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4 **SOMERS PLANNING BOARD MINUTES**  
5 **November 4, 2009**  
6

7  
8 **ROLL:**

9  
10 **PLANNING BOARD**

11 **MEMBERS PRESENT:** Chairman DeLucia, Mr. Keane,  
12 Mr. Knapp, Mr. Goldenberg,  
13 Mr. Foley and Ms. Gannon  
14

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

21 **ABSENT:** Ms. Gerbino  
22

23 The Meeting commenced at 7:35 p.m. Planning Board Secretary  
24 Marilyn Murphy called the roll. Chairman DeLucia said that a  
25 required quorum of four members of the Board being present called  
26 the meeting to order.  
27

28 Chairman DeLucia noted that Planning Board Secretary Murphy  
29 prepared and submitted for the Board's consideration the approval of  
30 the draft minutes of the October 7, 2009 Planning Board meeting  
31 consisting of twenty-one (21) pages.  
32

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

36 The Chair asked if there was a motion to approve the October 7,  
37 2009 draft minutes.  
38

39 On motion by Ms. Gannon, seconded by Mr. Goldenberg and  
40 unanimously carried, the minutes of October 7, 2009 were approved.

1 The Chair noted that the DVD of the October 7, 2009 Planning Board  
2 meeting is made a part of the approved minutes and is available for  
3 public viewing at the Somers Public Library. The approved minutes  
4 are also on the Town's website [www.somersny.com](http://www.somersny.com) and are available  
5 for public review at the Planning & Engineering office at the Town  
6 House.

7

8 **PROJECT REVIEW**

9

10 **WRIGHT'S COURT SITE PLAN [HALLIC PLACE]**

11 **[TM: 17.11-1- 5. 18]**

12

13 Chairman DeLucia noted that this is the project review of the  
14 application of Hallic Place Development, LLC/Wright's Court for Site  
15 Plan Approval, Special Exception Use Permit for the Groundwater  
16 Protection Overlay District, and a Stormwater Management and  
17 Erosion and Sediment Control Permit. She explained that the  
18 applicant proposes to develop two lots located in the Business  
19 Historic Preservation (B-HP) Zoning District. The Chair noted that  
20 this application was last discussed at the October 9, 2009 Planning  
21 Board meeting whereby the Board with Town Consultant Sarah  
22 Brown of Frederick P. Clark Associates began the review of Part 2 of  
23 the Full Environmental Assessment Form or EAF to determine  
24 whether or not the proposed Type I Action will have a significant  
25 adverse impact on the environment under SEQRA Section 617.7  
26 Determination of Significance. She mentioned that a Type I Action  
27 under SEQRA is one that has been identified in the SEQRA  
28 Regulations as being more likely to require the preparation of an  
29 Environmental Impact Statement or EIS. The Chair stated that a  
30 Determination of Significance should not be made until after all  
31 outstanding issues have been adequately addressed and additional  
32 information has been provided and considered by the Board. She  
33 said that the Town Consultant and the Board will continue reviewing  
34 Part 2-Project Impacts and Their Magnitude, for the purpose of  
35 determining whether it is acceptable in arriving at a negative  
36 declaration supported with adequate detail in explaining the reasons  
37 why the environmental concerns that were identified and analyzed do  
38 not rise to the level of significance under SEQRA.

39

1 The Chair acknowledged for the record receipt of the following: a  
2 memo dated October 22, 2009 from Town Engineer Gagné to the  
3 Fire Prevention Bureau attaching a copy of Board member John  
4 Keane's October 17, 2009 e-mail to be considered in requiring  
5 emergency access to the buildings; a memo dated today in response  
6 that the Bureau's recommendation stands; a letter dated and  
7 received by hand on October 26, 2009 from John Kellard, P.E. of  
8 Kellard Sessions Consulting, P.C., submitting a site layout plan last  
9 revised October 21, 2009, and a site lighting plan, last revised  
10 October 8, 2009, and stating that the project's Landscape Architect  
11 will submit a revised plan upon its completion; a memo dated October  
12 28, 2009 from Town Engineer Gagné with items to be addressed; a  
13 memo dated and received on October 30, 2009 from Town  
14 Consultant Sarah L. Brown, Senior Associate/Planning of Frederick  
15 P. Clark Associates, Inc. submitting for the Board's review a draft  
16 expanded Part 2 of the Full EAF and adding the Planning Board's  
17 meeting dates to the timeline and providing a narrative describing the  
18 impacts and mitigation for those impacts; and a letter dated  
19 November 3, 2009 and received today from Ed Buroughs of  
20 Westchester County Planning Board with comments.

21  
22 The Chair referenced Page 2, paragraph 2 of the November 3, 2009  
23 letter from Ed Buroughs, *We recommend that the Planning Board*  
24 *require that a note be placed on the site plan to identify this provision*  
25 *of fair and affordable units and to identify the specific units to which*  
26 *such legal restrictions and conditions can apply.*

27  
28 Adam Wekstein, the applicant's attorney, replied that he will put the  
29 note on the site plan identifying the affordable units.

30  
31 The Chair explained that at the October 7, 2009 meeting, the Board  
32 moved to refer the applicant to the Zoning Board of Appeals (ZBA)  
33 with a positive recommendation to consider the necessary variances  
34 to Lot A in addition to the area variances. She noted that the ZBA  
35 cannot make a determination until the Planning Board has made a  
36 Determination of Significance. She said that this application will be  
37 placed on the December 15, 2009 ZBA agenda.

38

1 Attorney Wekstein noted that he made the application for the  
2 variances to the ZBA which he has submitted to the Planning Board  
3 as well as the ZBA.

4  
5 The Chair asked the applicant's representative to give a brief  
6 presentation regarding their recent revised submission for the benefit  
7 of the Board and the public.

8  
9 John Kellard, the applicant's engineer, said that minor changes were  
10 made to the plan in order to address FP Clark's recent memo. He  
11 indicated that the most significant change was the relocation of the  
12 dumpster. He mentioned that originally the dumpster was located on  
13 the northern portion of the parking lot. Engineer Kellard explained  
14 that the alignment of the dumpster required a truck to pick up the  
15 garbage from the opposite direction of the one-way pattern. He said  
16 that the location of the dumpster plan was adjusted so the truck can  
17 follow the one-way pattern of the northern parking lot. Engineer  
18 Kellard said that a sign indicating the area as a one-way parking lot  
19 was relocated. He noted that the dumpster is located 60-feet from  
20 the street and is screened from the street by the stonewall that runs  
21 parallel to Scott Drive and a stockade fence. He said that  
22 landscaping is also proposed in that area and will be illustrated on the  
23 revised Landscape Plan. Engineer Kellard mentioned that the  
24 location of the lighting poles have been made according to a study  
25 prepared by Mr. Newell. He explained that because of the  
26 modifications to the parking lot the lighting plan has been updated.  
27 Engineer Kellard noted that the loading spaces in the driveway area  
28 which will be the size of a thirty-foot space has been revised. He  
29 mentioned that deliveries to the site will be made by UPS or Fed-Ex  
30 trucks which can easily fit within the 30-foot space. He indicated that  
31 the 45-foot space will only be used by a moving van. Engineer  
32 Kellard said that these comments and revisions address the  
33 comments from FP Clark.

34  
35 Engineer Kellard noted that the Town Engineer's comments can be  
36 addressed and details will be provided on the final Site Plan.  
37 The Chair asked about the 15-foot landscape buffer between the  
38 applicant's property and the adjoining property.

39

1 Sarah Brown, Town Consultant Planner, said that because this  
2 property is in the B-HP District between a non-residential and  
3 residential the buffer for a rear-yard is 15-feet.

4

5 Engineer Kellard noted that the landscape buffer is 15-feet. He  
6 explained that the distance between the parking area and the rear  
7 property line is 100- feet. He said that landscaping is proposed  
8 between the parking area and the rear property line.

9

10 Engineer Kellard said that there are existing large trees that will be  
11 retained on Site "B" between the residence and parking area.

12

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

15

16 Mr. Knapp asked why the bench for the bus stop is still on the plan.  
17 He also questioned space 13 and opined that it will be difficult for  
18 cars to get into that space.

19

20 The Chair said that the bench will be removed from the plan because  
21 the school buses now enter Scott Drive.

22

23 Engineer Kellard said there should not be a problem turning into  
24 space 13 as there is nothing uncommon about that space as there is  
25 a 27-foot wide aisle.

26

27 Lisa Tenenzapf, resident of Scott Drive, said that she does not  
28 understand why the dumpster has to be located on the street and not  
29 in the corner. She mentioned that even if there is a stockade fence it  
30 still will be visible. She asked what time the dumpster will be emptied  
31 and how illuminated will it be.

32

33 Engineer Kellard replied that the dumpster will not be visible as there  
34 will be landscaping and a stockade fence. He indicated that he does  
35 not know the schedule for the dumpster pickup. Engineer Kellard said  
36 that the lighting can be set up so the whole property is not  
37 illuminated.

38 Town Engineer Gagné opined that the dumpster pickup is usually  
39 during the day.

40

1 Mr. Keane opined that the lighting in the outside perimeters can be  
2 adjusted.

3

4 Ms. Gannon said that the table on the front of the lighting plan does  
5 not agree and she asked that this be fixed. She mentioned that there  
6 is no description on what the fixtures will look like.

7

8 Engineer Kellard stated that the Lighting Package will be made a part  
9 of the overall plan.

10

11 Mr. Keane asked if there is a Somers Code requirement that  
12 mandates buildings be illuminated at night. He noted that it is  
13 important to minimize the impact of the lighting.

14

15 Mr. Foley said that dark parking lots present a liability problem.

16

17 The Chair opined that security and safety have to be the concern.

18

19 Engineer Kellard suggested turning off the commercial lights after 8  
20 o'clock. He mentioned having one light at the residential portion of  
21 the building and one or two lights in certain portions of the parking lot  
22 for residents up until 11:00-12:00 P.M. and then have motion lights.

23

24 Lisa Tenenzapf said that low lights can be used to help minimize the  
25 lighting. She noted that she moved to Somers for the solitude and  
26 even low lights will not provide enough of a buffer.

27

28 Mr. Keane noted that the lighting will be designed in such a way as to  
29 minimize the lights.

30

31 Mr. Goldenberg asked how many apartments will be sold and not  
32 rented.

33

34 Attorney Wekstein said that three of the apartments will be restricted  
35 but none will be sold at this time.

36

37 Mr. Goldenberg asked how many people can live in a one-bedroom  
38 apartment. He said that he is concerned because there are no  
39 deeded apartments and there could be an environment created  
40 because there is no landlord on the premises and many people living

1 in the apartment can change the district. He noted that the people in  
2 the area are concerned about the population growth and that it will  
3 create a different district.

4  
5 Attorney Wekstein indicated that there is nothing in the Somers Code  
6 that addresses the occupancy of a one-bedroom apartment. He said  
7 that it is a building code and enforcement issue.

8  
9 The Chair asked Town Engineer Gagné to summarize his memo to  
10 the Board for the benefit of the public.

11  
12 Town Engineer Gagné noted that the site lighting plan demonstrates  
13 that the site lighting will not adversely affect off site properties in that  
14 the 0.5 foot candle power is maintained on site. He indicated that  
15 there is one exception in front on Route 202 where the sidewalk  
16 comes out where the 0.5 foot candle power will project onto the right-  
17 of-way. He opined that this is the entrance way to the site so it  
18 should not be a problem. Town Engineer Gagné said other items that  
19 will need to be addressed as part of the final approval are the  
20 residential entrance treatment that must be discussed by the Board to  
21 see what level of detail has to be provided and the Scott Drive  
22 sidewalk location has been discussed in the past that it should be  
23 located on the west side of the road rather than the east. He said  
24 that the west side is where the utility poles are located and would  
25 interfere with the pedestrian and the snow removal equipment. Town  
26 Engineer Gagné explained that the applicant has provided access to  
27 the west side of Route 202 or the Town House side via the site's  
28 internal sidewalk by bringing the walk to both Route 202 and the rear  
29 of the Town House parking lot. He noted that the sidewalk proposed  
30 on Route 202 at Scott Drive will be installed where traffic signs have,  
31 in the past, caused concern to truck traffic entering Scot Drive by  
32 error. Town Engineer Gagné said that the relocation of the traffic  
33 signs must be incorporated in the sidewalk design. He said that the  
34 snow storage area must be shown on the plan and the site oil tanks  
35 must be located inside the buildings and so noted. He also asked  
36 that a copy of the formal Maintenance Agreement for each lot for the  
37 Stormwater Management facilities binding on all subsequent property  
38 owners and filed with the County as a deed restriction be provided  
39 and that the Landscape Maintenance, Pesticides & Herbicides

1 Program notes, dated September 2009, recommendations must be  
2 referenced on the site plan.

3  
4 Mr. Knapp said that the rental agreement on the apartments should  
5 have a limit on the number of vehicles and an agreement to stop  
6 vehicle maintenance on the property.

7  
8 Attorney Wekstein said that just because the units are affordable  
9 does not mean that more people will live in the apartments.

10  
11 The Chair asked if there can be reserved spaces for residential.

12  
13 Attorney Wekstein noted that he can speak to the applicant but  
14 reserved spaces were not something that was planned.

15  
16 The Chair said that Planning Consultant Brown is present to continue  
17 the review of the draft and expanded Full EAF for the Board's  
18 discussion and evaluation. She noted that, as the Board has done in  
19 the past, the Town Attorney, staff, Board members and the  
20 applicant's representatives may interject their comments and/or  
21 questions during the discussion.

22  
23 Sarah Brown, the Town's Planning Consultant, noted that at the last  
24 meeting the Planning Board asked that she prepare the expanded  
25 Part 2 of the EAF. She said that if the Board has an issue that they  
26 would like expanded or comments that should be removed they can  
27 alert her to that issue. Town Planning Consultant Brown mentioned  
28 that she provided the timeline and a description of what was  
29 discussed at each Planning Board meeting.

30  
31 The Chair said that on Page 9 of 16 space was left to insert future  
32 plan set submissions.

33  
34 Town Consultant Planner Brown indicated that will be the plan set  
35 when the Board makes their Determination of Significance.

36  
37 Town Consultant Planner Brown mentioned that Mr. Keane sent her  
38 an e-mail saying that this project is near the Elephant Hotel and the  
39 Old Bet statue and that has been added.

1 Town Consultant Planner Brown said the Board should discuss the  
2 landscape feature proposed for Scott Drive.

3  
4 Engineer Kellard said that the landscape plan submitted in August  
5 had a detail of the proposed entrance statement as you pass the  
6 driveway entrances to the project. He noted that the detail shows an  
7 extension of the stonewall on the west side with landscaping with  
8 Dogwoods behind the wall and Boxwoods in front of the wall.

9 Engineer Kellard said that the second crosswalk allows pedestrians  
10 walking down Scott Drive to not have to continue down to Route 100,  
11 the main road, and can walk through the project itself. He mentioned  
12 that discussions were held on whether the entrance statement should  
13 be on the southern portion of Scott Drive by the driveway or the  
14 northern section of the site by the property line. Engineer Kellard  
15 said that it is his understanding that the Board prefers the entrance  
16 statement rights after the applicant's driveways and that is shown on  
17 the plan.

18  
19 The Chair asked if seasonal flowers will be planted with gardener  
20 maintenance.

21  
22 Engineer Kellard said that perennial flowers are detailed on the plan  
23 but he will talk with the applicant to see if he is willing to plant  
24 seasonal flowers and maintain them.

25  
26 Attorney Wekstein noted that as the entrance statement has evolved  
27 the idea was to make it as low maintenance and low chemical and  
28 fertilizer intensive as possible. He said that there was discussion  
29 which was more natural without the wall and without making a  
30 statement. He stressed that the Board has to make a decision on the  
31 entry statement which will be necessary when the Board makes a  
32 final decision on the plan.

33  
34 Town Engineer Gagné said that any improvements within the Town  
35 right-of-way (ROW) especially walls, there is a potential liability and  
36 his recommendation is that walls not be installed within the ROW.  
37 He said that the ROW is 50-feet.

38  
39 Mr. Keane asked where the utilities poles are located and Engineer  
40 Gagné said they are within the ROW.

1 Attorney Wekstein said that if the Board wants landscaping without  
2 walls the applicant will do that but this is a decision of the Board.

3  
4 Engineer Kellard noted that the existing wall is on the west side  
5 on the property line. He explained that walls were only introduced  
6 because he felt that is what the Board wanted.

7  
8 Mr. Keane opined that the entry statement should be as natural as it  
9 can be utilizing internal landscaping that is not intrusive internally to  
10 the lot.

11  
12 The Chair said that it is the consensus of the Board not to have a  
13 stonewall on the east side of the property.

14  
15 Engineer Kellard said that landscaping can be in the ROW and trees  
16 will be planted in the ROW.

17  
18 Mr. Keane noted that his proposal is to leave the entry natural and  
19 incorporate landscaping internal to the lot that minimizes the  
20 aesthetic impacts.

21  
22 Mr. Goldenberg referred to the revised September 9, 2009 EAF form  
23 where it asked if the proposed action will result in the generation of  
24 traffic significantly above present levels. He said that when the  
25 buildings go up it will result in a substantial increase in traffic.

26  
27 Attorney Wekstein explained that traffic studies done in 2004 and  
28 reconfirmed in 2007 showed that there will be no significant impact  
29 at the intersection during the peak hours. He noted that you have to  
30 look at if the traffic will affect the level of service and the study says it  
31 will not affect the level of service.

32 Town Consultant Planner Brown stated that the traffic issue was  
33 covered on Page 14 and traffic counts were done in 2004 and  
34 additional traffic counts in 2007. She mentioned that FP Clark's  
35 traffic engineer agreed with the applicant's traffic study.

36  
37 Mr. Goldenberg said that he does not believe that there will not be a  
38 significant traffic increase that will result from the new buildings.

39

1 The Chair asked Town Consultant Planner Brown if all the  
2 outstanding issues have been addressed.

3

4 Town Consultant Planner Brown said that her only concern is the  
5 decision on the entrance feature.

6

7 The Board decided that the formal landscaped entry statement for the  
8 residential neighborhood to the north, located north of the project's  
9 driveway which included stone wall and formal plantings have been  
10 eliminated and instead the applicant will provide groupings of plants  
11 on the project site immediately north of each entry drive.

12

13 The Chair opined that the plan has changed significantly from the  
14 original plan and is a big improvement.

15

16 The Chair asked if there is a consensus that as lead agency the  
17 Board finds that sufficient information has been provided and  
18 adequately addressed and that an EIS is not required and that a  
19 Negative Declaration be prepared.

20

21 On motion by Mr. Knapp, seconded by Mr. Keane, (Mr. Goldenberg  
22 voting nay) and carried, the Board moved that the Planning Board as  
23 lead agency in the project review of the application of Hallic Place  
24 Development, LLC/Wright's Court for Site Plan Approval and related  
25 permits and, after discussion and evaluation of the Full EAF, has  
26 determined that: under SEQRA 617.7 (a) (2) an Environmental  
27 Impact Statement (EIS) is not required; under 617.7 (b) the proposed  
28 action will not result in a significant adverse environmental impact  
29 and therefore, a Negative Declaration is warranted; and under 617.12  
30 a (draft) Negative Declaration be prepared for the November 18,  
31 2009 Planning Board meeting and filed and published for distribution,  
32 and the file made available to the public.

33

34 The Chair said that the Planning Board's determination for a Negative  
35 Declaration ends the SEQRA process and the next procedure is the  
36 Planning Board's decision to grant Site Plan Approval and the related  
37 permits.

38

39 The Chair directed that the Board direct Town Consultant Planner  
40 Brown to prepare a draft Resolution for the next meeting, November

1 18, 2009, provided the applicant has submitted the information and  
 2 material requested (Landscape Plan).

3  
 4

5 **OPENGATE PARKING LOT EXTENSION**  
 6 **[TM: 17.06-1-3]**

7

8 Chairman DeLucia noted that this is the project review of the  
 9 application of Opengate Inc. for amended site plan approval for 20  
 10 additional spaces to the existing 8 parking lot spaces. She said that  
 11 this application was submitted on September 23, 2009. The Chair  
 12 mentioned that the property is located at 28 Warren Street in an R-40  
 13 single family residential zoning district.

14

15 The Chair acknowledged for the record receipt of the following: a  
 16 letter dated and received by hand on September 23, 2009 by Barry  
 17 G. Naderman, P.E. of Naderman Land Planning and Engineering,  
 18 P.C. enclosing submission of application for Site Plan Approval with  
 19 related documents; a memo dated October 29, 2009 from Town  
 20 Engineer Gagné with 12 items to be addressed and requesting a site  
 21 walk; and a memo dated October 29, 2009 from Town Planner Hull  
 22 with her project review and comments and attaching a draft Notice of  
 23 Intent to be Lead Agency and determining that the proposed action is  
 24 an Unlisted Action under SEQRA for the Board's review.

25

26 The Chair asked the applicant's representative to give a presentation  
 27 regarding this application for the benefit of the Board and the public.  
 28 She requested that the previous application for a maintenance facility  
 29 be tied into this application.

30

31 Barry Naderman, the applicant's engineer, explained that the property  
 32 is located on the east side of Warren Street and is a six acre parcel.  
 33 He mentioned that the maintenance facility is on the north end of the  
 34 property and there was a proposal to replace that facility with a new  
 35 one at the rear of the site. Engineer Naderman said that the  
 36 maintenance facility is no longer proposed. He mentioned that  
 37 Opengate is now renting a building for their maintenance facility. He  
 38 said that Opengate is interested in extending the parking lot to  
 39 provide additional parking on the site. Engineer Naderman  
 40 commented that the deep hole testing revealed sandy loam soil which

1 is a good draining soil. He said that the new and relocated parking  
 2 spaces are to be constructed of porous pavement. Engineer  
 3 Naderman indicated that the National Asphalt Paving Association  
 4 published in November 2008 a series regarding porous pavement.  
 5 He said that it shows how to design the sub-layer in the parking lot for  
 6 a certain storm. He noted that the proposal is to use the porous  
 7 pavement for the extension of the parking lot. He explained that the  
 8 porous pavement consists of a three inch top course and underneath  
 9 that based on the design criteria is a 9 inch layer of stone. He said  
 10 that the runoff will go right through the pavement into the stone  
 11 reservoir and then into the sub-soils. Engineer Naderman described  
 12 the cross section of the treatment. He explained that eventually the  
 13 runoff will go into a drywell that is another infiltration measure.

14  
 15 Engineer Naderman said that the porous pavement document is  
 16 based upon studies by the University of New Hampshire, which is a  
 17 cold climate, and because the water is not retained on the surface of  
 18 the pavement it allows less than 25% of salt on the pavement. He  
 19 noted that the maintenance is just properly using the pavement by not  
 20 applying sand. Engineer Naderman said that this could be used for a  
 21 pilot program in Town.

22  
 23 Engineer Naderman noted that the proposal is for 20 additional  
 24 parking spaces on the site. He explained that there are now 28  
 25 parking spaces and Opengate finds that occasionally there is a  
 26 deficiency in parking spaces and this parking will be for overflow  
 27 parking. He said that there is an existing light pole at the end of the  
 28 existing parking lot and that will be relocated in the parking lot as no  
 29 additional lighting is proposed.

30  
 31 Mr. Keane says that compliance with Chapter 10 of the State  
 32 Stormwater Manual regarding phosphorous requirements says that  
 33 85% of water must be kept on site. He noted that Chapter 10 lays out  
 34 the process and that should be addressed.

35  
 36 Mr. Knapp asked that the erosion control detail regarding hay bales  
 37 and detail as to how to prevent animals from entering the outfall pipe  
 38 be provided.

39

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

3  
 4 Town Engineer Gagné said that the application drawing must show  
 5 the entire lot, existing buildings, parking areas and utilities. He asked  
 6 that a list of the requested waivers required under the Site Plan  
 7 Review Chapter 144 be provided. Town Engineer Gagné requested  
 8 that the Town Tax Lot information be corrected and that the north  
 9 arrow be provided on the plans. He asked that the Site Zoning and  
 10 the compliance table with the list of ZBA Variances and/or SEUP or  
 11 non-conformance status be posted.

12  
 13 Engineer Naderman stated that this application is under the Special  
 14 Exception Use Permit (SEUP) for the school; therefore, there is no  
 15 non-conformance status. He indicated that this will be clarified.

16  
 17 Town Engineer Gagné noted that any areas proposed for outdoor  
 18 equipment or material storage be identified; and if there is none then  
 19 place a note on the site plan.

20  
 21 Ms. Gannon asked what will be done for snow removal.

22  
 23 Engineer Naderman said that the snow will be placed along the  
 24 perimeter of the parking lot.

25  
 26 Mr. Keane indicated that the snow melt which may have toxic  
 27 pollutants should be contained.

28  
 29 The Chair asked Town Planner Hull to share her memo to the Board  
 30 for the benefit of the public.

31  
 32 Town Planner Hull said that the site plan drawing should identify  
 33 all the parking spaces on the site and then depict the changes being  
 34 proposed. She asked that the number of evergreens to be installed  
 35 in a table on the site plan drawing be quantified and provide  
 36 information as to the maintenance requirements of the porous  
 37 pavement if there is any maintenance. Town Planner Hull mentioned  
 38 that this action qualifies as an Unlisted Action Under SEQRA and as  
 39 such a long form Part I of the EAF should be submitted to be

1 distributed with the Notice of Intent to be Lead Agency. She  
2 explained that a draft of the lead agency notice has been provided.

3  
4 The Chair asked Engineer Naderman to submit a letter stating that  
5 the maintenance facility application has been withdrawn.

6  
7 Engineer Naderman mentioned that there will be a sign at the  
8 entrance of the parking lot that alerts maintenance workers that this is  
9 a porous pavement parking lot and not to use salt or driveway  
10 sealers.

11  
12 The Chair asked if the applicant and his representative reviewed the  
13 draft Notice of Intent and had any comments or questions.

14  
15 Engineer Naderman stated that he reviewed the notice of intent for  
16 the Lead Agency determination and had no questions or comments.

17  
18 The Chair asked if there were any comments from members of the  
19 Board.

20  
21 Mr. Goldenberg asked how long it will take to construct the additional  
22 parking spaces.

23  
24 Engineer Naderman said that it will take approximately 2 to 3 weeks  
25 to construct the additional parking spaces.

26  
27 The Chair mentioned that Town Planner Hull has commented that  
28 this action qualifies as an Unlisted Action under SEQRA and that the  
29 Applicant should submit a long form Part I of the EAF to be  
30 distributed with the Notice of Intent to be Lead Agency.

31  
32 On motion by Ms. Gannon, seconded by Mr. Foley, and unanimously  
33 carried, the Board determined that the proposed action is an Unlisted  
34 Action and moved to declare itself Lead Agency pursuant to Part 617,  
35 Article 8 (State Environmental Quality Review Act (SEQRA) of the  
36 NYS Environmental Conservation Law, and Chapter 92  
37 (Environmental Quality Review) of the Code of the Town of Somers,  
38 NY, and contingent upon receipt by applicant of Part 1 of the Full  
39 Environmental Assessment Form, to circulate a Notice of Intent to be

1 Lead Agency to all involved and interested agencies with a copy of  
 2 the plan.

3  
 4 The Chair explained that unless an objection is received by any other  
 5 involved agency within 30 days from the date of this notice, the  
 6 Somers Planning Board will assume this role. She said that this  
 7 information is also available for public review in the Planning and  
 8 Engineering office at the Town House.

9  
 10 Mr. Keane reiterated that the four goals in Chapter 10 must be  
 11 addressed.

12  
 13 The Chair noted that the Board has a site walk scheduled for  
 14 November 21, 2009 and asked if the Board wants to add this project  
 15 to that calendar date.

16  
 17 The Chair directed that a site walk be scheduled for the parking lot  
 18 expansion at the Opengate Campus for November 21, 2009.

19  
 20 *Mr. Knapp left the meeting at this time.*

21  
 22 **DISCUSSION**

23  
 24 **HOMELAND TOWERS, LLC WIRELESS**  
 25 **TELECOMMUNICATIONS FACILITY**  
 26 **[TM: 38.17-1-5]**

27  
 28 Chairman DeLucia said that this will be a discussion regarding the  
 29 dispute with the Zoning Board of Appeals (ZBA) for designation of  
 30 Lead Agency on the application of Homeland Towers, LLC Wireless  
 31 Telecommunications Facility to be located at 121 Route 100 (Amato  
 32 property).

33  
 34 The Chair asked Town Planner Hull to discuss with the Board the  
 35 letter received on November 2, 2009 from the Chief, SEQRA and  
 36 Training Unit of the NYS Department of Environmental Conservation,  
 37 Division of Environmental Permits.

38  
 39 Town Planner Hull said that a letter was received from the DEC  
 40 requesting additional information for the reasoning why the Planning

1 Board wants to be Lead Agency on the project. She explained that  
2 this letter was sent the day she sent her letter to the Commissioner  
3 on behalf of the Planning Board. Town Planner Hull noted that three  
4 additional background information items be provided to assist the  
5 Commissioner in reaching a decision. She mentioned that she can  
6 supply the additional information but asked the Board if they had any  
7 other questions other than what was listed in her letter to the  
8 Commissioner.

9

10 Mr. Keane said that the statements about global reach that the  
11 Planning Board has versus the ZBA should be augmented. He  
12 explained that the ZBA does not get involved unless a variance is  
13 required whereas the Planning Board is more involved ensuring  
14 compliance with the Master Plan in a more broad based way in  
15 compliance with the various zoning requirements in the Town Codes.  
16 Mr. Keane said that the ZBA handles the Special Exception Use  
17 Permit for Cell Towers. He mentioned that Code 170-129 (9) relates  
18 to Planning Board responsibilities for site planning for a cell tower.  
19 He indicated that the Planning Board can incorporate all the criteria  
20 set forth in Section 129.8 which are all the requirements the ZBA  
21 must look at in order to issue the permit. Mr. Keane opined that legal  
22 counsel should be consulted.

23

24 Town Planner Hull noted that the ZBA has authority to issue the  
25 SEUP but the permit involves a change in a specific property that  
26 exists in a Zoning District that does not allow that use. She opined  
27 that the Cell Tower SEUP is different and that should be pointed out  
28 to the Commissioner.

29

30 Mr. Foley said that the only entity that has advocated affirmatively on  
31 behalf of the ZBA being Lead Agency is the applicant's attorney Mr.  
32 Gaudioso. Mr. Foley referenced Attorney Gaudioso's letter to  
33 Commissioner Grannis dated October 7, 2009 specifically under  
34 Conclusion and the paragraph above where he suggests that SEQRA  
35 should not take place in the context of a matter related to the  
36 Telecommunications Act. He also noted that Attorney Gaudioso also  
37 states that designation of the Planning Board as Lead Agency would  
38 unreasonably delay the application and unreasonably discriminate  
39 against AT&T in violation of the supremacy clause of the United

1 States Constitution and the Telecommunication Act (TCA). Mr. Foley  
2 opined that statement should not go unchallenged.

3  
4 Mr. Keane opined that there is no factual basis for other statements  
5 that were made in Attorney Gaudioso's letter in reference to the TCA.

6  
7 Mr. Foley said that the TCA contemplates that a SEQRA analysis will  
8 take place and is not in lieu of.

9  
10 Mr. Keane explained that when there is a conflict between two boards  
11 the Planning Board has to make a strong case around two elements  
12 of the regulatory criteria.

13  
14 Mr. Goldenberg said that he is concerned about the Case Law that  
15 was quoted by Attorney Gaudioso.

16  
17 The Chair indicated that Ms. Gannon provided the Board with a  
18 decision on Case Law by the Town of Montgomery Town Board  
19 versus the Town of Montgomery Planning Board which basically  
20 states that the Town Board has broader governmental powers than  
21 the Planning Board.

22  
23 Mr. Keane said that this case is similar because it can be determined  
24 that the Planning Board has broader governmental powers in this  
25 case than the ZBA and this should be brought out in the Town  
26 Planner's memo to the Commissioner.

27  
28 Town Planner Hull noted that the Board has until November 18, 2009  
29 to make the submission to the Commissioner and she will e-mail a  
30 draft letter to the Planning Board for their input and comments.  
31 She said that the Planning Board should prove that the Zoning Code  
32 is a misnomer that the ZBA issues the SEUP on cell tower projects.  
33 She indicated that under other circumstances it equates to a site plan  
34 whose power is with the Planning Board. Town Planner Hull stated  
35 that this is where the biggest comparison should be made.

36  
37 **PLANNING BOARD CALENDAR**

38  
39 Chairman DeLucia noted that the Board will review and adopt the  
40 Planning Board and site walk calendar for 2010.

1 The Chair said that there will be two meetings in August to make up  
2 for the loss of a meeting in September and November.

3

4 The Chair mentioned the calendar for site walks and the Board  
5 decided to schedule site walks when needed.

6

7 On motion by Mr. Keane, seconded by Ms. Gannon, and  
8 unanimously carried, the Board moved to adopt the Planning Board  
9 calendar for 2010.

10

11 There being no further business, on motion by Mr. Keane,  
12 seconded by Ms. Gannon, and unanimously carried, the meeting  
13 adjourned at 10: 00 P. M.

14

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

18

19

20

Respectfully submitted,

21

22

Marilyn Murphy

23

Planning Board Secretary

24