return of the bond. He explained that the
12 bond release happens once it has been reduced to 10% and that is
13 the domain of the Town Board.

14
15 Town Planner Hull explained that A174 related to the road
16 acceptance procedure and in discussion with the Town Attorney and
17 Principal Engineering Technician the changes she mentioned were
18 what was recommended. She said that the Town Board is asking for
19 the Planning Board to comment and if the Board wants the Code to
20 stay the same she will state that to the Town Board.

21
22 Town Planner Hull noted that Section 150-16 and A174 Section III
23 relate to the extension of the bond period and the reduction of the
24 bond and also relates to improvements and performance bond or
25 filing of bond.

26
27 Town Attorney Eriole advised that some of the concerns should be
28 distinguished from some of the potential changes. He said that there
29 is some ambiguity between performance bonds and maintenance
30 bonds. He explained that you cannot take a performance bond and
31 reduce it and call it a performance bond, it should be called a
32 maintenance bond. He noted that changes to the Code will clarify the
33 procedure.

34
35 Mr. Goldenberg said that now there is a distinction between a
36 maintenance bond and a performance bond. He mentioned that
37 since he has been on the Planning Board he never saw a
38 maintenance bond. He opined that maintenance should not be a
39 bond but a contract between the Town and the participant. Mr.
40 Goldenberg said that he feels that if the performance bond is

1 satisfied, then the Board makes the recommendation to the Town
2 Board.

3
4 Town Planner Hull explained that the Town received legal advice that
5 a performance bond should be separated from a maintenance bond.
6 She noted that presently the performance bond is used as a
7 maintenance bond as well. She noted that the Town Attorney
8 advised that the Town should protect itself by separating the
9 performance bond and maintenance bond. She noted that a
10 maintenance bond is new to the Town and legally the Town will be
11 more protected if it uses two separate bonds.

12
13 Town Attorney Eriole explained that a maintenance bond is an
14 additional layer of protection for the Town.

15
16 Mr. Foley said that there comes a time when the work is finished and
17 there is agreement that the work has been performed and the
18 performance bond is released. He explained that the law now says
19 that is the end of the protection but with the addition of a maintenance
20 bond there will be an additional level of protection.

21
22 Town Attorney Eriole noted that the addition of a maintenance bond
23 will be explained to the developer so he is aware of it before his
24 project starts.

25
26 Mr. Keane said that he has several concerns as it relates to the
27 maintenance bond. He explained that security is provided in the form
28 of a performance bond (i.e., letter of credit, passbook, check). He
29 noted the a performance bond is a promise to perform the acts that
30 are necessary, for example, build a road according to a criteria that
31 has to be fulfilled to make sure that the road was built properly. He
32 said that what the Board is talking about at the end of the project is
33 the release of the security, not the bond. Mr. Keane commented that
34 he is trying to understand that in no event shall a bond be reduced to
35 less than twenty-five percent (25%) of its original face value and at
36 the same time a maintenance bond for ten percent (10%) is posted.

37
38 Mr. Foley said that the bond will go from a reduction of 25% to zero
39 and at that time a maintenance bond is posted.

40

1 Mr. Keane asked if the Town Board will take over when the bond is
2 reduced to 25%.

3

4 Mr. Foley opined that when a bond is reduced to 25% it becomes a
5 Town Board matter because the next step is to extinguish the bond in
6 its entirety.

7

8 Mr. Keane opined that it is not clear what the next step should be,
9 whether it should be the Planning Board or the Town Board after the
10 bond is reduced to 25%. He said that the Planning Board decides if
11 the information is substantive enough and the activities that are
12 performed are complete, and if so, then the Planning Board
13 recommends to the Town Board to release the bond.

14

15 Mr. Keane explained that the process should be that you start out
16 with an X amount and after a request is made in writing with a list of
17 everything that has been done with the dollar amount values, a
18 physical inspection is conducted and if everything is satisfactory to
19 the Town Engineer a Public Hearing is held and a recommendation is
20 made to the Town Board to reduce the bond. He opined that after
21 this point it is not clear what is supposed to happen.

22

23 Town Planner Hull stressed that what Mr. Keane just said is not the
24 process in the Town Code.

25

26 Town Attorney Eriole explained that when 10% is left of the
27 performance bond it may not be enough protection for the Town.

28

29 Mr. Keane said that the process has to demonstrate what the
30 Planning Board has to do and when the Planning Board does not
31 have to be involved. He noted that if during the period of three years,
32 which is being suggested, nothing goes wrong that should be the
33 domain of the Town Board. He mentioned that during this time an
34 inspection has to be made to make sure that nothing went wrong.

35

36 Town Attorney Eriole explained that when a performance bond is
37 reduced to 25% of its original value that is the lowest the Town wants
38 to go for its own protection and the next step is for the developer to
39 complete everything and have the bond released.

40

1 Town Planner Hull said that the process is that the applicant will
2 come to the Planning Board requesting the release of the entire bond
3 (remaining 25%) and then the Planning Board makes a
4 recommendation to the Town Board that the release should occur
5 and then recommends a maintenance bond be established.

6

7 Town Planner Hull stated that the existing process is unclear.

8

9 Mr. Foley proposed that maintenance bonds be automatic after the
10 performance bond is lifted and all requests to reduce or return the
11 bond be submitted in writing to the Planning Board and then the
12 Planning Board makes a recommendation to the Town Board.

13

14 Town Planner Hull asked who should hold the Public Hearing, the
15 Town Board or the Planning Board.

16

17 Mr. Keane explained that originally there is a bond for 100% and then
18 incremental changes take place and according to Code the Planning
19 Board holds a Public Hearing and makes a recommendation to the
20 Town Board on the reduction or release of the bond. He noted that
21 the Town Board releases or reduces the bond.

22

23 Town Planner Hull said that in the Town Code under G. reduction of
24 bond is not the policy Mr. Keane just described but is the policy the
25 Planning Board has been following.

26 Mr. Keane said that it is unclear who administers the 25% threshold.
27 He opined that when a bond reaches the 25% threshold the Board
28 reviews it and then makes a recommendation to the Town Board to
29 release the performance bond and establish a maintenance bond.

30

31 Town Attorney Eriole said if the Planning Board wants to see the
32 applications, hold the Public Hearing and make the recommendation
33 to the Town Board, the Code has to be changed. He noted that an
34 applicant that requests a release of bond reduction comes to the
35 Planning Board; the Planning Board acquires all the data and
36 necessary information, holds a Public Hearing and after the close of
37 the Public Hearing makes a recommendation to the Town Board.

38

39 The Board directed the Town Attorney to review the Code and
40 include the addition of a maintenance bond.

1 The Chair said that the maintenance bonds refer to the roads and
2 after one year it was not sufficient protection.

3

4 Mr. Keane said that the written process before the recommended
5 changes was not being followed.

6

7 Town Planner Hull reminded the Board that the referral is from the
8 Town Board to review the changes suggested in her memo dated
9 February 2, 2010. She said that she would like to send a memo to
10 the Town Board saying that the Town Attorney will be reviewing the
11 Code to clarify the process. Town Planner Hull said that the Town
12 Board should know that there will be further changes based on the
13 discussion this evening.

14

15 Mr. Goldenberg asked how a performance bond amount is
16 determined.

17

18 Town Consulting Engineer Barbagallo explained that the developer
19 proposes an estimate which is reviewed by the Engineering
20 Department.

21

22 Mr. Keane said that Town Law 277 is clear about differentiating the
23 difference between a performance bond from security.

24

25 Ms. Gannon said that if the Board is going to discuss maintenance
26 and performance bond, Section R150 incorporates a definition of a
27 maintenance bond.

28

29 The Chair asked Town Consulting Engineer Barbagallo if three years
30 is enough for the maintenance bond to be in effect.

31

32 Town Consulting Engineer Barbagallo said that the three years for
33 the maintenance bond is enough but he asked the Town Attorney to
34 investigate if a surety company will issue a three year maintenance
35 bond.

36

37 Mr. Keane said that the maintenance bond can be issued by a Letter
38 of Credit or cash and does not have to be issued from a surety
39 company. He stressed that the promise (performance bond) has to
40 be differentiated from financial security.

1 Mr. Foley asked that it be clarified that the bond reduction does not
2 apply to maintenance bonds.

3

4 The Chair asked that the check list be changed and be part of the
5 Town Attorney's review.

6

7 **DISCUSSION**

8

9 Chairman DeLucia said that this is a discussion by the Planning
10 Board on a draft certification of disclosure of interest.

11

12 Town Planner Hull referred to her memo dated February 8, 2010
13 which was written pursuant to e-mail discussions of various Planning
14 Board members. She noted that she provided a certification in
15 relation to Section 809 of General Municipal Law. Town Planner Hull
16 indicated that if the Planning Board determines that Planning and
17 Engineering applications should include such a certification, this
18 information can be forwarded to the Town Board and Town Attorney
19 for their review and determination.

20

21 Town Planner Hull mentioned that a Board member said that Section
22 809 says nothing about applicants and town employees/board
23 members being parties to an agreement whereby the
24 employee/board member may receive a benefit if the application is
25 approved. She said that the Board will have to amend the section if
26 this is what the Planning Board wants.

27

28 Mr. Foley explained that Section 809 is law and it is clear what it
29 requires and any deviation from that to be more inclusive or less
30 inclusive is a mistake. He said that it requires a discreet amount of
31 disclosure and the task should be to create a form that closely mimics
32 Section 809 of General Municipal Law.

33

34 Town Planner Hull opined that Section 809 is probably not what the
35 Planning Board wants addressed. She said that the Board may want
36 to go further and add when a member of a Board is doing work for an
37 applicant and receives compensation for that work.

38

39 Town Attorney Eriole said that a Disclosure of Interest acts as a gate
40 keeper.

1 Mr. Foley explained that the statute defines what an interest is and if
2 an applicant is related to any employee of the Town that disclosure
3 has to be made. He stated that the Board has to fashion a form that
4 complies with Section 809 of the General Municipal Law.

5
6 Town Attorney Eriole said that if you draft that form and it mimics
7 Section 809 it will not ferret out the problem that brought about this
8 discussion.

9
10 Town Planner Hull explained that the reason the disclosure of interest
11 was generated was by an incident that occurred and the Planning
12 Board wanted something to assure them that any relationship
13 between an employer and employee does not involve a Board
14 member or employee of the Town. Town Planner Hull indicated that
15 changes will have to be made in order to make Section 809
16 applicable to the law. She stressed that the question is can a
17 disclosure such as the Board wants be legally created.

18
19 Mr. Keane questioned if the Board is an enforcement body and asked
20 what can the Board do if the certification is in the affirmative.

21
22 The Chair noted that the Ethics Code describes clearly what is
23 meant.

24
25 Ms. Gannon said that she e-mailed the Board a copy of the
26 McKinney's forms which restates the statute of Section 809. She
27 suggested that the Town Attorney review the Section of the Law as
28 she feels it is not an appropriate use of the Town Planner's time.

29
30 The Board directed Town Attorney Eriole to draft a Certification of
31 Disclosure of Interest and combined reference to General Municipal
32 Law Section 809 for the Board's review.

33
34 There being no further business, on motion by Ms. Gannon,
35 seconded by Mr. Keane, and unanimously carried, the meeting
36 adjourned at 9:45 P. M.

37
38 Chairman DeLucia noted that the next meeting of the Planning Board
39 will be held on Wednesday, April 14, 2010 at 7:30 P. M. at the
40 Somers Town House.

1
2
3
4
5
6

Respectfully submitted,

Marilyn Murphy
Planning Board Secretary