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4                                   **SOMERS PLANNING BOARD MINUTES**  
5   **APRIL 22, 2009**

6  
7   **ROLL:**

8  
9   **PLANNING BOARD**

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

13  
14 **ALSO PRESENT:**               Town Engineer Gagné  
15   Town Planner Charney Hull  
16   Town Attorney Holt-Cinque  
17   Planning Board Secretary Murphy

18  
19 **ABSENT:**                               Mr. Knapp

20  
21 The Meeting commenced at 7:35 P. M. Planning Board Secretary  
22 Marilyn Murphy called the roll. Chairman DeLucia noted that a  
23 required quorum of four members of the Board being present called  
24 the meeting to order.

25  
26 Chairman DeLucia noted that Planning Board Secretary Murphy  
27 prepared and submitted for the Board's consideration the approval of  
28 the draft minutes of the March 11, 2009 Planning Board meeting  
29 consisting of nineteen (19) pages.

30  
31 The Chair asked if there were any comments or questions from  
32 members of the Board.

33 Ms. Gannon added wording to the last paragraph on Page 5,  
34 *Engineer Allen referring to the site walk on October 8, 2008*  
35 *commented that the Board appreciated all the work that Mr. Mitchell*  
36 *did on the existing house and it is not Mr. Mitchell's plan to tear down*  
37 *the structure.*

38  
39 The Chair asked if there was a motion to approve the March 11, 2009  
40 draft minutes, as amended.

1 On motion by Ms. Gerbino, seconded by Mr. Keane, and  
2 unanimously carried, the minutes of March 11, 2009, as amended,  
3 were approved.

4  
5 The Chair noted that the DVD of the March 11, 2009 Planning Board  
6 meeting is made a part of the approved minutes and is available for  
7 public viewing at the Somers Public Library and on the Town's  
8 website [www.somersny.com](http://www.somersny.com). She said that the approved minutes  
9 are also available for public review at the Planning & Engineering  
10 office at the Town House.

11  
12 **DECISION FOR APPROVAL**

13  
14 **ROSEMARY ZAPPI FINAL SUBDIVISION, STEEP SLOPES.**  
15 **STORMWATER MANAGEMENT AND EROSION AND SEDIMENT**  
16 **CONTROL AND TREE PRESERVATION PERMITS**  
17 **[TM: 28.09-1-8]**

18  
19 Chairman DeLucia said that the Planning Board will be reviewing the  
20 Final Subdivision, Steep Slopes, Erosion and Sediment Control and  
21 Tree Preservation Permits on the application of Rosemary Zappi for  
22 property located at 9 Kniffen Road in an R-80 Residential Zoning  
23 District. The Chair noted that the applicant proposed to subdivide a  
24 6.627 acre lot into a two-lot subdivision on Lot 17 of the former Tip  
25 Top Farms Subdivision. She explained that this application was last  
26 discussed at the March 25, 2009 Planning Board meeting whereby  
27 the applicant submitted an application for final subdivision approval  
28 with revised plans, Conservation Easement document and other  
29 supporting documents for discussion. The Chair mentioned that the  
30 Board then moved to waive a Public Hearing and requested the  
31 applicant to revise the plans and plat and resubmit the application  
32 and a Conservation Easement in a form acceptable to the Town  
33 Attorney. The Chair said that on April 14, 2009 the applicant  
34 submitted drawings last revised April 9, 2009 reflecting staff's  
35 comments and a copy of the Plat last revised March 25, 2009.

36  
37 The Chair acknowledged receipt of the following: a memo dated April  
38 21, 2009 from Town Engineer Gagné with comments; a copy of a  
39 memo dated April 16, 2009 from Town Planner Hull attaching draft  
40 Resolution No. 2009-06 granting conditional approval for the Board's

1 consideration and approval; a copy received today of the  
2 Conservation Easement in a form acceptable to the Town Attorney  
3 Kristen Holt-Cinque.

4

5 The Chair asked Town Attorney Holt-Cinque if she found the  
6 Conservation Easement acceptable.

7

8 Town Attorney Holt-Cinque noted that the Conservation Easement is  
9 acceptable but there is a typographic omission. She said that the  
10 omission is in reference to the sentence about non-use of herbicides  
11 and pesticides on the property.

12

13 Jim Zappi, the applicant's representative, agreed to add the sentence  
14 to the Conservation Easement document.

15

16 Town Engineer Gagné commented on the Conservation Easement  
17 noting that there may be a need for a paragraph to have the property  
18 owner maintain the boundary, monuments, fence or wall that  
19 separates the human activity from the Conservation Easement.  
20 He opined that there should be a paragraph so the property owner  
21 maintains the conservation easement and keeps it in good order. He  
22 said that the fence and stonewall is approved as part of the  
23 subdivision that borders the Conservation Easement.

24

25 The Chair suggested that paragraph can be added under  
26 Maintenance which is number 5 in the Conservation Easement.

27

28 Mr. Zappi suggested that the Board have a boiler plate conservation  
29 easement document. He said that he is concerned because Town  
30 Engineer Gagné keeps adding additional comments. He feels that  
31 the property owner who buys the house will not even look at the  
32 Conservation Easement document.

33

34 Town Engineer Gagné noted that the Board does have a boiler plate  
35 conservation document but it has to be tweaked in reference to the  
36 circumstances.

37

38 Ms. Gerbino said that she is sorry to hear the applicant say that the  
39 Conservation Easement document will be tossed aside. She  
40 mentioned that Town Engineer Gagné raised an issue in reference to

1 maintenance. Ms. Gerbino noted that she is distressed that the  
 2 applicant does not find the easement important.

3  
 4 Mr. Keane indicated that the Conservation Easement document was  
 5 drafted by the Town Attorney and Mr. Zappi agreed to the document  
 6 and said that he will incorporate the paragraph in reference to the  
 7 pesticides and herbicides. He asked how critical to the easement  
 8 document is Town Engineer Gagné's suggestion in regard to the  
 9 property owner maintaining the boundary.

10  
 11 Town Engineer Gagné said that once the lot is created the  
 12 Conservation Easement will regulate it, not the fact that it was shown  
 13 on an Improvement Plan. He indicated that without the fence it will  
 14 be a lot easier for someone to encroach into the conservation  
 15 easement. He explained that with the fence there is a physical  
 16 barrier.

17  
 18 Town Attorney Holt-Cinque advised that the language in the current  
 19 agreement allows the Town to enter and inspect the conservation  
 20 easement areas, to insure compliance with the terms of the  
 21 Conservation Easement. She mentioned that the Conservation  
 22 Easement document is not as specific as the Town Engineer would  
 23 like.

24  
 25 Town Engineer Gagné said that it is the Board's decision to  
 26 determine if the current Conservation Easement document is  
 27 sufficient. He explained that unless the fence is constructed at the  
 28 boundary line and requires that the property owner maintain the fence  
 29 and is incorporated into the conservation easement he will not be  
 30 able to enforce the issue.

31 Mr. Zappi suggested adding a deed restriction to the deed for Lot 8.2  
 32 that requires the owner to maintain the Conservation Easement  
 33 boundary line fence and stonewall in good condition.

34  
 35 The Board agreed to add the deed restriction as a condition in the  
 36 Resolution of approval.

37 Mr. Zappi introduced his wife Rosemary who is the owner of this  
 38 project. She thanked the Board for their help.

39

1 Mr. Goldenberg commented that Town Engineer Gagné provided the  
2 Board with a memo dated April 21, 2009 and he thinks that the Board  
3 should listen to Town Engineer Gagné's reasons that are depicted in  
4 his memo.

5  
6 Mr. Zappi mentioned that this project has preliminary subdivision  
7 approval and the guidelines have to be followed and not constantly  
8 changed.

9  
10 Mr. Zappi mentioned that at the last meeting when this project was  
11 reviewed there were six or seven items that had to be addressed and  
12 he has successfully addressed those items.

13  
14 Town Engineer Gagné said that details have to be worked on.

15  
16 Mr. Zappi noted that the Planning Board has reviewed this application  
17 for two years and he does not feel that he should make any more  
18 changes.

19  
20 The Chair asked Town Engineer Gagné to summarize his memo.

21  
22 Town Engineer Gagné asked that the rip-rap detail regarding the  
23 length and size of stone be provided and provide a profile to adjust  
24 the steep grade change into the cul-de-sac. He asked that the wall  
25 detail indicate the wall drain discharge location. Town Engineer  
26 Gagné said that on the outlet control structure detail provide a copy of  
27 the grate cut sheet; and correct the discrepancy posted for the steel  
28 cover; identify the size of the proposed steel angle; post the depth of  
29 the sump and provide an open mouth overflow structure to reduce  
30 potential clogging of the reticuline grating. Town Engineer Gagné  
31 requested that the full lot number information be added to the plan.  
32 Town Engineer Gagné referred to the Construction Drawings  
33 and requested that a concrete valve box detail with cover, rim and  
34 bottom elevations be provided and said that the control box may be  
35 subject to buoyancy forces; provide calculations and the appropriate  
36 base weight to counter the forces. He asked that a drain inlet detail  
37 with cover detail be provided and that the water quality basin  
38 maintenance access road and detail of the surface treatment be  
39 identified and that the minimum width of the top of the berm be  
40 posted. Town Engineer Gagné requested that the note in reference

1 to the temporary access easement be removed or provide the  
 2 easement if necessary. He said that on sheet 3 of 7 the correct road  
 3 layout location to compliment the improvement plan and on the  
 4 fence/wall detail provide the type of wood to be installed for the rails  
 5 and the post, the method of attachment, type of fence caps, distance  
 6 to the wall; the wall detail must include the stone size, wall bedding  
 7 material and width. Town Engineer Gagné said that the note under  
 8 the Town Road Pavement section must be revised to replace the  
 9 words “paved swale” with “asphalt swale”. He asked that on the pond  
 10 under drain detail, provide a detail of the valve box and cover;  
 11 eliminate reference to 8” blocks; provide valve part number and cut  
 12 sheet showing the valve stem with the ability to access and service  
 13 same. He mentioned that the wooden guide rail design calculation be  
 14 provided for review and material specification and post the maximum  
 15 ground slope above the retaining wall section to the driveway. Town  
 16 Engineer Gagné said that on the VortSentry general detail add the  
 17 following notes; the precast structure shall be set on a crushed stone  
 18 bed and the Baysaver type hydrodynamic structure would be an  
 19 acceptable alternative practice and post the base elevation of the  
 20 VortSentry unit on the plan.

21  
 22 The Chair asked Town Engineer Gagné if these items are significant.

23  
 24 Town Engineer Gagné said that the items are not significant but are  
 25 construction details that have to be addressed.

26  
 27 The Chair asked Mr. Zappi if he will address the Town Engineer’s  
 28 concerns.

29  
 30 Mr. Zappi said that there was an agreement that he would address  
 31 the items in the Town Planner and Town Engineer’s March memos  
 32 and the Conservation Easement correction and he will not address  
 33 any other issues. He noted that these issues should have been  
 34 worked out under preliminary subdivision approval.

35  
 36 Town Engineer Gagné said that there was no agreement with the  
 37 Board that Mr. Zappi just does this and that; that is not how it works.

38

1 Mr. Goldenberg said that he does not appreciate Mr. Zappi's attitude  
2 and suggested continuing the discussion and then the Board will  
3 make a decision.

4  
5 Mr. Keane commented that there should have been a meeting  
6 between staff and Mr. Zappi to coordinate and work out the details of  
7 the Resolution before the Resolution was presented to the Board.  
8 He said that the reports from staff have to be provided in a timely  
9 fashion and not received a day before the meeting.

10  
11 Town Engineer Gagné suggested working out the details of his memo  
12 with Mr. Zappi and putting this application over until the next agenda.

13  
14 Mr. Keane referred to Page 11 of the Resolution under Ongoing  
15 Conditions Required After Signing of Plat, Number 3. *All work shall*  
16 *be performed in accordance with the approved "Stormwater Pollution*  
17 *Prevention Plan" (SPPP).* He indicated that the rip-rap detail should  
18 be part of the SPPP. Mr. Keane said that the Erosion and Sediment  
19 Control Manual should be mentioned in the Resolution and he noted  
20 that the (New York Contractors Erosion and Sediment Control Field  
21 Notebook) is helpful when you are out in the field.

22  
23 Town Engineer Gagné said that when you are out in the field you will  
24 not have the SPPP the details have to be shown on the construction  
25 drawings. He stressed that in order to build this project you need the  
26 details (i.e., control and valve box).

27  
28 Mr. Zappi asked that the Board review Town Engineer Gagné's  
29 memo and asked what rip-rap detail should be addressed.

30  
31 Town Engineer Gagné noted that the length and the size of the stone  
32 must be provided on the rip-rap detail. He mentioned that he asked  
33 that posting the road stationing be put on the plan and provide a  
34 vertical curve for all change of grade to insure a proper transition and  
35 provide the detail to adjust the steep grade change into the cul-de-  
36 sac.

37  
38 The Chair asked Town Engineer Gagné if what is being discussed  
39 are critical items.

40

1 Town Engineer Gagné said that the items in his April 21, 2009 memo  
2 are minor but must be part of the Conditions in the Resolution. He  
3 noted that most of the items have to be addressed prior to  
4 construction.

5  
6 Town Planner Hull said that the Board has a Resolution before them  
7 and the conditions are based on the Town Engineer's memos. She  
8 indicated that in the past those conditions were incorporated into the  
9 Resolution of Approval. She explained that the details that the Town  
10 Engineer requested and if the Board approves will be incorporated  
11 into a new Resolution.

12  
13 Mr. Zappi noted that he is upset because Town Engineer Gagné at  
14 the last meeting indicated that there were nine items to be addressed  
15 and now there is a new memo with three pages of items to be  
16 addressed.

17  
18 Mr. Goldberg suggested that the Town Engineer and Mr. Zappi get  
19 together and work things out.

20  
21 The Chair said that Mr. Zappi has changed the tone of the meeting  
22 and she asked him to consider addressing the items in the  
23 Town Engineer's memo because the items have to be addressed  
24 before a Resolution can be approved.

25  
26 Ms. Gerbino acknowledged that the applicant is disappointed but she  
27 cannot make a decision on the applicant's position and she is  
28 offended by Mr. Zappi's use of the English language. Ms. Gerbino  
29 said that the Board cannot allow Mr. Zappi to determine when the  
30 Board makes a decision possibly because a report was late and that  
31 report does not please the applicant. She stressed that the applicant  
32 should not be running the meeting.

33  
34 The Chair said that she agreed with the Town Engineer's memo in  
35 reference to removing conditions # 5, 7, 8, 10, 11, 12, 14 from the  
36 Draft Resolution.

37  
38 Mr. Keane noted that the Resolution before the Board does not  
39 incorporate the Town Engineer's subsequent review.

40

1 Town Planner Hull asked the Board if she can assume that if the  
2 Town Engineer has not done his review that she shouldn't have done  
3 her review. She said that she had no idea the extent of the Town  
4 Engineer's review.

5  
6 Mr. Keane said that if the Town Engineer's concerns are to be  
7 incorporated they should have been in the Resolution before the  
8 Board receives the Resolution.

9  
10 Mr. Zappi suggested that he and Town Engineer Gagné go to the  
11 small meeting room and try to work out the issues with the  
12 Resolution.

13  
14 *At this time the Board took a short break. Mr. Zappi and Town*  
15 *Engineer Gagné returned to continue the discussion.*

16  
17 Town Engineer Gagné advised the Board that Mr. Zappi discussed  
18 the items in the Resolution and agreed to Number 1, 3, 6, 7 in his  
19 April 21, 2007 memo and on the Construction Drawings: Number 1,  
20 3, 5, 8, 9, 13 and 14.

21  
22 The Chair reviewed the draft Resolution with the Board and noted a  
23 change that was suggested by the Town Engineer on page 6, first  
24 WHEREAS, add the words "*Stormwater Management*" in front after  
25 Article 93; and on the second WHEREAS, eliminate the reference to  
26 rain garden proposed under the preliminary drawing. She asked that  
27 the word *accompanying* be eliminated from the fifth line of the last  
28 WHEREAS paragraph.

29  
30 Town Planner Hull advised the Board that she will incorporate all the  
31 conditions that were agreed to by Mr. Zappi and Town Engineer  
32 Gagné into the Resolution.

33  
34 The Chair asked if there were any comments or questions from  
35 members of the Board.

36  
37 Mr. Keane suggested adding the *New York State Standards and*  
38 *Specifications for Erosion and Sediment Control, also known as the*  
39 *under Ongoing Conditions Required After Signing of the Plat, under*  
40 *Number 5.*

1 The Chair asked if there was a consensus of the Board to approve  
2 the Resolution, as amended.

3  
4 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and  
5 unanimously carried, the Board moved to approve draft Resolution  
6 No. 2009-06 Granting of Conditional Final Subdivision Approval, Tree  
7 Preservation Permit, Steep Slopes Permit, and Stormwater  
8 Management and Erosion and Sediment Control Permit to Rosemary  
9 Zappi, as amended, for the Chairman's signature.

10  
11

12 **PROJECT REVIEW**

13

14 **RICHARD A. AND JOANNE NASH AND HENRIETTA COHN**  
15 **LOT LINE CHANGE [TM: 27.10-1-20.1 & 20.3]**

16

17 Chairman DeLucia noted that this is the project review of the  
18 application submitted on April 7, 2009 of Richard and Joanne Nash  
19 and Henrietta Cohn for a Lot Line Change for property located at Two  
20 Penny Lane and Lake Road in a Residential R-80 Zoning District.  
21 The Chair said that the applicant proposes to adjust property lines to  
22 a location between existing buildings to conform ownership to actual  
23 use of buildings. The Chair said that the applicant has requested that  
24 the Board waive regulation requirements to provide a constraints map  
25 and topography. She explained that the applicant has also requested  
26 that this project be reviewed under Section 150-15 Abbreviated  
27 Approval process. The Chair mentioned that the applicant has  
28 submitted a complete application and associated fees together with a  
29 short form EAF.

30

31 The Chair acknowledged receipt of the following: a memo dated April  
32 16, 2009 from Town Planner Hull with a project description and  
33 project review with information, comments and recommendations and  
34 a memo dated April 17, 2009 from Town Engineer Gagné with five  
35 comments.

36

37 The Chair asked the applicant's representative to give a brief  
38 presentation regarding this submission.

39

1 Glennon Watson, the applicant's licensed surveyor, said that he  
 2 prepared the plat for the Board's consideration. He explained that  
 3 Mrs. Cohn and Mr. and Mrs. Nash are related, in fact, Mrs. Nash is  
 4 the daughter of Mrs. Cohn. Mr. Watson said that the building on one  
 5 lot is being used by the Nash's and they would like to move the lot  
 6 line so the property line will separate the buildings and the ownership  
 7 of the buildings will be with the lots. He explained that it involves the  
 8 line that comes off the cul-de-sac at the end of 2 Penny Lane to the  
 9 west creating a straight line between the buildings. Mr. Watson  
 10 mentioned that based on the Town Engineer's comments he will have  
 11 to make a slight change in the front line in order to conform with the  
 12 requirement that the property line be radial or perpendicular to the  
 13 street line for the distance of the front line setback. He mentioned  
 14 that he has no problem with the comments in the Town Planner and  
 15 Town Engineer's memos. Mr. Watson said that he understands that  
 16 the Board cannot act this evening but would like the Board to send  
 17 the applicant to the Zoning Board of Appeals (ZBA). He noted that he  
 18 is hopeful that the Board will make a positive recommendation to the  
 19 ZBA. Mr. Watson said that this application will meet the test for an  
 20 area variance. He commented that the only physical change will be  
 21 that the gravel driveway be maintained and that an asphalt driveway  
 22 apron be provided, as recommended by the Town Engineer.

23  
 24 The Chair asked Town Engineer Gagné to review his memo for the  
 25 benefit of the public.

26  
 27 Town Engineer Gagné said that he has no objection to the proposed  
 28 lot line change. He mentioned that the slight adjustment of the lot line  
 29 can accomplish the needs of the applicant and still meet the zoning  
 30 requirement for the right-of-way line. He noted that it is appropriate  
 31 to have the driveway apron because of the dirt and mud that is  
 32 generated from the dirt driveway. Town Engineer Gagné stated that  
 33 he has no objection to the Planning Board granting the waivers from  
 34 the subdivision regulation requirements such as the need to provide a  
 35 constraints map and topography.

36  
 37 Town Engineer Gagné noted that the applicant requested the  
 38 Abbreviated Approval process be followed, however, the Code  
 39 requires that four conditions must be satisfied in order for the  
 40 abbreviated process to be followed; and in this case one of those

1 conditions is that the lot line change not create nonconformity with the  
2 Zoning Code and that cannot be satisfied as shown. He opined that  
3 this application should use the preliminary approval process.

4  
5 Town Attorney Holt-Cinque advised that the Planning Board can refer  
6 this application to the ZBA for the necessary variances and then  
7 return to the Planning Board using the Abbreviated Approval process.

8  
9 Town Planner Hull said that the applicant has yet to obtain the  
10 variances and as such the Planning Board should refer the applicant  
11 to the ZBA prior to continuing the review of the application. She  
12 explained that if the variances are denied the applicant cannot  
13 proceed with the Abbreviated Approval process.

14  
15 The Chair indicated that the Planning Board has to make a  
16 recommendation on this application to the ZBA. She suggested  
17 scheduling a site walk before the Board makes a recommendation to  
18 the ZBA.

19  
20 The Chair asked Town Planner Hull to share her comments regarding  
21 her review of the application for the benefit of the public.

22  
23 Town Planner Hull said that the Zoning Requirements table should be  
24 revised to list out the accessory structures separately. She noted that  
25 the accessory structures should be labeled on the plan to correspond  
26 with the Zoning Requirement Table. Town Planner Hull indicated that  
27 the application appears to be a Type II Action, however, the short  
28 form EAF should be revised to include more description in relation to  
29 question #8 and question #10 should include both the Zoning Board  
30 of Appeals (variances) and the Planning Board (subdivision  
31 approval).

32  
33 The Chair asked if there was a consensus of the Board to waive the  
34 requirement to prepare a constraints map and topographic map.

35  
36 On motion by Mr. Keane, seconded by Mr. Goldenberg, and  
37 unanimously carried, the Board moved to waive the submission  
38 requirement as recommended by the Town Planner and Town  
39 Engineer that the applicant not need to prepare a constraints map  
40 and topographic map.

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

3

4 The Chair directed that a site walk be scheduled for this project for  
5 Saturday, May 16, 2009 at 9:00 A. M.

6

7 The Chair explained that the applicant must obtain variances from the  
8 Zoning Board of Appeals, and therefore the Planning Board will  
9 continue to review this application before referring the applicant to the  
10 ZBA with a positive or negative recommendation.

11

12 **DISCUSSION**

13

14 The Chair mentioned that the discussion scheduled for this evening  
15 will not be held.

16

17 There being no further business, on motion by Mr. Keane,  
18 seconded by Ms. Gerbino, and unanimously carried, the meeting  
19 adjourned at 9:30 P. M.

20

21 Chairman DeLucia noted that the next meeting of the Planning Board  
22 will be held on Wednesday, May 13, 2009 at 7:30 P.M. at the Somers  
23 Town House.

24

25

26

27

Respectfully submitted,

28

29

30

Marilyn Murphy  
Planning Board Secretary

31

32

33