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PLANNING DEPARTMENT

TOWN HOUSE
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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 8, 2014**

4

5

6

7 **ROLL:**

8

9 **PLANNING BOARD**

10 **MEMBERS PRESENT:**

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

11

12

13

14 **ALSO PRESENT:**

Director of Planning Syrette Dym
Consultant Town Engineer Joseph Barbagallo
Planning Board Town Attorney Joseph Eriole
Planning Board Secretary Marilyn Murphy

15

16

17

18

19 The meeting commenced at 7:30 p.m. Planning Board Secretary Marilyn
20 Murphy called the roll and noted that a required quorum of four members
21 was present in order to conduct the business of the Board.

22

23 **APPROVAL OF DRAFT MINUTES FOR MEETINGS HELD ON
24 OCTOBER 30, 2013 AND NOVEMBER 13, 2013.**

25

26 Chairman Currie noted that Planning Board Secretary Marilyn Murphy
27 prepared and submitted for the Board's consideration approval of the draft
28 minutes of Planning Board meetings held on October 30, 2013 and
29 November 13, 2013.

30

31 The Chair asked if there were any comments or corrections from the Board
32 on the October 30, 2013 Planning Board minutes.

1
2 Ms. Gannon noted that on Page 10 under the Granite Pointe discussion
3 she was explaining a portion of the Remedial Action Work Plan (RAWP)
4 in regard to weigh shipping papers.

5
6 On motion by Ms. Gerbino, seconded by Ms. Gannon, and unanimously
7 carried, the draft minutes of October 30, 2013, as amended, were
8 approved.

9
10 The Chair asked if there were any comments or corrections from the Board
11 on the draft minutes of November 13, 2013 and no one replied.

12
13 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and unanimously
14 carried, the draft minutes of November 13, 2013 were approved.

15
16 The DVD's of the October 30, 2013 and November 13, 2013 Planning
17 Board meetings are made a part of the approved minutes and are available
18 for public viewing at the Somers Public Library and the text of the approved
19 minutes is also on the Town's website and is available for public review at
20 the Planning & Engineering office at the Town House.

21
22 **PROJECT REVIEW**

23
24 **HIDDEN MEADOW AT SOMERS [TM: 15.07-1-6]**

25
26 Chairman Currie noted that this is an application for Preliminary
27 Subdivision Approval, Site Plan Approval, Steep Slopes, Wetland and
28 Stormwater Management and Erosion and Sediment Control Permits
29 relative to application of the Multifamily Residence Baldwin Place District
30 (MFR-BP) under consideration by the Town Board.

31
32 Chair Currie acknowledged memos from Director of Planning Dym dated
33 January 6, 2014, January 7, 2014 and January 2, 2014 and a memo from
34 Consultant Town Engineer Barbagallo dated January 3, 2014.

35 Chair Currie asked the applicant's representative to update the Board on
36 the application.

37
38 Richard Williams, the applicant's engineer, noted that he met with the Fire
39 Prevention Bureau today. He indicated that the meeting was very positive

1 as they liked the plan and only requested that one hydrant be added to the
2 plan.

3
4 Engineer Williams said that during the site walk with the Board there were
5 positive comments made and a request to submit applications for the
6 project. He explained that he submitted applications for Preliminary
7 Subdivision Approval, Site Plan Approval, Stormwater Management and
8 Erosion and Sediment Control, Wetland and Steep Slopes Permits.

9 Engineer Williams mentioned that a Tree Permit was not provided because
10 the Tree Survey is not finished yet but will show the trees on site that will
11 be removed as well as trees along the Route 6 corridor. He said that he
12 will discuss the widening of Route 6 as one of the improvements that is
13 proposed. Engineer Williams noted that a new EAF was provided using the
14 DEC mapper and the new workbook. He also indicated that he submitted
15 response letters to the Open Space Committee and the NYC Department
16 of Protection (NYCDEP). Engineer Williams indicated that the DEP asked
17 that the Board request additional information in regard to wastewater and
18 stormwater which has been provided. He commented that the applicant's
19 wetland consultant provided information on the function of the existing on
20 site wetland and a traffic report was submitted from the applicant's traffic
21 consultant. Engineer Williams noted that the Traffic Report analyzes levels
22 of service at the intersection of Route 6 and Windsor Road and Route 6
23 and Mahopac Avenue. He said that the Traffic Report concludes that the
24 project will not change the level of service at those intersections. Engineer
25 Williams noted that a letter from the Department of Transportation (DOT)
26 was received which backs up the applicant's traffic report and says that this
27 project will have a minimal impact on traffic on Route 6.

28
29 Engineer Williams said that a Preliminary Wastewater Report and a
30 Preliminary Stormwater Pollution Prevention Plan (SWPPP) have been
31 provided. He explained that the Preliminary SWPPP talks about the
32 proposed primary treatment practices and the green infrastructure
33 practices. He mentioned that the green infrastructure practices provide
34 water quality volume, runoff production volume and quantity calculations.
35 Engineer Williams indicated that the calculations were performed in
36 accordance with Town Regulations and the Department of Environmental
37 Protection (DEP) and Department of Environmental Conservation (DEC)
38 Regulations. He pointed out that the SWPPP includes an entire section on
39 the Total Maximum Daily Load (TMDL) implementation program. He

1 mentioned that detail sheets and a Preliminary Erosion Control Plan have
2 also been submitted.

3
4 Engineer Williams mentioned that this application is seeking the Multifamily
5 Residence Baldwin Place District (MFR-BP) which is a Town Board applied
6 action to apply the Floating Overlay Zone.

7
8 Engineer Williams said that some changes that have been made are the
9 relocation of the entrance to the site to maximize sight distance which was
10 based on discussion with the NYS Department of Transportation (DOT)
11 and the applicant's traffic engineer. He indicated that the entrance will be
12 located directly across from Windsor Road. He noted that a conceptual
13 layout for the widening of Route 6 including a left turn lane has been
14 provided. Engineer Williams mentioned that a detailed survey of the Route
15 6 right-of-way is being developed. He stressed that the next submission
16 will include more detail with respect to the limits of the grading, trees that
17 will be removed and the impacts to the wetlands located at the toe of the
18 slope of Route 6. He said that originally he did not think a wetland permit
19 would be necessary because none of the on site work requires a wetland
20 permit; however, if Route 6 is widened with a left turn lane the existing
21 wetland is at the toe at the slope at Route 6. He mentioned that widening
22 will require additional fill. Engineer Williams noted that the site layout still
23 provides access to the Town's adjacent parcel. He said that during the site
24 walk there was discussion on whether to create its own right-of-way and
25 dedicate the road to the Town or to place the road in an easement.
26 Engineer Williams said that he recommends placing the road in an
27 easement because if a right-of-way line is created the entrance to the site
28 and the access to the Town as a dedicated parcel will create front yard
29 setback issues. He noted that he can establish an easement that offers the
30 Town the same rights they would receive if they owned it. Engineer
31 Williams said that in order to avoid the need for variances he would like to
32 place the entrance road and the access to the Town road in an easement.
33 He explained that because of the relocated site entrance the change in
34 grade has to be overcome. He noted that the new site entrance is located
35 much lower in the site and that caused the cluster of units to be
36 reconfigured. Engineer Williams said that now there are 8 clusters of
37 buildings instead of 9.

38
39 Chair Currie asked Director of Planning Dym to discuss her memos for the
40 benefit of the Board and the public.

1
2 Director of Planning Dym said that the purpose of her memo dated January
3 2, 2014 was to see how the conceptual plan and all the submissions meet
4 the requirements of MFR-BP Zoning and to determine if all the submissions
5 meet the Board's need to determine all the impacts. She noted that the new
6 EAF was used and she identified some areas that need revisions. Director
7 of Planning Dym asked the Board to consider hiring a traffic consultant for
8 review of the submitted Traffic Impact Study and to consider whether such
9 study also needs to address the potential future impacts and operational
10 considerations of an adjacent Town park with active recreation facilities.
11 She said that the Board can ask for a Request for Proposal (RFP) from
12 Michael Galante of Frederick P. Clark who has assisted the Board in the
13 past. Director of Planning Dym indicated that the DOT submitted a letter
14 saying that they do not see a traffic impact from traffic generated from this
15 development.

16
17 Director of Planning Dym said that she matched the compliance to Zoning
18 against all the conditions of §170-13.A. She noted that under Off Street
19 Parking it is not clear that the special standards of this section relative to
20 MFR Districts have been met. She mentioned that parking must be met in
21 accordance with Section 170-12D(5). She noted that 113 spaces provided
22 is not detailed but should be detailed and identified.

23
24 Director of Planning Dym noted that under Recreation area and Open
25 Space the requirement that each MFR District shall have a recreation area
26 designed, improved and maintained for the use of the residents of the
27 development and their guests has not been provided on site. She said that
28 any proposed development of recreational facilities for town wide use on
29 the adjacent property must be assessed against the MFR requirement that
30 required recreation uses to serve the residents of the development.

31
32 Director of Planning Dym said that based on discussion with Town Attorney
33 Baroni described in her memo dated January 7, 2014 there is a conflict
34 regarding recreation area requirements that has to be resolved. She noted
35 that the Board may want to make a recommendation to the Town Board to
36 modify what is stated in the Zone or allow compensation or require on site
37 recreation.

38
39 Director of Planning Dym indicated that the Intent to be Lead Agency
40 Notice has been circulated and the required 30 days have passed for any

1 objections to the Planning Board acting as Lead Agency for this project.
 2 She also said that the Board has to decide if they have enough information
 3 to make a Determination of Significance.

4
 5 Chair Currie asked Consultant Town Engineer Barbagallo to review his
 6 memo for the benefit of the Board and the public.

7
 8 Consultant Town Engineer Barbagallo said that as his memo is lengthy he
 9 will just reference the high points of the memo. He noted that it has come
 10 to his attention through recent discussions with the NYS Office of the
 11 Attorney General Watershed Inspector that in accordance with the Clean
 12 Water Act additional requirements are applicable for projects located within
 13 the Total Maximum Daily Load (TMDL) watershed of the Amawalk
 14 Reservoir. Consultant Town Engineer Barbagallo indicated that the
 15 Watershed Inspector General feels that these requirements are in addition
 16 to those regulations already required by the NYSDEC SPEDES program
 17 and the Enhanced Phosphorous requirements of the Stormwater
 18 Management Design Manual.

19
 20 Consultant Town Engineer Barbagallo said that the memo from Insite says
 21 that the most recent NYCDEP Regulations eliminated the need for the
 22 applicant to perform a pollutant loading analysis, and with respect to the
 23 TMDL established for the NYC East of Hudson Watershed there are
 24 several programs that have been implemented in order to reduce the
 25 amount of phosphorous within the watershed. Consultant Town Engineer
 26 Barbagallo stated that what the Attorney General is saying and what the
 27 applicant's engineer is saying are in conflict with one another.

28
 29 Engineer Williams interjected that he understands the Watershed General's
 30 interpretation as he is using SEQRA. He feels that phosphorous is a
 31 potential impact that should be studied and the way to study that is by a
 32 phosphorous loading analysis. Engineer Williams noted that is not what
 33 the TMDL says. He explained that if there is a body of water that you think
 34 has a pollutant you have to go through a lot of steps to find out what the
 35 TMDL is and then decide how you will reduce the pollutant concerns using
 36 different programs. Engineer Williams mentioned some of the programs:
 37 Septic System Repair Program, DEP Wastewater Treatment Plant Upgrade
 38 Program and for existing development the MS4 Program.

39 Consultant Town Engineer Barbagallo explained that if through the analysis
 40 it is determined that phosphorous loads have increased it does not mean

1 the project cannot move forward or that infrastructure has to be put on site
 2 in order to accommodate the reduction back to zero netting. He said that
 3 the Watershed Inspector General is not saying that this is a zero net
 4 increase but that if the calculations show that there is a greater pollutant
 5 load that will be a result of the construction activity. He noted that there is
 6 precedent in some lawsuits and recent decisions that have been put in
 7 place. Consultant Town Engineer Barbagallo explained that the applicant
 8 based on the amount of phosphorous increase provides funds into the
 9 overall program for use by the Town to reduce phosphorous elsewhere in
 10 the TMDL.

11
 12 Consultant Town Engineer Barbagallo stressed that if what the Watershed
 13 Inspector General said is not correct he is willing to listen to Engineer
 14 Williams and ask that documentation be provided that what the Inspector
 15 General represented to him is not correct.

16
 17 Engineer Williams said that for new development the TMDL implementation
 18 plan says that you need to meet the requirements of the Stormwater
 19 Design Manual and the enhanced phosphorous standards. He stated that
 20 it does not talk about phosphorous loading standards or analysis but just
 21 meeting the requirements of the additional document that was developed
 22 specifically to address phosphorous pollutant concerns. Engineer Williams
 23 mentioned that the DEP revised their regulations in 2010 and eliminated
 24 the phosphorous loading calculations and the Watershed Inspector General
 25 was aware of this revision. He noted that the DEC establishes a TMDL on
 26 an implementation plan and to comply with that plan you have to meet the
 27 requirements of the enhanced phosphorous removal standards. Engineer
 28 Williams stressed that the Watershed Inspector General says that in
 29 addition to the TMDL Implementation Plan he wants the applicant to do
 30 more but that is not written in any regulations but he used the guise of
 31 SEQRA.

32
 33 Mr. Keane opined that this is not about the Clean Water Act. He said that
 34 the TMDL was established as a result of the ongoing work with the City of
 35 New York and the watershed towns. Mr. Keane noted that this came about
 36 because of the discharges into reservoirs. He explained that every
 37 reservoir watershed has an assigned TMDL and a waste load relating to
 38 sewage and load allocation that winds up in the reservoir.

39 Ms. Gerbino said that she did research on the Watershed Inspector
 40 General position and it was created in 1993 by the Federal Government

1 because the City of New York did not want the expense to filter their water.
2 She explained that they entered into an agreement that they would not
3 have to filter their water as long as they took care of the watershed. Ms.
4 Gerbino indicated that the duty of the Watershed Inspector General is that
5 he monitor the Catskill, Delaware watershed and phosphorous.

6
7 Director of Planning Dym said that she received a request from the
8 Watershed Inspector General that his office be included in the SEQRA
9 distribution.

10
11 Consultant Town Engineer Barbagallo said that he will speak to the
12 Watershed Inspector General and his reference to the Clean Water Act and
13 will report to the Board.

14
15 Mr. Keane suggested that the Watershed Inspector General have a
16 discussion with the DEC technical staff as they are the prime regulator. He
17 stressed that the Clean Water Act states “thou shall not pollute”.

18
19 Mr. Keane said that the Watershed Inspector General should be asked to
20 show if the calculation is done how that will demonstrate the reduction of
21 phosphorous so the TMDL is being complied with.

22
23 Ms. Gannon said the Town Attorney should be apprised of the situation to
24 determine the Boards legal obligation if there is a fundamental difference of
25 opinion with the Watershed Inspector General based on his opinion and the
26 existing law.

27
28 Consultant Town Engineer Barbagallo noted that the applicant has
29 prepared a preliminary Stormwater Pollution Prevention Plan (SWPPP).
30 He provided water quality volume calculations for the sizing of the
31 stormwater treatment infrastructure. He mentioned that Chapter 10 of the
32 NYS Stormwater Management Design Manual requires that projects
33 located within the NYC DEP East of Hudson watershed calculate water
34 quality volumes considering the 1 year design storm rainfall based upon
35 total watershed area following upon the SCS (Curve Number)
36 methodology. He indicated that his comments are not typical of a project at
37 this stage.

38
39 Consultant Town Engineer Barbagallo commented that the applicant
40 proposes to construct a common access roadway to serve the townhouse

1 development and future access to the adjacent Town owned parcel. He
2 said that it is unknown if a portion of the site roadway may be dedicated to
3 the Town in the future. The site roadway must be designed in accordance
4 with the Somers Town Road "A" design standards. Consultant Town
5 Engineer Barbagallo said that if access is provided to the Town park from
6 the roadway the Board will have to look at the impact from the park and
7 how many vehicles will be entering and leaving that park. He asked how
8 many fields are proposed and if they will have lighting.

9

10 Engineer Williams indicated that the Town is working on developing a
11 concept plan for the park.

12

13 Consultant Town Engineer Barbagallo interjected that he prepared a
14 proposal on the feasibility, programming and concept layout for the park.
15 He indicated that the proposal is still in development.

16

17 Mr. Keane stated that the soils on the site are highly erodible soils and he
18 questioned how much is usable for ballfields.

19

20 Consultant Town Engineer Barbagallo noted that the ballfields will be
21 synthetic fields. He said if the park site is programmed correctly there can
22 be a playground in proximity to the new development.

23

24 Ms. Gerbino commented that she needs more specific information before
25 she can accept the studies on the future Town park. She opined that the
26 park plan has to be finalized.

27

28 Ms. Gerbino asked where the snow removal will go. She said she is
29 concerned about the river as it is 200 vertical feet below the rock wall.

30

31 Engineer Williams indicated that snow storage areas will be shown on the
32 plan and will be integrated to drain to the stormwater practices. He said that
33 he is concerned that the ballfield studies will hold up the project.

34 Consultant Town Engineer Barbagallo said that he has to meet with the
35 Parks and Recreation Supervisor to discuss the ballfields.

36

37 Mr. Foley asked if anyone decided this is a good place to build a park as it
38 is inconvenient for Somers residents as it is in the extreme northwest
39 corner of Town.

40

1 Consultant Town Engineer Barbagallo stated that Supervisor of Parks and
 2 Recreation Steve Ralston is excited about the opportunity for ballfields.
 3 He said that this site is closer to the Preserve development than Reis Park.
 4

5 Mr. Goldenberg noted that the children in the Hidden Meadow development
 6 will enjoy fields in their neighborhood.
 7

8 Consultant Town Engineer Barbagallo referred back to his memo and
 9 asked the applicant to update the Erosion and Sediment Control Plan to
 10 depict all proposed temporary soil stockpile areas. He noted that the
 11 SWPPP and the Environmental Assessment acknowledge that a phased
 12 construction approach is necessary to insure that no greater than 5 acres
 13 of land are disturbed at one time. He also said that the EAF indicates that
 14 outdoor lighting will be constructed as part of the proposed development.
 15 He noted that the applicant shall show all intended outdoor light fixtures on
 16 the site plan and prepare a site photometric plan to depict illumination
 17 levels based upon the layout and intensity of light fixtures. Consultant Town
 18 Engineer Barbagallo said that the proposed site layout will create a steep
 19 slope embankment along the western property line adjacent to the Town
 20 owned parcel. He said that the Planning Board may wish to consider a
 21 temporary chain link fence along the top of the embankment on the
 22 property line. He said that a Tree Removal Plan must be submitted.
 23

24 Mr. Keane summarized that the applicant is offering this application as a
 25 Negative Declaration because they feel that all the significant impacts
 26 have been reduced to a less than significant level.
 27

28 Engineer Williams agreed that there are only a few significant impacts such
 29 as traffic, stormwater and wastewater and they can be mitigated with the
 30 hope of the issuance of a Neg Dec.
 31

32 Ms. Gannon asked if the application for the proposed zoning is part of the
 33 action. She noted that it is not listed in the EAF under the description of the
 34 action.
 35

36 Director of Planning Dym stated that the proposed zoning is intrinsic in the
 37 action. She explained that the major part of the action is to apply the MFR-
 38 BP Zone. Director of Planning Dym noted that when the EAF is revised
 39 language will be used to clarify the action to include the application of the
 40 MFR-BP overlay zone to this project.

1

2 Mrs. DeLucia said that the plans have to be revised and the applicant has
3 to respond to Consultant Town Engineer Barbagallo's memo.

4

5 Engineer Williams explained that he will not respond to all Consultant Town
6 Engineer Barbagallo's detail comments but will provide the information the
7 Board needs to determine SEQRA and working toward returning to the
8 Town Board.

9

10 Ms. Gannon said when she reviewed the Layout and Landscape Plan she
11 does not see the 113 parking spaces. She noted that she is concerned
12 about the flow of the driveways and where the snow will be put after a
13 storm.

14

15 Engineer Williams explained that the crisscross hatch pattern represents
16 driveways where it is anticipated porous pavement will be used. He
17 indicated that the parking table will be clarified to show where all the
18 parking spaces will be located. Engineer Williams noted that he will review
19 the size of the driveways. He said that the original design was to create a
20 minimum length of 20 feet.

21

22 Director of Planning Dym said that her recommendation to hire a traffic
23 consultant will be helpful to review the driveway access along Route 6 as
24 well as the three-way intersection that will be created in the future.

25

26 Ms. Gerbino noted that the plan is for 45 building lots of which eight will be
27 affordable. She said that the project is providing townhouses on fee simple
28 lots with a Homeowners Association. She opined that the assessment will
29 all be the same even if they are affordable units.

30

31 Rose Noonan, Executive Director of the Housing Action Council, explained
32 that the assumption is that the assessed value of the affordable homes will
33 be at a lower assessed value because of the 50-year affordable restriction.
34 She stressed that the Somers Tax Assessor will decide on the assessed
35 value of the affordable townhouse units.

36 Ms. Gerbino asked if the common charges for the townhouse units will be
37 the same for everyone.

38

39 Ms. Noonan stated that she assumes the common charges will be the
40 same for all units but the details are still being worked out. She said that

1 there will be a deed restriction on all the affordable units with the owners
 2 being permitted to increase the sale price of the units based on a CPI that
 3 relates to changes in income in wages in the region.

4
 5 Director of Planning Dym asked that Ms. Gerbino's questions be answered
 6 in writing in the next submission. She said that she wants to know the size
 7 of the units and to understand the potential sales price and tax implications
 8 to the Town. Director of Planning Dym requested that this analysis and a
 9 narrative to make an assessment of the project be provided.

10
 11 Ms. Gerbino asked what the overall recreation fees will be for the project.

12
 13 Mr. Foley indicated that there are two different issues and there has not
 14 been a request for a waiver in whole or part of the recreation fee. He
 15 mentioned that on site recreation is also required.

16
 17 Director of Planning Dym said that there is an obligation under zoning to
 18 provide on-site recreation and recreation fees. She explained that the
 19 applicant has the right to request a reduction for the recreation fees for the
 20 affordable units. She explained that the recreation obligation might be
 21 placed off-site on to the adjacent property. Director of Planning Dym said
 22 that the regulations have to be modified to allow this to happen.

23
 24 The Board having received no objections to the Planning Board acting as
 25 Lead Agency for this application and the required 30 days of circulation
 26 having passed, on motion by Chair Currie, seconded by Mr. Goldenberg,
 27 and unanimously carried, the Board having moved to accept Lead Agency
 28 status under SEQRA (6NYCRR Part 617).

29
 30 Director of Planning Dym asked the Board if Frederick P. Clark Associates
 31 should submit a proposal to review the traffic on Route 6 and the future
 32 traffic impact of a potential adjacent Town park development.

33
 34 Consultant Town Engineer Barbagallo felt this is premature because of the
 35 interaction with the park and how that may change the traffic study. He
 36 suggested that the proposal be done after the revised Traffic Study is
 37 submitted.

38
 39 Mr. Foley stressed that this Board spent a lot of time on a project
 40 asking the Town Board to adopt a change in the Code, that did not happen.

1 He said that he is concerned about doing that again. Mr. Foley mentioned
 2 that this project is not Code compliant because the plan does not show on-
 3 site recreation that is required.

4
 5 Ken Kearney, applicant, said that it is possible to ask for a waiver of on-site
 6 recreation. He noted that if it is decided that there should be on-site
 7 recreation he will provide that recreation. Mr. Kearney indicated that he
 8 can meet that part of the Code. He stated that he is not asking for a Zone
 9 Change but a Town Board action to apply an existing overlay zone. Mr.
 10 Kearney stressed that the project Mr. Foley referred to is a completely
 11 different situation.

12
 13 Engineer Williams explained that the on-site recreation is two tenths of an
 14 acre. He indicated that the applicant may pursue the waiver but he will
 15 show the on-site recreation on the next submittal.

16
 17 **INFORMAL APPEARANCE WITH SKETCH PLAN**

18
 19 **SOMERS CROSSING [TM: 17.15-1-15.1]**

20
 21 *At this point Mr. Goldenberg recused himself and did not participate in this application.*

22
 23 Chairman Currie explained that this is an application for an Informal
 24 Appearance with Sketch Plan Review for an amendment to a proposed
 25 mixed use development in connection with a proposed Zoning Amendment
 26 for application to the subject property that substitutes an additional 20
 27 residential townhouse units for a prior proposed 75 bed memory care
 28 facility.

29
 30 Chair Currie acknowledged receipt of memos from Director of Planning
 31 Dym, Consultant Town Engineer Barbagallo and the applicant’s attorney
 32 Richard O’Rourke.

33
 34 Timothy Allen, the applicant’s engineer, explained that the Board approved
 35 the Scoping Document and he reviewed the comments that have been
 36 received. He said that he wants to keep the Planning Board involved in the
 37 process. Engineer Allen mentioned that the memory care facility has been
 38 eliminated from the plan and replaced with an additional 20 units of
 39 townhouses. He opined that the change from an environmental standpoint

1 is better by not having the large building and the parking and visual aspects
2 associated with it.

3

4 Engineer Allen mentioned that he now has incorporated grading and
5 stormwater basins to the plan. He noted that the Draft Environmental
6 Impact Statement (DEIS) is being prepared. Engineer Allen indicated that
7 the review is on connecting roadways and a trail system for Fireman's
8 Park.

9

10 Engineer Allen commented that the DEIS process is about looking at
11 potential environmental impacts. He opined that the elimination of the
12 memory care facility is an environmental improvement.

13

14 Rick O'Rourke, the applicant's attorney, indicated that the memory care
15 facility is beyond the applicant's control and will not be a component of the
16 proposal. He said that the proposal is an alternative that is specifically
17 addressed in the Scoping Document. Attorney O'Rourke noted that an
18 alternative was townhouse units, and the grocery store without the memory
19 care facility. He explained that one of the proposed alternatives will be
20 elevated to become the proposed action. Attorney O'Rourke opined that
21 from a legal perspective the scope has been adopted and the property has
22 the same uses and are taking the preferred alternative and elevating it to
23 the proposed action. He said that it is not necessary to revisit the hard
24 work and the comprehensive scope that has been issued. Attorney
25 O'Rourke said that an amended scope should be issued with a new
26 proposed action and re-circulation of the scope. He said that as a courtesy
27 he felt that the Planning Board should understand that the applicant has
28 listened to their comments and incorporated some of those into the plan.

29

30 Mrs. DeLucia opined that the removal of the memory care facility is a good
31 thing. She said that she agrees with Town Attorney Baroni's comments.

32

33 Attorney O'Rourke said that this is a petition for a Zone change with the
34 removal of the memory care facility from the zoning petition. He indicated
35 that the amended scope will redact all references to the memory care
36 facility.

37 Ms. Gerbino said she realizes that the addition of the 20 units of
38 townhouses is an alternative and part of the scoping. She said that the
39 Town Board has to make a formal change.

40

1 Attorney O'Rourke asked the Planning Board to make a recommendation
2 to the Town Board to proceed with review of the proposed amended
3 concept plan for Somers Crossing that drops the prior proposed memory
4 care facility from the proposed action.
5

6 Chair Currie asked Director of Planning Dym to review her memo for the
7 benefit of the Board and the public.
8

9 Director of Planning Dym asked the Board if there is anything they want to
10 consider in place of the memory care facility.
11

12 Ms. Gannon said that it is not quite as simple as removing an alternative
13 because the alternative include a mix of conditions. She noted that
14 Alternative E already exists that is multifamily residential (60) units, retail
15 grocery store and no memory care facility. Ms. Gannon said this
16 application would be for 60 units + 20 additional units. She indicated that
17 the new normal will be 80 townhouses. She suggested that the alternatives
18 be reviewed so the Town Board will know what they want to capture in
19 terms of looking at the number of residential units. Ms. Gannon noted that
20 Alternative E states multifamily residential with fewer units than 60 with
21 retail grocery.
22

23 Attorney O'Rourke said he is not suggesting that Alternative E be
24 eliminated. He explained that the proposed action that includes the
25 memory care facility is eliminated and the proposed new action is
26 80 units of residential housing and a grocery store.
27

28 Planning Board Town Attorney Eriole said that part of the intended purpose
29 of the scoping process is to narrow down the real scope of the review.
30

31 On motion by Mrs. DeLucia, seconded by Mr. Keane, and unanimously
32 carried, the Board moved that the applicant's attorney and the Planning
33 Board concurs with the recommendation of the Town Attorney and Director
34 of Planning that the Town Board direct the applicant to prepare a revised
35 petition to reflect the change and submit an amended scope for review,
36 recirculation and adoption.

37 **DISCUSSION**

38
39 *At this point Mr. Goldenberg re-joined the meeting.*
40

1 Chair Currie explained that the Board will be discussing the need to
2 schedule a regular second monthly Planning Board meeting.

3
4 Chair Currie asked Director of Planning Dym her thoughts on two Planning
5 Board meetings per month.

6
7 Director of Planning Dym explained that members of the Planning Board
8 are in favor of scheduling two meetings every month. She noted that there
9 are opportunities on the calendar to schedule meetings if needed. Director
10 of Planning Dym mentioned that the fourth Tuesday of each month is
11 available; she indicated that looking ahead over the next several months
12 there is a possibility for new applications but they have not yet been
13 submitted to the Board. Director of Planning Dym said that if there were
14 complaints from applicants that their project was not being dealt with in a
15 timely manner that would be known to the Supervisor and in turn to the
16 Planning Office. She noted that to her knowledge this never happened but
17 if in the future if that happens consideration will be given for a second
18 meeting. She suggested that the second Tuesday of the month be
19 reserved for meetings if needed.

20
21 Ms. Gannon said that staff and availability of the Town Attorney have to be
22 considered for the second meeting in order for that to work.

23
24 Planning Board Town Attorney Eriole stated that he is available to attend
25 meetings on the fourth Tuesday of the month.

26
27 Consultant Town Engineer Barbagallo said that he also is available to
28 attend meetings on the fourth Tuesday of the month. He suggested that
29 the room be made available for meetings but not to formally schedule
30 meetings until they are needed. Consultant Town Engineer Barbagallo
31 indicated that there is a potential volume of applications that will be before
32 the Board this summer.

33
34 Mrs. DeLucia noted that she asked that the request for a second meeting
35 be added to the agenda. She said that having the meetings at Town Hall
36 instead of having to search for a meeting place makes it convenient for the
37 Board and staff.

38
39 Chair Currie stated that there is a consensus of the Board to reserve the
40 fourth Tuesday of the month for Planning Board meetings if needed.

REVIEW OF DRAFT WATERSHED INSPECTOR GENERAL'S LETTER

Chairman Currie explained that Consulting Town Engineer Barbagallo would like the Board's input on a letter he drafted to the Watershed Inspector General (WIG) relative to Granite Pointe.

Consultant Town Engineer Barbagallo explained that he articulated to the Board the position relative to the recent action by Granite Pointe and the Watershed Inspector General's input relative to the Stormwater Pollution Prevention Plan (SWPPP). He noted that the Watershed General at first reviewed and commented on the current SWPPP as if the SWPPP was for the entire site. Consultant Town Engineer Barbagallo indicated that the Board asked him to clarify in writing his conversation with the Watershed Inspector General for the record. He mentioned that the Remedial Action Work Plan (RAWP) does not require the level of review referenced in the Watershed Inspector General's letter.

Consultant Town Engineer Barbagallo said that his letter starts with a definition on the first page on his role with the Town and a definition of the project. He indicated that his letter explained the Final Supplemental Environmental Impact Statement (FSEIS) review and the current understanding with a two-step review process. He noted that the first step will address review of the project FSEIS documents, adoption of the findings under SEQRA and issuance of the Town of Somers environmental permits related to the remedial site work for Granite Pointe.

Consultant Town Engineer Barbagallo explained that the WIG said that the Pollutant Load Analysis is required for this project but after discussion he convinced him that no Pollutant Load Analysis will be completed at the interim site remediation stage. He said after discussion he is not convinced that this is a law that requires the Town to do this. He opined that the WIG would probably like the Town to create such a law. Consultant Town Engineer Barbagallo said that the argument of the WIG is that the Pollutant Load Analysis relates to SEQRA and Federal Law. He stated that he will have a follow-up conversation with the WIG as he does not want to commit the Town or the applicant to something that is not an obligation.

Ms. Gerbino said that her concern is that the WIG position was created to keep an eye on the City of New York and its watershed and not to keep an eye on Somers.

1

2 Mr. Keane interjected that the WIG position was to watch the watershed
3 towns and not the City of New York.

4

5 Engineer Allen said that this type of project is not being overseen by the
6 Attorney General in other Towns. He explained that the Department of
7 Conservation (DEC) and Department of Environmental Protection (DEP)
8 Code says if you are over 20% impervious on a site the Pollutant Loading
9 Analysis is being done. Engineer Allen stressed if Philip Bein, WIG, wants
10 to sue the DEC that is his choice. He stated that you live by the Code and
11 if there is a guideline that is different.

12

13 Mr. Keane noted that the WIG is trying to wrap the Pollutant Loading
14 Analysis under SEQRA and all that states is the impact is significant and
15 the argument that the impact is not significant can be made using the DEC
16 Manual calculations. He said that the Clean Water Act is point source
17 discharge related and until you can demonstrate a pollutant is discharged
18 at that point there is no case. Mr. Keane suggested that Consultant Town
19 Engineer Barbagallo speak to Pat Ferracane on his input on enforcement.
20 He commented that the WIG has done a poor job in making sure that the
21 MS4's and the watershed Towns are doing their job. Mr. Keane opined
22 that the WIG position has had the last 15 years to make a difference.

23

24 Consultant Town Engineer Barbagallo said that he cannot send the letter to
25 the WIG until he has follow-up conversation with the WIG and Pat
26 Ferracane.

27

28 Engineer Allen stated that the applicant will not pay for legal advice on this
29 issue.

30

31 Mrs. DeLucia said that she made a comment at the October 30, 2013
32 meeting on purpose, that the Planning Board took a "hard look" by
33 addressing all the concerns from residents and she would like this
34 comment in the letter to the WIG.

35 Ms. Gannon referred to a comment in the letter under Current
36 Understanding, *Site restoration as part of Town of Somers issued*
37 *environmental permits will include a sunset provision as to result in*
38 *reestablishment of removed vegetation in the event the subdivision*
39 *application and process is not acted on.* She said that because of financial

1 reasons an applicant may not be able to execute and she asked how the
 2 sunset trigger will be set up.

3
 4 Consultant Town Engineer Barbagallo said that the condition of
 5 remediation is interim and not a permanent condition. He explained that
 6 there will be a condition in the Tree Permit that some trees have to be
 7 replaced but if remediation is needed tree planting will not be necessary.
 8 He stressed that there is a Landscaping Plan that is part of the subdivision
 9 that respects the fact that restoration needs to be replaced. Consultant
 10 Town Engineer Barbagallo explained that this provision is in the event that
 11 the subdivision is not approved, the restoration to reestablish the conditions
 12 that exists now will have to be installed.

13
 14 Ms. Gerbino said that what the City is doing is very impressive and the
 15 Town can do no less. She noted that the City is putting in deer fencing so
 16 the trees that are being replaced will have an opportunity to survive.

17
 18 Consultant Town Engineer Barbagallo said that the letter to the WIG will be
 19 updated after he has conversation with Mr. Bien.

20

21 **PROJECT REVIEW (CONTINUED)**

22

23 **GREENBRIAR SOMERS CORP. [TM: 6.14-1-28,29]**
 24 **WETLAND, STEEP SLOPES, TREE PERMIT AND**
 25 **STORMWATER MANAGEMENT AND EROSION AND SEDIMENT**
 26 **CONTROL PERMITS**

27

28 *At this time Mrs. DeLucia recused herself and did not participate in the*
 29 *discussion.*

30

31 Chairman Currie said that the Board will be reviewing the application for a
 32 Wetland, Steep Slopes, Tree Permit and Stormwater Management and
 33 Erosion and Sediment Control Permits for property located on the North
 34 side of Greenbriar Drive for the construction of 2 residential townhouse
 35 units with connection to existing utility lines and roadway.

36 Chair Currie acknowledged receipt of a letter from Joan Ribaud, Receiver
 37 of Taxes and from the Consultant Town Engineer Barbagallo.

38

39 Chair Currie asked that applicant's representative to give a brief overview
 40 of the project.

1
 2 Joseph Buschynski, the applicant’s engineer, noted that the subdivision
 3 was before the Board in 2005-2006 and is the last four lots in Section 7 of
 4 Greenbriar. He explained that the plan was to re-subdivide the lots and to
 5 receive approval to build on Lots 3 and 4. Engineer Buschynski said that
 6 lots 1 and 2 were held in abeyance due to a large Oak Tree on lot 2. He
 7 mentioned that the Oak tree has been removed which resulted in violation
 8 proceedings under the Tree Ordinance. He said that there was a settlement
 9 between the Town and owner. Engineer Buschynski indicated that he
 10 submitted applications for environmental permits to allow the development
 11 on Lots 1 and 2. He said that there are seven (7) trees to be removed.
 12 Engineer Buschynski noted that from those lots stormwater will go to
 13 infiltration pits consistent to what was built for Lots 3 and 4.

14
 15 Mr. Goldenberg mentioned that the violation was the cutting of the Oak
 16 Tree and residents came to the meeting upset about what happened to the
 17 tree. He asked what type of settlement was made with the Town on the
 18 cutting of the Oak Tree.

19
 20 Engineer Buschynski said that the violation resulting in the equivalent of 25
 21 trees replaced within the community. He noted that there was a
 22 recommendation that no new trees were needed on the project site and the
 23 Parks and Recreation Department said that they did not need new trees.
 24 Engineer Buschynski indicated that the settlement to the Town was that the
 25 owner paid a certain amount to the Town in lieu of tree replacement. He
 26 explained that the owner felt that the tree could be removed when it was
 27 determined that it was no longer worthy of preservation and in the opinion
 28 of the applicant’s arborist it was taken down on that basis.

29
 30 Mr. Goldenberg said that the Town was supposed to determine if the tree
 31 was worthy of preservation and was not granted that right.

32
 33 Mr. Foley said he was very upset when the tree was removed but the
 34 matter was adjudicated and the Planning Board is charged with evaluating
 35 present circumstances.

36 Consultant Town Engineer Barbagallo mentioned that the public will be
 37 notified when there is a Public Hearing. He noted that the Subdivision has
 38 been approved and this is a review of environmental permits. He said that
 39 he asked that the proposed site work include site disturbance within the
 40 100-foot buffer of NYSDEC regulated wetlands and that the applicant

1 provide seeding and vegetative restoration proposed within the NYSDEC
 2 wetland buffer. He noted that he is concerned about existing slopes on the
 3 northwest property line of lots 1 and 2 along the edge of the sewer
 4 easement have become eroded.

5
 6 Mr. Keane asked what is being done for creating a buffer some place else.

7
 8 Consultant Town Engineer Barbagallo said that the work in the buffer is the
 9 installation of a pipe to connect to the sewer. He noted that barriers can be
 10 put up to insure that it does not turn into a lawn.

11
 12 Ms. Gannon asked that the landscape plan have a two year warranty.

13
 14 Mr. Keane opined that this applicant should be held to the letter of the
 15 Code.

16
 17 Ms. Gannon asked why an out of date EAF was accepted. She said that
 18 under the certification for Chapter 167 the bottom is blank and the affidavit
 19 to be completed by corporation owner is not filled out and permission for a
 20 Town inspector making a site visit is not initialed. She stressed that the
 21 forms have to be filled out correctly before being sent to the Board and
 22 other agencies.

23
 24 Mr. Keane said that he wants to know what trees will be removed that meet
 25 the regulatory diameter at breast height. He also asked why the applicant
 26 has not built on the other two lots.

27
 28 Engineer Buschynski said that the entrance work and water and sewer
 29 lines, infiltrators was accomplished a few years ago. He noted that the
 30 market is better now and the applicant would like to build. He mentioned
 31 that there are current building permits on the lots.

32 Mr. Keane said that the mitigation that was done should be revisited to
 33 make sure it was appropriate. He noted that one of the discharge points
 34 just short of the wetland was a swale with stone for roughage to slow down
 35 water from the storm drain.

36 Engineer Buschynski noted that drainage system was brought down to the
 37 bottom in a series of drop manholes.

38
 39 Ms. Gannon referred to Consultant Town Engineer Barbagallo's memo,
 40 *Through discussions with the Town Principal Engineering Technician, the*

1 *applicant requested to waive requirement for an updated delineation of the*
2 *wetland buffer. Based upon the minimal level of disturbance and the*
3 *observed site conditions, we feel comfortable to recommend that the*
4 *Planning Board consider waiving such requirement for an updated*
5 *delineation.*

6
7 Consultant Town Engineer Barbagallo said that was his recommendation
8 but after input from the Board the wetland delineation should be updated.
9 He indicated that it is appropriate to prepare an action memo for the Board
10 and the applicant.

11
12 Ms. Gannon asked if she can go on a site walk with Consultant Town
13 Engineer Barbagallo as she is not familiar with the site.

14
15 Chair Currie said it was the consensus of the Board to have the wetland
16 boundaries and the 100-foot wetland buffer delineated.

17
18 **NANCY GERBINO ACTING CHAIRMAN**

19
20 Chair Currie noted that he would like to appoint Nancy Gerbino as Acting
21 Chairman in his absence.

22
23 On motion by Chair Currie, seconded by Ms. Gannon, and unanimously
24 carried, the Board moved to appoint Nancy Gerbino as Acting Chairman.

25
26 On motion by Chair Currie, seconded by Mr. Goldenberg, and unanimously
27 carried, the meeting adjourned at 10:45 P.M. and the Chair noted that the
28 next Planning Board meeting will be held on Wednesday, February
29 12, 2014 and will be held at 7:30 P. M. at the Somers Town House and
30 there being no further business, the meeting was adjourned.

31
32 Respectfully submitted,
33
34 Marilyn Murphy
35 Planning Board Secretary
36
37