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5 **SOMERS PLANNING BOARD MINUTES**
6 **AUGUST 25, 2010**
7
8

9 **ROLL:**

10
11 **PLANNING BOARD**

12 **MEMBERS PRESENT:** Chairman DeLucia, Mr. Keane,
13 Ms. Gerbino, Mr. Goldenberg, Mr. Foley,
14 Ms. Gannon and Mr. Currie
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 The meeting commenced at 7:35 p.m. Planning Board Secretary
22 Marilyn Murphy called the roll. Chairman DeLucia noted that a
23 required quorum of four members was present in order to conduct the
24 business of the Board.

25
26 **APPROVAL OF JUNE 23, 2010 MINUTES**
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 June 23, 2010 Planning Board meeting
31 consisting of thirty-eight (38) pages.
32

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

36 The Chair asked if there was a motion to approve the June 23, 2010
37 draft minutes.
38

39 On motion by Mr. Goldenberg, seconded by Ms. Gannon, and
40 unanimously carried, the minutes of June 23, 2010 were approved.

1 The Chair noted that the DVD of the June 23, 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 **PUBLIC HEARING**

9

10 **ROSEMARY ZAPPI SUBDIVISION** 11 **REDUCTION OF PERFORMANCE BOND**

12

13 Chairman DeLucia noted that this is a Public Hearing to consider the
14 reduction of the performance bond for the Rosemary Zappi
15 Subdivision in accordance with Chapter 150-16. G. of the Code of the
16 Town of Somers in the original posted amount issued by the form of a
17 check in the amount of \$115,555 to \$17,005. She said that the
18 property is located at 9 Kniffen Road. The Chair indicated that this
19 request was last discussed at the August 11, 2010 Planning Board
20 meeting whereby the Board scheduled the Public Hearing for this
21 evening.

22

23 The Chair asked if anyone from the public was present for the
24 reduction of the performance bond for the Rosemary Zappi
25 Subdivision and no one responded.

26

27 The Chair asked Planning Board Secretary Murphy if prior to the
28 Public Hearing was the required legal notice published.

29

30 Planning Board Secretary Murphy stated that the legal notice was
31 published in the North County News for their August 15, 2010 issue.

32

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

35

36 Ms. Gerbino suggested changing the language to say the bond will
37 be reduced by \$98,550.

38

39 Mr. Goldenberg asked if it is proper procedure when there is a
40 request for a bond reduction or anything else and the applicant does

1 not appear before the Board. He said that if this has been done in
2 the past he has no objection.

3
4 The Chair explained that sometimes when everything is done the
5 Board does not have the applicant appear. The Chair said that at the
6 August 11, 2010 meeting the Board received a memo dated July 17,
7 2010 from Steven Woelfle, Principal Engineering Technician,
8 itemizing the roadway cost estimate indicating the required
9 improvements completed, the amount of the reduction, a roadway
10 checklist, As-Builts and inspection reports on file, and commenting
11 that all bonded improvements are completed except for the
12 installation of the top asphalt course. The Chair mentioned that by
13 memo dated August 4, 2010 Consulting Town Engineer Joseph C.
14 Barbagallo, P.E. commented that he completed a review of the file
15 and that a site inspection to verify construction activities was
16 completed on June 28, 2010 and he found all site features to be
17 installed in accordance with the approved plans and he supports the
18 bond reduction by \$98,550 from \$115,555 to \$17,005 as
19 recommended by Steven Woelfle.

20
21 Mr. Goldenberg said that he is familiar with the documentation that
22 the Chair just read but he does not remember being on the Board
23 when there was a Public Hearing and the applicant was not present
24 to answer questions.

25
26 The Chair explained that she informed Mr. Zappi that it was not
27 necessary to be present but if there were questions from staff or
28 residents at the Public Hearing she would call him on his cell phone
29 and he would come to the meeting.

30
31 The Chair said that there was a consensus of the Board to close the
32 Public Hearing.

33 On motion by Ms. Gerbino, seconded by Mr. Currie, and unanimously
34 carried, the Board moved to close the Public Hearing on the bond
35 reduction for the Rosemary Zappi Subdivision.

36
37 The Chair asked if Consulting Town Engineer Barbagallo had any
38 objection to the reduction of the bond and recommendation to the
39 Town Board.

40

1 Consulting Town Engineer Barbagallo replied that he has no
2 objection to the reduction of the performance bond.

3
4 On motion by Mr. Goldenberg, seconded by Ms. Gannon, and
5 unanimously carried, the Board moved to recommend under Section
6 150-16.G. of the Code of the Town of Somers that the Planning
7 Board send a memo to the Town Board recommending that the
8 Rosemary Zappi Subdivision performance bond be reduced by
9 \$98,550 from the original amount of \$115,555 to \$17,005 as
10 recommended by the Consulting Town Engineer.

11
12 **DECISION**

13
14 **SUSAN HAFT/RIDGEVIEW DESIGNER BUILDERS, INC.**
15 **FINAL CONSERVATION SUBDIVISION APPROVAL**
16 **[TM: 16.12-1- 41 & 42]**

17
18 Chairman De Lucia noted that this is the Decision of the Planning
19 Board on the application of Susan F. Haft and Ridgeview Designer
20 Builders, Inc. of Pound Ridge, N.Y. to consider for approval draft
21 Resolution No. 2010-06 the Granting of Conditional Final
22 Conservation Subdivision Approval, Steep Slopes Permit, Stormwater
23 Management and Erosion and Sediment Control Permit and Tree
24 Removal Permit for a 4-lot configuration on approximately 12.444
25 acres in an R-40 Residential Zoning District to be serviced by
26 individual septic systems and wells and accessed by a common
27 driveway. The Chair explained that the properties are located on the
28 east side of Lovell Street near Benjamin Green Lane. She mentioned
29 that Ridgeview Designer Builders, Inc. is the owner of Lot 41 at 16
30 Lovell Street of which Susan F. Haft is its President, and Susan F.
31 Haft is the sole owner of Lot 42 at 18 Lovell Street. This application
32 received Conditional Preliminary Conservation Subdivision Approval
33 and necessary permits on June 14, 2006 by Resolution No. 2006-16.
34 The Chair noted that the applicants are represented by Geraldine N.
35 Tortorella, Esq. of Hocherman Tortorella & Wekstein, LLP and
36 Timothy S. Allen, P.E. of Bibbo Associates, LLP. The Chair said that
37 this application was last discussed at the August 11, 2010 Planning
38 Board meeting whereby the Board waived the Public Hearing and
39 requested Town Planner Sabrina Charney Hull, AICP to prepare a
40 draft Resolution for consideration for approval at this meeting.

1 The Chair asked Attorney Tortorella if she reviewed the draft
2 resolution.

3

4 Attorney Tortorella, representing the applicant, replied that she
5 reviewed the draft resolution and had a few changes.

6

7 Town Planner Hull explained that she sent the Board and the
8 applicant's attorney some changes by e-mail. She noted that the
9 changes were adding the words "Stormwater Management" before
10 "Erosion and Sediment Control Permit" and changing "Susan Haft" to
11 "Susan F. Haft" throughout the document. Town Planner Hull
12 mentioned that on Page 8 the Whereas clause introducing the final
13 submission now reads, *Whereas, an application for Final Subdivision*
14 *Approval was received on January 23, 2010 from Susan F. Haft, as*
15 *sole owner of Lot #42 at 18 Lovell Street, and Susan F. Haft, as*
16 *president of Ridgeview Designer Builders, Inc., owner of Lot #41, 16*
17 *Lovell Street, and included the following plans and documents.*

18

19 Attorney Tortorella made a change to the first WHEREAS clause on
20 Page 9 two additional lots should be changed to *three additional lots*
21 as one lot was omitted from the description. She asked that the
22 acreage of 1.85 acres for the third lot be added to the resolution.

23

24 Tim Allen, the applicant's engineer, asked if two lots will be counted
25 for the recreation fee.

26

27 Town Planner Hull said that there are three lots but one lot has an
28 existing house, therefore; only two new lots will be counted for the
29 recreation fee.

30

31 Attorney Tortorella suggested a change on Page 12, number 5. to
32 read *and approved by NYCDEP on July 27, 2007 with the amended*
33 *Stormwater Pollution Prevention Plan revised on March 1, 2010 for*
34 *which amended approval by the NYCDEP was granted on May 11,*
35 *2010.*

36

37 Attorney Tortorella referenced Page 12, no. 10, and changed the on-
38 going condition to read, *That the Conservation Easement shall be*
39 *filed simultaneously with the filing of the plat at the Office of the*
40 *Westchester County Land Records.*

1 Town Planner Hull changed on Page 12, no. 11, to read *in relation to*
2 *the Homeowners Association, be filed simultaneously.*

3
4 Attorney Tortorella said that she would like to discuss the duration of
5 the permit with the Board. She explained that there is Final
6 Subdivision Approval, Steep Slopes Permit, Stormwater Management
7 and Erosion and Sediment Control Permit and a Tree Permit. She
8 noted that under the Ordinance for Steep Slopes and the Stormwater
9 Management and Erosion and Sediment Control Permit are only
10 good for one year unless otherwise provided by the Planning Board.
11 Attorney Tortorella said that the Tree Removal Ordinance has a
12 twenty-four month duration for the permit. She said that it is unlikely
13 that the work permitted under the Stormwater Management and
14 Erosion and Sediment Control Permit and the Steep Slopes Permit
15 will be done within one year. Attorney Tortorella indicated that the
16 work under the Tree Removal Permit may not be completed within
17 twenty-four months time.

18
19 Attorney Tortorella explained that the Steep Slopes Permit is for the
20 construction of the common driveway and the stormwater basins.
21 She noted that the Stormwater Permit has to do with the subdivision
22 stormwater system and that will be constructed at the same time as
23 the common driveway but for all intents and purposes that permit
24 needs to be ongoing throughout the build out of the subdivision.
25 Attorney Tortorella indicated that the Tree Removal Permit pertains to
26 the construction of the driveway and the stormwater basins. She
27 mentioned that she is not thinking about weather but the economy.
28 She said that the owner will not build the infrastructure unless they
29 can build the houses. She indicated that the DEP approval is valid
30 for five years which recognizes the realities of construction of the
31 subdivision. Attorney Tortorella appealed to the Board to change the
32 duration of the Town permits. She commented that she has
33 addressed this in other communities and they have realized the
34 economic realities.

35
36 Attorney Tortorella asked that all the permits have the same duration.

37
38 Town Planner Hull said that provisions can be put in the resolution
39 that extends the permits for a specific amount of time for extenuating
40 circumstances.

1

2 Town Attorney Eriole advised that the Town Code requires one year
3 for permits except for the Tree Removal Permit which requires two
4 years.

5

6 Attorney Tortorella explained that the Code allows additional time if
7 otherwise provided by the Planning Board.

8

9 Mr. Keane said that the permits should not be triggered until work
10 activities begin.

11

12 Engineer Allen suggested language that states that the Board agrees
13 that this permit shall be perpetually reviewed for a period of X amount
14 of years and it is understood in the resolution.

15

16 Mr. Foley said that statement will tie the hands of future Boards.

17

18 Town Attorney Eriole said that the Board is limited to what the Code
19 allows. He explained that the Tree Removal Permit is good for two
20 years but the other permits have a duration of one year.

21

22 Attorney Tortorella stated that there needs to be a specific statement
23 in the resolution explaining the duration of the permits.

24

25 Mr. Foley noted that time-extensions are requested before the
26 resolution expires and this is an option that is available. He said that
27 the applicant is trying to save time by not coming back to the Board
28 for a time-extension. He said that he does not want to set a
29 precedent twelve months before it is necessary.

30

31 Attorney Tortorella opined that a year makes no sense in the duration
32 of the permits.

33

34 Mr. Keane suggested that the extension of the permits be tied to the
35 subdivision approval.

35

36 Attorney Eriole mentioned that the duration of the Tree Permit is two
37 years then all the permits can be tied to that permit.

38

39 Mr. Foley referred to Town Code Section 93-20. Expiration of permit,

1 *All Stormwater Management and Erosion and Sediment Control*
2 *Permits shall expire if the work authorized by such permit is not*
3 *substantially started within one year or is not completed by a date*
4 *which shall be specified in the permit. The permitting authority may,*
5 *upon written presentation of sufficient justification for delay made*
6 *prior to the expiration of the permit, grant a reasonable extension of*
7 *time to begin the work prescribed under the permit.*

8
9 Town Planner Hull said that according to the Code the earth moving
10 should take place within a year unless there is a good reason for the
11 extension.

12
13 Attorney Tortorella reiterated her request to have the Steep Slopes
14 and Stormwater Management and Erosion and Sediment Control
15 Permits tied to the Tree Removal Permit with the duration of two
16 years.

17
18 Town Planner Hull said per legal confirmation the permits can be tied
19 to the Tree Removal Permit, this way all permits will expire at the
20 same time.

21
22 The Chair corrected the box on Page 1 of the Resolution to read
23 *Stormwater Management and Erosion and Sediment Control Permit*
24 *and to Susan F. Haft and to Ridgeview Designer Builders, Inc.* She
25 corrected the Certification noting the Resolution #2010-16 changed to
26 #2010-06.

27
28 Ms. Gannon mentioned that there were two Public Hearings and on
29 Page 5 it notes that all those wishing to be heard were given the
30 opportunity to be heard but she could not find where the second
31 Public Hearing was closed.

32
33 Town Planner Hull informed the Board that the beginning part of the
34 Resolution was taken directly from the Preliminary Subdivision
35 Resolution which was written before her employment with the Town.
36 She said that she will recreate a Whereas that closes the second
37 Public Hearing.

38
39 The Chair said that there was a consensus of the Board to approve
40 the Draft Resolution, as amended.

1 On motion by Mr. Keane, seconded by Mr. Currie, and unanimously
 2 carried, the Board moved to approve draft Resolution No. 2010-06,
 3 as amended, Granting of Final Conservation Subdivision Approval,
 4 Steep Slopes Permit, Stormwater Management and Erosion and
 5 Sediment Control Permit and Tree Removal Permit to Susan F. Haft
 6 and Ridgeview Designer Builders, Inc., in accordance with §276 and
 7 §278 of Town Law and §150-13.J. "Planning Board Action" of the
 8 Code of the Town of Somers for the Chairman's signature.

9

10 Ms. Gerbino asked if the permits will be good for two years or twenty-
 11 four months.

12

13 Town Planner Hull said that she will reference the language that is
 14 currently contained in the Tree Removal Permit which is twenty-four
 15 months.

16

17 **DECISION**

18

19 **BARBAGALLO/MEICHNER ROADWAY IMPROVEMENTS**
 20 **FOR THE SCENIC RESOURCE PROTECTION AREA KNOWN AS**
 21 **SMITH LANE**

22

23 The Chair explained that a Decision by the Planning Board for the
 24 Re-grant of Resolution No. 2008-08 of Site Plan Approval for
 25 Barbagallo/Meichner Roadway Improvements for Scenic Resource
 26 Protection area known as Smith Lane will not be on the agenda
 27 because the Planning Board has not yet received the required
 28 documents or information.

29

30 The Chair asked what should be submitted.

31

32 Town Planner Hull explained that it will be a letter from the applicant
 33 with the reasoning for the re-grant.

34

35 **PROJECT REVIEW**

36

37 **MCENTERGART STEEP SLOPES PERMIT**
 38 **[TM: 36.12-2-6]**

39

1 Chairman DeLucia said that this is the project review of the
2 application of Patricia McEntergart and owner Henry Seligson for a
3 Steep Slopes Permit for property located on the north side of
4 Amawalk Point Road for the construction of a single-family residence,
5 driveway, septic system and well within the 25-35% very steep slope
6 category. She noted that Amawalk Point Road is to be maintained as
7 a private road. The Chair mentioned that the application was
8 originally submitted on February 18, 2004 but was withheld due to a
9 lawsuit brought by the neighboring property owner and the
10 subsequent improvements to the road which are now completed.

11
12 The Chair acknowledged for the record receipt of the following: a
13 letter dated June 14, 2010 from Timothy S. Allen, P.E. of Bibbo
14 Associates, LLP enclosing two proposals, namely, the original site
15 plan SP-1 and an alternate site plan A-SP both dated October 13,
16 2005 and revised May 27, 2010 for the Board's consideration; a
17 memo dated July 23, 2010 from the Conservation Board with
18 concerns and recommendations, and in particular comment number
19 3; and a memo dated August 20, 2010 from Consulting Town
20 Engineer Joseph C. Barbagallo, P.E. BCEE with his review and
21 comments.

22
23 The Chair said for the benefit of the Board and the public, will Mr.
24 Allen, the applicant's representative, please give a brief review of this
25 application that was submitted in 2004 and withheld until this
26 submission and please address the Conservation Board's concerns.

27
28 Tim Allen, the applicant's engineer, explained that this application
29 came in about the same time as another lot (Calandrucci) on
30 Amawalk Point Road. He said that lot had issues with the access to
31 future properties. He mentioned that the access was a driveway and
32 the question was what would become of the access.

33 Engineer Allen informed the Board that there was a lawsuit and the
34 Calandrucci's won. He said that Amawalk Point Road was improved
35 to a standard recommended by the former Town Engineer. Engineer
36 Allen indicated that the applicant was told that until the improvements
37 were complete it was best to hold off on the application. He stated
38 that the road is complete and the stormwater basins are in place. He
39 noted that the McEntergart lot has been considered in the overall

1 development of the property. Engineer Allen said that he is before
2 the Board to approve the steep slopes application.

3
4 Engineer Allen pointed out to the Board the steep slopes on the
5 property (driveway and in the area that ascends to the house site). He
6 mentioned that the Consulting Town Engineer asked for the level of
7 disturbance but he feels that from a steep slopes standpoint the site
8 disturbs less slopes than the alternative plan.

9
10 Engineer Allen explained that the alternative plan was to bring the
11 house down the hill and does not ascend the band of steep slopes.
12 He noted that to cradle the house and put in the septic area and
13 stormwater improvements it is necessary to cut into the slope
14 which will make for an awkward backyard.

15
16 Engineer Allen said that the disturbance of the total previous site plan
17 is 54,000 sq. ft. and the total for this plan is 43,560 sq. ft. He noted
18 that the Code calls for minimizing the steep slopes disturbance.
19 Engineer Allen suggested a site walk to help the Board with their
20 decision.

21
22 The Chair referenced the Conservation Board's memo dated July 23,
23 2010, *The driveway would have to be changed and made to go north*
24 *following the 450 contour line in order to avoid the steep slopes.*
25 *The driveway located along the 450 contour line would be less*
26 *disturbance and less invasive.*

27
28 Consulting Town Engineer Barbagallo said that the driveway to the
29 south will result in a greater level of steep slopes disturbance.

30
31 Town Consulting Engineer Barbagallo opined that the CB referenced
32 the alternative plan in their memo. He said that the Alternative house
33 site will disturb a greater number of steep slopes. He asked Engineer
34 Allen if under the SP-1 plan had he considered going to the south and
35 what level of disturbance that might be.

36
37 Engineer Allen said that will not work because it is very steep coming
38 into the road.

39

1 Mr. Keane noted that he remembers because he was at the previous
2 site walk and that there is only one place to put the house that
3 reduces the impact to the steep slopes. He said that scheduling a
4 site walk will help the Board with their decisions.

5
6 Consulting Town Engineer Barbagallo referred to his memo dated
7 August 20, 2010, *as requested by Guy Gagné in his March 22, 2005*
8 *memorandum, the Applicant has submitted an alternate site plan (A-*
9 *SP) with an alternative house location to that shown on the original*
10 *site plan (SP-1) for review and consideration by the Planning Board.*
11 *The Planning Board shall consider this alternative plan (A-SP) along*
12 *with the input from the Conservation Board in their memorandum*
13 *dated July 23, 2010 for an alternate driveway location. We suggest*
14 *that the Applicant present information, graphical and tabular, that*
15 *compares the level of disturbance for the two plans proposed (SP-1*
16 *and A-SP) along with the alternative driveway location recommended*
17 *by the Conservation Board (CB), at the next Planning Board meeting,*
18 *such that the Planning Board can consider the various alternatives*
19 *and provide guidance to the applicant on which alternate is preferable*
20 *and complete the application documents for his review.*

21
22 The Chair directed that a site walk be scheduled for September 25,
23 2010.

24 25 26 **PROJECT REVIEW**

27 28 **HOMELAND TOWERS, LLC/NEW CINGULAR WIRELESS PCS** 29 **(AT&T) SITE PLAN AND STEEP SLOPES PERMIT** 30 **[AMATO PROPERTY] 121 ROUTE 100** 31 **[TM: 38.17-1-5] CARRYOVER**

32
33 Chair DeLucia said that this is the application of Homeland Towers,
34 LLC/New Cingular Wireless PCS LLC (AT&T) for Site Plan
35 Approval and Steep Slopes and Stormwater Management and
36 Erosion and Sediment Control Permits for property owned by Michael
37 P. Amato and Alice T. Amato located at 121 Route 100 in the R-80
38 Residential Zoning District and Westchester County Agricultural
39 District. The Chair explained that the Zoning Board of Appeals (ZBA)
40 is currently reviewing this application for a Special Exception Use

1 Permit and area variances for the installation of a wireless
2 telecommunications facility and related equipment on the premises
3 consisting of a 140' tall monopole. She said that the ZBA is Lead
4 Agency under SEQRA in a coordinated review with the Planning
5 Board. The Chair noted that Manuel Vincente is the managing
6 member of Homeland Towers, LLC, a New York limited liability
7 company with a main office located in White Plains, New York and is
8 represented by Robert D. Gaudio, Esq. of Snyder & Snyder, LLP,
9 and AT&T is represented by Neil J. Alexander, Esq. of Cuddy &
10 Feder, LLP. The Chair mentioned that this application was last
11 discussed at the August 11, 2010 Planning Board meeting whereby
12 the Board scheduled a Public Hearing for Site Plan Approval and
13 related permits for Wednesday, September 22, 2010 at 7:30 p.m. at
14 the Somers Town House.

15

16 The Chair acknowledged for the record receipt of the following:
17 a letter dated August 9, 2010 received on August 10, 2010 from
18 Robert D. Gaudio, Esq. of Snyder & Snyder, LLP enclosing: an
19 application for Environmental Permit under Chapter 167 Wetlands
20 and Water Course Protection; the Owner's Affidavit; Applicant
21 Acknowledgment; Application Processing Certification; a letter in
22 Support of the Application for Environmental Permit, dated July 14,
23 2010 ("Wetlands Letter"), prepared by Tectonic; a site plan, prepared
24 by Tectonic, last revised July 27, 2010 and in accordance with the
25 Consulting Town Engineer's comments dated July 19, 2010 and
26 Section 167-6.A.(9) of the Town Code; and a Color Constraint Maps,
27 prepared by Tectonic, last revised July 8, 2010 and to reflect the
28 revised access road layout to the Facility. She said that also noted in
29 the letter is a comment that copies of the EAF and SPPP prepared by
30 Tectonic were revised to reflect revised grading plans and the
31 Consulting Town Engineer's comments were previously submitted to
32 the Planning Board on July 6, 2010, and that the Board also received
33 an additional letter dated August 15, 2010 received on August 18,
34 2010 from Robert D. Gaudio, Esq. of Snyder & Snyder commenting
35 that the "Applicant Acknowledgment" was submitted under protest; a
36 memo dated August 20, 2010 from Consulting Town Engineer
37 Joseph C. Barbagallo, P.E., BCEE of Woodard & Curran providing a
38 summary of his review of the applicants' Site Plan Application and
39 other documents received and commenting that the Planning Board
40 consider requesting the Applicant prepare a Master Plan for the Town

1 to demonstrate the locations of any anticipated cell tower locations
2 throughout the Town in order to preserve its natural resource and
3 scenic beauty (§170-1.29.1.(A)(3) and items that were partially
4 addressed; and a memo dated August 20, 2010 from Town Planner
5 Sabrina Charney Hull, AICP, with her project review and comments,
6 carried over from her July 18, 2010 memorandum, in bold type.

7
8 The Chair asked Consulting Town Engineer Barbagallo to give a brief
9 review of the August 23, 2010 submission.

10
11 Consulting Town Engineer Barbagallo said that he briefly reviewed
12 the submission which was in answer to comment number 2 of his
13 memorandum dated August 20, 2010. He noted that there were
14 minor changes.

15
16 Cara Bonomolo, the applicant's attorney, indicated that she is here to
17 discuss the August 10, 2010 submission regarding the Wetland and
18 Stormwater Management and Erosion and Sediment Control Permit.
19 She noted that she received comments from the Town Planner and
20 Consulting Town Engineer. She explained that the Consulting Town
21 Engineer requested a minor change to the grading in the turnaround
22 area and that was shown in the plans that were submitted August 24,
23 2010. Attorney Bonomolo indicated that the Town Planner's memo
24 was a carryover from the comments from prior meetings. She stated
25 that she is here this evening to answer any questions or comments
26 from the materials that were submitted as part of the August 10, 2010
27 submission.

28
29 The Chair asked Consulting Town Engineer Barbagallo to review his
30 memo for the benefit of the public.

31
32 Consulting Town Engineer Barbagallo referenced his memo dated
33 August 20, 2010, *As discussed at the Review Meeting with the*
34 *Applicant's Engineer, the road shall be graded to convey run-off from*
35 *the road to the proposed swale. The grading plan and swale layout*
36 *shall be revised as necessary to achieve the objective.* He said that
37 this was partially addressed. Consulting Town Engineer Barbagallo
38 asked the applicant to revise the grading at the turnaround area at
39 the end of the access road to convey this portion of the road to the
40 proposed swale. He noted that his brief review of the revised plans

1 revealed that the grading has been revised in the turnaround area to
2 provide the positive slope to the drainage swale. He said for clarity
3 all calculations should be reflective of the actual drainage area to the
4 swale.

5
6 Consulting Town Engineer Barbagallo said that he asked that the
7 Landscaping Plan be incorporated in the overall Site Plan drawing
8 and include visual mitigation, determined to be necessary, along the
9 Route 100 corridor. He mentioned that the Board is contemplating
10 additional landscaping which may be along Route 100 or the
11 compound area and because additional landscaping may be
12 requested the plans will have to be revised and that is the reason the
13 response is partially addressed.

14
15 Consulting Town Engineer Barbagallo indicated that he requested the
16 applicant prepare a Master Plan for the Town to demonstrate the
17 location of any anticipated cell tower locations throughout the Town
18 that are required to provide Town wide coverage. He stated that the
19 Master Plan has not been provided.

20
21 The Chair asked why the applicant will not provide the Master Plan.

22
23 Neil Alexander, attorney representing AT&T, said that a Master Plan
24 has been provided.

25
26 Consulting Town Engineer Barbagallo said that the applicant has
27 referenced what sites they have and studies from those sites and
28 sites that they are considering and they feel this is a Master Plan.
29 He opined that a Master Plan would be for AT&T to look at the entire
30 Town and identify the ideal sites that would minimize the number of
31 towers in Town and review the different heights and alternatives. He
32 said that he would define this plan as complying with the Town Code.

33
34 Attorney Alexander said that regardless of what is shown for the
35 western section of Town that would not affect what is germane to this
36 application. He said that this application is located at the south
37 eastern gateway of the Town. He indicated that AT&T has sites at
38 Exit 6A off Route 684 and in the Town of Bedford. Attorney
39 Alexander explained that you cannot get too far west or too far south
40 from the Majestic site in order to connect to those sites. Attorney

1 Alexander mentioned that the wireless consultant has provided
2 alternate heights to justify the need for the proposed height of the
3 monopole at this location. He mentioned that what was shown at
4 Baldwin Place does not make a difference because there are existing
5 sites in between that site and the proposed site. Attorney Alexander
6 showed the Board via the bullet board the location of the existing and
7 proposed sites.

8

9 Consulting Town Engineer Barbagallo said that the proposed site
10 (Amato) has a slope continuing upward to the crest of the hill and if a
11 Master Plan was done it may show that a taller tower up the hill may
12 eliminate the need for the Santaroni cell tower.

13

14 Attorney Alexander stated that both sites are needed as shown in the
15 radio frequency reports. He indicated that 6 or 7 alternatives have
16 been studied.

17

18 Mr. Goldenberg said that there has been discussion by the
19 Consulting Town Engineer and the applicant's attorneys for months.
20 He noted that attorneys have presented to the ZBA and the Planning
21 Board and no professional engineers have spoken for the applicant.
22 He asked what qualifies the lawyers to make engineering statements.
23 Mr. Goldenberg said that he would like an engineer to explain at a
24 meeting about the towers and how they affect the Town.

25

26 Attorney Alexander stated that four radio frequency affidavits have
27 been received from a qualified expert along with numerous reports
28 and maps that have been reviewed by the Towns wireless consultant.
29 He said that the Town's consultant has no problem with the
30 determination on the gap in service and the means in which to bridge
31 that gap. Attorney Alexander noted that modifications to the plans
32 have been received in reference to comments from the Board's staff.
33 He commented that the IBM, Pepsi, DOT and Billingsley property
34 were reviewed but did not work. Attorney Alexander opined that a
35 sufficient amount of assessment and analysis has been conducted on
36 the sites that this tower will hand off to and the Board knows where
37 they will go next.

38

39 Mr. Goldenberg said that he was at the Planning Board and Zoning
40 Board Meetings and a statement was made at the ZBA meeting by

1 the applicant's attorney that was completely wrong. He said that
2 there is no one to question about the statement and he would like the
3 applicant's planner and engineer to answer some questions.

4
5 Attorney Alexander said that he is a certified US Green Counsel
6 Builder and he is qualified to talk about planning. He noted that the
7 Town's wireless consultant brought a Landscape Architect to
8 meetings.

9
10 The Chair said that the Town's consultants recommended the
11 concealment pole.

12
13 Consultant Town Engineer Barbagallo said that a lot of
14 documentation has been provided but that is not the same as a
15 Master Plan. He explained that a Master Plan would start absent this
16 site and would start with what existing infrastructure is in Town and
17 where are the ideal sites to minimize the number of sites. He said that
18 he does not know that this is the ideal site and he feels that the top of
19 the hill would be better because the tower would be in the trees and
20 would be less visible.

21
22 Attorney Alexander said that he is very comfortable with the record in
23 establishing how this site was picked and how it was vetted by the
24 Towns wireless consultant. He opined that there is frustration over
25 the concealment pole versus the tree and what the two Boards feel
26 about aesthetics. He mentioned that Attorney Gaudioso said that
27 when the Boards are reviewing the next cell tower application,
28 Santaroni, they can meet at a work session and the Master Plan can
29 be put on the list for discussion. He said that the request for a Master
30 Plan is late in the discussion for this application.

31
32 Consultant Town Engineer Barbagallo said that he has had a
33 comment requesting a Master Plan since his first memo. He noted
34 that saying that this is the last bite at the apple is not genuine
35 because the Master Plan comment has been requested by the Town
36 Planner and the Planning Board from the beginning of the project.
37 Consulting Town Engineer Barbagallo commented that the Planning
38 Board has shown interest in understanding from a Master Plan
39 perspective if the Amato is the right site.

40

1 Attorney Alexander said that the Code states the type of review that
2 the Planning Board as an involved agency can conduct.

3
4 Town Attorney Eriole noted that the applicant is frustrated over the
5 amount of work that has been done to provide information on various
6 sites and is still driven by the nature of choosing those sites and
7 putting the Boards in a position of deciding what sites should be
8 investigated. Town Attorney Eriole opined that if the applicant
9 provided a Master Plan it would have shown which towers will work
10 and which location is needed.

11
12 Attorney Alexander said that there is infrastructure in Town such as: a
13 sewer plan, stormwater plan, potable water and an affordable
14 housing plan and they do not use a Master Plan. He opined that only
15 the wireless application is singled out on the Master Plan issue.

16
17 Town Attorney Eriole advised that the Master Plan is an intractable
18 position but the Planning Board is putting on the record that the
19 applicant is wrong by not providing a Master Plan. He commented
20 that the applicant has provided a lot of information on particular sites
21 which the applicant would like to qualify as a Master Plan.

22
23 Mr. Keane stated that the Master Plan discussion has gone on for a
24 long time and the applicant has said that they will not provide a
25 Master Plan and that may be a legal issue from a Planning
26 perspective. He said that it is a regional problem and not a Town
27 problem or a neighborhood problem. He opined that the Town as
28 part of the grander scheme should have their own proper scheme as
29 it pertains to the bigger picture.

30
31 Mr. Keane asked Attorney Alexander about his comment about
32 60,000 vehicles at the intersection of Route 35 and 100. He said that
33 every iteration of the EAF shows 61,000 as the annual number of
34 viewers likely to observe a proposed project. He said that HDR
35 corrected the number and set it at 10,410 for daily trips in the corridor
36 between Route 35 and Route 139. Mr. Keane said that this raises
37 the question about the number of viewers travelling north and south
38 along Route 100 and if you assume that the 10,410 number is correct
39 and there was no correction to that number and you multiple that
40 number by 365 (daily trips) you come out to three million seven

1 hundred and ninety-nine thousand six hundred and fifty (3,799,650)
2 trips per year. He said that number is incorrect as there are not
3 enough cars to pass along Route 100 on a daily basis. Mr. Keane
4 said his point is that when you look at your visual impact analysis and
5 that VHB followed the requirement under the Department of State
6 Manual and the DEC Manual that was not done and part of the
7 evidence why the report is partially wrong is that the numbers never
8 showed up as it was never done. Mr. Keane opined that the ZBA has
9 not addressed this issue. He said that it will be interesting to see how
10 the ZBA handles the visual addendum from the Determination of
11 Significance perspective.

12
13 Mr. Keane commented that the ZBA will also have to answer the
14 question that pertains to the travel to work on a daily basis, routine
15 travel by residents, the numbers of viewers at a residence and at a
16 work site. Mr. Keane said that the reports and analysis are wrong.
17 He mentioned that HDR pointed that out but did not take it far
18 enough. He said that the number of people viewing the poles is a big
19 issue. Mr. Keane said that the Negative Declaration and Resolution
20 that was prepared on behalf of the ZBA has statements that are
21 erroneous because they were based on erroneous information
22 because the facts do not exist in the file. Mr. Keane said that the
23 ZBA will have to link statements to facts in the file.

24
25 Attorney Alexander said that he received his information in regard to
26 the vehicles at the intersection of Route 35 and Route 100 from
27 AADT from the DOT website.

28
29 Mr. Keane said that in the suggested resolution that was prepared by
30 Attorney Gaudioso it said that two trees in the line of site were going
31 to be installed in order to placate the ZBA in regard to screening.

32
33 Ms. Gannon said that there was a discussion at the ZBA meeting
34 about the 7-Eleven side street as you look across to the driveway and
35 if a tree was placed there it would reduce the view.

36
37 Town Planner Hull said that the tree was to be in the residential
38 driveway of the Amato property looking back at the field. She said
39 that she is not sure that this tree is the one that is referred to in the
40 Resolution.

1 Mr. Keane opined that the Landscape Plan does not show proof that
2 the trees they are providing will actually provide the screening that
3 they say it will provide. He said that the profiles are wrong because
4 they did not follow HDR's request.

5
6 Mr. Keane said that the Negative Declaration prepared by Attorney
7 Gaudioso said that the methodology employed by VHB when
8 preparing the VIA including but not limited to referencing the NYS
9 Department of State Planning and Design Manual for the review of
10 applications for wireless telecommunication facilities Manual and the
11 NYS DEC Program Policy DEP00-2 entitled, "Assessing and
12 Mitigating Visual Impact Program" it says see the VIA. He indicated
13 that the visual assessment as it pertains to mitigation and duration of
14 view was left out.

15
16 Mr. Keane mentioned that the Town Planner will provide a Negative
17 Declaration and Resolution and Chairman Marx of the ZBA said that
18 he will compare the one from Attorney Gaudioso and Town Planner
19 Hull's.

20
21 The Chair said that the EAF should be done by the ZBA and not the
22 applicant. She opined that the description of the action should be re-
23 written. The Chair noted that under Impact on Growth and
24 Community Neighborhood it says that the proposed action will not
25 affect the community and she feels that the answer should be yes.
26 The Chair noted that the proposed action will conflict with officially
27 adopted plans or goals. She said that should be a potential large
28 impact because she is referring to the 1994 Somers Master Plan. The
29 Chair said that the proposed action will set an important precedent for
30 future projects. She explained that this will be the first cell tower in a
31 residential district and in a high impact area.

32
33 Town Attorney Eriole explained that the purpose of the EAF is to
34 allow the agencies that are involved to review the document as a
35 starting point for the impact issues. He said that this is tied to the
36 Determination of Significance. Town Attorney Eriole stated that the
37 Chair has put on the record her thoughts for the Lead Agency to
38 consider. He said that it is not necessary to amend the EAF as it is
39 the starting SEQRA document. Town Attorney Eriole said that the

1 document that belongs to the Town is the Determination of
2 Significance not the EAF.

3
4 Mr. Keane mentioned that the Board has never seen any specs on
5 the tree pole. He noted that there have been a lot of pictures on a
6 tree but no one has stated which tree is the actual tree that is
7 proposed. He said that the applicant has stated that there is no
8 impact from the tree but if you look at the tree line behind the tree that
9 is questionable. He said that to state that the impact is not significant
10 in the Negative Declaration is erroneous. He said that he hopes the
11 ZBA will correct this statement. Mr. Keane noted that there are more
12 items that will make it difficult to connect the facts to the statements
13 that have to be made.

14
15 The Chair asked if NYS Gas and Electric will have to provide another
16 pole for this application.

17
18 Consulting Town Engineer Barbagallo indicated that two poles will be
19 installed as part of this application.

20
21 Mr. Keane said if the power is going to be brought in off Route 100
22 the likelihood is that the wires will be overhead. He noted that the
23 voltage drop will be significant if the secondary distribution voltage is
24 used as opposed to the primary overhead distribution voltage. He
25 asked if the power will be brought in overhead mounted at the top of
26 the pole and run to a transformer and then drop it down to the 277
27 voltage line to line at the facility. He said that this will create visual
28 impact that has not been addressed.

29 Consulting Town Engineer Barbagallo mentioned that 208 volts is
30 what is being provided. He said that the location of the transformer
31 has not been mentioned.

32
33 Town Attorney Eriole asked if he is authorized in working with the
34 Town Planner in drafting the Negative Declaration and the Draft
35 Resolution.

36
37 Attorney Bonomolo said that the applicant reserves the right to
38 challenge the fees associated with the Town Attorney working on the
39 Draft Negative Declaration and draft Resolution. She said that the

1 question is if the fees are legally chargeable to the applicant and this
2 is one of the issues that will be brought before the Town Board.

3
4 Attorney Alexander noted that the applicant and Attorney Gaudioso
5 have some issues that they are taking to the Town Board and he is
6 not familiar with the issues and that is the only trepidation and
7 hesitation he has in authorizing the Town Attorney's help with the
8 draft Negative Declaration and draft Resolution.

9
10 Town Planner Hull explained her position as being staff to the
11 Planning Board and the ZBA. She stressed that there are concerns
12 raised by the Planning Board and not necessarily shared by the ZBA.
13 She stated that the draft Negative Declaration and draft Resolution
14 have to be drafted in such a way that recognizes these issues and
15 the differences between the Boards and the reasons why the ZBA is
16 approving certain aspects that the Planning Board disagrees with.
17 Town Planner Hull said that it is in the applicant's best interest to
18 have the Town Attorney involved in the process. She noted that
19 there will be hesitancy if the fees associated with the Town Attorney's
20 review are under scrutiny. She stressed that these documents are
21 the most important to the approval of this application.

22
23 Attorney Alexander said that he will ask Mr. Vincente and Attorney
24 Gaudioso to follow up on this issue.

25
26 Mr. Keane said that Attorney Gaudioso made a claim that no other
27 areas of expertise were recommended by staff or any involved or
28 interested agency and that there was no formal objection to HDR
29 services as the consultant was received by the Zoning Board. He
30 opined that this is a false statement.

31
32 Town Planner Hull said that in reviewing the draft Resolution it was
33 written in a manner that the Town does not write their resolutions.
34 She said the Resolution written by Attorney Gaudioso was self-
35 serving to the applicant and that is the primary reason the Planning
36 Board does not allow applicants to write first drafts of resolutions.
37 Town Planner Hull stated that she will do her best to advise Chairman
38 Marx in a professional capacity to endorse a Resolution that is
39 reflective of the Town's work in relation to approvals. She stressed
40 that the language in the draft Negative Declaration and draft

1 Resolution is critical because of both Board's working in a
2 coordinated review. She explained that the Planning Board has
3 voiced certain concerns and the Lead Agency has chosen to decide
4 otherwise and this has to be brought out in the Negative Declaration
5 and the Resolution so there is a complete understanding of the
6 history of this application and what the deciding factors are. Town
7 Planner Hull noted that the ZBA may feel that the consultants that
8 were hired were sufficient for the following reasons and also to say
9 that the Planning Board voiced concern about adequate
10 representation and give the reasons. Town Planner Hull opined that
11 the documents can be balanced with both Boards being heard but the
12 ZBA as Lead Agency has the authority to make the decisions.
13

14 Mr. Keane indicated that he realizes that the ZBA has the final say in
15 the content of the Negative Declaration and he is concerned about
16 statements made by Attorney Gaudioso, self-serving as they may be,
17 and if that was being done in a fair way facts would have been
18 connected to statements. He said that the Planning Board did
19 oppose someone doing the visual analysis and the ZBA entered into
20 a contract before the Planning Board had a say in the matter. Mr.
21 Keane mentioned that the context of the scope with the visual
22 analysis that HDR was going to do was very inconsistent with what
23 the Town Planner asked to be done. Mr. Keane said that this lead to
24 the inadequacies and inappropriateness of statements and
25 information that were made by the applicant and HDR. He said that
26 HDR was opining on information that was not relevant or not factual.
27

28 The Chair said that she asked Attorney Gaudioso how he arrived at
29 the height of the monopole being 148 feet when the proposal was for
30 140 feet but the Negative Declaration stated the pole was 148 feet.
31 She noted that Attorney Gaudioso responded that the pole was 145
32 feet. The Chair explained that at a meeting Attorney Gaudioso said
33 that the top of the tree would come to a point of 8 additional feet
34 which would bring the height of the pole to 148 feet.
35

36 The Chair stressed that the Planning Board has not had an
37 applicant's attorney prepare Resolutions for many years. She noted
38 that the Planning Board staff prepares the Resolutions. The Chair
39 explained that when Attorney Gaudioso prepared the draft Resolution

1 it came as a big surprise with the material not being what she
2 expected.

3

4 Attorney Bonomolo concluded that there have been numerous
5 remarks about what Attorney Gaudioso has said and she cannot
6 characterize them in any way and the record speaks for itself. She
7 said that with respect to the Negative Declaration there is evidence in
8 the record that supports the statements made in those documents
9 and the documentation required under the Code has been provided
10 and the record is complete. Attorney Bonomolo noted that the
11 Planning Board can submit their comments to the ZBA for their
12 consideration as Lead Agency in adopting the Negative Declaration.
13 Attorney Bonomolo said that she would like to clarify for the record
14 that the specification for the Sabre Tree was submitted and is
15 referenced in the Project Review of the Town Planner's memo.

16

17 Mr. Keane said that Attorney Bonomolo should watch the tape of the
18 ZBA meeting and listen to what Attorney Gaudioso said about the
19 specs for the Sabre Tree.

20

21 Consulting Town Engineer Barbagallo said that during the site plan
22 review he would like to ask the applicant if there is going to be a large
23 transformer as there may need to be screening around the
24 transformer. He wants to know if there is any other electrical
25 equipment not shown on the plan.

26

27 Mr. Keane said that NYSEG needs to provide information on the
28 height of the poles that come in off Route 100 and information on the
29 transformer.

30

31 The Chair asked what pole will be connecting to the proposed pole in
32 Lewisboro and covering Goldens Bridge and Route 138.

33

34 Attorney Alexander asked how that is relevant to this application.

35

36 The Chair said that she is just curious.

37

38 Town Planner Hull asked if the Board wants a Site Plan Resolution
39 prepared after the Public Hearing and after the decisions by the ZBA.

40

1 Town Attorney Eriole advised that the resolution should be prepared
2 for a meeting after the close of the Public Hearing and the Board
3 agreed.
4

5 The Chair noted that a Public Hearing is scheduled for this
6 application on September 22, 2010 at 7:30 P.M. at the Somers Town
7 House.
8
9

10 **HOMELAND TOWERS, LLC\NEW CINGULAR WIRELESS**
11 **PCS, LLC (AT&T) SITE PLAN APPROVAL AND WELAND PERMIT**
12 **(SANTARONI PROPERTY) [TM: 37.13-2-3]**
13

14 The Chair noted that this is a carry-over from the August 11, 2010
15 agenda of the project review of the application of Homeland
16 Towers/New Cingular Wireless PCS (AT&T) for Site Plan approval
17 and Wetland Permit for property located at 2580 Route 35 owned by
18 Umberto and Carol Santaroni for the installation of a wireless
19 telecommunication facility in an R-120 Residential Zoning District.
20 The Chair mentioned that this application is presently before the ZBA
21 for a Special Exception Use Permit and area variances. She
22 explained that the applicants are in the process of substantially
23 revising the site plan and therefore this matter will be carried over to
24 the September 22, 2010 agenda.
25

26 There being no further business, on motion by Mr. Goldenberg,
27 seconded by Ms. Gannon, and unanimously carried, the meeting
28 adjourned at 10:00 P.M. and the Chair noted that the next Planning
29 Board meeting will be held on Wednesday, September 22, 2010 at
30 7:30 P. M. at the Somers Town House.
31
32
33
34

35 Respectfully submitted,

36
37 Marilyn Murphy
38 Planning Board Secretary
39
40

1