

Telephone  
(914) 277-5366

FAX  
(914) 277-4093

PLANNING DEPARTMENT

TOWN HOUSE  
335 ROUTE 202  
SOMERS, NY 10589

Town of Somers

WESTCHESTER COUNTY, N.Y.

Fedora DeLucia, Chairman  
John Currie  
Christopher Foley  
Vicky Gannon  
Nancy Gerbino  
Eugene Goldenberg  
John Keane



**SOMERS PLANNING BOARD MINUTES  
MAY 11, 2011**

**ROLL:**

**PLANNING BOARD**

**MEMBERS PRESENT:**

Chairman DeLucia, Ms. Gerbino,  
Mr. Goldenberg, Mr. Foley, Ms. Gannon  
and Mr. Currie

**ABSENT:**

Mr. Keane and Consulting Town Engineer  
Barbagallo

**ALSO PRESENT:**

Town Planner Sabrina Charney Hull  
Town Attorney Joseph Eriole  
Planning Board Secretary Murphy

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

Mr. Goldenberg asked as a point of order if there is an error in the minutes in relation to a point of law can the minutes be changed.

Mr. Foley stated that the minutes have to reflect what actually occurred even if what occurred was erroneous and the correction can be made at a subsequent meeting when a statement is made.

The Chair indicated that the Town Attorney will review the issue.

**APPROVAL OF APRIL 13, 2011 MINUTES**

Chairman DeLucia noted that Planning Board Secretary Marilyn Murphy prepared and submitted for the Board's consideration the approval of the draft minutes of the Planning Board meeting held on April 13, 2011 consisting of twenty-one (21) pages.

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

The Chair asked if there was a motion to approve the April 13, 2011 draft minutes.

On motion by Ms. Gannon, seconded by Ms. Gerbino, and unanimously carried, the minutes of April 13, 2011 were approved.

The Chair noted that the DVD of the April 13, 2011 Planning Board meeting is made a part of the approved minutes and is available for public viewing at the Somers Public Library. The text of the approved minutes are also on the Town's website [www.somersny.com](http://www.somersny.com) and is available for public review at the Planning & Engineering office at the Town House.

**PUBLIC HEARING**

**METROPCS NEW YORK, LLC  
AMENDED SITE PLAN, WETLAND PERMIT, STORMWATER  
MANAGEMENT AND EROSION AND SEDIMENT CONTROL,  
SPECIAL EXCEPTION USE PERMIT FOR THE GROUNDWATER  
PROTECTION OVERLAY DISTRICT  
[TM: 17.15-1-13]**

Chairman DeLucia mentioned that this is the Public Hearing on the application of MetroPCS New York, LLC under Somers Town Code Wireless Ordinance Section 170-129 for Amended Site Plan Approval, Wetland and Stormwater Management and Erosion and Sediment Control Permits and Special Exception Use Permit for activity in the Groundwater Protection Overlay District to co-locate a wireless telecommunications facility on the existing 103' tall stealth flagpole with associated unmanned equipment to be located at grade within an expansion of the existing fenced

compound. The Chair noted that the existing tower is located at the Somers Towne Centre property, 325 Route 100 in the Neighborhood Shopping (NS) Zoning District. She explained that MetroPCS has entered into a Communications Site Lease Agreement with Urstadt Biddle Properties, Inc., the owner of the property, and with T-Mobile Northeast, LLC, owner of the existing tower. The Chair indicated that the applicant is represented by Anthony B. Gioffre III of the law firm Cuddy & Feder LLP of White Plains, New York and Scott M. Chasse P.E. of the engineering firm All Points Technology Corp. of Killingworth, Connecticut. She said that this application was last discussed at the April 13, 2011 Planning Board meeting whereby the Board moved to schedule a Public Hearing for this evening, directed the applicant to submit revised drawings by April 21, 2011, and at the request of Town Planner Hull submit a revised Zoning Conformance Table for clarification which should be consistent with the plans.

The Chair acknowledged for the record receipt of the following: a cover letter dated April 19, 2011 received April 20, 2011 by Cuddy & Feder, LLP submitting revised plans and other materials dated April 19, 2011 with responses to staff's memoranda, and then submitting on May 10, 2011 plans last revised May 10, 2011; a letter dated and received on April 27, 2011 from the Bureau of Fire Prevention commenting that they reviewed the plans at their April 11, 2011 meeting and have no objections; an executed affidavit of posting at the property on April 26, 2011; a memo dated May 6, 2011 received May 9, 2011 from the Conservation Board with five (5) concerns and recommendations and a memo dated May 6, 2011 superseded May 10, 2011 from Consulting Town Engineer Joseph C. Barbagallo, P.E., BCEE, that all of the outstanding items have been addressed and commented that he has no objection to closing the Public Hearing. She said that in a telephone conversation with Mr. Barbagallo today, he said that in his memo under item number 5, the May 10, 2011 Plans direct all flow from the impervious surfaces into the gravel compound area and the gravel compound thickness is sufficient to accommodate all increases in stormwater runoff volume. The Chair noted that Consultant Town Engineer Barbagallo feels that the applicant has addressed and provided mitigation for disturbance occurring inside the wetland buffer and if the Planning Board would like to include additional wetland mitigation as a condition, he has no objection.

The Chair commented that a memo dated May 9, 2011 superseded May 11, 2011 from Town Planner Sabrina Charney Hull, AICP said that all issues have been addressed and commenting that the applicant wished to obtain approval from Urstadt Biddle on the moving and/or relocation of the landscape plantings and is including this as a condition of final approval and has no objection to closing the Public Hearing.

The Chair asked the applicant's representative to give a brief presentation on the recent submission.

Anthony Morando, the applicant's attorney, said that MetroPCS is proposing to install its antennas within the existing flagpole facility located at the Somers Towne Centre.

Scott Chasse, the applicant's engineer, stated that the revised plans dated May 10, 2011 reflect the recent changes from the Consultant Town Engineer and Town Planner. He mentioned that the setback distances have been clarified from the proposed and existing, the bulk table has been modified to clarify the sideyard setback, the stormwater retention has changed by increasing the depth of the gravel to an 18" bed around the perimeter of the proposed equipment slab and the calculations have been provided demonstrating that the void space has the capacity to retain the additional flow.

The Chair asked Planning Board Secretary Murphy if prior to the Public Hearing, was the legal notice published, the adjoining property owners notified, and the property posted.

Planning Board Secretary Murphy stated that the legal notice was published in the Journal News on May 1, 2011, the adjoining property owners were notified via mail on May 1, 2011 and the sign stating the date, time and place of the Public Hearing was posted on April 26, 2011.

The Chair asked if anyone was present who wished to be heard regarding this application and no one responded.

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

Planning Board Secretary Murphy said that there was no communication

regarding this application.

Chairman DeLucia said that the record shows that no one present wished to be heard and no other communication has been received in objection to the proposal.

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

Mr. Goldenberg mentioned the letter dated May 10, 2011 Town Planner Hull sent to the Building Inspector in reference to Omnipoint Communications in relation to a violation and asked if this affects this application.

Town Planner Hull explained that the Building Inspector has not reviewed the issue yet but he will investigate the situation. She opined that the previous applicant may have to go back to the Zoning Board of Appeals for a revised variance. Town Planner Hull indicated that this is a construction error.

The Chair said that there is a consensus of the Board to close the Public Hearing, grant the applicant's request and direct Town Planner Hull to prepare a conditional resolution of approval for the Chairman's signature.

On motion by Mr. Goldenberg, seconded by Mr. Currie, and unanimously carried, the Board moved to close the Public Hearing on the application of MetroPCS New York, LLC, and direct Town Planner Hull to prepare a conditional Resolution of Approval for the Chairman's signature.

(End of Agenda Item)

## **DISCUSSION OF FEBRUARY 23, 2011 MINUTES**

Mr. Goldenberg asked Town Attorney Eriole if a Board member makes a mistake in relation to a law in the minutes how can this be addressed. He explained that the mistake was made during the review of the Heritage Hills Sewage Treatment Plant application which was approved. He said that the minutes of February 23, 2011 include a statement made by the Chairman: *The Chair noted that if there is an objection at the Public Hearing the application cannot proceed under the Abbreviated Approval*

*Process.* Mr. Goldenberg stated that he reviewed the Code and did not find this to be the rule or law.

Mr. Goldenberg said that there was an objection from the public at the Public Hearing.

Town Attorney Eriole said that there is no hard and fast rule that if someone makes an objection during the Pubic Hearing that the application cannot proceed.

Mr. Foley explained that the statement was translated correctly in the minutes but the statement that was made was incorrect; however, the minutes from the past cannot be changed.

Town Planner Hull indicated that the Chair made a statement that if somebody objects then the Abbreviated Approval Process cannot be followed. She said that Mr. Goldenberg is trying to have this corrected as he did not find this rationale in the law.

Town Planner Hull read from the minutes of February 23, 2011 as it relates to the process, *The Chair noted that if there is an objection at the Public Hearing the application cannot proceed under the Abbreviated Approval Process.* She explained that in the Town Code under the Abbreviated Approval Process there is explicit information as to when to move from Abbreviated Approval to Preliminary and Final Approval and it is not based upon an objection at the Public Hearing.

Mr. Goldenberg said that he would like the Board to go on record that the Chair's statement is incorrect.

The Chair read a statement from Town Attorney Eriole from the February 23, 2011 minutes; *It appears that the subdivision will leave two lots that are conforming under the Code. He said that with the created lot something may be done with that asset. Town Attorney Eriole said that his concern is if this application meets the standards for the Abbreviated Approval Process. He explained that one standard is that the Planning Board finds no conflict with the public interest including possible future subdivision of the property.*

Town Attorney Eriole said that the procedure is that the minutes are what the minutes are and they have been transcribed accurately. He noted that the question is “can clarification be made as part of this discussion.” Town Attorney Eriole opined that the Board should take into consideration during the review if there is public interest in changing the application from the Abbreviated Approval process. Town Attorney Eriole said that in the spirit of the Chairman’s comments if there is an objection from a member of the public the Board may want to rethink the approval process.

The Chair commented that during a Public Hearing on a lot line change Mr. Lieto advised the Board that the access to the property line was not correct and that meant that the Abbreviated Approval Process could not be used.

Ms. Gerbino noted that the example the Chair referred to is that Mr. Lieto had information about an easement therefore the Abbreviated Approval Process could not move forward.

Town Attorney Eriole said that if the Chair’s statement in reference to the Abbreviated Approval Process was read by the public and that any objection as a matter of law would stop the process would be an incorrect interpretation.

The Chair said that there are three (3) members of the Planning Board that are residents of Heritage Hills and those members should disclose that they are residents of Heritage Hills.

The Chair noted that Attorney Whitehead mentioned that Mr. Goldenberg as a resident of Heritage Hills could be in conflict with the application. She commented that she should have asked Town Attorney Eriole if Mr. Goldenberg should have sat in the audience as a resident when making his comments.

Mr. Goldenberg said that he is offended by the Chair’s remark as there are three members of Heritage Hills on this Board and he is the only one singled out.

Town Attorney Eriole stated that it is a conclusion of law that a conflict of interest is decided on a case by case basis. He agreed with the Chair that members of the Board who live in Heritage Hills should disclose their residency when reviewing applications relating to Heritage Hills. He

explained that disclosure allows the applicant and the public to consider if they have any objections. Town Attorney Eriole advised that some conflicts are clear but when the conflict is not financial but is a neighborly interest, the fact that you have those connections does not necessarily mean that you have to recuse yourself.

There being no further business, on motion by Ms. Gannon, seconded by Ms. Gerbino, and unanimously carried, the meeting adjourned at 8:20 P.M. and the Chair noted that the next Planning Board meeting will be held on Wednesday, May 25, 2011 at 7:30 P. M. at the Somers Town House.

Respectfully submitted,

Marilyn Murphy  
Planning Board Secretary