

Telephone
(914) 277-5366

FAX
(914) 277-4093

PLANNING DEPARTMENT

Town of Somers

WESTCHESTER COUNTY, N.Y.

TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

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



**SOMERS PLANNING BOARD MINUTES
JUNE 22, 2011**

ROLL:

PLANNING BOARD

MEMBERS PRESENT:

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

ABSENT:

Town Planner Sabrina Charney Hull
Ms. Gannon

ALSO PRESENT:

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 MAY 25, 2011 MINUTES

Chairman DeLucia explained that the May 25, 2011 Planning Board draft minutes prepared by Planning Board Secretary Murphy were not distributed to the members in a timely fashion and therefore will be considered for approval together with the June 8, 2011 draft minutes at the July 27, 2011 Planning Board meeting.

The Chair asked if there were any comments or questions from members of the Board in reference to the May 25, 2011 Planning Board minutes and no one responded.

DECISION

ROUTE 100 REALTY LLC SUSSMANN MOBIL STATION APPLICATION FOR AMENDED SITE PLAN, WETLAND, STEEP SLOPES, GROUNDWATER PROTECTION OVERLAY DISTRICT PERMITS [TM: 17.18-1-2]

Chairman DeLucia noted that this is the application of Route 100 Realty LLC by Paul Sussmann and Juliette Fourgeot Sussmann for Conditional Amended Site Plan Approval, Special Exception Use Permit for activity within the Groundwater Protection Overlay District, Wetland, Steep Slopes, and Stormwater Management and Erosion and Sediment Control permits for the proposed alteration and expansion of an existing 880 square foot convenience store to 3,057 square feet, reconfiguration of the existing and additional parking spaces at a total of 17 spaces and a new stormwater management basin. The Chair mentioned that the property is located at the Mobil Gasoline Service Station, 291 NYS Route 100 consisting of a .8660 acre in a Neighborhood Shopping Zoning District and Groundwater Protection Overlay District. The Chair said that at the April 14, 2010 Planning Board meeting the Board determined the proposed action an Unlisted Action under SEQRA and at the June 23, 2010 meeting the Board declared itself Lead Agency. She noted that the applicant is represented by Engineer Timothy S. Allen, P.E. of Bibbo Associates LLP and Architect Roy Van Lent of Van Lent Architects and Planners.

The Chair explained that this application was last discussed at the June 9, 2011 Planning Board meeting whereby, after a discussion of the outstanding issues, there was a consensus of the Board to direct Town Planner Hull to prepare a draft Negative Declaration and draft Conditional Resolution of Approval for consideration for adoption at this evening's meeting.

The Chair acknowledged for the record receipt of the following: a letter dated June 15, 2011 received on June 17, 2011 from applicant's representative Timothy S. Allen, P.E. of Bibbo Associates submitting

amended Site Plan Drawings last revised June 15, 2011, a copy of the Stormwater Pollution Prevention Plan last revised June 15, 2011, and responding to staff's and the Board's comments, and a memo dated June 21, 2011 from Consulting Engineer Joseph C. Barbagallo, P.E., BCEE providing new comments following his review of the remaining issues.

The Chair noted that Town Planner Hull has submitted for the Board's consideration for adoption a draft SEQRA Unlisted Action, Negative Declaration and Notice of Determination of Non-Significance pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Chair mentioned that Town Planner Hull is not present this evening and therefore Planning Board Attorney Joseph Eriole will review the draft Negative Declaration and draft Conditional Resolution with the Board and applicant's representative for any comments and questions.

Mr. Keane said that Consulting Engineer Barbagallo must determine if the Stormwater Pollution Prevention Plan (SPPP) meets the requirements of Section 93 of the Town Code that relates to mitigation of the stormwater impacts. He explained that if the SPPP meets the requirements of Section 93 it will serve as a factual backdrop that the impacts have been mitigated to the maximum extent practicable and the Board can move forward with the Negative Declaration.

Matthew Gironda of Bibbo Associates, the applicant's engineer, informed the Board that he met with Consulting Engineer Barbagallo this morning to review his comments.

Town Attorney Eriole reviewed the Negative Declaration with the Board and applicant.

The Chair said that the comma after Somers and after Planning Board should be removed.

Mr. Foley asked that the comma be removed between Realty and LLC wherever it appears in the Negative Declaration and Resolution.

Engineer Gironda mentioned that the building size is incorrect and should be changed to 3,057 SF.

The Chair noted that under the following plans and documents on Page 6 Number 4. insert the sentence *withdrawn by the applicant at the June 8, 2011 Planning Board meeting.*

The Chair read from Page 11, Number 19. *Given the analysis, correspondence and other evidence relating to the proposed project, the negative environment impacts of the proposed "action" do not rise to the level of "significance" under SEQRA, and therefore, the Planning Board issues this negative declaration of environmental significance after examining all the elements noted in the Part II Project Impacts and their Magnitude, and more specifically to land, water transportation, public health, and community character as further elaborated above.*

Engineer Girona mentioned on Page 12, number 3. of the EAF, *Will Proposed Action affect any water body designated as protected (under Articles 15, 24, 25 of the Environmental Conservation Law (ECL) and suggested that the impact be checked as a small to moderate impact.*

Mr. Keane explained that Part 2- Project Impacts and Their Magnitude, are the responsibility of the Lead Agency (Planning Board) and not the applicant.

Mr. Keane noted that Town Planner Hull answered the questions in the EAF but did not answer questions in columns 1, 2 and 3. He explained that the developable area does not contain a protected water body; therefore, it does not apply. He said that the EAF is showing examples and the Board had to take what is factually there.

Consulting Engineer Barbagallo agreed with Mr. Keane and said that Number 4 should be left as just yes as part of the Negative Declaration.

The Chair asked Consulting Engineer Barbagallo to summarize his memo to the Board.

Consulting Engineer Barbagallo mentioned his comments remaining from his June 8, 2011 memorandum relative to the SPPP, that as indicated in the memorandum from the Town Planner dated June 7, 2011, the site is not within a designated Main Street area; therefore, the SPPP shall be revised accordingly, including the need for a variance from the New York City Department of Environmental Protection (NYCDEP) Rules &

Regulations §18-39 (a) (1) has been addressed. He mentioned that correspondence has been received from the DEP that a variance is not required because the applicant meets the 25% threshold.

Consulting Engineer Barbagallo said that the Westchester County Department of Health Approval for the Septic is pending because approval of the SPPP is necessary before approval can be granted. He also mentioned that NYCDEP approval is also pending and can be a condition of approval. Consulting Engineer Barbagallo explained that NYSDEC cannot grant approval until the implementation of the Site Plan improvements are completed and that cannot happen until the de-commissioning process for the ground water remediation and monitoring network is complete and accepted by the NYSDEC. He said that this will also be a condition of approval.

Consulting Engineer Barbagallo referenced comments on the Aquifer Impact Assessment (AIA) and said 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 §170-32.8A (3). He indicated that this has partially been addressed. He mentioned that test pits shall be completed along with soil percolation tests that demonstrate that the area proposed for installation of the Cultec system is suitable for infiltration purposes and that infiltration rates verify those assumed in calculations within the SPPP Report, dated May 31, 2011. Consulting Engineer Barbagallo said that the applicant shall provide a signed and sealed copy of soil percolation test data.

Mr. Keane asked if this rises to a significant level of impact in that it has to be readdressed.

Consulting Engineer Barbagallo indicated that there is a set of plans that are signed and sealed but he feels it will make it complete by inserting the data into the SPPP. He opined that this will not invalidate the SPPP but will complete the documentation in the SPPP.

Consulting Engineer Barbagallo said that a note has to be added to the Site Plan that makes it clear where the tanker will park when filling up the propane tank. He mentioned that this will be a condition of approval. He indicated that next month when the Board reviews the project this condition can be removed.

Consulting Engineer Barbagallo commented that relative to the SPPP and adequate demonstration and not being able to meet the full quality and quantity of the requirements in the NYS Stormwater Design Manual thus triggers them to move into Chapter 9. He explained that the applicant's engineer has provided calculations based on water quality volumes that demonstrate that 2 ½ times the volume will be required under Chapter 9 versus the full requirements. Consulting Engineer Barbagallo stated that he asked the applicant to be prepared to discuss the 2 ½ times volume and reference it to the site plan and explain why it cannot be accomplished on site. He said that he has done this review with the applicant and is comfortable because of the grades and the way that the elevations work on the site. Consulting Engineer Barbagallo mentioned that once the Board listens to the analysis and the additional calculations that have been provided the test relative to the triggering of Chapter 9 will be met.

Engineer Girona explained that there is limited space that can be used for the sand filter. He noted that the applicant is trying to maintain as much of the existing pavement as possible and minimize disturbance within the wetland buffer.

Consulting Engineer Barbagallo said that he wants the Board to understand the constraints on the property and in order to provide 2 ½ times the treatment capacity the sand filter can only be used in the area between the building and the restaurant property line.

Mr. Keane noted that given the physical constraints on the property and trying to treat the 100% runoff that cannot be done is the rationale for going to the 25% rule.

Timothy S. Allen, applicant's engineer, explained that the rationale is covered in the text.

The Chair explained that draft resolutions with corrections are usually reviewed at the next Planning Board meeting but the Board can adopt the resolution with the corrections being made by Town Planner Hull.

Town Attorney Eriole said that from a legal perspective either practice is fine. He explained that if the language is clear and the Board is comfortable with the changes the Resolution can be adopted, as amended.

Mr. Keane mentioned that the impacts that are identified in the Draft Negative Declaration that are tied to the SPPP have to be determined that it meets the New York State Stormwater Design Manual criteria and that there are no substantive issues that are outstanding.

Consulting Engineer Barbagallo stated that the SPPP satisfies the requirements for mitigation to the maximum extent practicable under SEQRA.

The Chair said that there is a consensus of the Board to adopt the draft Negative Declaration, as amended.

On motion by Mr. Goldenberg, seconded by Mr. Currie, and unanimously carried, the Board moved that the Town of Somers Planning Board as Lead Agency has determined that, with supporting reasons, the Proposed Action will not have any significant adverse environmental impacts and adopts the draft SEQRA Negative Declaration dated June 22, 2011, as amended, and that a draft Environmental Impact Statement will not be prepared.

The Chair informed the Board and the public that this ends the SEQRA process.

The Chair indicated that Planning Board Attorney Joseph Eriole will now review draft Conditional Resolution No. 2011-05 with the Board and the applicant's representative for any comments and questions.

Town Attorney Eriole made a correction to the first Whereas clause of the Resolution in reference to the size of the existing building and stated that it should read *to increase the size of their existing 880 SF convenience store which will include the addition of 2,177 SF of space. The total building size will be 3,057 SF.* He said that this should be reflected in the Negative Declaration document. Town Attorney Eriole referenced Mr. Foley's comment that there is no comma after Realty in the title box and should be changed throughout the resolution.

The Chair changed the words in the first Whereas clause to read *Juliette Fourgeot Sussmann.*

Mr. Foley suggested the change in the first Whereas clause to read *on behalf of then owners Paul and Juliette Fourgeot Sussmann.* Town

Attorney Eriole changed the Whereas clause to read *ownership subsequently transferred to Route 100 Realty LLC.*

The Chair on Page 4, Number 4. inserted Consulting Engineer Barbagallo's last memo dated June 21, 2011 and on Page 5, Line 16, inserted the last letter from Engineer Allen dated June 15, 2011. The Chair added the words (*withdrawn by applicant at the June 8, 2011 Planning Board meeting*).

Consulting Engineer Barbagallo suggested changing the fourth Whereas clause on Page 6 to read *in accordance with a letter submitted by Somers Mobil, received on April 15, 2011 the Planning Board requested, and the Applicant agreed, to restrict fuel delivery to the early morning hours (prior to rush hour), to avoid unsafe congestion at the subject facility.*

Town Attorney Eriole changed the word *among* to *between* on Page 6, Line 24.

Consulting Engineer Barbagallo omitted the word *potential* on Page 6, Line 36. He changed the wording on Page 7, Condition 1. under Conditions Required Prior to Signing of Site Plan to read *That the site plan contain a note that all improvements shown on the plans be installed in accordance with the approved plan and construction standards and specifications of the Town.*

Mr. Foley asked for a change throughout the document to read Groundwater Protection Overlay *District* instead of *Zone*.

Consulting Engineer Barbagallo requested a change to the language on Page 8. Condition 5, to read *That the applicant provide a copy of the Westchester County Health Department Approval permitting the change of use for the on-site septic system and that the site plan be signed by the Westchester County Health Department.*

Consulting Engineer Barbagallo said that on Page 8, Number 6. that reference to the septic system be removed from that condition. He also changed on Page 8, Number 8. to read *that the applicant shall provide certified results for the test pits and soil percolation test...*

Consulting Engineer Barbagallo said that Conditions 10, 11, 12, 13, 14 and 15 can be removed from the Resolution.

The Chair said that there is a consensus of the Board to adopt draft Conditional Resolution No. 2011-05, as amended.

On motion by Ms. Gerbino, seconded by Mr. Currie, and unanimously carried, the Board moved to adopt Conditional Resolution No. 2011-05 as amended, to grant Route 100 Realty LLC, by Paul Sussmann and Juliette Fourgeot Sussmann Conditional Amended Site Plan Approval, Special Exception Use Permit for activity within the Groundwater Protection Overlay District, Wetland, Steep Slopes, and Stormwater Management and Erosion Control Permits.

There being no further business, on motion by Mr. Keane, seconded by Mr. Goldenberg, and unanimously carried, the meeting adjourned at 9:10 P.M. and the Chair noted that the next Planning Board meeting will be held on Wednesday, July 27, 2011 at 7:30 P. M. at the Somers Town House.

Respectfully submitted,

Marilyn Murphy
Planning Board Secretary