

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 14, 2014**

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5

6

7 **ROLL:**

8

9 **PLANNING BOARD**

10 **MEMBERS PRESENT:**

Acting Chairman Gerbino, Mr. Keane,
Mr. Goldenberg, Mr. Foley and Ms. Gannon

11

12 **ALSO PRESENT:**

Director of Planning Syrette Dym
Consultant Town Engineer Joseph Barbagallo
Planning Board Town Attorney Joseph Eriole
Planning Board Secretary Marilyn Murphy

13

14 **ABSENT:**

Chairman Currie and Mrs. DeLucia

15

16 The meeting commenced at 7:35 p.m. Planning Board Secretary Marilyn
17 Murphy called the roll and noted that a required quorum of four members
18 was present in order to conduct the business of the Board.
19

20

21 Acting Chair Gerbino noted that the Westchester Municipal Planning
22 Federation informed the Town that the Distinguished Citizen Planners
23 Award for 2014 was awarded to Fedora DeLucia. She said that Fedora
24 has mastered land use and as a result Somers is a wonderful town to live
25 in. She noted that Fedora deserves a lot of credit for a lot of the good
26 things that have happened.
27

28

29 Acting Chair Gerbino explained that Somers also received another award
30 for achievements in stormwater management and the person responsible is
31
32

1 Consultant Town Engineer Joseph Barbagallo. She mentioned that there
2 will be a dinner to honor them in June.

3

4 **APPROVAL OF DRAFT MINUTES FOR MEETINGS HELD ON**
5 **MARCH 12, 2014 AND MARCH 25, 2014**

6

7 Acting Chairman Gerbino noted that Planning Board Secretary Marilyn
8 Murphy prepared and submitted for the Board's consideration approval of
9 the draft minutes of Planning Board meetings held on March 12, 2014 and
10 March 25, 2014.

11

12 Acting Chair Gerbino asked if there were any comments or corrections from
13 the Board on the draft March 12, 2014 Planning Board minutes and no one
14 replied.

15

16 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and unanimously
17 carried, the Board moved to approve the draft minutes of March 12, 2014.

18

19 Acting Chairman Gerbino noted that Planning Board Secretary Marilyn
20 Murphy prepared and submitted for the Board's consideration approval of
21 the draft minutes of the Planning Board meeting held on March 25, 2014.

22

23 Acting Chair Gerbino asked if there were any comments or corrections from
24 the Board on the draft March 25, 2014 Planning Board minutes and Ms.
25 Gannon made a correction to page 4, line 1, *Parts 2*.

26

27 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and unanimously
28 carried, the Board moved to approve the draft minutes of March 25, 2014,
29 as amended.

30

31 The DVD of the March 12, 2014 and March 25, 2014 Planning Board
32 meetings are made a part of the approved minutes and are available for
33 public viewing at the Somers Public Library. The text of the approved
34 minutes is also on the Town's website www.somersny.com and is available
35 for public review at the Planning & Engineering office.

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39 **TIME-EXTENSION**

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

Acting Chairman Gerbino noted that this is a request for a 90-day time-extension for Final Conservation Subdivision Approval, Stormwater Management and Erosion and Sediment Control, Steep Slopes and Tree Removal Permits from May 19, 2014 up to and including August 17, 2014 in accordance with §150-13.M of the Code of the Town of Somers. She said that this is the 14th request for an extension of Final Subdivision Approval.

Acting Chair Gerbino acknowledged receipt of a letter from the applicant's Attorney Geraldine Tortorella, Esq. dated April 16, 2014 requesting a 90-day time-extension from May 19, 2014 up to and including August 17, 2014. Acting Chair Gerbino noted that Director of Planning Dym in her memo dated April 30, 2014 had no objection to the Planning Board granting the 90-day time-extension. She indicated that Director of Planning Dym stated that the applicant provided an explanation regarding the status of work on the project and the need for a further subdivision approval extension for consideration by the Planning Board. Acting Chair Gerbino said that Steve Woelfle, Principal Engineering Technician, said that the site is clean and stable with no erosion or runoff and that the ponds continue to function properly and he continues to make periodic site inspections.

The Acting Chair asked the Board if they had comments or questions regarding the requested time-extension and no one responded.

On motion by Mr. Goldenberg, seconded by Ms. Gannon, and unanimously carried, the Board moved to grant a 14th request for a 90-day time-extension to Susan Haft/Ridgeview Designer Builders, Inc. for Final Conservation Subdivision Plat Approval from May 19, 2014 up to and including August 17, 2014.

REFERRAL

1 **19 LOCUST DRIVE [TM: 5.15-2-31]**

2

3 Acting Chairman Gerbino noted that this is a referral from the Town Board
4 regarding a request by the owner of 21 Locust Drive to purchase Town
5 property at 19 Locust Drive for review and comment.

6

7 The Acting Chair asked Director of Planning Dym for a report on the
8 referral from the Town Board.

9

10 Director of Planning Dym provided the Board with a map of the property
11 and noted that she went out in the field with Principal Engineering
12 Technician Steve Woelfle to take a look at the property. She mentioned
13 that there is an existing house and the owner owns the lot at the corner.
14 Director of Planning Dym explained that the owner is seeking to acquire the
15 lot that is south of these lots which is zoned Residence District (R-10). She
16 indicated that the applicant is requesting purchase of the parcel with the
17 intent of having an option for replacing his septic system in the future with
18 the need for the additional square footage represented by this lot.

19

20 Director of Planning Dym said that having observed the property even the
21 lot at the corner is quite tight. She noted that she understands the owners
22 concerns. Director of Planning Dym indicated that the original Deed
23 Restriction dated October 20, 1993 states that the land shall remain
24 unimproved subject to general grading and landscaping for passive
25 recreation. She stated that the Town Board has taken pre-action on this
26 which would allow the sale based on the modification to the Restrictive
27 Covenant (deed restriction) for the Town owned property located at 19
28 Locust Drive.

29

30 Acting Chair Gerbino said she is confused because the Town Board
31 adopted a Resolution on April 11, 2014 to circulate the request to purchase
32 the Town Property at 19 Locust Drive to Engineering, Highway
33 Superintendent, Parks and Recreation Board, Planning Board and the
34 Open Space Committee and on the same day they adopted a Resolution
35 authorizing modification of the restrictive covenant for this property.

36 Acting Chair Gerbino said she is puzzled as to why the Town Board is
37 asking for the Planning Board's opinion when it is already done, although
38 she does not understand what the Town Board has done.

1 Ms. Gannon said that the Resolution says modifications but there is no text
 2 of the modifications so she was mystified as to what action took place
 3 regarding the original document.

4
 5 Acting Chair Gerbino referred to Principal Engineering Technician Woelfle's
 6 memo dated May 7, 2014 that *care should be taken as to not set precedent*
 7 *with modifying the restrictive covenant, however, if a septic system issue*
 8 *does arise, this Office agrees that the suitable area would be the southwest*
 9 *side.*

10
 11 Mr. Keane said that the Restrictive Covenant states that it is not to be
 12 utilized in determining compliance with environmental or health regulations.
 13 He asked why this restrictive covenant was put in place. He noted that the
 14 geological structure beneath the surface of the earth may be solid lead.

15
 16 Mr. Keane stated that the Board should ask the Town Board what the
 17 factual basis for the authorization of the modification was to arrive at their
 18 decision.

19
 20 Planning Board Town Attorney Eriole said that the referral is for the
 21 purpose of review and comment. He said that the Resolution is odd by
 22 saying they authorize the modification of the Restrictive Covenant but it
 23 does not say in what respect. He commented that the questions of how to
 24 modify the Restrictive Covenant be part of this debate is difficult to
 25 comment on without an applicant or the reasons from the Town Board.

26
 27 Consultant Town Engineer Barbagallo stated that the original Restrictive
 28 Covenant has four deed restrictions: shall remain unimproved land, subject
 29 to general grading and landscaping; shall be merged into the adjoining lot
 30 owned by parties of the second part; shall not be included in whole or in
 31 part in any application for subdivision approval, or considered in
 32 determining compliance with zoning, environmental or health regulations in
 33 connection with any other application to the Town; shall not be used for any
 34 activity requiring a steep slope or wetland permit.

35
 36 Consultant Town Engineer Barbagallo advised that the Board should be
 37 careful about a blanket modification because this lot added to the other two
 38 makes this property over 20,000 SF. He said that if the lot is to be used for
 39 just a septic system that has to be specific.

40

1 Planning Board Town Attorney Eriole said that neighbors may have to be
2 notified that the lot is available. He noted that one issue is that the
3 covenant has to be amended so a septic system can be put on that lot. He
4 explained that another issue may be the potential of the lot if the lots are
5 merged.

6
7 Acting Chair Gerbino referenced the Open Space Committee memo dated
8 April 21, 2014, *The Committee reviewed the forwarded request to purchase*
9 *19 Locust Drive. The stated purpose behind this request somewhat*
10 *puzzles us. The adjoining property owner indicates a desire to fix his 84-*
11 *year old septic system, but it is unclear whether the system is failing and*
12 *why he would need the subject property to repair it.*

13
14 Planning Board Town Attorney Eriole advised that language should be
15 drafted before the Planning Board gives their review and comment.

16
17 Ms. Gannon stated that she does not have sufficient information to say
18 anything positive about this referral. She said that the Town Board should
19 forward their reason for determining that this is a wise amendment of the
20 covenant.

21
22 Consultant Town Engineer Barbagallo referred to the letter from Anthony
23 and Pamela Beadle to Supervisor Morrissey saying *we also have been told*
24 *that such use would require a modification to the restrictive covenant to the*
25 *land deed that is normally applicable. We therefore petition for such*
26 *modification as may allow our intended use.* He said that the owner wants
27 to put the septic system only on Lot 31.

28
29 Mr. Foley said with the sale of this property the lot will be on the tax rolls.

30
31 Director of Planning Dym said she can send a memo to the Town Board
32 stating the Planning Board's concerns. She noted that there are questions
33 about the procedure, environmental issues and the expansion of the lot to
34 20,000 SF.

35
36 Planning Board Town Attorney Eriole said if there is a modification
37 proposed the Town Attorney should draft language for the modification. He
38 indicated that this language is needed for the Planning Board to make their
39 review. He said that there has to be a proposal so the Board can decide if
40 it is appropriate. Planning Board Town Attorney Eriole said the Board

1 cannot opine until the language is reviewed. He said he will work with the
2 Director of Planning on the language for the memo to the Town Board.

3
4 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and unanimously
5 carried, the Board moved to have the Director of Planning send a memo to
6 the Town Board stating the concerns of the Board and its consultants in
7 regard to the request to purchase Town Property located at 19 Locust
8 Drive.

9
10 *At this time Director of Planning Dym left the meeting.*

11
12 **PROJECT REVIEW**

13
14 **NORTH COUNTY HOMES WETLAND, STEEP SLOPES, TREE**
15 **PRESERVATION AND STORMWATER MANAGEMENT AND EROSION**
16 **AND SEDIMENT CONTROL PERMITS [TM: 36.20-1-59]**

17
18 Acting Chair Gerbino said that the Board will be reviewing the Wetland,
19 Steep Slopes, Tree Preservation and Stormwater Management and
20 Erosion and Sediment Control permits for North County Homes, applicant,
21 and Thomas Caracciolo, owner, for property located on the west side of
22 Bedell Road for permits for the construction of a single family home, well
23 and septic system. Acting Chair Gerbino noted that the property is located
24 in south Somers and is the last lot in the subdivision.

25
26 Acting Chair Gerbino asked the applicant's representative to describe the
27 application.

28
29 John Karell, the applicant's engineer, said that this is the last lot in the
30 subdivision. He noted that the applicant proposes to build a house,
31 driveway and septic system. He indicated that the septic system has
32 Health Department approval. Engineer Karell said that a drainage ditch
33 was installed on the adjacent property to divert drainage off the hill around
34 the swimming pool and house on the adjacent property. He explained that
35 the drainage ditch is causing the wetland on the applicant's property.
36 Engineer Karell said he is proposing to pick up the drainage ditch from the
37 point where it enters this property and pipe it down to the road to a
38 manhole which will provide drainage capabilities for the Town. He noted
39 that drainage will be parallel to the road. Engineer Karell opined that this

1 will eliminate the wetland as it is solely caused by the construction of the
2 drainage ditch.

3
4 Acting Chair Gerbino asked what the date was for the construction of the
5 swimming pool on the adjacent property as it is alleged that the drainage
6 ditch was put there for the pool.

7
8 Engineer Karell said that when the Board does their site walk they will see
9 that the area has been routed out to a substantial swale by stormwater
10 events. He stated that it will be obvious on the site walk for the Board to
11 realize what this ditch was constructed for.

12
13 Acting Chair Gerbino asked the Consulting Town Engineer to review his
14 memo for the benefit of the public.

15
16 Consultant Town Engineer Barbagallo mentioned that he walked the site
17 with Principal Engineering Technician Woelfle and he agreed that the swale
18 is diverting the water but he is not sure if that is the sole reason for the
19 wetlands.

20
21 Consultant Town Engineer Barbagallo referred to his memo dated May 9,
22 2014. He said that the drawings identify that approximately 48,300 square
23 feet of land disturbance is anticipated by the proposed construction
24 activities. He indicated that the applicant is required to prepare a
25 Stormwater Pollution Prevention Plan (SWPPP). He asked that the
26 applicant revise the drawings to illustrate a limit of disturbance line that
27 corresponds to the proposed construction limits. Consultant Town
28 Engineer Barbagallo mentioned that the project site is located within the
29 watershed of the Muscoot Reservoir which is identified as a Total Maximum
30 Daily Load (TMDL) phosphorous restricted basin by the NYSDEC "Phase I
31 Phosphorous Total Daily Loads for Reservoirs in the NYC Water Supply
32 Watershed" dated June 2000. He noted that projects located within the
33 TMDL watershed are prohibited from creating any increase in phosphorous
34 load to the subject waterbody. Consultant Town Engineer Barbagallo
35 explained that the Watershed Inspector General (WIG) has been paying
36 attention to projects in the TMDL and is asking that the pollutant loading
37 analysis be completed. He said that the TMDL can be treated on site but if
38 that cannot be accomplished there are other mechanisms that can be used.

39

1 Engineer Karell explained that this plan was submitted as a concept plan
 2 because he wanted to know how the Board feels about the piping of the
 3 ditch.

4
 5 Consultant Town Engineer Barbagallo asked that the applicant revise the
 6 plans to indicate an area for temporary soil stockpiles during construction.

7
 8 Consultant Town Engineer Barbagallo commented that the Health
 9 Department approval for the septic system means that they are satisfied
 10 with the comments relative to water and wastewater. He asked that the
 11 applicant provide documentation of final WCDOH design approval for the
 12 proposed septic absorption field limits.

13
 14 Consultant Town Engineer Barbagallo said that the applicant shall prepare
 15 a Tree Removal Plan with all regulated trees identified. He noted that the
 16 delineation of the site wetland area was completed by Tim Miller
 17 Associates on March 29, 2014. He stated that a Wetland Buffer Mitigation
 18 Plan must be provided and it must evaluate the ecologic functions provided
 19 by the existing buffer area and shall demonstrate that any proposed
 20 plantings/mitigation areas are functionally equivalent to existing conditions.
 21 He said that relative to the ditch creating the wetland is related to this
 22 comment.

23
 24 Consultant Town Engineer Barbagallo mentioned that the applicant is
 25 proposing to construct a 10' wide driveway with a maximum longitudinal
 26 slope of 14% grade. He said that Town Code specifies that residential
 27 driveways shall have a maximum grade of 12%. Consultant Town
 28 Engineer Barbagallo said that driveway grades may be permitted at a
 29 maximum grade of 14% if proven to be necessary based upon site
 30 constraints to the satisfaction of the Planning Board. He commented that
 31 the applicant says he will be able to accomplish the 12% grade but that will
 32 require more cutting and more disturbance in the buffer.

33
 34 Consultant Town Engineer Barbagallo said that a site walk should be
 35 scheduled in order to understand the Board's perspective on the swale.

36
 37 Mr. Keane opined that when the other lots were constructed they pushed
 38 the shallow and surface groundwater around and delivered the water onto
 39 this lot. He said that putting the driveway and stormwater management in
 40 the wetland buffer is not allowed in Somers. Mr. Keane said that factual

1 data has to be shown on how the water will move over the surface or in
2 shallow movement after the improved modifications are installed. He said
3 that there will be a lot of problems if the buffer cannot be shrunk.

4
5 Engineer Karell showed the Board the buffer area with the house, septic
6 being three quarters outside the buffer area. He said that the ditch is
7 delivering pollutants to the roadside ditch because it is eroding the swale.
8 Consultant Town Engineer Barbagallo opined that the heavy flows are
9 stormwater related.

10
11 Ms. Gannon questioned Page 2, question 17 a. of the EAF, *Will the*
12 *proposed action create stormwater discharge, either from point or non-point*
13 *sources*. She said the answer is “no” but on question 17 b. *will stormwater*
14 *discharges be directed to established conveyance systems (runoff and*
15 *storm drains)*, the answer was listed as “yes” but there was no description.

16
17 Engineer Karell said that what it is being discharged to is a pipe that
18 crosses Bedell Road and discharged into the end section and conveyed
19 under Bedell Road in the Town’s drainage system.

20
21 Acting Chairman Gerbino directed that a site walk be scheduled for Friday,
22 May 23, 2014 at 6:30 P.M. Walkers to meet at 38 Bedell Road.

23
24 There being no further business, on motion by Mr. Goldenberg, seconded
25 by Mr. Keane, and unanimously carried, the meeting adjourned at
26 8:50 P.M. The Acting Chair noted that the next Planning Board meeting
27 will be held on Wednesday, June 11, 2014 at 7:30 P. M. at the Somers
28 Town House.

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31
32 Respectfully submitted,

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36 Marilyn E. Murphy
37 Planning Board Secretary
38
39