

Telephone 1
(914) 277-5366₂

FAX
(914) 277-4093

PLANNING DEPARTMENT

TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

Town of Somers

WESTCHESTER COUNTY, N.Y.



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

3

**SOMERS PLANNING BOARD MINUTES
JANUARY 25, 2012**

4

5

6

7 **ROLL:**

8

9 **PLANNING BOARD**

10 **MEMBERS PRESENT:**

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

11

12

13

14 **ALSO PRESENT:**

Consulting Engineer Joseph Barbagallo
Town Attorney Joseph Eriole
Planning Board Secretary Marilyn Murphy

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17

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

21

22 **PUBLIC HEARING**

23

24 **MCENTEGART STEEP SLOPES, TREE PRESERVATION AND**
25 **STORMWATER MANAGEMENT AND EROSION AND SEDIMENT**
26 **CONTROL PERMITS [TM: 36.12-2-6]**

27

28 Chairman Currie explained that this is the Public Hearing for the Marino
29 Group, LLC and Patricia McEntegart for the McEntegart Steep Slopes,
30 Tree Preservation and Stormwater Management and Erosion and
31 Sediment Control permit application. He explained that the property is
32 located on the North side of Amawalk Point Road for the construction of a

1 residence, driveway, septic system and well within the very steep slopes
2 category of 25%-35% slopes.

3
4 The Chair asked Planning Board Secretary Murphy if prior to this Public
5 Hearing had the legal notice been published and the adjoining property
6 owners notified of the Public Hearing.

7
8 Planning Board Secretary Murphy stated that the legal notice was
9 published in the Journal News on January 15, 2012 and the adjoining
10 property owners notified via mail on January 15, 2012.

11
12 The Chair asked the applicant's representative to give a brief presentation
13 regarding this application.

14
15 Matt Girona, the applicant's engineer, explained that the applicant is
16 proposing to construct a single family residence off of Amawalk Point Road,
17 which is a privately owned road. He noted that the house will be serviced
18 by a well, septic system and private driveway. Engineer Girona stated
19 that the well and septic system have received approval from the County
20 Health Department. He mentioned that the stormwater treatment system
21 has been prepared to capture any runoff generated from the new home and
22 to prevent any adverse impacts to the drainage along Amawalk Point Road.

23
24 The Chair asked Consulting Town Engineer Barbagallo if he had any
25 comments on the application.

26
27 Consulting Town Engineer Barbagallo indicated that he provided a memo
28 dated January 20, 2012 on the update of the application. He said that at
29 the last Planning Board meeting there were outstanding items that had to
30 be addressed. Consulting Engineer Barbagallo noted that he met with the
31 applicant's engineer to discuss the outstanding issues which resulted in
32 modification to the plan. He said that the applicant will provide hydraulic
33 calculations to size the proposed level spreader which must be provided
34 prior to the issuance of environmental permits. Consulting Engineer
35 Barbagallo said that the applicant will provide swale calculations based
36 upon the 100 year rainfall event. He explained that the applicant agreed to
37 extend the proposed retaining wall and planter box 20 feet to the north-
38 east, and utilize segmental concrete blocks or stone to replace the
39 proposed railroad ties. Consulting Engineer Barbagallo said that the
40 applicant will provide documentation of the Notice of Intent (NOI) filing prior

1 to the issuance of Environmental Permits. He also asked the applicant to
2 post a Maintenance Bond for Amawalk Point Road to secure restoration of
3 damage that may occur during construction activity. He indicated that the
4 Maintenance Bond shall be at a minimum of \$15,000 and be posted prior to
5 the issuance of Environmental Permits. Consulting Town Engineer
6 Barbagallo mentioned that these will all be conditions in the Resolution.

7
8 Consulting Town Engineer Barbagallo discussed changes to the
9 Resolution. Some of the important changes were on page 3, the first and
10 second Resolved clause, that the wording *and the Engineering Department*
11 *recommended and the Planning Board agreed* be added.

12
13 Consulting Town Engineer Barbagallo also added in condition 3, page 4, of
14 the Resolution the wording *in accordance with New York State Standards*
15 *and Specification for Erosion and Sediment Control and the New York*
16 *State Design Manual dated August 20, 2010 including all updates and/or*
17 *revisions.*

18
19 The Chair acknowledged for the record a letter dated January 25, 2012
20 from Thomas and Ann Calandrucci of 5 Amawalk Point Road.

21
22 The Chair asked if anyone present wished to be heard regarding this
23 application.

24
25 Ann Calandrucci, adjoining property owner, said that she owns property at
26 5 Amawalk Point Road. She explained that she came before the Board for
27 a Steep Slopes and Tree Preservation Permit. She mentioned that there
28 were many meetings with the Planning Board and Conservation Board and
29 finally they received approval. Ms. Calandrucci said that a condition of
30 approval was the building of a 700 foot town road which is 22 foot wide
31 with detention ponds and catch basins. She explained that she began talks
32 with the Marino Group for monetary support so the construction of the road
33 could be shared as they would need access for their proposed home. Ms.
34 Calandrucci stated that the Marino Group agreed and contributed \$35,000
35 and if they received approval an additional \$45,000 was to be contributed.
36 She noted that the Marino Group also agreed to share utility costs so that
37 the lines that were run would be accessible for them in the future.

38
39 Ms. Calandrucci stated that construction of the road commenced in 2008
40 with the final top layer put down in 2010. She said that after the top coat

1 was finished she received an e-mail stating that “they decided it doesn’t
 2 make much sense to make any more voluntary contributions at this time
 3 considering all of the factors at play. If approved in the near future, we do
 4 plan to build and, of course, under those circumstances would consider
 5 future voluntary contributions.” Ms. Calandrucci said that she wanted to
 6 make it public record that she is due money for the final phase as well as
 7 the conduit pipe and she is bringing this to the Board’s attention because
 8 she is requesting a maintenance bond be posted by the Marino Group for
 9 the maintenance of the road during construction. She asked that the
 10 maintenance bond amount be greater then what is proposed. Ms.
 11 Calandrucci said that the Marino Group has already demonstrated that they
 12 back away from responsibility, if they decide it doesn’t make sense to them.

13
 14 Ms. Calandrucci said that before a Certificate of Occupancy (CO) is issued
 15 that the maintenance of the road be signed by all future homeowners and
 16 this condition be added to the Resolution. She mentioned that the original
 17 resolution on file was signed by the Larsens and the Calandruccis.

18
 19 Joe Zuzzolo said that he built Amawalk Point Road and asked the Board to
 20 consider a larger Maintenance Bond. He noted that another problem is the
 21 maintenance of the storm drainage system. Mr. Zuzzolo explained that
 22 when the road was finished all the catch basins and retention pond were
 23 cleaned out and he asked the Board to request a bond for the maintenance
 24 of the storm drainage system. He reiterated that there is a road and storm
 25 drainage maintenance agreement signed by Anita Larsen and Patricia
 26 McEntegart. He said that the agreement on file with the Town and
 27 Westchester County states that any future homeowners have to sign that
 28 agreement. He mentioned that during Planning Board meetings it was
 29 determined that the road had to be built before any other construction could
 30 take place.

31
 32 Mr. Zuzzolo asked how the agreement can be enforced and if it can be
 33 made a condition of the CO.

34
 35 Mr. Foley said that if the agreement states that it has to be signed by future
 36 homeowners it is a valid agreement enforceable in court.

37
 38 Town Attorney Eriole noted that the agreement being referred to is a
 39 Declaration of Covenants, Easements and Restrictions. He stated that the
 40 agreement is filed and runs with and against the title to all properties. Town

1 Attorney Eriole clarified that the declaration does not require anyone to sign
2 a Maintenance Agreement but acts on its own as an obligation that runs
3 with the land.

4
5 Mr. Foley opined that this is not a planning issue.

6
7 Consulting Town Engineer Barbagallo said that the third Whereas clause
8 on page 2 of the Resolution is an exact excerpt of the language.

9
10 Town Attorney Eriole commented that the posting of an adequate bond is
11 covered in the Resolution and making sure that future owners can be held
12 to a maintenance agreement is covered by the Covenant.

13
14 Mr. Keane opined that two bond issues, road maintenance and stormwater
15 have to be addressed.

16
17 Consulting Town Engineer Barbagallo explained that the amount calculated
18 for the Maintenance Bond assumed that 50 feet beyond the driveway is the
19 area subject to damage with the calculation being full replacement of the
20 top course, the curbing on both sides of the driveway, cleaning and final
21 restoration. He opined that \$15,000 for the bond is sufficient for restoration
22 activities.

23
24 Consulting Town Engineer Barbagallo agreed with Mr. Keane that the
25 amount for the erosion and sediment control bond should be increased.

26
27 Cliff Ysell, resident of 2523 Route 35, said that Consulting Town Engineer
28 Barbagallo should be very specific on the amount of the bonds. He said
29 that when the section is blacktopped for the new residence there will be
30 heavy machinery on the road. He opined that it will cost more than
31 \$15,000 to re-blacktop the road. Mr. Ysell opined that the cost for blacktop
32 will increase by the time the house is built.

33
34 Consulting Town Engineer Barbagallo disagreed that the amount of
35 \$15,000 is not sufficient for the maintenance bond. He explained that the
36 bond covers to the driveway and 15-feet past for the replacement of the top
37 course.

38 Engineer Girona indicated that he had discussions with the Consulting
39 Town Engineer and they agreed to the calculations considering 50 feet
40 from the driveway would be the potential for any additional disturbance

1 and considering machinery that will access the site. Engineer Gironda said
 2 that he agrees with the amount for the maintenance bond that was
 3 determined by the Consulting Town Engineer.

4
 5 Chair Currie said that the Planning Board can request that Consulting
 6 Engineer Barbagallo take another look at the amount for the maintenance
 7 bond.

8
 9 Consulting Engineer Barbagallo noted that he can request the applicant to
 10 submit a detailed cost estimate for the maintenance bond.

11
 12 Tim Allen, the applicant's engineer, agreed to provide a line by line item
 13 based on current prices and detailing the cost estimate. He reminded the
 14 Board that the bond is only for damages and repair of the road.

15
 16 Mr. Ysell asked that the road be cleaned of all debris when the construction
 17 crews leave for the day.

18
 19 Mr. Keane mentioned that the applicant has submitted a Stormwater
 20 Management and Erosion Control Plan.

21
 22 Mr. Zuzzolo asked if the Board looked at placing the driveway in another
 23 location.

24
 25 Mr. Keane stated that the Board considered another location for the
 26 driveway but nothing else worked.

27
 28 Patricia McEntegart, applicant, opined that a character issue was
 29 mentioned about money she may owe the Calandrucci's. She mentioned
 30 that she attended a meeting with the Calandrucci's and Mr. Zuzzolo which
 31 resulted in an impasse. Ms. McEntegart stated that nothing was signed
 32 and she decided to pay something if the house was built. She said to
 33 suggest that a pledge was made and was not honored is incorrect.

34
 35 Town Attorney Eriole explained that he reviewed this issue and it is not
 36 appropriate for the Board to comment on private obligations.

37
 38 Consulting Town Engineer Barbagallo changed the language on Condition
 39 5, page 4 of the Resolution to read an acceptable maintenance bond shall
 40 be at a minimum of \$15,000, *depending upon a specific estimate to cover*

1 *the costs of road restoration to include the top course replacement, curb*
2 *replacement to 50-feet beyond the proposed driveway along with an*
3 *additional amount to cover restoration of the common stormwater*
4 *infrastructure.*

5
6 Mr. Keane opined that the Board must make sure they are using the correct
7 term and language.

8
9 Mr. Foley suggested that instead of calling the bond a maintenance bond or
10 a restoration bond just call it a bond and define what it is protecting against
11 and set the amount for the bond.

12
13 Tom Calandrucci, resident of 5 Amawalk Point Road, asked if there is a
14 proposal by the Marino Group for a second lot.

15
16 Consulting Town Engineer Barbagallo said that there is no proposal for any
17 further subdivision by the Marino Group. He mentioned that he asked that
18 a note be added to the plan stating that there would be no further
19 subdivision but the applicant reserved their right to research that in the
20 future.

21
22 Ms. DeLucia stated that she is concerned that the note stating “no further
23 subdivision” will not be added to the plan.

24
25 Cliff Ysell asked if the road and drainage be sized on the idea of two homes
26 being built.

27
28 Engineer Girona noted that if another residence is proposed
29 environmental permit applications will have to be submitted.

30
31 Mr. Calandrucci noted that when he applied for his permit to build his home
32 the Board made him build a road in case more homes were built on
33 Amawalk Point Road.

34
35 On motion by Ms. DeLucia, seconded by Mr. Keane, and unanimously
36 carried, the Board moved that pursuant to 6NYC RR Part 617 of the
37 implementing regulations pertaining to Article 8 (SEQR) of the
38 Environmental Conservation Law and Chapter 92 of the Town of Somers
39 Code, the Planning Board hereby determines that the proposed activity is a
40 Type II Action, and therefore, no further review in accordance with SEQR

1 was necessary.

2

3 Mr. Goldenberg asked that *to the satisfaction of the Consulting Town*
4 *Engineer* be added to condition 5 and 6 on page 4 of the Resolution.

5

6 Ms. DeLucia suggested the language on condition 6, page 4, to read *field*
7 *changes that would not significantly alter, effect or endanger the steep*
8 *slopes.*

9

10 Consulting Town Engineer Barbagallo changed the language on condition
11 6, on page 4 of the Resolution to read *that field changes that do not change*
12 *the intent of the design or are significant, if required, are approved by the*
13 *Principal Engineering Technician and the Consulting Town Engineer prior*
14 *to implementation. Significant field changes or those that deviate from the*
15 *intent of the Planning Board approval must be approved by the Planning*
16 *Board.*

17

18 Consulting Town Engineer Barbagallo said that he will revise the language
19 in the Resolution for the February 8, 2012 Planning Board meeting.

20

21 Discussion ensued with Mr. Keane, Engineers Girona and Allen with
22 Town Consulting Engineer Barbagallo deciding that the applicant revise
23 the plans to include a direct connection of the overflow of the stormwater
24 treatment area to the catch basin at the north-eastern corner of Amawalk
25 Point Road and Route 35.

26

27 The Chair asked if there was a consensus to close the Public Hearing.

28

29 On motion by Chair Currie, seconded by Ms. DeLucia and unanimously
30 carried, the Board moved to close the Public Hearing on McEntegart Steep
31 Slopes, Tree Preservation and Stormwater Management and Erosion and
32 Sediment Control Permits.

33

34 Consulting Town Engineer Barbagallo directed that the Resolution of
35 Approval be placed on the February 8, 2012 Planning Board agenda in
36 order to clarify the language.

37

38 There being no further business, on motion by Chair Currie, seconded by
39 Ms. DeLucia, and unanimously carried, the meeting adjourned at 9:00 P.M.

1 and the Chair noted that the next Planning Board meeting will be held on
2 Wednesday, February 8, 2012 at 7:30 P. M. at the Somers Town House.

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Respectfully submitted,

Marilyn Murphy
Planning Board Secretary