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5 **SOMERS PLANNING BOARD MINUTES**
6 **APRIL 28, 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 Consulting Town Engineer Barbagallo
18 Town Attorney Joseph 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 said that a
25 required quorum of four members of the Board were present and
26 called the meeting to order.
27

28 Chairman DeLucia noted that Planning Board Secretary Murphy
29 prepared and submitted for the Board's consideration the approval of
30 the draft minutes of the March 24, 2010 Planning Board meeting
31 consisting of twenty-three (23) pages.
32

33 The Chair asked if there were any comments or questions from
34 members of the Board and no one responded.
35

36 The Chair asked if there was a motion to approve the March 24, 2010
37 draft minutes.
38

39 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and
40 unanimously carried, the minutes of March 24, 2010 were approved.

1 The Chair noted that the DVD of the March 24, 2010 Planning Board
2 meeting is made a part of the approved minutes and is available for
3 public viewing at the Somers Public Library. The text of the approved
4 minutes are also on the Town’s website www.somersny.com and is
5 available for public review at the Planning & Engineering office at the
6 Town House.

7

8 **PROJECT REVIEW**

9

10

11 **MITCHELL PRELIMINARY SUBDIVISION**

12 **[TM: 16.09-1-9]**

13

14 Chairman DeLucia noted that this is the project review of the
15 application of Gary and Ann Mitchell for Preliminary Subdivision
16 Approval, Steep Slopes, Erosion and Sediment Control and Tree
17 Preservation Permits for property known as the Mitchell Subdivision
18 owned by Gary and Ann Mitchell. She said that the property is
19 located at 201 Tomahawk Street, NYS Route 118, on the west side of
20 the street, south of the Route 118 intersection with Green Tree Road
21 in the R-40 Residential Zoning District. The Chair explained that the
22 site also abuts the Town of Somers Koegel Park. She mentioned that
23 the proposal would divide a 7.10 acre parcel into four single-family
24 residence lots fronting on a new Town roadway approximately 710-
25 feet long terminating in a 90-foot diameter cul-de-sac consisting of an
26 existing residence and outbuildings on one 0.94 acre lot, two new lots
27 on 0.94 acres, and the remaining lot on a 3.29 acres serviced by
28 individual septic systems, wells and driveways.

29

30 The Chair indicated that this application was last discussed at the
31 March 11, 2009 Planning Board meeting whereby the applicant’s
32 representative Timothy Allen of Bibbo Associates gave a brief
33 presentation on the revised plans, full EAF and related materials
34 submitted on January 27, 2009 and also responded to staff’s memos
35 and site walk memo of October 15, 2008. The Chair noted that the
36 Board then directed staff to send an Action Letter to the applicant
37 listing the items raised by Planning Board members and staff. The
38 Chair said that on March 12, 2009 staff sent the Action Letter to
39 Engineer Allen with 24 items to be successfully addressed to staff’s
40 satisfaction. The Chair suggested another site walk as there are new

1 members on the Board and the last site walk was conducted on
2 October 14, 2008.

3
4 The Chair acknowledged for the record receipt of the following: a
5 letter dated April 6, 2010, from Engineer Allen submitting revised
6 drawings, Stormwater Pollution Prevention Plan, limited soil
7 investigation and Full EAF with various attachments and responding
8 to the March 12, 2009 Action Letter; a memo dated March 17, 2009
9 from the Bureau of Fire Prevention stating that the Bureau would like
10 two fire hydrants to be installed on the property, one in the cul-de-
11 sac and one in the middle of the roadway that leads from Route 118
12 to the cul-de-sac; a memo dated April 21, 2010 from Edward
13 Buroughs, AICP, Acting Commissioner of Westchester County
14 Planning Board with review comments and also supporting the
15 applicant's interest in pursuing the 3-lot Conservation Plan layout for
16 the subdivision, which will reduce the construction of unnecessary
17 roadways and potentially achieve permanent open space
18 preservation; a memo dated April 23, 2010 from Consulting Town
19 Engineer Joseph C. Barbagallo, P.E., BCEE, with project review
20 comments and recommendations; and a memo dated April 28, 2010
21 from Town Planner Sabrina Charney Hull, AICP, with review and
22 project comments and recommendations and attaching a Draft Notice
23 of Intent to be Lead Agency.

24
25 The Chair asked the applicant's representative to give a brief
26 presentation on the revised submission.

27
28 Timothy Allen, the applicant's engineer, said that the proposed plan
29 has not changed dramatically but he has tried to answer issues and
30 comments from the Board and staff. Engineer Allen mentioned that
31 there was discussion on Lot 1 not being conforming. He explained
32 that the house on Lot 1 was to be affordable housing but given the
33 fact that the side lot is too close the proposal is now to demolish the
34 existing house and construct a new house. He noted that he
35 provided a cost estimate of the 3-lot scenario vis-à-vis a common
36 driveway versus a town road. Engineer Allen said that the difference
37 in cost is approximately \$100,000. He stated that the proposal is for
38 4-lots. He indicated that he provided an updated Phase I and a
39 SPPP. Engineer Allen explained that the Department of
40 Environmental Protection (DEP) and the Department of

1 Environmental Conservation (DEC) are finally on the same page as
2 to what are the stormwater requirements. He explained that the DEP
3 has accepted the DEC standards which has one practice in a series
4 notwithstanding the infiltrators.

5
6 Engineer Allen said that he noted that Mr. Buroughs suggests using
7 the cluster development provisions of Section 278 of NYS Town Law
8 and that would enable the applicant to have three new lots and keep
9 the existing house and a benefit to the Town would be the donation of
10 2.6 acres as open space connected to Koegel Park.

11
12 The Chair noted that there would be a common driveway in this
13 scenario.

14
15 Engineer Allen said this is a determination that the Board has to
16 make but the applicant will not pursue this idea if the Board decides
17 against the cluster development. He mentioned that engineering
18 issues (cuts to neighboring properties) are less with the cluster
19 development. He noted that if the Board recommends the 280A
20 Conservation Plan that has to be referred to the Town Board with a
21 recommendation.

22
23 The Chair asked if the Board has comments on the Conservation
24 Subdivision. She said that the 1994 Master Plan recommends the
25 278 Cluster Subdivision.

26
27 Town Planner Hull said that changes were made to the Conservation
28 Subdivision to set a threshold for conservation subdivisions in light of
29 subdivisions that were created 20-30 years ago with oversized lots.
30 She indicated that this application is a different situation because this
31 is a property next to a town park and there is an advantage with the
32 Conservation Subdivision law as the Board can weigh the pros and
33 cons. She stated that one of the pros is the proximity to Koegel Park.

34
35 The Chair said that this subdivision does not meet the threshold of 12
36 acres.

37
38 Town Planner Hull said that it does not have to meet the 12 acre
39 threshold under the Open Development Law.

40

1 The Chair said that the Planning Board can make a recommendation
2 to the Town Board and they will review the use of a Conservation
3 Subdivision on a case to case basis.

4
5 Town Attorney Eriole said that for the public benefit they should know
6 that the Conservation Subdivision is a way to put the same number of
7 lots on a smaller footprint to preserve open space.

8
9 Town Planner Hull noted that the applicant was directed to show a
10 conforming conventional subdivision. She said this has been
11 submitted but more analysis is needed. Town Planner Hull explained
12 that from a zoning perspective the 4-lot subdivision is conforming by
13 tearing down the existing house.

14
15 The Chair mentioned that there is a possibility that the existing house
16 can be affordable housing.

17
18 Engineer Allen explained that if the existing house stays it will be
19 affordable but under the Conventional Plan the house will be
20 demolished.

21
22 The Chair asked the Board if they prefer the Conventional
23 Subdivision or do they have interest in a Conservation Subdivision.

24
25 Mr. Goldenberg asked the reason for tearing down the house.

26
27 Town Planner Hull explained the house will be removed in order to
28 have a complying plan. She noted that if the house is left on the plan
29 there will be setback issues. Town Planner Hull said that if the
30 applicant has a subdivision with a common driveway the setbacks will
31 be different.

32 Ms. Gannon asked if the applicant's preference is the Conventional or
33 Conservation Subdivision.

34
35 Engineer Allen stated that as long as the lot count is 4-lots the
36 applicant prefers the common driveway. He mentioned that the
37 action letter asked the applicant to compare the cost differential
38 between a 3-lot and 4-lot subdivision. Engineer Allen opined that the
39 common driveway approach has advantages such as the affordable
40 housing and open space for Koegel Park.

1 Mr. Keane indicated that he is in favor of eliminating the fourth lot in
2 the back. He indicated that his main concern is the discharge point
3 heading to the gully and wetland and the steep slopes at the back
4 end of the lot. He said that he prefers the common driveway to a
5 Town road and the affordable nature of the existing house.

6

7 Engineer Allen mentioned the 280A Conservation Plan would be a 4-
8 lot plan but the house at the back of the lot will be preserved.

9

10 The Chair indicated that the Planning Board should refer the
11 application to the Town Board for a decision.

12

13 Town Attorney Eriole advised that the Planning Board should make a
14 positive recommendation to the Town Board.

15

16 Engineer Allen mentioned that the Planning Board should state that
17 the Conventional Subdivision meets all the zoning requirements and
18 explain the reason for the Conservation Plan such as donation of land
19 and affordable housing.

20

21 Town Planner Hull said that she will put the reason why the Planning
22 Board is recommending that the Town Board consider the
23 Conservation Subdivision in her memo to the Town Board.

24

25 Consulting Town Engineer Barbagallo noted that he enumerated
26 some outstanding items in his memo dated April 23, 2010. He said
27 that field testing and stormwater issues have to be done in order for
28 him to say that a Conservation Subdivision meets all the
29 requirements. He questioned if this has to be considered by the
30 Board prior to the Board's recommendation to the Town Board.

31 Town Attorney Eriole advised that the recommendation to the Town
32 Board should indicate that Consulting Town Engineer Barbagallo has
33 to verify conditions before he gives his consent to proceed but this
34 does not have to hold up the Planning Board's recommendation.

35

36 Mr. Keane asked if the Town Board denies the recommendation of
37 the Planning Board is the Board forced into the 4-lot Conventional
38 Subdivision.

39

1 Engineer Allen said that the Board is hedging its bet because the
2 Board is acknowledging that there are a few outstanding engineering
3 comments. He noted that the field testing has been done.
4 Engineer Allen indicated that he is not concerned about the soil
5 capacity not being able to handle stormwater because the septic area
6 is 50-feet away which is required by code.

7
8 Town Attorney Eriole said anything the Board refers to the Town
9 Board that is different can be considered anew but with respect to the
10 Conservation Subdivision recommendation that action from the Town
11 Board would be final if the Board cannot find another way to shape
12 the Cluster Subdivision.

13
14 Town Planner Hull said if there are outstanding issues to verify that
15 this is a conforming Conventional Subdivision it would be
16 advantageous for Engineer Allen to work with Consulting Town
17 Engineer Barbagallo to satisfy the outstanding items to ensure that
18 this is a conforming Conventional Plan.

19
20 The Chair noted that in 2007 the Local Law for Conservation Zoning
21 says this procedure may be followed at the discretion of the Planning
22 Board if in its judgment the application will benefit the Town by
23 satisfying one or more purposes as set fourth in 170.13 (1). She said
24 that she is only saying that the Board has discretion in sending their
25 recommendation to the Town Board.

26
27 Town Planner Hull agreed that there is enough justification to send a
28 recommendation to the Town Board but Consulting Town Engineer
29 Barbagallo still feels that there is some proving that has to be done in
30 relation to stormwater and she wants the Board to be comfortable
31 saying that the Conventional Subdivision is conforming.

32 Engineer Allen said if he responds to Town Planner Hull's memo and
33 Consulting Town Engineer Barbagallo's memo will the Board
34 recommend to the Town Board that this application proceed as a
35 Cluster Subdivision. He suggested that Town Planner Hull draft a
36 memo for the next Planning Board meeting and in the interim he will
37 work with Consulting Town Engineer Barbagallo to make sure that he
38 is comfortable with the Conventional Subdivision.

39

1 Engineer Allen said he wants to clarify that if the Town Board denies
2 the Cluster Subdivision that the Planning Board has already said that
3 the Conventional Subdivision works.

4
5 The Chair mentioned that the Board will not review the Notice of
6 Intent prepared by Town Planner Hull because the orientation of the
7 notice will change.

8
9 The Chair directed that Town Planner Hull draft a memo to the Town
10 Board in reference to the recommendation to the Town Board for a
11 Cluster Subdivision for the next meeting.

12

13 **PROJECT REVIEW**

14

15 **HOMELAND TOWERS, LLC AND NEW CINGULAR**
16 **WIRELESS PCS, LLC (AT&T) SITE PLAN AND STEEP SLOPES**
17 **[TM: 38.17-1-5] 121 ROUTE 100**

18

19 Chairman DeLucia said that this is the project review of the
20 application of Homeland Towers, LLC/New Cingular Wireless LLC
21 (“AT&T”), collectively referred to as the applicants, for site plan
22 approval and steep slopes permit for property located at 121 Route
23 100 owned by Michael P. and Alice T. Amato for the installation of a
24 wireless telecommunications facility in an R-80 Residential Zoning
25 District.

26

27 The Chair acknowledged for the record receipt of the following: a
28 letter dated April 23, 2010 from attorney Robert D. Gaudioso
29 representing Homeland Towers requesting that this application be
30 adjourned and placed on a future agenda to give the Board an
31 opportunity to review resubmission of revised materials.

32

33 **PROJECT REVIEW**

34

35 **HOMELAND TOWERS, LLC. NEW CINGULAR WIRELESS PCS,**
36 **LLC (AT&T) SITE PLAN AND WETLAND PERMIT**
37 **[TM: 37.13-2-3] 2580 ROUTE 35**

38

39 Chairman DeLucia noted that this is the project review of the
40 application of Homeland Towers, LLC/New Cingular Wireless PCS,

1 LLC (“AT&T”), collectively referred to as the applicants, for site plan
2 approval and wetland permit for property located at 2580 Route 35
3 owned by Umberto and Carol Santaroni for the installation of a
4 wireless telecommunications facility in an R-120 Residential Zoning
5 District.

6
7 Chairman DeLucia acknowledged for the record receipt of a letter
8 dated April 23, 2010 from attorney Robert D. Gaudio representing
9 Homeland Towers requesting that this application be adjourned and
10 placed on a future agenda to give the Board an opportunity to review
11 the site plan.

12
13 Mr. Goldenberg asked when the applicant submits the plan does the
14 150-day time clock start all over again.

15
16 Town Attorney Eriole explained that if the Board determines that the
17 application is incomplete, the applicant’s responsiveness plays into the
18 consideration if the 150-days will be held to as a hard timeline.
19 He said that as long as the Board has been timely in responding to
20 the applicant that will tie into the tolling of the 150-days. Town
21 Attorney Eriole mentioned that if it is a substantial re-submission the
22 Board should determine if the 150-days should start all over.

23
24 **DISCUSSION**

25
26 The Chair stated that this is an open discussion of two items on the
27 agenda by members of the Board and staff as follows:

- 28
29 1. Draft Certification of Disclosure of Interest
30 2. Bond Code revisions

31 **DRAFT CERTIFICATION OF DISCLOSURE OF INTEREST**

32 Town Attorney Eriole said a comment was made in reference to
33 General Municipal Law Section 809 which narrowed the focus a little
34 too much as there are other things the Board was interested in having
35 disclosed other than what is covered in Section 809. He noted that
36 what the Board is reviewing incorporates all the various provisions in
37 regard to disclosure both of contract vendees, employment

1 relationships or other interest which are covered by anything in
2 Section 800 et.al of the general municipal law. He said that it
3 broadens the disclosure to be made to persons, partners, directors,
4 employees, etc. Town Attorney Eriole said that it takes into account
5 every defined term for the person who must make the disclosure.

6
7 Ms. Gannon said that her objection to the draft of this form is that it
8 does not account for the instance if there is a relationship. She said
9 that the form is not drawing a conclusion but is allowing the
10 opportunity for a relationship to be identified and what happens after
11 that will involve further discussion and may involve litigation but there
12 is no ability to record the instance of the relationship.

13
14 Town Attorney Eriole said if Ms. Gannon means that the form does
15 not suggest some kind of automatic follow-up to the disclosure she is
16 correct.

17
18 Ms. Gannon said if there is a relationship the form should ask for the
19 persons name and the relationship. She noted that the form
20 suggests that if there is a relationship that is the end.

21
22 Town Attorney Eriole said that he can add if such a relationship exists
23 disclose it on the attached page. He said that the idea is that a
24 person or entity who will swear under penalty of perjury that there is
25 no such relationship will not sign the form if there is such a
26 relationship.

27
28 Ms. Gannon mentioned that there are certain things that you may
29 consider such as a relationship which certain people consider
30 acceptable; therefore, the form should provide the opportunity to
31 disclose the relationship.

32
33 Town Attorney Eriole noted that he can add the disclosure of a
34 relationship to the form to read *to the extent such a relationship does*
35 *exist please set forth the name of the parties and persons involved on*
36 *the attached form.*

37
38 Mr. Goldenberg asked what determines what the disclosure of
39 interest is.

40

1 Town Attorney Eriole said that the terms used in the certification
2 determine what the disclosure of interest is and by having someone
3 sign the disclosure form and if found to be untruthful they are now on
4 record as being untruthful.

5
6 Mr. Goldenberg asked who will determine what a conflict of interest
7 is. He suggested listing what the Board considers a conflict of
8 interest on the form.

9
10 Town Attorney Eriole said that the State statutes and the Attorney
11 General's opinions provide guidance on determining a conflict of
12 interest.

13
14 Mr. Foley noted that the form will describe what the Board considers
15 a conflict of interest and a yes answer does not necessarily mean a
16 project will not go forward. It means that you are disclosing the
17 conflict of interest.

18
19 Town Attorney Eriole said that the disclosure is meant to break up the
20 definitions into who is making the disclosure, who qualifies as a type
21 of relationship with a person who might create a conflict. He noted
22 that there could be an introductory paragraph that states that it is the
23 intent of the Town of Somers that persons with the interest described
24 below should make a disclosure.

25
26 Mr. Foley mentioned that Ms. Gannon spoke about the McKinney
27 form which is a plausible, useful form that was developed and he
28 suggested that form be used and the Board can add to it if they want.
29 He noted that the form should speak about the State of New York and
30 not just the Town of Somers.

31
32 Town Attorney Eriole commented that he used the McKinney form as
33 a reference and added his own interpretation based on comments
34 from the Board. He said that he narrowed the form to the Town of
35 Somers because it is this Town's boards that are concerned about
36 the disclosure of interest.

37
38 Mr. Foley opined that by shortening the form it loses clarity and he
39 favors the McKinney form.

40

1 Town Attorney Eriole said that he will take the McKinney form and
2 add to it what the Board wants.

3

4 The Chair noted that she wants a disclosure that is simple for
5 residents to understand.

6

7 Town Attorney Eriole said that he can soften the form by adding *if*
8 *there is any relationship that is defined or that you think is material*
9 *disclose it.*

10

11 Ms. Gannon also favors the McKinney form because there is a
12 degree of readability and accessibility to people who are not legal
13 professionals to understand the circumstances and questions that are
14 asked and presented in the form.

15

16 The Chair asked for a line for the date on the form.

17

18 Town Attorney Eriole said that he will revise the form that conforms
19 with discussions this evening.

20

21 **DISCUSSION**

22 **BOND CODE REVISIONS**

23 Town Attorney Eriole said that what the revision to the bond code
24 tries to achieve irrespective of past practices and what the code says
25 now is what the Planning Board feels should be the way the bond
26 release and reductions are handled. He explained that generally
27 speaking performance bonds should be distinguished from
28 maintenance bonds and the Planning Board will accept the
29 application and hold the Public Hearing and ultimately the Town
30 Board will reduce or return the bond. Town Attorney Eriole said the
31 idea was to streamline the bond process and that is what these
32 changes should reflect.

33

34 Town Attorney Eriole reviewed with the Board Section 150-16 and
35 A174 Code changes. He explained that the last paragraph under A
36 starting with *Such bond shall also provide...* is a reference to what
37 now should be called a maintenance bond. Town Attorney Eriole

1 explained that the entire A paragraph relates to a performance bond.
2 He mentioned that the code change now says *prior to release of the*
3 *performance bond, the applicant shall file a maintenance bond with*
4 *the town...The maintenance bond shall be in the amount of ten*
5 *percent (10%) of the original performance bond and shall remain*
6 *effective for a period of three (3) years...*

7
8 Town Attorney Eriole referenced G. of Section 150-16 and A174.
9 Reduction of bond. He opined that this section is confusing, *Upon*
10 *approval of the Town Board*, which gives the impression that should
11 happen first and then reads *and after due notice and public hearing,*
12 *the Planning Board may reduce the required amount of a*
13 *performance bond*, which gives the impression that the Planning
14 Board actually does the approving. He said that he removed that
15 wording and it now reads *this bond can be reduced when the Town*
16 *Board approves it and that is after the recommendation of the*
17 *Planning Board. The Planning Board will receive the completed*
18 *application and recommendation of the Town Engineer and set a*
19 *public hearing. After conducting the public hearing, the Planning*
20 *Board will make a recommendation to the Town Board as to whether*
21 *the performance bond should be reduced, and, if so, in what amount.*
22 *In no event, shall any performance bond be reduced to less than 25%*
23 *of the amount of the original performance bond.* He said that the
24 idea is if the applicant wants to go below 25% they should finish the
25 work and make an application for a maintenance bond which will
26 bring the bond to 10%.

27
28 Town Attorney Eriole said that he cleaned up the checklist to state
29 what has to be provided. He noted that what it says is that the
30 Planning Board does the reviewing, with the Town Engineer and
31 Town Attorney confirming that the legal documents and engineering
32 are correct, then a recommendation is made to the Planning Board,
33 the Planning Board refers their recommendation to the Town Board,
34 and the Town Board makes the final approval.

35
36 Town Attorney Eriole asked if the Board had any changes or
37 comments on the revisions to the performance bond language
38 changes.

39

1 Mr. Goldenberg mentioned that the Town no longer has a Town
2 Engineer and now has a Consulting Town Engineer and the Code
3 should be changed to reflect this.

4

5 Mr. Foley said that he does not want to see applicant's coming back
6 every month for a 2% reduction.

7

8 Consulting Town Engineer Barbagallo questioned if a Surety
9 Company will issue a maintenance bond for a three (3) year period.
10 He said that his experience tells him that they will only issue the bond
11 for two (2) years. He noted that the Board may want to say a
12 maintenance bond or other form of surety. Consulting Town
13 Engineer Barbagallo asked if a bond is inclusive of all types and
14 forms of surety.

15

16 Town Attorney Eriole said that the Board may want to use language
17 that is used by Title Insurance Companies that says the maximum
18 term used by reputable bonding or Surety Company is not less than
19 two (2) years.

20

21 Mr. Goldenberg said that when a bond is returned or released that
22 the Town Board at their meeting votes on the bond.

23

24 Town Attorney Eriole explained that the change to the Code states
25 that the Town Board will approve such reductions by resolution.
26 He said that if the Town Board goes against the Planning Board's
27 recommendation they have to state the reasons on the record.

28

29 Ms. Gannon suggested providing a definition of Town Engineer which
30 in the Code can be Consulting Town Engineer or authorized
31 representative of the Town.

32 The Chair directed that Town Attorney Eriole make the changes for
33 the Planning Board's review.

34

35 **PROJECT REVIEW**

36

37 **NORTH END AT SOMERS AMENDED SITE PLAN**
38 **[TM: 4.20-1-3.1]**

39

1 Chairman DeLucia said that this is the project review of the
2 application of North End at Somers, LLC, by applicant James Zappi,
3 P.E., for Amended Site Plan Approval. She noted that the applicant
4 is the contract vendee with owner National Golfworx New York
5 Realty, LLC as contract vendor. The Chair mentioned that the
6 property is located on the north side of U.S. Route 6 at Birdsall Road
7 in the Neighborhood Shopping Zoning District (NS) consisting of
8 11.0742 acres of a public golf driving range of which 10.548 acres is
9 located in Somers and 0.5261 acres in the Town of Carmel, Putnam
10 County. The Chair explained that the applicant proposes to construct
11 five buildings known as Building A, B, C, D and E of mixed use
12 retail/residential development with 348 parking spaces and three
13 loading spaces in which 35 or 36 of the proposed 71 housing units
14 would be set aside as fair and affordable housing and will be serviced
15 by public sewer and water. The Chair indicated that a site walk was
16 conducted by members of the Board, Town Engineer and Town
17 Planner on April 12, 2008 and the Town Engineer's report was
18 submitted to the Board on April 4, 2008. The Chair said that this
19 application was last discussed at the February 11, 2009 Planning
20 Board meeting whereby the Board directed staff to send the applicant
21 an Action Letter listing items raised by Board members and staff to be
22 successfully addressed to staff's satisfaction.

23
24 The Chair acknowledged for the record receipt of the following: a
25 letter dated March 9, 2010 from William E. Lachenauer, Project
26 Coordinator of Hudson Engineering Consulting, P.C. submitting a
27 binder report entitled "Planning Board Application & Environmental
28 Assessment Form including Supplements" and addressing comments
29 by Board members and staff contained in the Action Letter dated
30 February 13, 2009; a letter dated March 24, 2010 from Edward
31 Buroughs, AICP, Acting Commissioner, Westchester County
32 Planning Board, with review comments and recommendations; a
33 letter dated April 7, 2010 from Marilyn Shanahan, SEQRA
34 Coordination Section, NYC Department of Environmental Protection
35 with 18 review comments; a memo dated April 14, 2010 from the
36 Conservation Board; a memo dated April 23, 2010 from Consulting
37 Town Engineer Joseph C. Barbagallo, P.E., BCEE, with project
38 review comments and recommendations; and a memo dated April 27,
39 2010 from Town Planner Sabrina Charney Hull, AICP, with project
40 review comments and recommendations and attaching a draft Notice

1 of Intent to be Lead Agency and that the action is considered an
2 Unlisted Action under SEQRA for the Board's review and action.

3
4 The Chair asked the applicant's representative to give a presentation
5 regarding this revised submission and related materials. She
6 suggested that during the presentation that the Town Planner,
7 Consulting Town Engineer, Town Attorney and the Board interject
8 their comments and questions in an open forum. The Chair said that
9 staff may include items in their memo that have not been covered.

10
11 James Zappi, applicant, said that the property is located on the
12 northerly side of Route 6 in the Baldwin Place area and is in the
13 Neighborhood Shopping (NS) District. He noted that the property is
14 approximately 10 ½ acres. Mr. Zappi explained that as part of the
15 approval process the property has to be in the Peekskill Sanitary
16 Sewer District. He mentioned that the Town Board will have to create
17 a sewer district and once that takes place he will make an application
18 to the Westchester County Board of Legislatures and request that his
19 property be added to the Peekskill Sanitary Sewer District. Mr. Zappi
20 stressed that without the approval to the Peekskill Sanitary Sewer
21 District this is not a viable project.

22
23 Mr. Zappi informed the Board that the project consists of five (5)
24 buildings; with three (3) buildings in the back in a U shape facing
25 Route 6. He said that these buildings will be three stories with
26 commercial space on the first floor and two floors of residential.
27 Mr. Zappi noted that at the center of the three buildings will be green
28 space which will serve as stormwater treatment between the U
29 shaped buildings and the two smaller buildings. Mr. Zappi indicated
30 that he was creative with the parking spaces which will be underneath
31 the building for the residential usage. He mentioned that the large
32 buildings will have elevators. He explained that the Town Board
33 asked him to do a scaled rendering to show how the buildings will
34 look from Route 6.

35
36 The Chair asked what the height of the buildings are.

37
38 Mr. Zappi said that the Town Board passed an amendment to Zoning
39 that allows the buildings to be 50' high. He said that he wants to
40 bring character to the site and the neighborhood shopping zone is

1 specific about architectural with a lot of design features and those
2 have been incorporated in the elevations. Mr. Zappi noted that the
3 floor plans show a studio, one and two bedrooms. He commented
4 that 50% of the units will be affordable housing.

5
6 Mr. Goldenberg asked if Mr. Zappi negotiated with anyone in regard to
7 financing for the affordable housing. He indicated that the Town has
8 commitments in regard to affordable housing and he asked if this
9 project with the affordable housing units can be used toward the
10 Town's commitment.

11
12 Mr. Zappi said that he received a density bonus which allows the
13 developer to use his own money to make the project viable. He
14 noted that this project will not be contingent on tax credits or federal
15 or local funding.

16
17 Town Planner Hull noted that all housing projects that come before
18 the Board with affordable housing will help the Town with their
19 commitment in accordance with the purchase of the Eagle River
20 property as well as helping Westchester County meet its obligations
21 to the Federal government with their housing settlement act.

22
23 The Chair asked if HUD guidelines will be used.

24
25 Mr. Zappi stated that he will be using HUD guidelines.

26
27 Mr. Zappi reviewed the Site Plan of the project with the Board. He
28 suggested that the number of parking spaces be reduced as there is
29 too much parking on site. He recommended that there be land
30 banked parking spaces for future parking. Mr. Zappi also showed the
31 Board a two scale rendering from his landscape architect of what the
32 project will look like from Route 6. He said that you will not be able
33 to see very much of the buildings from Route 6. Mr. Zappi showed
34 the Board the typical elevation of what the buildings will look like and
35 mentioned that they will have false roofs. Mr. Zappi explained that
36 the larger buildings will have flat roofs on the inside and are designed
37 to be green roofs.

38
39 The Chair asked if the building will be sprinkled.

40

1 Mr. Zappi replied that the buildings will have sprinklers and will have
2 alarms in each building and a central alarm.

3
4 Mr. Foley asked if the apartments will be rentals.

5
6 Mr. Zappi said that he has not decided if the apartments will be
7 rentals but he is leaning towards condominiums with a mix of rentals.

8
9 The Chair said that she would like to see a restaurant in this
10 development.

11
12 William Lachenauer, the applicant's engineer, mentioned that a
13 meeting was held with the Town Planner, Consulting Town Engineer,
14 and members of the Planning Board and he came away from that
15 meeting with a list of must haves and he is compiling information to
16 access the impacts of this project. Engineer Lachenauer explained
17 that the DEP recently adopted regulation changes in coordination
18 with the DEC regulations which went into effect on April 5, 2010. He
19 said that projects that were in the pipeline with DEP can stay with the
20 old regulations or comply with the new regulations. Engineer
21 Lachenauer noted that he provided pollutant calculations that were
22 required previously and are contained in the SPPP that was provided
23 to the Board. He stated that those regulations are no longer required.
24 He mentioned that a change in the DEP regulations is that if you have
25 20% or more of impervious surface on the site there is a requirement
26 for two treatment processes in tandem and they cannot be identical.
27 Engineer Lachenauer commented that the two treatment processes
28 have been done in the original design where there will be two
29 treatment practices, bio-swales going to a pocket pond and are
30 different because they do not have the same pollutant removal
31 loading rates. He mentioned that the DEC requires bio-retention
32 basins and alternative practices. Engineer Lachenauer said that he
33 incorporated a bio-retention system in the project and mentioned that
34 all the flow from stormwater is sheet flow. He explained that the bio-
35 retention area is 4 feet of engineered soil so the stormwater as it
36 sheet flows filters down through the media removing the five
37 pollutants that are required to be treated. Engineer Lachenauer
38 noted that there will be buildings with three green roofs. He said that
39 the excess run-off from one of the roofs will be stored in an
40 underground piping system to be utilized during landscape season.

1 Engineer Lachenauer said that run-off from the paved areas through
2 slotted curbs to a bio-swale which attenuates the water for 30
3 minutes at a velocity of less than 2-feet per second. He indicated that
4 the project will receive full treatment and will receive pollutant
5 reduction credits. Engineer Lachenauer said in summary on the
6 stormwater he can continue under the previous DEP regulations or
7 use the new regulations but he has already designed the two
8 stormwater practices in tandem. He mentioned that he would like to
9 incorporate the SPPP that was previously submitted and decide if
10 revisions are necessary and determine which best serves the site.
11 Engineer Lachenauer stressed that he will be looking for the most
12 aggressive design to meet the goals and the necessary approvals.

13

14 Engineer Lachenauer said that he received comments from the Town
15 Planner and Consulting Town Engineer. He said that Mr. Zappi has
16 agreed to complete a geotechnical analysis of site soils with
17 recommendations for building foundations. He noted that he would
18 like to address the comments by having a technical meeting with the
19 Town Planner and Consulting Town Engineer and then he will work
20 with the outside agencies. Engineer Lachenauer said that he met
21 with the DEP and will clarify the issue about the DEC wetland and the
22 discharge from the pipe and the definition of a watercourse.

23

24 Consulting Town Engineer Barbagallo asked if the applicant can
25 quantify the existing condition based on what is being done on the
26 site as opposed to standards on grass being that this project is a
27 manicured and fertilizer based site.

28

29 Engineer Lachenauer said that the reason DEP is getting rid of
30 pollutant loading calculations is because a back lawn is treated the
31 same way as a golf course.

32

33 Consulting Town Engineer Barbagallo said that stormwater practices
34 are shown in the wetland buffer area. He noted that the applicant is
35 using various systems to treat stormwater in the wetland buffer and
36 per Town Code the applicant should mitigate impacts to the wetland
37 buffer. He mentioned that there are other mitigation methods that
38 can be used such as off-site mitigation.

39

1 Engineer Lachenauer said that mitigation does not have to be defined
 2 at this point in the process. He explained that whatever credit is
 3 given on site will reduce what has to be done off-site.

4
 5 Consulting Town Engineer Barbagallo said that with the geotechnical
 6 analysis he would like to make sure that data is collected that will
 7 allow the Board and staff to evaluate the placement of fill.

8
 9 Engineer Lachenauer mentioned the placement of the 13,000 cubic
 10 yards of fill and said that will be part of the geotechnical analysis.
 11 He mentioned that he will work with Consulting Town Engineer
 12 Barbagallo to create a list and scope of what should be covered with
 13 the geotechnical analysis.

14
 15 Mr. Zappi said that the Planning Board has the power to reduce
 16 parking on this site and if the land banking of spaces can be
 17 eliminated he will provide mitigation in that area.

18
 19 Town Planner Hull indicated that the Town Board has to authorize the
 20 Planning Board to reduce parking. She mentioned that the reduction
 21 of parking spaces ties in with the County's March 24, 2010 letter.
 22 She said that there has to be discussion as to the reason why this
 23 site is a Neighborhood Shopping site unto itself and the benefits of
 24 that versus incorporating that with the rest of Route 6.

25
 26 Engineer Lachenauer said that he will work with the Planning Board
 27 on the benefits of this project being a neighborhood shopping site
 28 unto itself but it will be difficult because of the uses on both sides of
 29 the project (gas station and restaurant).

30
 31 Mr. Zappi said he wonders who makes up some of the Codes as this
 32 Code does not make any sense. He questioned why anyone would
 33 want to walk to a gas station and who from the gas station would
 34 want to walk to his property. He said that it would be understandable
 35 if the entire neighborhood was in an NS Zone then the entire
 36 community should be linked together. He stressed that he will not put
 37 the buildings in front because that would cause it to be a failed
 38 shopping center. Mr. Zappi noted that he will put a sidewalk on his
 39 property on Route 6.

40

1 Engineer Lachenauer mentioned the comment concerning the
2 possible joint effort on the Sanitary Sewer Pumping Station; he
3 indicated that it will conserve resources to develop one pumping
4 station and access the force main on Route 6.

5
6 Consulting Town Engineer Barbagallo asked about the use of
7 pervious materials on this site and requested that a list of options be
8 provided so they can be considered during the process.

9
10 Engineer Lachenauer said that the technology regarding porous
11 pavement is not there yet and his preference is block paving or a
12 grass paver over porous asphalt pavement.

13
14 Ms. Gannon referenced the County's March 24, 2010 letter under
15 connection to County sanitary sewer line, *in our opinion, it is not*
16 *productive to engage in detailed site plan review – or development*
17 *master plan reviews-without first establishing a sound basis for*
18 *infrastructure planning, particularly when the planning relies on the*
19 *facilities and approvals of other governments and agencies.*
20 *We continue to be concerned about a lot-by-lot approach to*
21 *proposing property additions to the County Sewer District.* She asked
22 if this data exist or will it be addressed. Ms. Gannon noted that Mr.
23 Zappi admitted that it is a major problem if this project does not get
24 into the County Sewer District.

25
26 Mr. Zappi said that the Town of Somers created the sewer district for
27 The Mews and probably should have asked that the North End
28 property be included. He said that he cannot ask that the North End
29 project be put in the sewer district until an environmental
30 determination is provided by the Planning Board.

31 The Chair directed the applicant to respond to comments contained in
32 the March 24, 2010 Westchester County Department of Planning
33 letter and the comments contained in the April 7, 2010 letter from the
34 NYCDEP.

35
36 The Chair noted that Town Planner Hull has prepared for the Board's
37 review and action a Notice of SEQR Actions and Notice of
38 Designation of Lead Agency pursuant to 6 NYCRR Part 617, Article 8
39 (State Environmental Quality Review Act (SEQRA)) of the State
40 Environmental Conservation Law and Chapter 92 (Environmental

1 Quality Review) of the Code of the Town of Somers, New York. The
2 Somers Planning Board determines that the Proposed Action is an
3 Unlisted Action under SEQRA as per Chapter 92 of the Code of the
4 Town of Somers in conjunction with Article 24 of the NYS
5 Environmental Conservation Law.

6
7 The Chair asked if the applicant's representatives reviewed the draft
8 Notice of Intent to be Lead Agency and have any comments or
9 questions.

10
11 Mr. Zappi acknowledged that he read the Notice of Intent and had no
12 questions or comments.

13
14 The Chair asked if there were any comments or questions from
15 members of the Board and no one replied.

16
17 The Chair asked if there was a consensus of the Board that the
18 Somers Planning Board determines that the Proposed Action is an
19 Unlisted Action under SEQRA as per Chapter 92 of the Code of the
20 Town of Somers in conjunction with Article 24 of the NYS
21 Environmental Conservation Law and declares its intent to be Lead
22 Agency.

23
24 Town Planner Hull stated that the EAF has to be revised before it can
25 be sent out to the involved and interested agencies.

26
27 On motion by Mr. Goldenberg, seconded by Ms. Gannon, and
28 unanimously carried, the Board moved that the Somers Planning
29 Board declares its intent to be Lead Agency in the application of
30 North End at Somers, LLC and to circulate a Notice of Intent to be
31 Lead Agency to all involved and interested agencies, together with
32 Part I of the Full Environmental Assessment Form dated February 9,
33 2010 and a copy of the plans.

34
35 The Chair said that this information is also available for public review
36 in the Planning and Engineering Office at the Town House. She
37 noted for the public's information, the Involved and Interested
38 Agencies have 30 calendar days within which to respond in writing as
39 to whether they object to the Planning Board serving as Lead
40 Agency. Also, the general public may communicate in writing to

1 Town Planner Sabrina Charney Hull, AICP, their environmental
2 concerns and questions.

3
4 Ms. Gannon referred to the Westchester County letter in relation to
5 the connection to the County sanitary sewer line, she indicated that
6 there was extensive discussion on the recent project and the
7 connection and those discussions contain analysis that would be
8 relevant and helpful to this applicant and she asked if this information
9 is available to this applicant.

10
11 The Chair said that letter from Westchester County is available to the
12 applicant.

13
14 The Chair directed that a technical meeting take place with staff, Mr.
15 Zappi and Engineer Lachenauer.

16
17 There being no further business, on motion by Ms. Gannon,
18 seconded by Mr. Foley, and unanimously carried, the meeting
19 adjourned at 10:30 P. M. and noted that the next meeting of the
20 Planning Board will be held on Wednesday, May 12, 2010 at
21 7:30 P. M. at the Somers Town House.

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23
24
25
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28
29
30

Respectfully submitted,

Marilyn Murphy
Planning Board Secretary