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2

**SOMERS PLANNING BOARD MINUTES  
NOVEMBER 18, 2009**

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6  
7 **ROLL:**

8  
9 **PLANNING BOARD**

10 **MEMBERS PRESENT:** Chairman DeLucia, Mr. Keane,  
11 Ms. Gerbino, Mr. Goldenberg,  
12 Mr. Foley and Ms. Gannon

13  
14 **ABSENT:** Mr. Knapp

15  
16 **ALSO PRESENT:** Town Engineer Gagné  
17 Town Planner Charney Hull  
18 Town Consultant Planner Brown  
19 Town Attorney Holt-Cinque  
20 Planning Board Secretary Murphy

21  
22 The Meeting commenced at 7:35 p.m. Planning Board Secretary  
23 Marilyn Murphy called the roll. Chairman DeLucia noted that a  
24 required quorum of four members of the Board being present called  
25 the meeting to order.

26  
27 Chairman DeLucia said that Planning Board Secretary Murphy  
28 prepared and submitted the draft minutes of the October 21, 2009  
29 Planning Board meeting consisting of thirty-three (33) pages for the  
30 Board's consideration and approval.

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

33  
34 The Chair asked if there was a motion to approve the October 21,  
35 2009 draft minutes.

36  
37 On motion by Ms. Gannon, seconded by Mr. Keane, and  
38 unanimously carried, the Board moved to approve the minutes of  
39 October 21, 2009.

1 The Chair noted that the DVD of the October 21, 2009 Planning  
2 Board meeting is made a part of the approved minutes and is  
3 available for public viewing at the Somers Public Library. The  
4 approved minutes are also on the Town's website  
5 [www.somersny.com](http://www.somersny.com) and are available for public review at the  
6 Planning & Engineering office at the Town House.

7

8 **DECISION**

9

10 **WRIGHT'S COURT SITE PLAN [HALLIC PLACE]**  
11 **[TM: 17.11-1-5, 18]**

12

13 Chairman DeLucia noted that this is a decision of the Planning Board  
14 on the application of Hallic Place Development, LLC/Wright's Court  
15 for Site Plan Approval, Special Exception Use Permit for the  
16 Groundwater Protection Overlay District and Erosion and Sediment  
17 Control Permits. She explained that this application was last  
18 discussed at the November 4, 2009 meeting whereby the Board  
19 requested the applicant to submit a revised landscape plan and after  
20 discussion and evaluation of the Full Environmental Impact  
21 Statement determined that the proposed action will not result in a  
22 significant adverse environmental impact and therefore the Board  
23 adopted a Negative Declaration and directed Town Consultant  
24 Planner Brown to prepare a draft Conditional Resolution for this  
25 meeting.

26

27 The Chair acknowledged for the record, receipt of the following: a  
28 letter dated November 16, 2009 and received on November 17, 2009  
29 from residents of Scott Drive and Hope Lane with concerns; a hand-  
30 delivered letter dated November 9, 2009 from Kellard Sessions  
31 Consulting, P.C. enclosing the requested revised landscape plan; and  
32 a letter from Town Historian, Mickey Oliver, just received by hand,  
33 with the concern that the buildings are too big.

34

35 The Chair asked the applicant's representative if he reviewed the  
36 draft Conditional Resolution and if he had any comments or  
37 questions.

38

39 Henry Hocherman, the applicant's attorney, said that he reviewed the  
40 Conditional Resolution and commented that on page 4 the second

1 Whereas Clause which refers to the Zoning Board of Appeals  
2 meeting hasn't taken place yet. He mentioned that a comment  
3 saying that variances will be granted from the ZBA is already in the  
4 Resolution; therefore, the second Whereas Clause on Page 4 should  
5 be eliminated. Attorney Hocherman said that this is his only  
6 comment and he is pleased with the Resolution.

7  
8 The Board agreed to eliminate the second Whereas Clause on Page  
9 4 of the Resolution.

10  
11 The Chair asked if there were any comments or questions from  
12 members of the Board.

13  
14 Mr. Goldenberg mentioned that this project is located in the Historic  
15 District and during the campaign in Somers the statement was made  
16 that Somers is a wonderful Town. He noted that the buildings in this  
17 proposal will house medical and business offices and will have  
18 apartments over the offices. He opined that the Business Historic  
19 Preservation District (BH-P) deserves better than to have buildings  
20 amongst the landmarks which will change the character of the district.  
21 Mr. Goldenberg noted that one-bedroom apartments in this area are  
22 not the proper solution. He mentioned historic areas in Richmond  
23 Town in Staten Island have been developed with boutiques and  
24 Katonah with a pharmacy. He commented that he is concerned  
25 about the wonderful Town that Supervisor Murphy spoke about  
26 during her campaign. Mr. Goldenberg said that he will vote against  
27 the Negative Declaration.

28  
29 The Chair stated that the Negative Declaration on this project was  
30 adopted on November 4, 2009.

31  
32 Ms. Gannon mentioned page 4, the last Whereas Clause of the  
33 Resolution, should mention the Code of the Town of Somers that the  
34 Planning Board may grant waivers from the B-HP District.

35  
36 Mr. Foley asked that the last Whereas Clause on Page 4 read, *in the*  
37 *B-HP District the Planning Board may grant waivers from Section*  
38 *170.17.1L of the Code of the Town of Somers.* He also said that on  
39 Page 1 of the Resolution Article IXA is under Chapter 170 "Zoning" of  
40 the Code of the Town of Somers. He said that on Page 5, the first

1 Whereas Clause should read *at their September 9, 2009 meeting,*  
2 *was to grant the requested waivers for Site A...* Mr. Foley corrected  
3 the third Whereas Clause on Page 5 stating that Article IXA is under  
4 Chapter 170 "Zoning" of the Code of the Town of Somers...with the  
5 same problem on Page 6, line 18 that must be changed. Mr. Foley  
6 said that on the title page of the Resolution it states "Groundwater  
7 Protection Overlay Zone" and it should be changed to "Overlay  
8 District ". Mr. Foley corrected the wording in the title page when  
9 referring to the Stormwater Management and Erosion and Sediment  
10 Control Permits to read *Permit*.

11  
12 The Chair said that on Page 6, Number 2, of the Resolution *October*  
13 *28, 2009 memorandum* be filled in.

14  
15 Mr. Keane requested changing the name of the NYS DEC booklets  
16 entitled, "Reducing the Impacts of Stormwater Runoff from New  
17 Development" dated April 1992 and adding "New York State  
18 Stormwater Design Manual" dated April 2008 including all updates  
19 and/or revisions.

20  
21 Mr. Foley said that in the Groundwater Protection Overlay District  
22 there is a specific prohibition on the disposal of hazardous waste  
23 referring to medical office use. He recommended that a condition on  
24 the use of toxic chemical pesticides, herbicides and fertilizers be  
25 added to the Resolution.

26  
27 Attorney Hocherman said the paragraph on hazardous waste will be  
28 acceptable as it just states the law as it is.

29  
30 Town Engineer Gagné said that he mentioned that the Landscape  
31 Maintenance, Pesticides & Herbicides Program notes, dated  
32 September 2009, be referenced on the site plan in his October  
33 28,2009 memo to the Board. He noted that medical waste will be  
34 handled in accordance with Health Department Regulations.

35  
36 The Chair asked if there was a consensus of the Board to approve  
37 the draft Resolution, as amended.

38  
39 On Motion by Ms. Gannon, seconded by Mr. Keane, and carried (Mr.  
40 Goldenberg voting nay) the Board approved draft Conditional

1 Resolution No. 2009-17 granting Conditional Site Plan Approval,  
2 Special Exception Use Permit for Location within the Groundwater  
3 Protection Overlay District and Stormwater Management and Erosion  
4 and Sediment Control Permit to Hallic Place Development, LLC for  
5 Wright's Court, as amended, for the Chairman's signature.

6

7 **PUBLIC HEARING**

8

9 **SOMERS REALTY PLANNED HAMLET SUBDIVISION**

10 **[TM: 4.20-1-13, 14, 15 AND P/O 12]**

11

12 Chairman DeLucia said that this is the Public Hearing of the  
13 application of Somers Realty Planned Hamlet Subdivision for  
14 Preliminary Subdivision Approval to divide the approximately 79.39  
15 acre property into three lots. The Chair noted that the property is  
16 located on Route 6 adjacent to the Somers Commons Shopping  
17 Center and Mahopac Avenue in the Planned Hamlet PH Zoning  
18 District owned by Somers Realty Corporation which Seth D. Capozza  
19 is its president. She indicated that the applicant is represented by  
20 Linda B. Whitehead of the law firm of McCullough, Goldberger and  
21 Staudt, LLP.

22

23 The Chair acknowledged for the record receipt of the following: a  
24 letter dated November 3, 2009 received on November 4, 2009 from  
25 Attorney Whitehead enclosing revised plans and commenting on the  
26 action letter; a copy of a memo dated November 5, 2009 from Town  
27 Engineer Gagné to the Town Board regarding the Amawalk  
28 Shenorock Water District Extension; a memo dated November 13,  
29 2009 from Town Planner Hull giving her review comments on the  
30 revised submission, and a memo dated November 17, 2009 from  
31 Town Engineer Gagné with comments and items to be addressed.  
32 The Chair asked Attorney Whitehead to make a presentation of the  
33 issues regarding the subdivision for the Board's and the public's  
34 benefit.

35

36 Linda Whitehead, the applicant's attorney, explained that this is the  
37 Somers Realty Planned Hamlet and after several years of review the  
38 Planning Board completed a Full SEQRA process with the adoption  
39 of a Findings Statement and approval for the Master Plan. She said  
40 that the Master Plan is unique to the Planned Hamlet Zone. She

1 mentioned that the Planning Board first has to approve a Master Plan  
2 and subsequent applications for subdivision and site plan for various  
3 elements of the mixed use plan. Attorney Whitehead noted that the  
4 Master Plan and SEQRA anticipated the future applications and this  
5 is the first future application. She explained that this application is to  
6 specifically create Lot 1 which is approximately 5.8 acres to be  
7 subdivided and conveyed to the Housing Action Council for  
8 construction of a senior affordable housing development which was  
9 part of the approved Master Plan. Attorney Whitehead said their Site  
10 Plan application is before the Board. She mentioned that at the  
11 request of the Town Engineer the water tower parcel has been added  
12 to the plan. She said that the water tower parcel will be dedicated to  
13 the Town for a future potential water tank. Attorney Whitehead said  
14 that the plan is showing a parcel that will be donated to the Town for  
15 a future firehouse. She noted that the parcel may be removed from  
16 the plan because the sewer and water is not being shown for that lot  
17 and the Health Department may not be willing to sign a map showing  
18 that lot. Attorney Whitehead said that if the firehouse parcel is  
19 removed from the plan it will be done when the residential town  
20 homes are proposed. She noted that Town Engineer Gagné said that  
21 additional area for stormwater management may be needed for the  
22 firehouse parcel.

23

24 The Chair asked if the applicant has spoken to the Health  
25 Department.

26

27 Attorney Whitehead indicated that preliminary meetings have been  
28 held with the Health Department. She said that when the Health  
29 Department signs a subdivision plat they are saying that there is  
30 sewer and water for each lot shown on the subdivision. She noted  
31 that she will discuss the firehouse lot with the Health Department but  
32 she just wanted the Board to know the reason if the firehouse lot is  
33 removed from this application.

34

35 The Chair noted that there is a water tank on the south side of The  
36 Preserve Subdivision.

37

38 Mr. Keane asked if Attorney Whitehead saw the November 12, 2009  
39 letter from the Department of Environmental Protection (DEP) in  
40 reference to The Mews at Baldwin Place. He said that it states that

1 NYCDEP also maintains approval authority for the proposed sewer  
2 collection system and sewer connection pursuant to Section 18-37 (e)  
3 of the Watershed Regulations. He mentioned that number 3. of the  
4 memo says that the subdivision plan for the Town road and the site  
5 plan for The Mews at Baldwin Place are inconsistent with regard to  
6 the location and size of the proposed stormwater measures.

7  
8 Attorney Whitehead said that is a statement of fact and is an approval  
9 that was listed in the Environmental Impact Statement (EIS). She  
10 noted that Insite Engineering has been in touch with DEP regarding  
11 The Mews Site Plan. She explained that the stormwater for the two  
12 projects are separate and the Planned Hamlet is handling the road.

13  
14 Attorney Whitehead mentioned that the Water District extension to  
15 include the Planned Hamlet was approved last night by the Town  
16 Board. She said that a solution was made in reference to the water  
17 supply for the loop issue and agreed that a declaration will be filed  
18 against the property stating that the applicant will provide a temporary  
19 reserve water system, the equivalent to a one day emergency supply.  
20 She explained that the reserve water system will be located adjacent  
21 to the water tank lot on the developers or Homeowners Association  
22 (HOA) property. Attorney Whitehead said that the reserve water  
23 system will be constructed by the developer and owned and  
24 maintained initially by the developer and eventually by the HOA. She  
25 stated that if there is no loop or water tower in place prior to the  
26 issuance of a building permit for a residential town home or the  
27 issuance of a Certificate of Occupancy for the assisted living facility,  
28 the emergency water system must be constructed.

29  
30 Town Engineer Gagné said that a pneumatic system will be pumped  
31 and will be reviewed as part of the subdivision with the town homes.  
32 Attorney Whitehead said that there will be a series of small tanks.

33  
34 Mr. Goldenberg asked the capacity of the permanent water tank.

35  
36 Attorney Whitehead said that the water tank will hold 100,000 gallons.

37  
38 Attorney Whitehead said that in August 2009 the Town expanded the  
39 Town Sewer District to include the Planned Hamlet and petitioned the  
40 County to expand the County District. She commented that the

1 County Department of Environmental Facilities completed their report  
 2 and will be signed off shortly by the Department of Health at which  
 3 point the final legislation will be prepared and sent to the Legislature  
 4 for a Public Hearing and approval.

5  
 6 Attorney Whitehead said that a property in a sewer district is favored  
 7 by the Health Department.

8  
 9 Attorney Whitehead mentioned that the Master Plan provided for a  
 10 loop road connecting a new entrance on Route 6 to the existing  
 11 access road into the Somers Commons Shopping Center. She  
 12 explained that the access road will become a part of the public road  
 13 system. She noted that now it is an easement to Somers Commons  
 14 Mall and is owned by Somers Realty. Attorney Whitehead said that  
 15 the applicant will construct the road through the frontage for the  
 16 Housing Council lot and provide a temporary turnaround. She  
 17 mentioned that Town Engineer Gagné has asked the applicant to  
 18 show the utilities for the remainder of the road for future construction.  
 19 Attorney Whitehead indicated that the utilities will be on the  
 20 construction plan because the Health Department does not want the  
 21 utilities on the plat. She explained that the applicant provided  
 22 stormwater for the road section that will be constructed and The  
 23 Mews will provide stormwater for the improvements on their lot. She  
 24 mentioned that the applicant will keep running tabs with each  
 25 successive application on the number of parking spaces that have  
 26 been built, the numbers for sewer and water capacity, building  
 27 coverage and stormwater management because the Master Plan  
 28 Approval was based on certain numbers. She said that the applicant,  
 29 when going forward, has to know how much of those numbers were  
 30 used up to make sure there is enough left for the anticipated  
 31 remainder of the development.

32  
 33 Peter Gregory, the applicant's engineer, showed the Board a plan  
 34 showing the construction of the road, utility improvements and the  
 35 proposed stormwater system for the roadway portion of the  
 36 development. He mentioned that at the last meeting he understood  
 37 how important it is to create a lot development table. He noted that  
 38 can be done on a lot by lot basis for the individual parcels and the  
 39 uses associated with them. Engineer Gregory indicated that he had a  
 40 difficult time allocating the stormwater numbers to this development

1 on a lot by lot basis. He noted that the numbers have to be created  
 2 on a contributing watershed area rather than the lots. Engineer  
 3 Gregory demonstrated how the plans were developed through the  
 4 Master Plan and how it conforms to the Master Plan that was  
 5 approved for the Stormwater Pollution Prevention Plan. Engineer  
 6 Gregory showed the Board the Post Development Map which was  
 7 developed from drainage calculations.

8  
 9 Town Engineer Gagné said that the Post Development Map will be  
 10 revised according to the new layout.

11  
 12 Engineer Gregory said the reason why a complete document has not  
 13 been submitted is because it is difficult to represent the development  
 14 table on the lot by lot basis.

15  
 16 Mr. Keane said that the location of the impervious surfaces will not  
 17 change from the Master Plan.

18  
 19 Attorney Whitehead mentioned that there was discussion on the  
 20 development table being done lot by lot during the Master Plan and  
 21 EIS process. She said that it has to be done by impervious surface  
 22 within the drainage basin. She explained that this will help to show  
 23 that the plans before the Board are consistent or will not create a  
 24 greater impact than what was reviewed in the Master Plan.

25  
 26 Engineer Gregory said that originally the entire loop road was to be  
 27 constructed, subsequently the project was scaled back and a way  
 28 had to be shown to access the affordable housing lot. He explained  
 29 that the cul-de-sac road will have access to the affordable housing  
 30 parcel. Engineer Gregory noted that when he reviewed the road to  
 31 see if it conformed to the Master Plan the problem was that the entire  
 32 roadway system was being handled as far as mitigation and  
 33 treatment by the stormwater facilities located at the entrance toward  
 34 Route 6. He indicated that the revised plan shows stormwater being  
 35 treated by basin 3, 4, 5 and a portion of 6. He mentioned that the  
 36 basin has been designed in accordance with the NYS Design Manual  
 37 with enhanced phosphorous treatment. He noted that additional  
 38 treatment methods have to be installed to work with the basin and  
 39 that will be part of the end development of the property.

40

1 Engineer Gregory said that a report will be provided with volume  
2 calculations, pollutant loading and efficiencies removal.

3  
4 Mr. Keane asked what the best way is to provide a sensitized table.  
5 He mentioned that when the calculations were done for the Master  
6 Plan as far as phosphorous removal it was only taken back to  
7 preexisting conditions. He indicated that the process and  
8 methodology from DEC prospective have changed in their manual  
9 in regard to the four goals.

10  
11 Engineer Gregory stated that the sensitized table has already been  
12 done.

13  
14 Attorney Whitehead stated that wetland consultant Steve Marino will  
15 have input on the methodology.

16  
17 Mr. Keane said that if the sizing and pollutant removal function is  
18 equivalent, it does not matter what is done.

19  
20 Mr. Keane stated that under Chapter 10 four goals have to be met  
21 and the first goal says that you are supposed to look at all the various  
22 available practices and make a determination on which ones are  
23 appropriate to use and which ones will not be and why. He said that  
24 if this is not in the documentation it will be a problem.

25  
26 Engineer Gregory said that he will incorporate an appendix that goes  
27 through item by item and addresses which practices are feasible and  
28 which are not. He mentioned that dealing with a roadway one of the  
29 problems is that the road is designed to Town standards and may  
30 limit the ability for the surfaces with the flow paths. He asked if a  
31 permeable paver can be used for a portion of the road it can be  
32 incorporated into the report. He mentioned that discussion in his  
33 office focused on the design of the road utilizing catch basins rather  
34 than swales and if there is flexibility he will incorporate some of these  
35 features.

36  
37 Town Engineer Gagné said that the Board is open to the use of  
38 pervious pavement.

39  
40 Mr. Keane asked Town Engineer Gagné his position on curbs.

1 Town Engineer Gagné said that curbs are necessary. He explained  
2 that on the Planned Hamlet layout the road will pass through a village  
3 center with building within 15-feet of the roadway and therefore curbs  
4 are necessary. He said for the record that he will have a lot more  
5 questions in the future.

6

7 Attorney Whitehead noted that the temporary cul-se-sac can be  
8 pervious.

9

10 Mr. Keane said that it is important to articulate the conceptual  
11 approach to stormwater from the beginning for the benefit of the  
12 Board and the applicant. He noted that Engineer Gregory's  
13 explanation on stormwater practices is very helpful and more  
14 understandable than to take it in a segmented way and try to deal  
15 with it.

16

17 Mr. Keane realizing the time constraints for this project asked that  
18 there be a lot of checking of the language that is being used and  
19 accuracy of the statements made so that the Board does not get into  
20 issues on what was said and if it is appropriate.

21

22 Town Engineer Gagné said that the plan indicated that infiltration is  
23 used in all the traffic islands.

24

25 The Chair asked if there will be maintenance agreements.

26

27 Attorney Whitehead explained that the only maintenance agreement  
28 relates to the temporary cul-de-sac and the drainage. She said that  
29 she will provide the documents.

30

31 The Chair asked the Board if they would agree to schedule an extra  
32 meeting on Thursday, December 17, 2009, if needed, and the Board  
33 agreed to the meeting.

34

35 Town Engineer Gagné said that he is concerned about the right-of-  
36 way line. He noted that a lot line change may be needed.

37

38 Engineer Gregory said that the property line along the front of the  
39 Somers Commons Mall reflects the road widening parcel. He

1 explained that there is a small portion where the property line and the  
 2 curb line aren't aligned.

3

4 Attorney Whitehead said that she will speak to the owner of the  
 5 Somers Commons Shopping Center to see if he will be willing to  
 6 convey a 5-foot strip of land. She mentioned Town Engineer Gagné's  
 7 request for a 20-foot easement and the additional utility information  
 8 and that will be provided.

9

10 The Chair asked Town Engineer Gagné to summarize his memo to  
 11 the Board for the benefit of the public.

12

13 Town Engineer Gagné said that the clearing limit line be made  
 14 clearer and the road profile for the entire road "A" be provided and the  
 15 utilities shown in profile which includes the Baldwin Place driveway.  
 16 He asked that the development table identifying the lot areas with the  
 17 applicable water, sewer and stormwater loads as approved by the  
 18 Master Plan. He said that all existing and proposed lot numbers, as  
 19 approved by the Town Assessor be provided. Town Engineer Gagné  
 20 asked that the maintenance responsibilities and easements be  
 21 clarified. He noted that the builder of the road should be named.

22

23 Attorney Whitehead stated that the road will be built using funding  
 24 from the County infrastructure funding and because of that it has to  
 25 be done as a Town project and bid through the Town.

26

27 Town Engineer Gagné noted that the bid documents will be done by  
 28 the applicant.

29

30 Town Engineer Gagné mentioned that concrete drain pipes are  
 31 proposed, however, the Highway Department requested that HDPE  
 32 pipe be used due to future maintenance. He requested that the  
 33 proposed survey monuments be shown and provide a minimum of  
 34 three property corner grid coordinates in accordance with the NAD83  
 35 System. He asked that the street trees and planting detail be shown.  
 36 Town Engineer Gagné asked about establishing the recreation fee for  
 37 the 72 units.

38

1 Attorney Whitehead said that a need has to be established for a  
2 recreation fee and senior affordable housing may not qualify as a  
3 need.

4  
5 Town Engineer Gagné requested sight easements at all the  
6 intersections and show all existing stone walls.

7  
8 The Chair asked Town Planner Hull to share her memo for the benefit  
9 of the public.

10  
11 Town Planner Hull said most of her comments have been addressed.  
12 She asked that the predevelopment slope areas be depicted on the  
13 plans and provide a source for the loadings for sewer and water and  
14 the acreage by lot be clarified.

15  
16 The Chair commenced with the Public Hearing. She asked Planning  
17 Board Secretary Murphy if prior to the Public Hearing had the  
18 required legal notice been published and the adjoining property  
19 owners notified and the sign posted.

20  
21 Planning Board Secretary Murphy replied that the notice was  
22 published in the North County News on November 8, 2009 and the  
23 notice of the Public Hearing was mailed to the adjoining property  
24 owners on November 8, 2009 with the sign posted on the property on  
25 November 8, 2009.

26  
27 The Chair asked if anyone from the public would like to be heard on  
28 this application and no one replied.

29  
30 The Chair asked if there were any questions or comments from  
31 members of the Board and no one responded.

32  
33 The Chair asked if there was a consensus of the Board to close the  
34 Public Hearing.

35  
36 On motion by Mr. Goldenberg, seconded by Ms. Gerbino, and  
37 unanimously carried, the Board moved to close the Public Hearing.

38

1 The Chair directed that staff send the applicant an Action Letter and  
2 that Town Planner Hull draft a conditional draft Resolution of  
3 Approval for the December 9, 2009 Planning Board meeting.  
4

## 5 **PUBLIC HEARING**

### 6 7 **THE MEWS AT BALDWIN PLACE** 8 **[TM: 4.20-1-15]** 9

10 The Chair said that this is the Public Hearing on the application of  
11 The Mews at Baldwin Place for the Site Plan Approval, Steep Slopes  
12 and Erosion and Sediment Control Permits by joint applicants the  
13 Housing Action Council, Inc, and Kearney Realty and Development  
14 Group, Inc. for the construction of 72 units of senior affordable  
15 housing to be serviced by public water and sewer. The Chair  
16 explained that the property is owned by Somers Realty Corporation  
17 and is in the Planned Hamlet PH Zoning District located on US Route  
18 6. She noted that the Housing Action Council is contract vendee for  
19 what will be Lot 1 of the Somers Realty Corporation Planned Hamlet  
20 Subdivision. She said that the Council will be forming a limited  
21 partnership with Kearney Realty & Development and Rose Noonan  
22 who is the Executive Director of the Housing Action Council. The  
23 Chair mentioned that the applicant is represented by Insite  
24 Engineering Surveying & Landscape Architecture, P.C. She  
25 indicated that this application was last discussed at the October 21,  
26 2009 Planning Board meeting whereby the Public Hearing was  
27 tentatively scheduled for this evening with the condition that the  
28 applicants provided the documents and information requested in an  
29 Action Letter by November 4, 2009.  
30

31 The Chair acknowledged for the record receipt of the following: a  
32 letter dated November 4, 2009 from Insite Engineering by Jeffrey J.  
33 Contelmo, P.E., President/Principal Engineer enclosing a Full  
34 Environmental Assessment Form last revised November 4, 2009  
35 together with drawings, reports and comments to the October 23,  
36 2009 Action Letter; a letter dated November 4, 2009 and received on  
37 November 5, 2009 from the Housing Action Council giving its  
38 timetable as requested by the Board; a memo dated November 4,  
39 2009 from the Conservation Board with 6 concerns and  
40 recommendations; a memo from the Bureau of Fire Prevention dated

1 November 6, 2009 and received on November 12, 2009 requesting  
2 that two parking spaces from the main entrances of both buildings be  
3 removed to allow for fire and medical vehicles; a letter dated  
4 November 12, 2009, received on November 16, 2009 from the  
5 NYCDEP with 4 comments regarding the set of drawings dated  
6 September 23, 2009; a memo dated November 15, 2009 to the Board  
7 and staff from Board member John Keane attaching a comment  
8 sheet regarding the applicants' Stormwater Pollution Prevention Plan;  
9 a memo dated November 16, 2009 from Town Planner Hull with  
10 Project History, Project Review and comments; a memo dated  
11 November 17, 2009 from Town Engineer Gagné with 15 items to be  
12 addressed and a memo dated November 17, 2009 received today  
13 from the Town Clerk that the Town Board reviewed the project at their  
14 November 4, 2009 meeting and had no comments.

15

16 The Chair asked the applicant's representative to give a presentation  
17 on the recent revised submission for the benefit of the Board and the  
18 public.

19

20 Rich Williams, the applicant's engineer, said that The Mews at  
21 Baldwin Place will be located on Lot 1 of the Somers Realty Planned  
22 Hamlet Subdivision. He said that the Somers Commons access drive  
23 will be dedicated as a Town Road. Engineer Williams explained that  
24 the site layout was laid out in the Master Plan and to remain  
25 consistent with that layout there will be two L shaped buildings with  
26 two parking lots and a total of 62 proposed parking spaces. He  
27 noted that the layout is consistent with the figure in the Master Plan  
28 but inconsistent with the table in the Master Plan. Engineer Williams  
29 said that he worked with Somers Realty Corporation to keep the total  
30 balance of parking at the Planned Hamlet and allocate more spaces  
31 to The Mews for a total of 62.

32

33 The Chair asked if there will be land banked parking spaces and  
34 Engineer Williams replied that there will be no land banked parking  
35 spaces. He said that there was a reference to land banked spaces in  
36 the EAF and that will be corrected.

37

38 Engineer Williams said that there is a secondary access proposed  
39 which will connect to the existing Somers Commons Drive and  
40 emergency access around the back of the building via the berms of

1 the stormwater management basins. He said that the Fire  
2 Department personnel can access the buildings from all sides.  
3 Engineer Williams noted that this was discussed at the meeting with  
4 the Bureau of Fire Prevention.

5  
6 The Chair asked Engineer Williams if he saw the memo from the  
7 Bureau of Fire Prevention requesting to remove two parking spaces  
8 from the main entrance of both buildings to allow for fire and medical  
9 vehicles.

10  
11 Engineer Williams said that two striped spaces will be provided at the  
12 entrance and adjustment will be made to some parking spaces to  
13 accommodate that change but still keeping the parking at 62 spaces.  
14 He said that in reference to zoning there are 2 yard setbacks that  
15 affect this property. He noted that the PH Zone established yard  
16 setbacks for exterior property lines only to the PH Zone and that has  
17 been complied with. Engineer Williams mentioned that the site will be  
18 supplied by public sewer and water and the water main ending at  
19 Somers Commons will be extended into the proposed Town road and  
20 a 6-inch service connection coming into the property will be provided.  
21 He indicated that the connection will split into 4 inch lines to service  
22 each building. Engineer Williams explained that public sewer is a  
23 little more complicated as the Master Plan contemplates a pump  
24 station located south on Route 6 at the low point to service all of the  
25 Planned Hamlet. He said that the pump station will not be  
26 constructed at this time; however, a pump station on The Mews  
27 property will run two force mains up the property and connect into the  
28 existing force mains on Route 6. He noted that sewage from the  
29 buildings will flow into the pump station via a central gravity sewer  
30 line on the property. Engineer Williams said that ultimately the pump  
31 station will tie into the permanent pump station for the Somers  
32 Planned Hamlet but to accommodate that a line will be installed from  
33 the drain manhole just prior to the pump station into the sewer  
34 manhole in the proposed Town road.

35 Engineer Williams said that the stormwater for the site is required to  
36 comply with NYCDEP and NYSDEC Regulations. He noted that the  
37 treatment train that is proposed consist of three bio-retention filters  
38 that will discharge to an extended detention dry basin located on the  
39 northwestern side of the property which will discharge to a low grade  
40 grass swale for final polishing of runoff and dissipation of velocity.

1 Engineer Williams commented that all impervious surfaces are to be  
2 treated by a stormwater management practice. He explained that the  
3 layout contemplated in the Master Plan had 1.9 acres of impervious  
4 surface but the site plan has been condensed to maintain limiting  
5 distance from the DEP watercourses and the impervious surface has  
6 been reduced to 1.7 acres. Engineer Williams mentioned that the  
7 current site plan has less impervious surface than what was  
8 contemplated in the Master Plan.

9

10 Engineer Williams said that the Stormwater Pollution Prevention Plan  
11 far exceeds what was contemplated in the Master Plan. He indicated  
12 that pollutant loading calculations have been provided to address  
13 NYCDEP Requirements for quality and quantity. He noted that to  
14 demonstrate compliance with the quality requirements pollutant  
15 loading calculation they have been provided in the appendix of the  
16 Stormwater Pollution Prevention Plan (SWPPP). He commented that  
17 the post development pollutant loading rates will be reduced to pre-  
18 development levels satisfying DEP quality requirements. Engineer  
19 Williams said the quantity requirements for post development peak  
20 flows from the 2, 10, 25 and 100 year storm events have been  
21 accomplished at Design Point 1 in accordance with the DEP  
22 requirements for quantity. He explained that the DEC requirements  
23 have four objectives, water quality volume, stream channel protection  
24 volume, over bank flood control and extreme flood control. Engineer  
25 Williams mentioned that because the property is located in the East  
26 of Hudson watershed the applicant has to comply with Chapter 10  
27 enhanced phosphorous removal standards. He said that all the goals  
28 in Chapter 10 will be met and will follow better design practices. He  
29 said that the better site design techniques will exceed directing 10%  
30 of the impervious surfaces to the better design practice.

31

32 Engineer Williams noted that he met with the Bureau of Fire  
33 Protection and will accommodate their request with regard to  
34 modifying the parking which will result in a minor shift in parking  
35 spaces. He said that he also met with Adam Smith, Superintendent  
36 of the Amawalk Shenorock Water District, where flow tests were  
37 performed throughout the project site and it was determined that  
38 there is enough pressure and flow to supply the buildings.

1 Engineer Williams said that he received Mr. Keane’s comments and  
2 he supplied technical responses and will modify or incorporate Mr.  
3 Keane’s comments in the SWPPP.

4  
5 Mr. Keane noted that he only reviewed four pages in the SWPPP and  
6 it should not be assumed that he agrees with the remaining pages.  
7 He said that the report has to be rewritten and be in accordance with  
8 what Engineer Williams said this evening. Mr. Keane noted that he  
9 did not receive Appendix “B”.

10  
11 The Chair asked Town Planner Hull to share her memo with review  
12 comments to the Board for the benefit of the public.

13  
14 Town Planner Hull said that her memo incorporates the action letter  
15 and the applicant has provided all the information requested in the  
16 action letter. She noted that she has additional comments that are  
17 more for the information of the Board. She indicated that the revised  
18 plan shows the 62 parking spaces and the acknowledgement by the  
19 applicant that changes have to be made to the EAF, specifically that  
20 the project site of 5.8 acres be used to complete the table and not  
21 reflect a project area for the entire Planned Hamlet. Town Planner  
22 Hull asked that the intermittent water courses as identified by  
23 NYCDEP be included and that the EAF include reference to the  
24 Baldwin Place Critical Environmental Area and remove the land  
25 banked parking spaces from the EAF. Town Planner Hull said that  
26 the Architectural Review Board (ARB) must review and approve the  
27 material treatment of the building and the project sign details prior to  
28 the Planning Board’s approval of the site plan. She asked that the  
29 PH Zoning Compliance Table include the table references for each of  
30 the columns and correct reference Max Far for any individually listed  
31 category of permitted uses. Town Planner Hull requested that the  
32 correct reference to Maximum permitted building height be used and  
33 include the total number of parking spaces in a row in the parking  
34 table.

35  
36 The Chair asked Town Engineer Gagné to summarize his memo to  
37 the Board for the benefit of the public.

38  
39 Town Engineer Gagné said that the Planning Board will need to  
40 discuss the proposed decorative light poles. He noted that the poles

1 will approach 15 feet and generally are acceptable provided the glass  
2 type fixture is installed with a top shield to reduce the night glow  
3 affect. He asked that a note be added that all site electrical systems  
4 be provided with a copy of the Board of Fire Underwriters Certificate  
5 prior to the issuance of a Certificate of Occupancy. He said that a  
6 note should be added on the site plan that no building permits will be  
7 issued until after the road serving as access be improved to the  
8 binder layer. Town Engineer Gagné said that the gravel emergency  
9 road detail indicates an Item 4 material that will be nearly impervious  
10 after several passes and the applicant must consider a pervious  
11 surface. He requested that the utility room where the sanitary house  
12 traps will be located, fire pumps and water meters be shown and  
13 show the existing gas main and the proposed service connection  
14 location. Town Engineer Gagné said that the existing capped water  
15 main spur shown at the northeast corner of the lot be corrected as the  
16 spur is the water main extension to Mahopac Avenue. He said that  
17 the lawn areas surrounding the parking lots should be graded to hold  
18 and allow for infiltration of surface stormwater and serve as small  
19 water gardens with properly chosen landscaping.

20  
21 Mr. Keane said that what wasn't mentioned in the SWPPP report was  
22 why infiltration practices were not going to be used.

23  
24 Town Engineer Gagné said that the roof leaders in the front of the  
25 buildings should discharge into rain garden areas for infiltration rather  
26 than directly to the water quality basin.

27  
28 Town Engineer Gagné noted that the Site Plan calls for the use of  
29 infiltration practices where there are traffic islands. He said that it has  
30 to be determined that infiltration practices will be used or because of  
31 solid rock infiltration practices cannot be used.

32  
33 Engineer Williams said that the Master Plan did not have traffic  
34 islands but he will try and work around the parking lot and see what  
35 can be done.

36 Town Engineer Gagné said that the garbage dumpster pad has been  
37 located over the proposed parking lot catch basin and must be  
38 relocated sufficiently from the low point to reduce the potential for the  
39 garbage leachate to enter the drainage system. He noted that the

1 approved clearing limit line has been depicted; however, the visual  
2 and environmental impacts of crossing the CLL must be analyzed.

3

4 Engineer Williams indicated that the clearing limit line has been  
5 reduced and is shown on the erosion control plan.

6

7 Town Engineer Gagné noted that the final Stormwater Pollution  
8 Prevention Plan will be reviewed and must include temporary  
9 stormwater sediment facilities and be detailed for review.

10

11 Ms. Gannon asked about the recreation fee for this development.

12

13 Linda Whitehead, attorney, stated that it has to be determined that  
14 the site plan generates a need for the recreational facilities and in her  
15 opinion a recreation fee is not warranted for this application.

16

17 The Chair said that the recreation fee can be discussed with the  
18 Town Board.

19

20 Rose Noonan, Executive Director of the Housing Action Council,  
21 said that Town Code allows the Town Board to grant a waiver on the  
22 recreation fee in an affordable housing development and she will be  
23 requesting that waiver.

24

25 The Chair commenced with the Public Hearing. She asked Planning  
26 Board Secretary Murphy if prior to the Public Hearing had the  
27 required legal notice been published and the adjoining property  
28 owners notified and the sign posted.

29 Planning Board Secretary Murphy replied that the notice was  
30 published in the North County News on November 8, 2009 and the  
31 notice of the Public Hearing was mailed to the adjoining property  
32 owners on November 8, 2009 with the sign posted on the property on  
33 November 8, 2009.

34

35 The Chair asked if anyone from the public would like to be heard on  
36 this site plan application and no one responded.

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

39

40 Ms. Gerbino asked if the applicant met with the ARB.

1 Engineer Williams stated that the applicant's architect met with the  
2 ARB this evening.

3  
4 Mario Salpepi, the applicant's architect, noted that he presented to  
5 the ARB architectural renderings which he showed to the Planning  
6 Board. He indicated that the ARB did not make any general  
7 comments to the colors and materials and basically accepted the  
8 building designs. He mentioned that the strip of Evergreen trees  
9 between The Mews development and Somers Commons Shopping  
10 Center will be increased to 12-14 feet as requested by the ARB.

11  
12 The Chair said that the Landscaping Plan is the Planning Board's  
13 purview. Mr. Keane reviewed the Code and noted that deciding what  
14 trees are to be planted does not seem to be decided by the ARB.

15  
16 Architect Salpepi said that the blue shutters that were placed on  
17 single windows will be eliminated as recommended by the ARB. He  
18 noted that the ARB requested photos of railings on the porches and  
19 decks that the applicant did on other sites. Architect Salpepi  
20 indicated that small design changes may be made to the railings.

21  
22 Town Engineer Gagné asked about the project sign and if that has  
23 been reviewed.

24  
25 Architect Salpepi said that the sign design is shown on the  
26 architectural drawings. He noted that it will be twin stone pillars with  
27 a painted wooden sign and will be lit from the ground. He explained  
28 that the ARB reviewed the sign and had no comments.

29  
30 The Chair mentioned that construction has started on the Yorktown  
31 Mews located on Route 6 and she suggested that the Mews at  
32 Baldwin Place change their name as it may be confusing.

33  
34 The Chair asked if there will be a timer for the lights so there is not a  
35 glow at night and Engineer Williams said that he will review the timer  
36 for the lighting.

37  
38 On motion by Ms. Gerbino, seconded by Mr. Goldenberg, and  
39 unanimously carried, the Board moved to close the Public Hearing.

40

1 The Chair directed that staff send the applicant an Action Letter.

2

3 Ms. Noonan explained that site plan approval must happen in  
4 December. She noted that this application will be reviewed by the  
5 County Planning Board in December and if there is site plan approval  
6 the application goes before the County Board of Legislators in  
7 January with completion in late March and the closing in mid April  
8 and construction starting in May.

9

10 The Chair directed that a draft resolution be prepared for the  
11 December 9, 2009 Planning Board meeting.

12

13 **DISCUSSION**

14

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

18

19 **HOMELAND TOWERS, LLC AND NEW CINGULAR**  
20 **WIRELESS [AT&T] 2580 Route 35**  
21 **[TM: 37.13-2-3]**

22

23 Chairman DeLucia explained that this item not on the agenda is a  
24 discussion by the Planning Board with Town Planner Hull regarding a  
25 Lead Agency matter.

26

27 Town Planner Hull noted that she attended the Zoning Board of  
28 Appeals (ZBA) meeting on November 17, 2009 wherein there was a  
29 discussion regarding the Lead Agency dispute in reference to the  
30 Homeland Towers application located at 121 Route 100. She said  
31 that the ZBA discussed their response to NYS Department of  
32 Environmental Conservation (DEC) stating their reasons why they  
33 should be Lead Agency on this project. Town Planner Hull  
34 mentioned that the ZBA notes that because the two agencies are  
35 from the Town of Somers should the determination of the Lead  
36 Agency question be submitted to the Town Board for determination.  
37 She explained that she has asked the Town Attorney to opine on the  
38 Section of the Code and to determine if the Town Code can stand in  
39 the face of State Law which states that the DEC is the determining  
40 factor in relation to the Lead Agency dispute.

1 Mr. Keane referred to the letter dated November 18, 2009 to the DEC  
 2 from the ZBA and noted that the applicant made a request to the  
 3 DEC for the ZBA to be Lead Agency and that opened the door to  
 4 what transpired.

5  
 6 Town Attorney Holt-Cinque indicated that she researched the issue of  
 7 who determines Lead Agency when there is a dispute between  
 8 Boards and found that the State when ruling on an issue preempts  
 9 local law. She said that she is still researching the issue and does  
 10 not have a definite answer.

11  
 12 Mr. Foley said that SEQRA is a State statute and if there is a conflict  
 13 the State statute will control.

14  
 15 Town Attorney Cinque-Holt said that localities are allowed to enact  
 16 more restrictive regulations under SEQRA.

17  
 18 Mr. Keane noted that the Code in reference to Lead Agency states  
 19 that the ZBA will be Lead Agency for variances, Special Exception  
 20 Use Permits and the Planning Board is lead on Site Plans. He  
 21 stressed that this still retains the conflict.

22  
 23 Town Attorney Holt-Cinque mentioned that Somers Town Code 92-8  
 24 says that in reference to a conflict between involved Town agencies  
 25 that the Town Board can make the determination on Lead Agency as  
 26 opposed to the DEC making the determination.

27  
 28 Mr. Keane said that if the applicant under SEQRA made a request to  
 29 DEC to designate a Lead Agency how does the Local Code  
 30 supersede that.

31  
 32 Town Planner Hull explained to the ZBA at their meeting that the  
 33 Planning Board received copies of application materials attendant to  
 34 Special Exception Use Permits for the wireless telecommunication  
 35 facilities; it does not discuss or review the materials as part of its  
 36 agenda unless a complete site plan application has been filed.  
 37 She indicated that the ZBA was dismayed by this and asked that the  
 38 Planning Board give special treatment to Special Exception Use  
 39 Permits that will be before the Board irrespective of the status of the  
 40 site plan application and be reviewed by the Planning Board and

1 carried forward on the Planning Board's agenda as soon as the  
2 application is filed with the ZBA. Town Planner Hull said that the ZBA  
3 submitted a letter to the Planning Board dated November 18, 2009 in  
4 reference to this question.

5  
6 Mr. Keane said that SEQRA requires that the Lead Agency  
7 determines what the action is and that it consider the entire action  
8 when it makes its determination for SEQRA. He opined that the  
9 problem is if the ZBA only deals with the SEUP and not Site Plan  
10 under SEQRA they are leaving part of the SEQRA process out and  
11 therefore any determination of Significance that the ZBA makes fails  
12 the hard look test. He opined that the Town of Somers has a problem  
13 because they partitioned the SEUP from Site Plan review and used  
14 two agencies to do it. Mr. Keane noted that the ZBA mentions issues  
15 about communication but does not address the substantive issue of  
16 the partitioning of the review especially with regard to SEQRA.

17  
18 Town Planner Hull asked the Planning Board if they want to send a  
19 memo to the Town Board asking for a Code change but the Board did  
20 not respond.

21  
22 Town Planner Hull said that the ZBA at their meeting issued their  
23 intent to be Lead Agency on the Homeland Towers application at  
24 2580 Route 35.

25  
26 The Board directed Town Planner Hull to submit a letter objecting to  
27 the ZBA as Lead Agency on the Homeland Towers application  
28 located at 2580 Route 35.

29  
30 Mr. Keane referred to a book by Mr. Gerard "Environmental Impact  
31 Review" which describes the selection of Lead Agency; *Lead Agency*  
32 *can have a profound effect on the future of the action under*  
33 *consideration since it wields significant authority under SEQRA.* He  
34 said that a law firm commentator said it is a vital issue for the attorney  
35 since the agency calls the tune which the others must dance. He  
36 noted that this really is the issue because if the ZBA is Lead Agency  
37 they call the tune to which the Planning Board dances or visa versa.  
38 Mr. Keane reiterated that the applicant requested that the ZBA be  
39 Lead Agency and Mr. Gerard states that there is a strong natural

1 interest in having a Lead Agency designated that is likely to support  
2 the action under consideration.

3  
4 Town Planner Hull asked the Board if they formally want to object to  
5 the Lead Agency determination regarding the cell tower located at  
6 2580 Route 35. She asked if the letter she drafted to the  
7 Commissioner in reference to the Planning Board seeking Lead  
8 Agency for the Homeland Towers cell tower located at 121 Route 100  
9 should be sent. She noted that she did not send the letter because  
10 the deadline was extended and she is still working on the mapping  
11 that was requested by the DEC.

12  
13 The Chair opined that the Site Plan for the cell towers should come to  
14 the Planning Board first and then be referred to the ZBA.

15  
16 Town Planner Hull said that a site plan application involves a specific  
17 site and the SEUP process involves a site that has been selected;  
18 therefore, the ZBA is concerned that the site plan application may be  
19 on a site that is not feasible.

20  
21 Mr. Keane suggested that a memo be sent to the Town Board  
22 recommending that the Planning Board be Lead Agency on the  
23 SEUP and Site Plan applications with the reasons for this  
24 determination.

25  
26 Town Attorney Holt-Cinque said that if the DEC decides that the ZBA  
27 should be Lead Agency it is because of their power under the SEUP  
28 as it currently exists.

29  
30 Mr. Keane said that an important issue is the cumulative impacts  
31 and it does not appear from the documentation that the ZBA  
32 has taken a hard look at the cumulative impact of cell towers in  
33 Somers.

34  
35 Mr. Foley said that the background that cannot be ignored is that this  
36 is SEQRA layered on top of the Federal Communications Act which  
37 means that the steps the Board can take are curtailed. He advised  
38 that the Federal Telecommunications Act has real teeth subject to a  
39 few basic requirements such as necessity. He mentioned that it is  
40 still being debated that necessity needs to be demonstrated by the

1 point of view of cell phone users in general versus cell phone uses of  
2 the particular applicant. He said with regard to this application the  
3 applicant has demonstrated that its users have a gap in their service  
4 not that there is a gap in general.

5  
6 Mr. Goldenberg noted that the applicant looked for places to put the  
7 cell tower and reviewed sites at IBM, Pepsi and even contacted the  
8 Town for sites. He said that the Town never responded to the  
9 request.

10  
11 The Chair reminded the Board that there is a site walk on Saturday,  
12 November 21, 2009.

13  
14 There being no further business, on motion by Ms. Gerbino,  
15 seconded by Ms. Gannon, and unanimously carried, the meeting  
16 adjourned at 10:30 P. M.

17  
18 Chairman DeLucia noted that the next meeting of the Planning Board  
19 will be held on Wednesday, December 9, 2009 at 7:30 P. M. at the  
20 Somers Town House.

21  
22  
23  
24  
25  
26  
27  
28

Respectfully submitted,

Marilyn Murphy  
Planning Board Secretary