

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
MAY 1, 2013**

4

5

6

7 **ROLL:**

8

9 **PLANNING BOARD**

10 **MEMBERS PRESENT:**

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

11

12

13

14 **ALSO PRESENT:**

Town Planner Syrette Dym
Town Attorney Gerald Reilly
Planning Board Secretary Marilyn Murphy

15

16

17

18 **ABSENT:**

Mr. Keane and Ms. Gerbino

19

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

23

24 **APPROVAL OF REVISED MINUTES OF DECEMBER 12, 2012**

25 **APPROVED ON MARCH 13, 2013, AND DRAFT MINUTES OF**

26 **JANUARY 9, 2013 AND JANUARY 23, 2013**

27

28 Chairman Currie noted that Planning Board Secretary Marilyn Murphy
29 prepared and submitted for the Board's consideration the approval of the
30 revised minutes of the Planning Board meeting held on December 12, 2012
31 and draft minutes of January 9, 2013 and January 23, 2013.

32 The Chair asked if there were any comments or corrections from the Board.

1
2 Chair Currie explained that Joanne Meder, representing Frederick P. Clark,
3 at the request of Vicky Gannon, at the March 13, 2013 meeting sent an
4 email on April 26, 2013 adding a paragraph to page 15, following line 28, of
5 the December 12, 2012 minutes regarding the Planning Board discussion
6 of several possible circulation changes on the proposed Site Plan for The
7 Green at Somers.

8
9 On motion by Chair Currie, seconded by Ms. Gannon, and unanimously
10 carried, the revised minutes of December 12, 2012, as amended, were
11 approved.

12
13 The Chair asked if there was any comments or corrections from the Board
14 on the draft minutes of January 9, 2013.

15
16 On motion by Chair Currie, seconded by Ms. Gannon, and unanimously
17 carried, the draft minutes of January 9, 2013 were approved.

18
19 The Chair asked if there was any comments or corrections from the Board
20 on the draft minutes of January 23, 2013.

21
22 On motion by Mr. Goldenberg, seconded by Ms. Gannon, and unanimously
23 carried, the draft minutes of January 23, 2013 were approved.

24
25 **TIME-EXTENSION**

26
27 **SUSAN HAFT/RIDGEVIEW DESIGNER BUILDERS, INC.**
28 **FINAL CONSERVATION SUBDIVISION APPROVAL**
29 **[TM: 16.12-1-41 & 42]**

30
31 Chairman Currie explained that this is a request for a 90-day time-
32 extension for Susan Haft/Ridgeview Designer Builders, Inc. for Final
33 Approval from May 20, 3013 to and including August 19, 2013 in
34 accordance with §150-13.M. of the Code of the Town of Somers. He
35 noted that this is the tenth request for an extension of Final Subdivision
36 Approval.

37 Chair Currie acknowledged receipt of a letter dated April 23, 2013 from
38 Geraldine Tortorella, Esq. requesting the time-extension.

39

1 On motion by Mrs. DeLucia, seconded by Mr. Goldenberg, and
2 unanimously carried, the Board moved to grant a tenth 90-day time-
3 extension to Susan Haft/Ridgeview Designer Builders, Inc. for Final
4 Conservation Subdivision Approval and related permits from May 20, 2013
5 to and including August 19, 2013 in accordance with Somers Town Code
6 §150-13.M.

7

8 **PROJECT REVIEW**

9

10 **BBS SUBDIVISION [FORMERLY STEVENS SUBDIVISION]**
11 **APPLICATION FOR PRELIMINARY SUBDIVISION APPROVAL,**
12 **STEEP SLOPES, WETLAND, TREE REMOVAL AND STORMWATER**
13 **MANAGEMENT AND EROSION AND SEDIMENT CONTROL PERMITS**
14 **[TM: 15.12-2-1]**

15

16 Chairman Currie explained that this application was removed from the
17 agenda at the applicant's request.

18

19 Mrs. DeLucia suggested that Town Planner Dym get in touch with the
20 applicant to request he respond to Consultant Engineer Barbagallo and
21 Town Planner Dym's memos before the next meeting.

22

23 **RENEWAL OF SPECIAL USE PERMIT**

24

25 **NEW CINGULAR WIRELESS PCS, LLC (AT&T)**
26 **RENEWAL OF SPECIAL USE PERMIT**
27 **[TM: 28.10-1-6.1]**

28

29 Chairman Currie mentioned that this is the application of New Cingular
30 Wireless for renewal of a Special Use Permit for an existing approved
31 AT&T Tower and Related Wireless Facility located at 243 Route 100,
32 Majestech Corporation property.

33

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

36

37 Neil Alexander, the applicant's attorney, explained that he received a letter
38 from Town Planner Dym that was a follow-up to the March 13, 2013
39 Planning Board meeting regarding applications for Amended Special
40 Permits and Site Plans for modifications of existing approved AT&T

1 Wireless Facilities at 115 Route 202, Lincoln Hall property and Route 100,
2 the Amato property. He said that subject to conditions of approval of each
3 of those applications, the Planning Board determined that issuance of each
4 Special Permit was conditional on compliance with all applicable provisions
5 of the Zoning Code or other laws applicable to telecommunication facilities.
6 He noted that what was decided was the need to renew the AT&T tower
7 and related wireless facility located at 243 Route 100, the Majestech
8 Corporation Property which he requested.

9

10 Mr. Goldenberg said that it is the responsibility of the carrier or owner to
11 renew their permits.

12

13 Attorney Alexander opined that the Board is interpreting renewal conditions
14 differently or are more clearly annunciating how that should happen.
15 He said that the Board is now stating a policy on how it should happen and
16 applicants will take notice. He noted that previously it was reasonable to
17 assume that when the facility was upgraded every five years that was a
18 renewal. Attorney Alexander indicated that Mr. Foley has a different
19 position as he is questing if the Planning Board can entertain an application
20 to amend a Special Permit when that permit has expired. He said he now
21 understands where the Board stands on this policy.

22

23 Mr. Foley said that Attorney Alexander's position hinges on that changes
24 were made and applications were submitted in conjunction with those
25 changes. He noted that Attorney Alexander's point is that because the
26 Planning Board had not clarified their position, each upgrade came with an
27 additional five year expiration date.

28

29 Town Attorney Reilly said that Special Permits have a tendency not to be
30 renewed in a timely fashion because there is no system that tracks them.

31

32 Mr. Goldenberg expressed his concern if a Special Permit for a cell tower is
33 not renewed will that be a liability to the Town. He asked if the
34 responsibility is on the owner of the tower or the Town.

35

36 Town Attorney Reilly advised that the renew of permits is the applicant's
37 responsibility.

38

1 Mr. Foley interjected that there now is a policy if an applicant comes to the
2 Board for an amendment request that will give the Board the opportunity to
3 see if there is a valid permit.

4
5 Mr. Foley said that the Resolution for a renewal of a wireless facility
6 indicates that they now have an additional five years and this is not correct.
7 He said that this application has been without a valid permit for 2 ½ years.
8 He suggested that the renewal run for a five (5) year renewal period from
9 December 20, 2010 through December 20, 2015. Mr. Foley noted that if a
10 permit is allowed to lapse without being renewed, there has to be some sort
11 of consequence.

12
13 Attorney Alexander said he made an application to renew the permit as an
14 accommodation. He opined that the Board wants to penalize an already
15 heavily regulated industry. He said that the Board changed its position and
16 no one alerted the telecommunication industry. Attorney Alexander said
17 that if this policy was mentioned before tonight it would have been
18 addressed.

19
20 Mr. Foley restated his position that without a valid permit for 2 ½ years
21 that the renewals should run for a five (5) year renewal period from
22 December 20, 2010 through December 20, 2015. He said this is his
23 opinion and not the Planning Boards.

24
25 Ms. Gannon opined that the applicant is here today with an application but
26 if they were coming for an application for another activity and asked for a
27 resetting of the date the Board would address that. She indicated that she
28 understands Mr. Foley's position but she is not convinced it is necessary.
29 Ms. Gannon said that she is inclined to set the expiration date of the
30 Special Permit starting today for an additional five year renewal.

31
32 Mr. Goldenberg mentioned that the Special Permit Application fee has not
33 been paid when it was due 2 ½ years ago and he feels that was a violation.

34
35 Attorney Alexander said that it is the Building Inspector's job to enforce the
36 Code and the Planning Board's job is to apply the Code to applicants
37 seeking permits. He stressed that the Planning Board does not enforce the
38 Code. Attorney Alexander commented that if the Board has a concern they
39 contact the Building Department.

40

1 Ms. Gannon asked if there is any sanction for failure to renew a Special
2 Exception Use Permit.

3
4 Town Attorney Reilly advised that if the facility does not have a valid permit
5 it would have to be caught and that didn't happen. He opined that there is
6 no penal jurisdiction for the Planning Board. He noted that jurisdiction is
7 the Building Department and they did not site any violation.

8
9 Mr. Foley stated that the Code says the Planning Board can renew a permit
10 when the tower is and has been in compliance with the requirements of this
11 Article. He noted that this tower has not been in compliance because for
12 the last 2 ½ years there was no renewal of the Special Use Permit. Mr.
13 Foley indicated that he is trying to develop a remedy for this issue. He said
14 that because of the omission to renew the permit, the Board cannot renew
15 the permit at this time.

16
17 Town Attorney Reilly disagreed with Mr. Foley and stated that the Board
18 can grant or deny the requested permit. He explained that for 2 ½ years
19 there was no renewal of the permit and that is the responsibility of the
20 Building Department.

21
22 Chair Currie interjected that Mr. Foley is suggesting that the expiration date
23 of the Special Use Permit be 2 ½ years from today to make up for the 2 ½
24 years the permit was not renewed.

25
26 Town Planner Dym indicated that at the March 13, 2013 meeting the
27 Planning Board directed that a Resolution of Approval be prepared and
28 determined that the requirements were in compliance for the Resolution.
29 She said that by e-mail Attorney Alexander attested that AT&T, as the
30 owner of the wireless facility, has not received any requests for co-location
31 and does not have any future plans for the construction of new wireless or
32 attached wireless telecommunications facilities in the Town of Somers.

33
34 Chair Currie said it was the consensus of the Board that the renewal of the
35 Special Permit period run from December 20, 2010 through December 20,
36 2015.

37
38 Ms. Gannon explained that she will vote no on the Resolution because the
39 permit renewal should run for five years not 2 ½ years.

40

1 On motion by Chair Currie, seconded by Mr. Foley, and unanimously
 2 carried, the Board moved to determine that the renewal of the Amended
 3 Special Permit for the existing approved AT&T Tower and related wireless
 4 facility action is a Type II Action and is therefore exempt pursuant to the
 5 New York State Environmental Quality Review Act (SEQRA) §617.5 (c)
 6 (26) and §92-6.B. (15) of the Code of the Town of Somers which states that
 7 license and permit renewals where there will be no material change in
 8 permit conditions or the scope of permitted activities is a Type II Action
 9 under SEQRA, and, therefore, that no further action under SEQRA is
 10 required.

11
 12 Chair Currie asked if the Board is comfortable having Attorney Alexander
 13 attest that AT&T, as the owner of the wireless facility, has not received any
 14 request for co-location and does not have any future plans for the
 15 construction of a new wireless or attached wireless telecommunication
 16 facilities in the Town and will continue to keep its removal bond in place for
 17 the ensuring five-year period of the requested special permit renewal.

18
 19 Mrs. DeLucia stated that she wants it attested to in writing for the file.

20
 21 Ms. Gannon mentioned that the Resolution says that by email dated April
 22 18, 2013, the applicant's representative attested that AT&T, as the owner
 23 of the wireless facility, has not received any request for co-location and
 24 does not have any future plans for the construction of a new wireless or
 25 attached wireless telecommunication facilities in the Town. She said that
 26 Attorney Alexander can verbally supplement the attestation tonight.

27
 28 Mr. Foley asked if the email is in the record.

29
 30 Town Planner Dym said that the email is part of the paper record.

31
 32 Attorney Alexander said that AT&T wireless is a carrier and has received
 33 approvals to co-locate. He mentioned that AT&T has a facility at the Amato
 34 property which recently was approved for an LTE 4G upgrade. He
 35 explained that facility connects to the Majestech facility to the South which
 36 also was renewed for a 4G upgrade. Attorney Alexander noted that going
 37 west on Route 35 there is a tower on the Santaroni property and AT&T also
 38 received approval at the Lincoln Hall property for a 4G upgrade. Attorney
 39 Alexander said that AT&T also has approval on the Tower at 80 Route 6
 40 and has approvals and is a carrier at Heritage Hills Utility parcel and will

1 apply for a 4G upgrade in the near future. Attorney Alexander stated that
2 he is not aware of any new sites or search areas that AT&T is seeking to
3 build. He indicated that AT&T will be looking to upgrade at the Heritage
4 Hills Utility parcel and potentially at 80 Route 6.

5
6 Mr. Goldenberg stressed that Attorney Alexander stated that a tower was
7 located on the Heritage Hills facility but that is incorrect; it is located on the
8 Transportation parcel.

9
10 Chair Currie indicated that the consensus of the Board was to accept
11 Attorney Alexander's verbal attesting that AT&T has no future plans for the
12 construction of new wireless facilities in Town.

13
14 On motion by Chair Currie, seconded by Mrs. DeLucia, and unanimously
15 carried, the Board moved to approve waiving the Special Permit Public
16 Hearing for the Renewal of the Special Permit for New Cingular Wireless
17 PCS, LLC (AT&T) pursuant to §170-129.6.G. of the Code of the Town of
18 Somers.

19
20 Chair Currie indicated that the Board with the applicant's representative
21 will be reviewing Resolution No. 2013-07.

22
23 Town Planner Dym mentioned that the wording in the Resolution on Page
24 5, Line 17, will be changed to reflect the renewal for the 2 ½ year period.
25 *As such, the renewal shall run for a five (5) year renewal period from*
26 *December 20, 2010 through December 20, 2015.*

27
28 Attorney Alexander asked the Board to reconsider the date of the renewal
29 of the Special Permit. He mentioned that the Board is now asking for a
30 Special Permit for every carrier and co-locator. Attorney Alexander
31 commented that the telecommunication industry will be before the Board a
32 lot and good relationships on both sides is needed.

33
34 Mr. Foley asked that the paragraph on Page 4, Line 23 through 26 be
35 omitted because a renewal application does not fit that description as it
36 does not constitute an eligible facilities request.

37
38 Mr. Foley defined the eligible facilities request as the following:

- 39
40 1. Co-location of new transmission equipment.

