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PLANNING DEPARTMENT

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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 25, 2011**

ROLL:

PLANNING BOARD

MEMBERS PRESENT:

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

ABSENT:

Mr. Keane

ALSO PRESENT:

Town Planner Sabrina Charney Hull
Consulting Town Engineer Barbagallo
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.

APPROVAL OF APRIL 27, 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 27, 2011 consisting of twenty-four (24) 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 27, 2011 draft minutes.

On motion by Ms. Gerbino, seconded by Mr. Currie, (Mr. Goldenberg voting nay) and carried, the minutes of April 27, 2011 were approved.

The Chair noted that the DVD of the April 27, 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 and is available for public review at the Planning & Engineering office at the Town House.

TIME-EXTENSION

SUSAN HAFT/RIDGEVIEW DESIGNER BUILDERS, INC. FINAL CONSERVATION SUBDIVISION APPROVAL [TM: 16.12-1-41 & 42]

Chairman DeLucia noted that this a request by letter dated May 6, 2011 received on May 17, 2011 by Geraldine N. Tortorella, Esq. of the law firm Hocherman Tortorella & Wekstein, LLP for the Board's consideration of a second 90-day time-extension from May 26, 2011 to and including August 24, 2011 of the Conditional Final Conservation Subdivision Approval granted on August 25, 2010 to Susan F. Haft and Ridgeview Designer Builders, Inc. for property located on the east side of Lovell Street north of Benjamin Green Lane. The Chair explained that Attorney Tortorella's request is made due to the fact that given current economic conditions the applicant does not anticipate being prepared to file the plat in the near future or to undertake payment of funds and/or posting of security. A history of the project from the filing of the application in July 2001 through the Final Approval process in August 2010 is stated in the request letter and in particular that "... a substantial investment they reasonably made which they seek to protect with this extension request." The Chair explained that she does not feel that Attorney Tortorella had to appear tonight due to her explanation of the State and Town Code and the economy issue as reasonable requests for the second time-extension.

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

Mr. Foley said that this is the second time-extension request which is the last extension permitted under Town Code. He stressed that the Code as it currently exists permits two extension requests for 90 days and when the Code is changed the Board can treat the time-extension differently.

Town Planner Hull explained that there is a change in the Town Code being reviewed by the Town Board to make it more consistent with the State Code. She explained that the State government passed a ruling which removed the number of time-extensions that can be granted primarily due to the economy. She said that change has been made at the State level and Somers Town Code will be changed to match the State regulations.

The Chair said that there was a consensus of the Board to grant a second 90-day time-extension.

On motion by Ms. Gannon, seconded by Mr. Currie, and unanimously carried, the Board moved to grant a second 90-day time-extension of the Conditional Final Conservation Subdivision Approval to Susan F. Haft and Ridgeview Designer Builders, Inc. from May 26, 2011 to and including August 24, 2011.

PUBLIC HEARING

ROUTE 100 REALTY, LLC SUSSMANN MOBIL STATION APPLICATION FOR AMENDED SITE PLAN, WETLAND, STEEP SLOPES PERMIT AND 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 Route 100 Realty, LLC for amended Site Plan Approval, Wetland and Steep Slopes Permits, Groundwater Protection Overlay District Special Exception Use Permit and Stormwater Management and Erosion and Sediment Control Permit for the proposed alteration and expansion of an existing 880 square foot convenience store to 3,363

square feet, a reconfiguration of the existing and additional parking spaces at a total of 17 spaces and a new stormwater management basin. The Chair said that the property is located at the Mobil Gasoline Service Station, 291 NYS Route 100 on a .8660 acre in the Neighborhood Shopping Zoning District and Groundwater Protection Overlay District. She noted that according to Building Inspector Efrem Citarella's April 25, 2011 memo to applicant's representative Timothy S. Allen, P.E. of Bibbo Associates, it is his opinion that the expansion of the retail use only is allowed with the issuance of a Groundwater Protection Overlay District Permit by the Planning Board. The Chair mentioned that a significant portion of the site is located within a 100-foot wetland buffer which includes an adjacent pond and stream that drains directly to the Muscoot Reservoir. She indicated that the applicants are represented by Architect Roy Van Lent of Van Lent Architects and Planners and Engineer Timothy S. Allen, P.E. of Bibbo Associates LLP.

The Chair noted that this application was last discussed at the April 27, 2011 Planning Board meeting whereby at that meeting the Public Hearing was scheduled for this evening's meeting; she stated that the applicant was requested to make best efforts to use the Standard Practices Permit requirements contained in Chapter 9 sections of the NYS Stormwater Design Manual, and if applicant cannot comply with the standard practices permit requirements to provide a discussion and rationale. The Chair said that the applicant agreed to respond to the NYCDEP's May 27, 2010 letter, submit revised plans and other documents, and address the staff's comments to outstanding issues and the Board's comments.

The Chair acknowledged for the record receipt of the following: a letter dated May 12, 2011 received May 13, 2011 from applicant's representative Timothy S. Allen, P.E. of Bibbo Associates responding to staff's memoranda and the Board's comments, submitting Amended Site Plan drawings last revised May 12, 2011, attaching a response letter dated September 14, 2010 to the NYCDEP's May 27, 2010 letter, an application for Activity within a Groundwater Protection Overlay District, SWPPP last revised May 6, 2011, and Aquifer Impact Assessment (AIA) dated May 12, 2011; a memo dated and received May 11, 2011 from the Bureau of Fire Prevention with comments regarding the container capacity, distance to the road and building; a letter dated May 11, 2011 received on May 16, 2011 from Delroy Taylor, P.E., Associate Engineer, WCHD Bureau of Environmental Quality, to Hydro Environmental Solutions, Inc., attaching a

copy of Approval of Plans for Public Water Supply Improvement for the installation of one chlorine disinfection system; a letter dated May 16, 2011 received May 17, 2011 from Pat Gigliotti, owner of Gigliotti Enterprises, Inc. of Yorktown Heights, an adjoining property owner, expressing concern for the tenants and clients of Mill Pond and requesting that a fence be installed to stop people from parking in the Mill Pond Right-of-Way and walking over to the gas station and also a fence on the restaurant side of the gas station property to deter people from parking in the restaurant parking lot, both creating a liability issue for Gigliotti Enterprises, Inc.; a letter dated May 23, 2011 received on May 24, 2011 from Theresa VanZandt, P.E. part owner of Mill Pond Offices, Inc., an adjoining property owner, expressing concern for the safety and protection of the property, as well as the adjoining property of Gigliotti Enterprises, Inc., in connection with their experience in the use of its properties for parking by the customers of the gas station and obstruction of sight distance for vehicles exiting Mill Pond by vehicles parking along the ROW on either side of their entrance and requests that the Public Hearing be postponed or kept open past this evening's meeting to allow collection and review of the entire application; a memo dated May 20, 2011 received May 23, 2011 from the Conservation Board commenting on stockpiling soil, employing steel stakes with backing and filter fabric overlay, steel stakes into the pavement and whether new trees will be planted; a memo dated May 20, 2011 from Town Planner Sabrina Charney Hull, AICP, with project review comments and comments for the Board's discussion; an updated memo dated May 24, 2011 from Town Planner Hull and a second updated memo dated May 25, 2011 regarding parking spaces; and a memo dated May 25, 2011 from Consulting Town Engineer Joseph C. Barbagallo, P.E., BCEE with 5 discussion comments.

Consulting Town Engineer Barbagallo said that his memo consisted of 5 discussion comments and 4 additional comments based on new information.

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

Timothy S. Allen, P.E., the applicant's engineer, said that this project has been before the Board for a long time. He mentioned that the existing conditions has an 800 s. f. building and is one of the most used properties in terms of gas in the downtown area. Engineer Allen explained that the proposal is to upgrade the building which is a convenience store and is

very tight. He mentioned that the proposal is to make the building more modern and expand the building to 3,363 s.f. He said that the store will not change operations but is just for the convenience of the store for better service and operations.

Engineer Allen explained that the plan shows reconfigured parking with 17 spaces. He stressed that there has been a lot of discussion in reference to traffic and traffic circulation and he provided a traffic study. Engineer Allen commented that various schemes have been submitted which has cumulated in the present plan.

Engineer Allen said that in reference to fencing the property the Sussmanns are not in agreement to keep people from entering other people's property. He noted that in lieu of a fence he suggested putting up "no parking signs" along the right-of-way and a sign stating "parking for restaurant patrons only" at the Sussmanns' expense.

Engineer Allen noted that he understands the Gigliotti's concerns but fencing off the property is not a good idea and may not prevent what they are seeking to prevent. Engineer Allen commented on the trees that were cut down and said that it was determined because of the size of the trees a permit was not necessary. He indicated that the back and side areas of the property will be re-landscaped with trees for screening.

Engineer Allen indicated that he reviewed the staff's comments with the Town Planner and Consulting Town Engineer and he feels that this project can move forward.

The Chair asked Town Planner Hull to share her project review comment memoranda for the benefit of the public.

Town Planner Hull said that one of the major concerns has been parking and she has gone back and forth on what is required according to Code. She indicated that she did research on past precedents that were set for gasoline stations with convenience stores. Town Planner Hull explained that since 2007 the Board reviewed two gasoline stations that turned the garage service aspect to a convenience store. She stressed that in the past the Planning Board has only required the parking spaces for the convenience operation. Town Planner Hull noted that the Town Code talks about parking spaces for a gasoline filling station and spaces for the

convenience store operation. She said that 10 spaces are required for a gasoline filling station with 1 space for every 200 s.f. of floor area for a convenience store. Town Planner Hull noted that the last two gasoline stations that were approved because the gasoline service aspect has been taken away the Planning Board did not require the 10 required parking spaces per Code because of the elimination of the repair service. She explained that the cars are parked at the pumps when getting gas. Town Planner Hull indicated that the 17 parking spaces that are being provided per the calculation of the floor area are the correct number of spaces for this application.

Town Planner Hull mentioned that comments were received from the public regarding fencing.

Mr. Foley asked if there was a gasoline station in Town that did not have a convenience store or a servicing garage would not need any parking spaces.

Town Planner Hull said that if the gas station has an office the floor area would be counted and parking would be required for that aspect of the operation.

Town Attorney Eriole commented that an issue is that the Code is lacking in defined terms on the parking terminology. He mentioned that "gasoline station" is what is used in the parking requirement for 10 spaces with no such use specifically defined. He advised that you cannot know for certain what the Town fathers meant by "gasoline station". He agreed that the Board in the past has leaned toward the requirement being more about the garage than the filling station because it is difficult to imagine that 10 spaces are needed to get gas and then leave if that is the only use but on the other hand the terminology itself "gasoline station" means put gas in your car. Town Attorney Eriole suggested that the Board exercise its power under the Code to make a competent judgment as to what is actually required in terms of parking as the Code allows modification. He indicated that the Code was probably written when every gas station did not have a convenience store. Town Attorney Eriole said that the Board, pursuant to the Town Planner's suggestion, should agree that this past precedent applies to this application and that a total of 17 spaces are required for a 3,363 SF building. He advised that there is some ambiguity in the Code because of the lack of specific defined terms.

The Chair stated that the Code has to be updated.

Mr. Goldenberg mentioned that the Board has been dealing with the parking issue for over a year and decided on 17 parking spaces for this application. He said that a letter was received from the public asking for 26-27 parking spaces and he feels that the Board, after much deliberation, decided on 17 parking spaces.

Town Attorney Eriole advised that the Board has the power to determine the number of parking spaces.

Town Planner Hull said that if the Board was to consider what the Code says a gasoline station would require 27 parking spaces. She explained that in the past if the mechanical service aspect has been discontinued the Planning Board has not required the additional ten spaces.

Mr. Currie stated that in the past the term “service station” implied service and that is not the case with this application. He stressed that the term is misleading.

Town Attorney Eriole noted that when the Code was drafted a gasoline station repaired cars as well as selling gas.

Engineer Allen said that the Town Code is antiquated in regard to current operation of gas stations.

Town Planner Hull returned to her memo and noted that an adjoining property owner indicated that the landscape plan identifies trees and shrubs existing along the Mill Pond access road side of the subject property and along the back of the property and are no longer in place and are shown on the revised plan. Town Planner Hull said that the May 11, 2011 Westchester County Health Department approval of the disinfection system should be put on the plans and indicate the location of the system particularly in relation to the other site plan elements. She said that she will refer to the Consulting Town Engineer to address this.

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

The Chair mentioned that only one set of revised plans was submitted. She said that there was a question where the snow would be piled and how it would be carried away. She noted that the answer was that a pipe would be used to divert the snow melt and she asked if it was shown on the plan.

Engineer Allen explained that one set of plans was sent to the Planning Department for the public's review. He stated that the only plan change was that one parking space was eliminated and he did not want to submit 18 sets of revised plans to show the elimination of the parking space.

Town Planner Hull explained that it was her issue in reference to the parking space and Engineer Allen provided the plan for her review of the parking space.

Consulting Town Engineer Barbagallo said that his memo dated May 26, 2011 replaces his memo dated May 24, 2011. He indicated that his memo identifies the items that are remaining and new comments based on new information that was provided. He mentioned comments that were remaining from his April 22, 2011 memorandum and noted under the Stormwater Pollution Prevention Plan (SPPP) the applicant shall provide additional supporting discussion/rationale in the SPPP that clearly defines why Chapter 9 is the appropriate method as opposed to the standard approach. He said that as required by Section 9.3.1 of the New York State Stormwater Design Manual, where site specific circumstances do not allow proper sizing and installation of management practices contained in the New York Stormwater Design Manual, the SPPP must clearly identify and document the design difficulties that meet the redevelopment application criteria and document justification for the use of proposed alternative approaches. He indicated that the applicant incorporated a paragraph but there needs to be more details to comply with Section 9.3.1 in the State Design Manual. Consulting Town Engineer Barbagallo said that he is comfortable that he and Engineer Allen have a mutual understanding of what the language should be.

Consulting Town Engineer Barbagallo said that he met with Engineer Allen to determine the best method for stormwater pretreatment and it was agreed that an appropriately sized Vortech Unit, as manufactured by Contech, will satisfy the conditions of the site. He indicated that the drawing will be revised to reflect this unit with the supporting documentation on sizing submitted for review.

Consulting Town Engineer Barbagallo said that relative to the Westchester County Department of Health Approval for septic the applicant shall submit documentation from the WCDOH approving the expansion of the building and the use of the existing septic system. He mentioned that the applicant has provided a letter from the WCDOH stating that "it appears the existing OWTS is of sufficient capacity to service the Change of Use as proposed". He said that at this time, final approval from the WCDOH remains outstanding.

Consulting Town Engineer Barbagallo said that relative to New York City Department of Environmental Protection (NYCDEP) SPPP Approval the project requires approvals from the NYCDEP including SPPP. He noted that the NYCDEP issued comments to the applicant in a letter dated May 27, 2010 and to date the Board has not received any further communications to or from the NYCDEP. He indicated that the applicant shall provide the Town with copies of correspondence to the NYCDEP and an update regarding the status of review with the NYCDEP.

Engineer Allen said that the WCDOH and the NYCDEP approvals are linked as the WCDOH will not issue their approval until the NYCDEP issues their approvals. He stressed that the Site Plan cannot be signed until the conditions are satisfied. He explained that the NYCDEP will not review the application until the Negative Declaration is issued.

The Chair said that if the application goes well and the Public Hearing is closed she will direct the Town Planner to draft a Negative Declaration simultaneously with the Resolution.

The Chair reminded Engineer Allen that she asked him to write directly to the DEP in response to their May 27, 2010 letter and he agreed to communicate with the DEP but that has not happened. She noted that Engineer Allen included in his submission a letter dated September 14, 2010 addressed to the Planning Board and that is not acceptable. The Chair indicated that she expected the letter to the DEP to be provided for tonight's meeting.

Consulting Town Engineer Barbagallo said that in reference to the NYS Department of Environmental Conservation (DEC), the implementation of the Site Plan improvements cannot be completed until the

decommissioning process for the ground water remediation and monitoring network is complete and accepted by the NYSDEC. He noted that prior to the Chairman signing the site plan the applicant shall submit documentation from the NYSDEC that no further action is required on behalf of the applicant and that de-commissioning of the system is complete.

Consulting Town Engineer Barbagallo said that he had new comments on the Aquifer Impact Assessment (AIA) prepared by Hydro-Environmental Solutions, Inc. dated May 12, 2011. He mentioned that the AIA shall be revised to include the discussion required by Section 170-32.8A (1) and shall be revised to address the requirements of Section 170-32.8A (2) specifically as it relates to the particular design features to mitigate the water quality impacts of first-flush runoff from paved surfaces. He noted that the Site Plan shall be revised to include in both plan and detail the roof runoff mitigation that was identified in the AIA as being required to comply with the technical requirements of Section 170-32.8A (3).

Consulting Town Engineer Barbagallo said that Site Plan 3, last revised April 13, 2011 shows the propane tank being moved from the rear of the parking lot to a location between the building and Route 100. He commented that the applicant shall discuss the rationale for this change for the Planning Board's consideration.

The Chair stressed that this is a new change that was not discussed with the Planning Board. She said that the April 13, 2011 revised plans show on drawing SP3 a propane tank in front of the building and on drawing SP8 there are details of a different tank that is 10-feet away from the restaurant.

Engineer Allen apologized and said that it probably was a cut and paste from another application. He opined that it was not a big deal because the wetland consultant felt that the DEP would have an issue because the propane tank would be located within the wetland buffer and the tank should be relocated to the front of the building.

The Chair asked if the wetland consultant can put the DEP wetland issue in writing and Engineer Allen said that will be done.

Consulting Town Engineer Barbagallo said that the tank is above ground and he asked if that is where the little tanks will be filled. He asked if the

tank can be located elsewhere as he does not want to take away from the look of the building.

Engineer Allen said that the filling operation will be located behind the gas station and he will review alternate locations.

The Chair questioned where the truck will park when filling the propane tank.

Mr. Currie said that the questions in reference to the propane tank will be answered.

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 15, 2011, the adjoining property owners were notified via mail on May 13, 2011 and the sign stating the date, time and place of the Public Hearing was posted on May 15, 2011.

The Chair noted that two letters were received from adjoining property owners. She said that Teresa VanZandt, Mill Pond Offices, said that she was not notified of the Public Hearing. The Chair indicated that Planning Board Secretary Murphy explained that the notice of the Public Hearing was addressed from information from the Assessor's office and was addressed to Mill Pond Offices, Inc., c/o Cross Country Federal Savings Bank, 79-21 Middle Valley, New York and the notice has not been returned, therefore, it is believed to be received.

Attorney Eriole opined that Ms. VanZandt is carefully requesting more time to review the application and not stating that the notice was not sent. He said that the legal notice requirement was met.

The Chair asked for the record if the Planning Board Secretary received any communication by phone, e-mail, fax, walk-ins or other communication from persons of interest.

Planning Board Secretary Murphy noted that Ms. VanZandt came to the Office to review the application and plans for the Route 100 Realty, LLC Site Plan.

The Chair asked if anyone was present who wished to be heard regarding this application.

Teresa VanZandt, representing Mill Pond Offices and Gigliotti Enterprises, said that she is concerned and has great apprehension for the proposed amended Site Plan. She indicated that she was made aware of this project by the Public Hearing notice and went to the Planning Office to review the project. Ms. VanZandt said that her concern is safety issues which need to be addressed. She mentioned that her firm has retained legal counsel and professional consultants to review the plan. She said that she went to the 7-Eleven station that has a 2,700 SF building and the Sussmann proposal is 13% bigger with gas pumps that conflict with everything. Ms. VanZandt said that there were issues even with the 880 SF building with 16 parking spaces because there is concern about overflow parking in the right-of-way which obstructs site distance. She explained that it is already difficult pulling out of Mill Pond and turning left during rush hour with people parking or cuing on the shoulder. Ms. VanZandt requested more time to address her issues.

The Chair mentioned that the property was posted in reference to the Public Hearing.

Ms. VanZandt said that the sign was not posted before she reviewed the plans and the only time she knew about this project was on May 14, 2011 when she received the Public Hearing notice via regular mail. She requested that the Public Hearing remain open to review the project as her properties are affected now and with the much larger building and the addition of one parking space she has traffic and safety issues and wants to insure that people transversing her property are safe.

The Chair stated that zoning for the size of the building complies.

Ms. Goldenberg referenced a letter dated May 16, 2011 from Mr. Gigliotti from Gigliotti Enterprises, Inc. who received the timely Public Hearing notice and he asked Ms. VanZandt if that is her partner.

Teresa VanZandt stated that Pat Gigliotti is her father and is the majority owner of Mill Pond Offices and owns Gigliotti Enterprises, Inc. and that is how she found out about the Public Hearing.

Gary Forbes, resident of 7 Catherine Place, thanked the Board for giving of their time and he wants the Board to know that he appreciates them. He mentioned that he is a life long resident of Somers and he has witnessed a lot of changes and in balance Somers is a great Town. He noted that years ago there seemed to be a gas station on every corner. Mr. Forbes said that in the early 70's Spike Fourgeot owned a Shell station at Whitehall Corners and the station raised the level for everyone in the county because of the cleanliness and the beautiful flowers. He explained that he had to move that station and bought the property on Route 100. Mr. Forbes commented that Mr. Fourgeot is looking down and saying what a fantastic job Paul and Juliette are doing and his point is this application has been before the Board for 4 years and the Board has done its due diligence and asked every imaginable question and the Sussmanns are good business people with a tremendous tract record and their building will be an asset to the Town of Somers and he recommends approval of the project. He said that he respects the neighbor's concerns and their issues should be answered.

Kate O'Keefe, resident of Lake Purdy's for 35 years, noted that this is an unbelievable process and she acknowledged what a great asset Juliette and Paul are to the Town. Ms. O'Keefe said that she has never seen a parking problem at the gas station and the time people going in and out of a convenience store is a small amount of time. She stressed that there is little convenience in Somers as everything is on the perimeters and when traveling up Route 100 there is very limited choices. Ms. O'Keefe indicated that you favor the Sussmanns' business because of their generosity to the Town. She mentioned that the Sussmanns' sponsor fund raisers and everything that goes on at the station is positive. She said that if there is a safety issue it should be brought up with the State as Route 100 is a State road. She said that the station is in a part of Town where everyone is aware of what they are doing and if this part of Town is congested that is good because it means that business is good. Ms. O'Keefe stressed that people saying that they do not have knowledge of this project and have businesses in Town it questions whether they are listening to the people they service.

Bill Fleischauer said that he acknowledges and appreciates the hard work of the Board as he is a past Planning Board member who served during a rather volatile time. He noted that every project deserves its due and during his tenure on the Board he looked at the challenges and the opportunities that presented itself in that project and whatever challenges that exist with this Site Plan there are ways to mitigate those challenges. He mentioned that when he graduated from Somers there were 4,000 residents and now there are approximately 24,000 residents. Mr. Fleischauer said that he found out when you are proactive in change you can effect change in a much more positive direction than when you are against things. He said to be against something is your right but to make a business viable and a positive aspect to this Town even more positive is a trust that the people of this town have given you for your ability to make a decision not only to bring a valuable business forward but to also acknowledge a family that has multiple generations in this Town who have done their best to see this Town move forward in a positive and wonderful way.

The Chair mentioned that a process has to be followed and that process happens with every application and does not change with who the applicant is. She said that the Board are volunteers and attend two meetings per month and go on site walks. She said that it is a shame that this application took so long but when the Board asks for something and it is not received that delays the application. The Chair noted that she asked for a response to the DEP letter several times even though the applicant's engineer agreed to respond to the DEP. She mentioned that a letter was submitted dated September 14, 2010 that answers some of the DEP questions but not all the questions. The Chair said that the letter was written to the Planning Board but did not even list that a copy was sent to the DEP and the DEP does not even know about this letter. The Chair commented that she also asked that a basement plan be submitted and that was not provided. She noted that because of the office in the basement another parking space was necessary. The Chair stated that it was with no pleasure that this application was delayed she wanted it to move faster than it has but there is still information that has to be provided.

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

Mr. Goldenberg said that the applicant's engineer, the Consulting Town Engineer and Town Planner will get things done. He opined that sometimes good things happen when the process is extended. Mr. Goldenberg noted that he was one of the first people to worry about the traffic situation. He commented that since that time things have improved. He mentioned that there were plans for a supermarket on Route 100 and that is not going to happen. Mr. Goldenberg said that a traffic study done for the supermarket shows no real traffic problems. Mr. Goldenberg said to get on with the process and good luck to everybody.

Ms. Gannon said that while reading the April 27, 2011 minutes it reminded her about the fuel delivery truck pulling into the exit and she asked if that was a normal practice. She noted that Engineer Allen's explanation was that the practice cannot take place during normal operating hours but when the station is closed. Ms. Gannon stated that this morning around 6:50 A.M. the truck was in the gas station with the cab facing towards the entrance and when she returned about 7:15 A.M. the delivery truck was still there. She mentioned that she re-read all the traffic reports and it seems like a certain percentage of the time that despite the best efforts to schedule deliveries at off hours that it is happening in the morning. Ms. Gannon said her review always shows the delivery truck entering through the entrance. She asked about the new design and if it will allow the delivery truck not to enter through the exit.

Juliette Sussmann, applicant, explained that the deliveries are scheduled from 1 A. M. to 4 A.M. and sometimes that doesn't happen because the truck is backed up at the rack or the truck may have a flat tire, etc. She explained that tomorrow a delivery is coming in the evening and that will happen on occasion. She stressed that ExxonMobil will not send a truck to a gas station in a way that is unsafe. Ms. Sussmann mentioned that there has never been any safety issues or anyone hurt on the property regarding fuel. She said that anything to do with gasoline is done in the safest way.

Mr. Foley referred to Ms. Gannon's question and asked if it is routine for trucks to enter through the exit.

Ms. Gannon said that more to the point in the future will it still be necessary for the delivery truck to enter through the exit.

Ms. Sussmann explained that the station will still have the same footprint for gasoline.

Engineer Allen said that the reason the delivery truck enters through the exit is because the Sussmanns were getting shortage from the tanker because of the pumping operation of the tanker into the tanks. He noted that when the truck orientates the other way there is a full tank.

Town Planner Hull asked why that happens and Engineer Allen said because of the slope of the land.

Ms. Gannon said that if that is the standard operating procedure can that be shown and Engineer Allen said that he will show that on the plan.

Mr. Currie asked Consultant Town Engineer Barbagallo if he is on a mutual understanding with Engineer Allen on the AIA report.

Consultant Town Engineer Barbagallo indicated that there are two requested changes to the plan but they will not affect the design.

Mr. Currie opined that the issue remaining is the propane tank and its location.

Consultant Town Engineer Barbagallo indicated that the location of the propane tank in front of the building has not been discussed with the Board. He said that he asked for additional description, for example if the full requirements of the Stormwater Manual were implemented nothing else can be done on this property but manage stormwater. He stressed that the Site Plan is close but there are key approvals that are required. Consultant Town Engineer Barbagallo said the Board will have to decide if the approvals are handled as part of this approval now or conditions of approval.

The Chair asked how long it takes to fill a propane tank.

Paul Sussmann, applicant, said that the propane tank will be relocated but to answer the question it will take approximately 12 minutes to fill the propane tank.

Town Attorney Eriole said that the required approvals are typically conditions of approval. He noted that you do not get preliminary sign offs from involved agencies but the project does not go forward without those approvals. Town Attorney Eriole said that the question is that the Board is comfortable to ask if the Site Plan is where the Board wants it to be. He explained that there are two issues on the propane tank, one is, does the change of the location of the tank represent a change sufficient to extend the Public Hearing, or two, is the Board comfortable with the location of the tank. Town Attorney Eriole advised that even if the Board wants to discuss the location of the propane tank it does not require leaving the Public Hearing open.

Ms. Gerbino said that she would like to see where the propane tank will be located and she would like the Public Hearing to stay opened. She indicated that her concern is the propane tank and the request by the adjoining property owners for more time to review the project.

The Chair stated that the Health, Safety and Welfare are the primary responsibilities of the Board. She opined that there is not sufficient information on the change of location for the propane tank. She asked how the tank will be filled in the front of the building and then gets to the back of the building.

Engineer Allen said that the propane will be moved by piping. He stressed that he will design the propane tank to the Board's satisfaction. Engineer Allen noted that the Public Hearing can be closed and the issue of the propane tank revisited.

The Chair reminded Engineer Allen that he asked for a Public Hearing in November and said that everything will be done and the information is still not complete.

Engineer Allen explained that Health Department issues and the DEP letter were out of his control. He opined that the DEP is a SEQRA issue and the Planning Board is Lead Agency and should respond to the DEP.

The Chair responded that Town Planner Hull told Engineer Allen that the DEP letter is his responsibility.

Mr. Goldenberg said that the Board should consider what are the remaining issues. He noted that there is no one from the public tonight talking about the propane tank. Mr. Goldenberg noted that the Fire Department has not indicated that they are against the location of the propane tank. He said that the important issue is that the regulatory agencies approve the project.

The Chair noted that if there is one significant visual impact an EIS would have to be done.

The Chair said that she would like to keep the Public Hearing open in order to review the revised plans and direct a Negative Declaration and Resolution be prepared.

Engineer Allen stated that the notice was done properly and all the technical information has been reviewed by the Board's consultants.

Mr. Currie said that the neighbor's concerns are not applicable. He noted that he would not want to see a fence around this property and landscaping will be provided. Mr. Currie said that parking in the right-of-way is not the applicant's problem.

The Chair asked how many employees are there and where do they park.

Ms. Sussmann said that employee parking is in back of the building.

Eli, the gas station manager, noted that there are two employees in the morning and two in the afternoon. He said that he has never seen anyone park at the restaurant and walk over to the gas station.

Ms. Sussmann said that if the neighbors had an issue they could discuss it with her.

The Chair indicated that the trees that were removed were small and did not require a permit.

Mr. Foley mentioned that the Building Inspector submitted a memo dated April 25, 2011 in reference to Zoning Conformance for the Mobil station. He noted that this site is located within the Groundwater Protection Overlay District and the Code lists eleven (11) prohibited uses and one is a gasoline filling station. Mr. Foley explained that the Sussmann gas station was in

existence at the time the Code was enacted which made it a prior non-conforming use and allowed to continue. He said that the exception in the Code is that prior non-conforming uses cannot be expanded or enlarged or altered. Mr. Foley mentioned that he voiced his concern about this project in reference to the Code provisions. He noted that in essence what the Building Inspector determined is that there are two uses on this site: one, a gasoline station use and two, a retail use and it is only the retail use that is being altered or expanded. Mr. Foley said that he asked for clarification on this issue and he wanted the public to be aware of how it was resolved.

Mr. Foley said that the Board agrees that 17 parking spaces are needed. He explained that based on the analysis is that the Code's term "use of a gasoline station" really means "gasoline service station" and this station does not require 26 parking spaces but requires 17. Mr. Foley explained that another way to get to 17 spaces is that the Planning Board under its power with Section 170-41 based on the circumstances determines that 17 spaces are what are necessary. Mr. Foley said that the Board can state which of these two paths they will take and maybe it is both. He noted that the term "gasoline station" means "gasoline service station" therefore; you do not need the 10 parking spots. He noted that the Board under Section 170-41 can invoke their power to decide that understanding the requirement for 26 parking spaces the Board decides that only 17 parking spaces are necessary. Mr. Foley opined that both rationales work.

The Town Planner said that under Section 170-41 that reduction is contingent upon the Board allowing the reduction in the number of spaces initially improved subject to such conditions the Planning Board may deem necessary to insure the future improvement of such spaces any time the Board may determine that they are necessary. Town Planner Hull indicated that she determines this to be land banking and there is no area on this site to land bank parking spaces.

Mr. Foley clarified that the Board under Town Planner Hull's interpretation that where land banking is not a possibility lacks their power to invoke the reduction of parking spaces. He said that the only option is to conclude that "gasoline station" means "gasoline service" station and 10 parking spaces are not required.

Mr. Foley mentioned that an adjoining property owner requested more time to review the application and retain her own consultants. He noted that if

the Public Hearing is closed that will foreclose the additional discussion on the neighbor's concerns. He opined that an adjoining property owner deserves an opportunity to analyze her position as long as she does it quickly.

Ms. Gannon opined that in regard to the Town meeting the requirements of the posting of the property and notifying the adjoining property owners and upon consideration of the issues raised they have been discussed and the issue of the right-of-way has been discussed and she does not see a reason to continue the Public Hearing and she votes to close the Public Hearing.

Town Planner Hull said that there should be a consensus of the Board on the status of the Public Hearing. She explained that there are two rationales on keeping the Public Hearing open; one, neighboring property owner's request for more time to gather information; two, location of the propane tank.

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|----------------|----------------------|
| Ms. Gerbino | Public Hearing open |
| Mr. Goldenberg | Close Public Hearing |
| Chair DeLucia | Public Hearing open |
| Mr. Currie | Close Public Hearing |
| Mr. Foley | Public Hearing open |
| Ms. Gannon | Close Public Hearing |

The Chair said that there was no action as there was no consensus of the Board.

Mr. Goldenberg asked if the Public Hearing is closed how long do residents have to comment.

Town Planner Hull said that resident have 10 days to submit written comments on their concerns.

Mr. Foley noted that the 10-day written comment period is a compromise that the Board can use.

Lisa Gigliotti, adjoining property owner, said that she has retained the law services of Robert Davis of Shambert, Marwell, Davis & Hollis. She mentioned that during conversations with Mr. Davis he said that he would be surprised if the Public Hearing was closed because of the concerns of the adjoining land owners. Ms. Gigliotti opined that there are a lot of unanswered questions. She explained that she does not oppose the project but she has legitimate concerns about the parking spaces. Ms. Gigliotti explained that Mr. Davis's interpretation of the Code is that 26-27 parking spaces are needed per Code. Ms. Gigliotti said that she has not personally seen cars parking at the restaurant but Ms. VanZandt has. She noted that the Sussmann's have a responsibility to keep people off her property. Ms. Gigliotti said that an 880 SF convenience store will now be 3,336 SF and that will bring in more people. Ms. Gigliotti stated that there is not enough time for her to review the project and she asked that the Public Hearing remain open and if the Public Hearing is closed her attorney will file whatever he needs to file. She mentioned the pond and environmental concerns and the increase of the loading zone and setback requirements.

Ms. Gigliotti commented that the trees that were on the original plan are not on the proposed plan.

Mr. Goldenberg said that Ms. Gigliotti's concerns have been discussed tonight and the approvals from the DEP and DEC have to be given. He asked if Ms. Gigliotti is saying that the Board has not looked at all the concerns.

Ms. Gigliotti stated that is not what she means and she asked what is the purpose of a Public Hearing if she cannot speak about her concerns.

The Chair read from Town Law Section 274A Site Plan Review (2) Approval of Site Plan ...*the Site Plan elements which are included in the Zoning Ordinance or Local Law may include where appropriate those related to parking, means of access, screening, signs, landscaping, architectural features, location and dimension of buildings, adjacent land uses and physical features meant to protect adjacent land uses, as well as*

any additional elements specified by the Town Board, such as zoning or local law.

The Chair opined that the changing of the location of the propane tank is a big issue. She indicated that details on how the propane will get to the back of the building and where the tanker will park to fill the tank are necessary.

Ms. O'Keefe returned to the podium and said that if a debate is needed for the change in the plans the same can be said about a neighbor who at the eleventh hour should know what is going on in Town says they need time to review the project. She said that this is the same issue and you cannot have it both ways.

Town Attorney Eriole clarified that the Public Hearing is being held open for written comment only for a certain amount of time. He said that SEQRA regulations allow a 10-day time period to submit written comments.

Ms. Gerbino suggested closing the Public Hearing and granting a 10-day written time period. She said that regretfully because the Board worked so hard on this application, she originally wanted to keep the Public Hearing open but she now believes that there can be a compromise.

Town Attorney Eriole advised that the Board can close the Public Hearing and give the adjoining property owner, the public, a reasonable amount of time to review the project and submit written comments.

The Chair asked if there is a consensus of the Board to (1) continue the Public Hearing, or (2) close the public hearing and direct Town Planner Hull to prepare a Draft Negative Declaration and Draft Conditional Resolution of Approval, or (3) close the Public Hearing and make a decision within 62 days to approve the resolution with or without modification, or disapprove the site plan application.

Town Attorney Eriole opined that option three (3) is probably not the best option for the Board. He indicated that the Board should consider two options (1) keep the Public Hearing open, or (2) close the Public Hearing and give the public the opportunity to submit written comments within 10-days.

Town Attorney Eriole said that the adjoining property owners are present and have expressed their concerns and the Board legally can close the Public Hearing or close the Public Hearing and allow a 10-day written comment period.

The Chair stated that she was prepared to close the Public Hearing and direct the Town Planner to draft a Negative Declaration and draft a conditional Resolution but the change in the plan with the propane tank in front of the building and the neighbor's concerns changed her mind.

The Chair asked if there is a consensus to close the Public Hearing on the application of Route 100 Realty, LLC for Amended Site Plan Approval, Wetland, Steep Slopes, Groundwater Protection Overlay District and Stormwater Management and Erosion and Sediment Control Permits with a 10-day written comment period.

On motion by Chair DeLucia, seconded by Mr. Currie, and unanimously carried, the Board moved to close the Public Hearing on the application of Route 100 Realty, LLC for Amended Site Plan Approval, Wetland, Steep Slopes, Groundwater Protection Overlay District and Stormwater Management and Erosion and Sediment Control Permits with a 10-day written comment period to Monday, June 6, 2011.

Town Planner Hull said that the applicant will revise the plans and submit the information regarding the propane tank.

The Chair directed Engineer Allen to contact the Department of Environmental Protection (DEP) and submit a letter responding to their concerns.

There being no further business, on motion by Ms. Gannon, seconded by Mr. Goldenberg, and unanimously carried, the meeting adjourned at 10:15 P.M. and the Chair noted that the next Planning Board meeting will be held on Wednesday, June 8, 2011 at 7:30 P. M. at the Somers Town House.

Respectfully submitted,

Marilyn Murphy
Planning Board Secretary

