

Telephone 1
(914) 277-5366₂

FAX
(914) 277-4093

PLANNING DEPARTMENT

TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

Town of Somers

WESTCHESTER COUNTY, N.Y.



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

3

**SOMERS PLANNING BOARD MINUTES
FEBRUARY 13, 2013**

4

5

6

7 **ROLL:**

8

9 **PLANNING BOARD**

10 **MEMBERS PRESENT:**

Acting Chair Gerbino, Mrs. DeLucia,
Mr. Keane and Ms. Gannon

11

12

13 **ABSENT:**

Chair Currie, Mr. Goldenberg and Mr. Foley

14

15 **ALSO PRESENT:**

Consultant Planner Sarah Brown
Consultant Engineer Joseph Barbagallo
Planning Board Secretary Murphy

16

17

18

19 The meeting commenced at 7:30 p.m. Planning Board Secretary Marilyn
20 Murphy called the roll.

21

22 Acting Chair Gerbino noted that a required quorum of four members was
23 present in order to conduct the business of the Board.

24

25 The Board said that an Acting Chairman should be appointed during
26 Chairman Currie's absence.

27

28 On motion by Mrs. DeLucia, seconded by Mr. Keane, and unanimously
29 carried, the Board appointed Ms. Gerbino as Acting Planning Board
30 Chairman.

31 **APPROVAL OF DECEMBER 4, 2012 MINUTES**

32

1 Acting Chair Gerbino noted that Planning Board Secretary Marilyn Murphy
2 prepared and submitted for the Board's consideration the approval of the
3 draft minutes of the Planning Board meeting held on December 4, 2012
4 consisting of 12 pages.

5
6 Acting Chair Gerbino commented about her displeasure on how the escrow
7 is being handled. She read Town Code §133-1.B. (5). *The applicant may*
8 *waive the procedure and deposit funds to the escrow account pursuant to*
9 *§133-2.* Acting Chair Gerbino explained that the Board does not have to
10 discuss escrow with the applicant if they are agreeable to the escrow.

11
12 Mrs. DeLucia said that in all her years as Chairman of the Planning Board
13 the procedure was if an applicant waived the procedure and paid the
14 escrow the application was placed on the agenda.

15
16 On motion by Ms. Gannon, seconded by Mr. Keane, and unanimously
17 carried, the minutes of December 4, 2012, were approved.

18
19 Acting Chair Gerbino noted that the DVD of the December 4, 2012
20 Planning Board meeting is made a part of the approved minutes and is
21 available for public viewing at the Somers Public Library. The text of the
22 approved minutes is also on the Town's website www.somersny.com and is
23 available for public review at the Planning & Engineering office at the Town
24 House.

25
26 **TIME-EXTENSION**

27
28 **SUSAN HAFT RIDGEVIEW DESIGNER BUILDERS, INC.**
29 **FINAL CONSERVATION SUBDIVISION APPROVAL**
30 **[TM: 16.12-1-41 & 42]**

31
32 Acting Chairman Gerbino said that Susan Haft and Ridgeview Designer
33 Builders, Inc. have requested a 90-day time-extension for Final
34 Conservation Subdivision Approval, Stormwater Management and Erosion
35 and Sediment Control, Steep Slopes and Tree Removal Permit.
36 Acting Chair Gerbino acknowledged a memo from Town Planner Syrette
37 Dym stating that she has no objection to issuing the requested time-
38 extension.

39

1 Acting Chair Gerbino asked the applicant’s representative to discuss the
2 chipping and rock removal that is taking place on the site.

3 Timothy Allen, the applicant’s engineer, said that the chipping and rock
4 removal is taking place pursuant to Town Code. He explained that it will
5 take approximately one more month to finish the chipping and rock
6 removal. Engineer Allen mentioned that with deference to the neighbors the
7 applicant has stopped work on Saturdays. He said that if blasting was used
8 the work would have been finished much quicker.

9

10 Mrs. DeLucia noted that she asked Principal Engineering Technician
11 Woelfle if he would ask the owner not to do chipping on Saturdays and the
12 applicant immediately agreed. She said that she informed the neighbors
13 that the applicant is legally within his rights to remove rock and chipping
14 and she appreciates his cooperation in not continuing the rock removal
15 operation on Saturdays.

16

17 On motion by Mrs. DeLucia, seconded by Mr. Keane, and unanimously
18 carried, the Board moved to grant a 90-day time-extension to the period of
19 Conditional Final Conservation Subdivision Approval to Susan Haft and
20 Ridgeview Designer Builders from February 18, 2013 to and including May
21 20, 2013 according to Town Code §150-13-M.

22

23 **MITCHELL CONSERVATION SUBDIVISION**

24 **[TM: 16.09-1-9]**

25

26 Acting Chairman Gerbino noted that this is a request for a time-extension
27 for re-approval of Conditional Preliminary Approval for a 180-day time-
28 extension from April 11, 2013 through and including October 14, 2013.

29

30 The Acting Chair asked the applicant’s representative to discuss the
31 request.

32

33 Timothy Allen, the applicant’s engineer, indicated that the applicant is in the
34 process of assembling the required documents necessary to satisfy the
35 conditions of approval. He mentioned that the application is being
36 reviewed by the Department of Environmental Protection (DEP) and that
37 should be done fairly soon.

38

1 Acting Chair Gerbino acknowledged for the record a memo from Town
2 Planner Dym stating that she had no objection to the Planning Board
3 issuing the requested time-extension.

4
5 On motion by Mrs. DeLucia, seconded by Ms. Gannon, and unanimously
6 carried, the Board moved to grant a 180-day time-extension for the Mitchell
7 Conservation Preliminary Subdivision from April 11, 2013 through and
8 including October 14, 2013 in accordance with Town Code §150-13-M.

9

10 **PROJECT REVIEW**

11

12 **THE GREEN AT SOMERS AMENDED SITE PLAN**
13 **WETLAND, STEEP SLOPES AND STORMWATER MANAGEMENT**
14 **AND EROSION AND SEDIMENT CONTROL PERMITS**
15 **[TM: 4.20-1-3.1]**

16

17 Acting Chair Gerbino said that this is the application of National
18 Golfworx/Rick Van Benschoten, owner, for a mixed use development
19 consisting of four buildings with a combination of retail and residential uses.

20

21 The Acting Chair asked Consultant Planner Sarah Brown, representing
22 Frederick P. Clark Associates, to update the Board on the review.

23

24 Consultant Planner Brown explained that at the January 23, 2013 Planning
25 Board meeting the Board reviewed Part 2 of the EAF and directed F. P.
26 Clark to prepare a Negative Declaration Notice of Determination of Non-
27 Significance for the Board's review.

28

29 Acting Chair Gerbino asked Consultant Engineer Barbagallo to review his
30 memo for the benefit of the public.

31

32 Consultant Engineer Barbagallo mentioned that the applicant was not
33 supposed to address engineering details for this meeting. He explained
34 that the way the Negative Declaration is drafted will allow the Board to
35 proceed this evening. He commented that he provided language to F. P.
36 Clark that is included in the Negative Declaration.

37

38 Acting Chair Gerbino asked the applicant's attorney Linda Whitehead, if
39 she reviewed Draft #4 of the Negative Declaration.

40

1 Attorney Whitehead indicated that she reviewed Draft #4 and made minor
2 changes. She said that the word “approximately” was added in many
3 instances. Attorney Whitehead made a change to the fourth bullet on page
4 4 to read *the proposed action includes a zoning text amendment that would*
5 *allow for the currently proposed features of the development concept to*
6 *remain unchanged.*

7
8 Mrs. DeLucia said that the Neg Dec states that there will be no significant
9 adverse impacts.

10
11 Consultant Planner Brown mentioned that Ms. Gannon questioned Number
12 5 under Impact on Transportation, *U.S. Route 6 at Proposed Site Access*
13 *Drive/Planned Hamlet Site Access Drive-Recommended signalization of*
14 *this intersection and the construction of separate left turn lanes on U.S.*
15 *Route 6 at the location of the proposed access drive.* Consultant Planner
16 Brown explained that she spoke to Michael Galante of F.P. Clark and Ms.
17 Gannon is correct that this is a timing issue and is the mitigation proposed
18 by the applicant. She said that F. P. Clark has reviewed this and agrees
19 that this will mitigate the impact but ultimately it is up to NYS Department of
20 Transportation.

21
22 Attorney Whitehead stated that this recommendation was made on a much
23 more intense development. She noted that the Traffic Report was done
24 when the application had 25,000 SF of retail as opposed to 8,000 SF of
25 retail. She said that she would like to have a traffic light as it would be a
26 benefit for ease of getting in and out for the restaurant and retail.

27
28 Ms. Gannon said that the second point in her discussion was to add in the
29 duration of construction and traffic movement. She mentioned that on
30 Page 13 under Proposed Action involves generation of traffic during the
31 construction phase including that associated with importation of fill to the
32 Site. During the initial phases of site work, earthwork activities will require
33 the importation of fill. Because of constraints that would limit the availability
34 of on-site staging areas, the Applicant has projected that no more than 40
35 truckloads of fill could be imported to the Site on a daily basis. This
36 represents a total of 80 truck trips per day. Ms. Gannon noted that it says
37 the truck movement with the initial earthwork that takes place is 80 truck
38 trips per day but does not state how many days are involved.

39

1 Attorney Whitehead stated that it should read that over the course of an 8
2 hour day for approximately a five-week period.

3
4 Mrs. DeLucia asked if F. P. Clark approves of the Negative Declaration.

5
6 Consultant Planner Brown stated that F. P. Clark approves of the Neg Dec.

7
8 Attorney Whitehead said that she has to figure out how the changes can be
9 made tomorrow in order to submit the Negative Declaration to the Town
10 Board for its meeting.

11
12 Mr. Keane noted that the Negative Declaration as the Planning Board's
13 document as Lead Agency proves that the Board took a hard look and
14 identified all areas of potential environmental impacts and supported that
15 determination.

16
17 On motion by Mrs. DeLucia, seconded by Mr. Keane, and unanimously
18 carried, the Somers Planning Board as Lead Agency for the environmental
19 review of the application of The Green at Somers for Amended Site Plan,
20 Steep Slopes, Wetland and Erosion and Sediment Control Permits and
21 after identifying, evaluating and discussing the Full EAF has determined
22 that under SEQRA 617.7(b) the proposed Action will not have a significant
23 adverse impact on the environment and therefore a draft Environmental
24 Impact Statement will not need to be prepared and the draft Negative
25 Declaration is hereby adopted, as amended and filed and the file shall be
26 made available to the public completing, thereby, the SEQRA review
27 process.

28 **NEW CINGULAR WIRELESS PCS, LLC (AT&T)**
29 **AMENDED SITE PLAN AND AMENDED SPECIAL USE PERMIT**
30 **[TM: 16.15-1-1.1]**

31
32 **NEW CINGULAR WIRELESS PCS, LLC (AT&T)**
33 **AMENDED SITE PLAN AND AMENDED SPECIAL USE PERMIT**
34 **[TM: 38.17-1-5]**

35
36 **NEW CINGULAR WIRELESS PCS, LLC (AT&T)**
37 **AMENDED SITE PLAN AND AMENDED SPECIAL USE PERMIT**
38 **[TM: 28.10-1-6.1]**

39

1 Acting Chair Gerbino mentioned that there are three applications for New
2 Cingular Wireless for Amended Site Plan Approval and Special Use
3 Permits for modifications to existing approved facilities.

4
5 The Acting Chair asked the applicant's representative to discuss the
6 modifications to the cell towers at the Lincoln Hall property, Amato property
7 and the Majestech Corporation property.

8
9 Neil Alexander, the applicant's attorney, said that he will be specific to each
10 site but will make a presentation that fits all the sites. He mentioned the
11 Telecommunications Act of 1996, the shot clock that came out in 2009 and
12 most recently the Middle Class Tax Reform Act. Attorney Alexander
13 explained that the Middle Class Tax Reform Act says that if there is an
14 existing wireless facility that is being modified or co-located a municipality
15 cannot deny that application. He commented that he met with the Town
16 Planner and Town Attorney and discussed the Town Code and how to
17 reconcile the two while moving forward. Attorney Alexander said for record
18 keeping reasons it was suggested that he apply to amend the Special
19 Permits and amend the Site Plan. He agreed provided that the Public
20 Hearings are waived as allowed by Code. Attorney Alexander noted that
21 what is common with all three applications is that there is no proposed
22 scope of work outside the existing equipment compounds. He commented
23 that 4G LTE, a new technology, will be upgraded. Attorney Alexander said
24 that each tower has a concrete pad and equipment cabinets. He indicated
25 that there will not be a major change in the height of the cabinets and no
26 soil disturbance.

27
28 Attorney Alexander mentioned the monopole at Lincoln Hall and said that a
29 group of antennas and remote radio heads will be added in each sector.

30
31 Attorney Alexander noted that Majestech has a flagpole with the antennas
32 inside. He said that there also will not be a major change in the height of
33 the equipment cabinets.

34
35 Ms. Gannon mentioned that the Amato submittal is missing D exhibit
36 photographs that would determine compliance with visual mitigation.

37
38 Attorney Alexander stated that it is a copying error and he will provide the
39 missing photograph on the Amato submittal.

40

1 Attorney Alexander explained that the cell tower at Amato is a stealth tree.

2

3 Attorney Alexander said that he will address the electrical issue to
4 demonstrate that additional electrical service loads proposed by new AT&T
5 equipment may be met by the existing electrical service to the cell tower
6 site.

7

8 Consultant Engineer Barbagallo said that if the service has to be upgraded
9 with a new transformer that will be on the side of the road, the Planning
10 Board will want to mitigate the visual impact.

11

12 Attorney Alexander said that Amato and Majestech were designed for
13 additional co-locators and were sized appropriately.

14

15 Consultant Engineer Barbagallo mentioned that because of the new
16 equipment can the applicant still build out in the way that was originally
17 envisioned and not require any dirt to be removed.

18

19 Attorney Alexander stated that the new equipment will not take up any
20 additional space in the compound. He said that he provided a revised
21 structural and emissions report that shows that the new equipment will not
22 create a problem.

23

24 Attorney Alexander said that a condition of approval can be that the
25 applicant has to bring to the attention of the Town if the existing electrical
26 infrastructure needs to be changed and new infrastructure has to be
27 brought in.

28

29 Consultant Engineer Barbagallo suggested language to say that there will
30 be no ground disturbance now or in the future to accommodate the co-
31 location of carriers in accordance with prior approvals.

32

33 Attorney Alexander stated that each carrier will provide their own upgrade.
34 He suggested saying that the Board is only authorizing the scope of work
35 that is shown on the plan.

36

37 Consultant Engineer Barbagallo said that he will work with Town Planner
38 Dym on the language in the Resolution that will satisfy all parties.

39

1 Mr. Keane said that he wants to make sure that the NIER emissions
2 calculations are valid. He noted that the applicant has to demonstrate that
3 they met the criteria under Section 170-129 (5) C.

4
5 Attorney Alexander stressed that he provided a signed document by a
6 professional in the Radio Frequency Industry stating that the calculation
7 was done pursuant to the FCC established guidelines. He noted that the
8 document lays out the formula and how it was calculated.

9
10 Consultant Engineer Barbagallo suggested that Bechtel seal the Radio
11 Frequency document.

12
13 Attorney Alexander said that the FCC has set a standard that the applicant
14 provide a report using bulletin OET65 and showing compliance. He stated
15 that the applicant is in compliance and is not even close to the standard.
16 Attorney Alexander explained that the applicant is just updating their
17 existing facility and he questioned the basis for the Planning Board's
18 questioning the report. Attorney Alexander said that he will provide a
19 scientific As-Built that will address the Board's concerns.

20
21 Consultant Engineer Barbagallo suggested language to say *Prior to the*
22 *issuance of a Certificate of Occupancy, a Certificate of Operations shall be*
23 *provided in accordance with the provisions of the MRF by Bechtel*
24 *Communications Inc. dated October 11, 2012, and an operating agreement*
25 *is to be in place to ensure that maintenance activities are completed in the*
26 *future.*

27
28 Consultant Engineer Barbagallo noted that he received an email from Town
29 Attorney Baroni that states that the three cell tower applications are Type II
30 Action and, therefore no further action under SEQRA is required and no
31 circulation is warranted.

32
33 On motion by Mrs. DeLucia, seconded by Mr. Keane, and unanimously
34 carried, that Pursuant to 6 NYCRR Part 617.5 pertaining to SEQRA and
35 Chapter 92 of the Code of the Town of Somers, the Planning Board
36 determines the proposed activity of the modification of the existing AT&T
37 wireless facility at **Lincoln Hall** to be a Type II Action, as not having a
38 significant impact on the environment and therefore no further
39 environmental review is necessary, ending the SEQRA process.

40

1 On motion by Mrs. DeLucia, seconded by Mr. Keane, and unanimously
 2 carried, that Pursuant to 6 NYCRR Part 617.5 pertaining to SEQRA and
 3 Chapter 92 of the Code of the Town of Somers, the Planning Board
 4 determines the proposed activity of the modification of the existing AT&T
 5 wireless facility at the **Amato** property located at 121 Route 100 to be a
 6 Type II Action, as not having a significant impact on the environment and
 7 therefore no further environmental review is necessary, ending the SEQRA
 8 process.

9
 10 On motion by Mrs. DeLucia, seconded by Ms. Gannon, and unanimously
 11 carried, that Pursuant to 6 NYCRR Part 617.5 pertaining to SEQRA and
 12 Chapter 92 of the Code of the Town of Somers, the Planning Board
 13 determines the proposed activity of the modification of the existing AT&T
 14 wireless facility at the **Majestech** property to be a Type II Action, as not
 15 having a significant impact on the environment and therefore no further
 16 environmental review is necessary ending the SEQRA process.

17
 18 Attorney Alexander asked the Board to waive the Public Hearing on the
 19 Site Plan and the Special Permit.

20
 21 On motion by Mrs. DeLucia, seconded by Mr. Keane, and unanimously
 22 carried, the Board moved to waive the application of **Lincoln Hall**, New
 23 Cingular Wireless PCS, LLC for Amended Site Plan Public Hearing in
 24 accordance with §170-114C.(8) (e) and the Amended Special Permit Public
 25 Hearing in accordance with §170-129.6F

26
 27 On motion by Mrs. DeLucia, seconded by Mr. Keane, and unanimously
 28 carried, the Board moved to waive the application located at the **Amato**
 29 property, New Cingular Wireless PCS LLC (AT&T) for Amended Site Plan
 30 Public Hearing in accordance with §170-114C.(8) (e) and the Amended
 31 Special Permit Public Hearing in accordance with §170-129.6F

32
 33 On motion by Mrs. DeLucia, seconded by Mr. Keane, and unanimously
 34 carried, the Board moved to waive the application at the **Majestech**
 35 property, New Cingular Wireless PCS for Amended Site Plan Public
 36 Hearing in accordance with §170-114C.(8) (e) and the Amended Special
 37 Permit Public Hearing in accordance with §170-129.6F

38
 39 Acting Chair Gerbino directed that a Draft Resolution for the three wireless
 40 applications be prepared for the March 13, 2013 Planning Board meeting.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

There being no further business, on motion by Acting Chair Gerbino, seconded by Mrs. DeLucia, and unanimously carried, the meeting adjourned at 9:30 P.M. and the Acting Chair noted that the next Planning Board meeting will be on Wednesday, March 13, 2013 at 7:30 P. M. at the Somers Town House.

Respectfully submitted,

Marilyn Murphy
Planning Board Secretary