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5 **SOMERS PLANNING BOARD MINUTES**
6 **JUNE 24, 2009**
7

8
9 **ROLL:**

10
11 **PLANNING BOARD**

12 **MEMBERS PRESENT:** Chairman DeLucia, Mr. Keane,
13 Mr. Knapp, Ms. Gerbino, Mr.
14 Goldenberg and Ms. Gannon
15

16 **ALSO PRESENT:** Town Engineer Gagné
17 Town Planner Charney Hull
18 Town Attorney Baroni
19 Town Attorney Holt-Cinque
20 Planning Board Secretary Murphy
21

22 **ABSENT:** Mr. Foley
23

24 The Chair before, commencing with the meeting, reminded everyone
25 that there will be no Planning Board meetings for the month of July
26 and that there is only one meeting in August. She noted that the next
27 Planning Board meeting is scheduled for Wednesday, August 26,
28 2009 at 7:30 p.m. at the Town House.
29

30 The Meeting commenced at 7:35 p.m. Planning Board Secretary
31 Marilyn Murphy called the roll. Chairman DeLucia noted that a
32 required quorum of four members of the Board being present called
33 the meeting to order.
34

35 Chairman DeLucia noted that Planning Board Secretary Murphy
36 prepared and submitted for the Board's consideration the approval of
37 the draft minutes of the May 27, 2009 Planning Board meeting
38 consisting of twenty-eight (28) pages.
39

1 The Chair asked if there were any comments or questions from
2 members of the Board and no one replied.
3 The Chair asked if there was a motion to approve the May 27, 2009
4 draft minutes.

5
6 On motion by Ms. Gerbino, seconded by Mr. Keane and unanimously
7 carried, the minutes of May 27, 2009 were approved.

8
9 The Chair noted that the DVD of the May 27, 2009 Planning Board
10 meeting is made a part of the approved minutes and is available for
11 public viewing at the Somers Public Library and on the Town's
12 website www.somersny.com. She said that the approved minutes
13 are also available for public review at the Planning & Engineering
14 office at the Town House.

15
16 **PROJECT REVIEW**

17
18 **OMNIPOINT COMMUNICATIONS, INC.**
19 **TOWNE CENTRE AT SOMERS**
20 **325 ROUTE 100**
21 **[TM: 17.15-1-13]**

22
23 Chairman DeLucia said that this is the project review of the
24 application of Omnipoint Communications, Inc. at the Towne Centre
25 for Amended Site Plan approval, Wetland Permit and a Special
26 Exception Use Permit for activity within the Groundwater Protection
27 Overlay District to install a wireless telecommunications facility
28 consisting of a 103-foot stealth monopole with six small panel
29 antennas and related equipment cabinets at its base located in the
30 Towne Centre, 325 Route 100, in the Neighborhood Shopping (NS)
31 Zoning District. She noted that the owner of the property is Urstadt
32 Biddle Properties, Inc. The Chair stated that on March 17, 2009 the
33 Zoning Board of Appeals issued a Negative Declaration pursuant to
34 SEQRA subject to conditions and granted the requested area
35 variances and Special Exception Use Permit with conditions per
36 Resolution BZ02D/07.

37
38 The Chair noted that this application was last discussed at the June
39 10, 2009 Planning Board meeting whereby the Board required the
40 applicant to provide additional information and documentation for the

1 next Board meeting. She indicated that on June 12, 2009 an Action
2 Letter was sent to the applicant's attorneys. The Chair said that on
3 June 15, 2009 the Board received a hand delivered letter from the
4 attorneys for the applicant in response to comments made at the
5 June 10, 2009 meeting and the Action Letter, together with
6 information and documentation.

7
8 The Chair said for the record the Board is in receipt of the following:
9 a copy of the Site Lease with Options and Attached Exhibits; a memo
10 dated June 19, 2009 from Town Engineer Gagné with project review
11 comments; and a memo dated June 20, 2009 from Town Planner Hull
12 with project review comments.

13
14 The Chair asked the applicant's representative to give a brief
15 presentation on its recent submission for the benefit of the public.

16
17 Robert Gaudio, the applicant's attorney, said that a complete
18 application has been submitted and the application has been before
19 the Town for over 2 ½ years. He asked that the Board schedule a
20 Public Hearing on this application for the August 26, 2009 meeting.
21 Attorney Gaudio asked if the Chair said that a copy of the site
22 lease was submitted. He noted that the lease was not submitted by
23 his Office.

24
25 Town Engineer Gagné said that he obtained the site lease from the
26 property owner.

27
28 The Chair said that the site lease was submitted by Daniel Logue
29 from Urstadt Biddle's Office at the request of the Town Engineer.

30
31 Attorney Gaudio asked what is the relevance of Town Engineer
32 Gagné requesting the site lease.

33 The Chair said that Mr. Logue, Manager of Engineering and
34 Environmental Services, wrote, *Please use this letter as confirmation*
35 *that Urstadt Biddle Properties Inc. is in full agreement with Omnipoint*
36 *Communications Inc utilizing the original lease area for construction*
37 *of a telecommunications site more specifically described in Exhibit "B"*
38 *of the fully executed lease agreement dated September 11, 2006.*

39 She said that she was concerned about what was described in
40 Exhibit "B" since the Board did not have a copy.

1 Attorney Gaudioso stated for the record he objects to the lease being
2 part of the record and requested that the lease be returned. He
3 noted that if the Board has a reason for requesting the lease he will
4 take that under advisement and will submit a copy of the lease
5 agreement directly from Omnipoint. He opined that case law and a
6 case in Somers, AT&T versus Sherlock, states that lease agreements
7 are not to be given out unless the applicant consents and he does not
8 consent. Attorney Gaudioso requested that the lease agreement be
9 stricken from the record as it is, in his opinion, a trade secret and any
10 copies are so stamped and redacted from any foil requests.

11
12 Town Engineer Gagné stated for the record that he obtained the
13 lease agreement from the co-applicant Urstadt Biddle.

14
15 Roland Baroni, the Town Attorney, advised that the Town Engineer
16 had the right to request the lease from a co-applicant and he
17 disagrees with Attorney Gaudioso in reference to the Town
18 Engineer's right to obtain a copy of the lease.

19
20 Mr. Goldenberg referred to the June 15, 2009 memo from Attorney
21 Gaudioso on Page 3, Number 5, Alexan Woods Development, *It is*
22 *abundantly clear in this case that the proposal of these two projects*
23 *at the same time in proximate location was purely incidental are not*
24 *related...* He said that when the applicant is stating that the two
25 applications are coincidence he feels that the Board has the right to
26 look at the lease because the Board now finds out that certain things
27 are not coincidence.

28
29 Attorney Gaudioso disagreed saying that the issue relating to the
30 lease has nothing to do with the issue raised by Mr. Goldenberg.
31 He said that there is the matter of following procedure, as his firm
32 represents Omnipoint, and the request for the lease agreement
33 should have been made to him as the Attorney representing
34 Omnipoint.

35
36 Mr. Keane said that the applicant is before the Board for Site Plan,
37 Wetland and a Special Permit for the Groundwater Protection Overlay
38 District. He noted that Attorney Gaudioso should be familiar and
39 understands Section 171.29 relating to telecommunications
40 equipment and that he has fully complied with the requirements of

1 Section 170.129 with regard to all the documentation, data and
2 reports that are necessary. He opined that Attorney Gaudioso
3 inferred that all the data has been submitted thereby requesting the
4 Board to schedule a Public Hearing.

5
6 Attorney Gaudioso said that he is not inferring that all the documents
7 have been submitted, he is stating that the documents have all been
8 provided. He noted that all the required data has been submitted for
9 the past 2 ½ years to the Zoning Board of Appeals (ZBA) who are the
10 approving body under the section of the Code that was mentioned by
11 Mr. Keane. He said that complete applications have been submitted
12 for the SEUP and the Wetland permit for the Planning Board to
13 schedule a Public Hearing.

14
15 Mr. Keane opined that the applicant is not in compliance with Section
16 170.129 as it pertains to site plan and the issues the Planning Board
17 is responsible for.

18
19 The Chair mentioned that when Attorney Bonomolo first appeared
20 before the Planning Board she asked for a Public Hearing before the
21 Board had all the information necessary to hold a Public Hearing.
22 She said that Attorney Bonomolo quoted the ZBA each time she was
23 before the Board and she had to remind her that she was before the
24 Planning Board for site plan approval.

25
26 Attorney Gaudioso stated that the plan has been revised six times
27 and he has replied to numerous comments from the Town's
28 consultant and the Planning Board and its staff. He said that there
29 was no confusion by Attorney Bonomolo in reference to being before
30 the Board for site plan approval and SEUP. He mentioned that this
31 application is for a federally licensed wireless telecommunication
32 facility that has protection not only under federal law but is protected
33 by state law as a public utility facility. Attorney Gaudioso indicated
34 that under federal law this type of application should not be
35 unreasonably delayed. He said that he believes that he submitted
36 ample material for the scheduling of a Public Hearing. He mentioned
37 that the Town Code states that a Public Hearing should be held within
38 62 days of the submission of a complete application.

39

1 Attorney Gaudioso said that in his opinion the Board has a complete
2 application and if there are relevant questions that haven't been
3 raised he would gladly answer those questions or comments.
4 He commented that he feels that all the documentation for the SEUP
5 and the site plan criteria have been provided and the Board may not
6 agree with the findings and may not agree that the Board should
7 render site plan approval, but that is not the issue right now, as that is
8 the Board's discretion under the law, but it is the Board's obligation to
9 follow the law and he is asking that a Public Hearing be set.

10
11 Mr. Keane said that the application is for a 300 square foot facility.

12
13 Attorney Gaudioso said that the square footing of the facility is shown
14 on the plans and is detailed to a great extent showing equipment
15 cabinets, electrical conduits, fencing and landscaping.

16
17 Mr. Keane asked if the facility is more then 300 square feet.
18 He asked what is the square footage of the entire compound
19 including all the screening and the additional area for future use.

20
21 Attorney Gaudioso said that the additional area for future use is only
22 shown on the plan because it was requested by the Town Engineer
23 and is not part of the proposal.

24
25 Mr. Keane requested that the perimeter of the facility be measured
26 and the area for future use be removed from the plan.

27
28 Attorney Gaudioso said that for Mr. Keane to ask these questions
29 now when the plan has been on file is disruptive to the process but
30 the applicant's engineer will measure the square footage of the
31 compound.

32 The Chair noted that her hope was that this meeting could move
33 forward in a positive way but Attorney Gaudioso is making demands.
34 She indicated that Attorney Gaudioso is telling the Board what he
35 wants before the Board has the opportunity to state what they need to
36 schedule a Public Hearing.

37
38 Town Attorney Baroni asked if the issue is does the applicant have
39 permission to place the landscaping outside the lease area.

1 Attorney Gaudioso stated that he has the right to place landscaping
2 outside the lease area.

3

4 Ms. Gannon mentioned that on Sheet Z-3 the Landscape Plan
5 shows four proposed 20-25' trees subject to landlord approval.

6

7 Attorney Gaudioso said that the landlord granted approval for the
8 planting of the trees provided a two-year warranty is agreed to and
9 that will be provided under the site plan process.

10

11 Town Engineer Gagné noted that Urstadt Biddle is a co-applicant and
12 if the trees are outside the lease area he becomes responsible for the
13 plantings and/or maintaining of the trees.

14

15 Attorney Gaudioso stated that the location of the trees are shown on
16 the site plan and the landlord has agreed to the planting of the trees
17 provided there is a two-year warranty. He said that the plan has
18 recently been modified to add four 20-25' trees that was discussed at
19 the June 10, 2009 Planning Board meeting.

20

21 Mr. Keane referenced Visual Mitigation and Landscaping under
22 Section 170.129, and said that he wants to interpret what has been
23 submitted is in concert with Section 170.129 7j (1) which in part says
24 that the facility will be sited and designed to have a minimum adverse
25 visual impact on the Town, the immediate neighborhood, residential
26 property, parks, scenic vistas and roadways taking into account the
27 proximity to potential viewers and sight lines from major viewing
28 points and shall incorporate camouflage to the maximum extent
29 reasonably possible.

30

31 Attorney Gaudioso said that is the Special Exception Use Permit
32 (SEUP) criteria and the approving agency was the ZBA not the
33 Planning Board. He mentioned that the plan as well as landscaping
34 was submitted to the ZBA and that was approved as part of the
35 SEUP.

36

37 Town Attorney Baroni stated that the ZBA in their Resolution
38 specifically states that the Planning Board will decide the extent of the
39 landscaping.

40

1 Attorney Gaudioso stated that the landscaping is only with respect to
2 site plan criteria and the Section that Mr. Keane referenced was in
3 respect to SEUP criteria.

4
5 Mr. Keane questioned where the site plan criteria is in the Code.

6
7 Town Attorney Baroni said that the site plan criteria is not in the Code
8 but the Planning Board can adopt their criteria.

9
10 Mr. Goldenberg said that the Planning Board under aesthetics has
11 the right to discuss landscaping.

12
13 Town Attorney Baroni suggested that the Board supply a list of any
14 additional information that the Board requests and give Attorney
15 Gaudioso a reasonable date for him to submit the information and if
16 the submission is adequate proceed with the Public Hearing. He said
17 that the Board should be specific where they want the landscaping
18 and Attorney Gaudioso will ask his client to consider the landscaping.

19
20 Attorney Gaudioso said that he will not agree and acquiesce to
21 conditions and criteria on this application that are not required by the
22 Code. He said if the Board feels otherwise that is their prerogative.
23 He said that he will also not acquiesce to statements that he has not
24 made. He noted that if the Board wants additional landscaping and
25 are specific he will look into it. Attorney Gaudioso mentioned that at
26 the last meeting he was asked to place trees around the compound
27 and he went to the landlord and got permission and that is in addition
28 to landscaping that was previously agreed to. He said that there are
29 limitations because of existing landscaping and the Board wants trees
30 cut down to provide evergreen plantings. Attorney Gaudioso
31 mentioned that in the area close to Route 100 there are septic fields
32 which is an issue that has to be looked into.

33 Mr. Keane said that the response to placing the 20-25' trees was
34 inadequate and inaccurately interpreted because the Board would
35 never ask to put the trees where they were placed. He said that it is
36 disingenuous where the trees were placed and if there was
37 communication instead of being lectured to about the ZBA and all the
38 permits that they issue, it would have been done correctly. Mr.
39 Keane said that screening for the monopole and depth of field on how
40 you view the monopole is the central issue. He said that the only

1 screening that was done was at the low height of the base of the
2 equipment.

3

4 Attorney Gaudioso asked that the Board be specific as to what they
5 want and he will try to provide it. He commented that in a comment
6 letter the applicant was asked to screen the monopole from Heritage
7 Hills.

8

9 Mr. Keane said that screening from Heritage Hills was never
10 requested. He mentioned that one of the pictures was taken from a
11 site at the junction of Warren Street and Greenbriar at a 40 degree
12 angle away from the direction of the monopole. Mr. Keane noted that
13 whoever took the photograph was looking in the wrong direction and
14 that may have been misinterpreted by the Omnipoint representative
15 who attended the meeting when this was discussed.

16

17 Attorney Gaudioso said that the property is an 11 acre property in a
18 Shopping Center that is surrounded by significant landscaping and
19 has very limited views. He noted that this was shown by the balloon
20 test and documentation that was submitted. He said that if the Board
21 has a specific viewpoint in mind he will try and address it. Attorney
22 Gaudioso said that the issue of aesthetic impact is not just visibility
23 but is an aesthetic impact on a resource. He commented that when
24 you go down Route 100 you are traveling in a straight line away from
25 the proposed property and if you look over your shoulder 500-feet
26 from Route 100 to the pole to see back into the area. He noted that
27 there are no homes and there is significant landscaping to the South
28 along the property line and a stand of evergreens to the North with
29 evergreens screening the view from Bailey Court and the Somers
30 Town House. Attorney Gaudioso said to create a Landscaping Plan
31 when he is not sure of the viewpoint of the resource that the Planning
32 Board is concerned about is an impossible task.

33 Mr. Keane said that within the property is one of the viewpoints that
34 the Board is concerned about.

35

36 Attorney Gaudioso noted that he submitted a plan showing four 25'
37 trees as close to the base of the pole as possible. He said that two
38 trees are from the south and two from the north in conjunction with
39 the 11 trees that were previously proposed. Attorney Gaudioso
40 mentioned that in this area there is a 10 foot utility easement,

1 underground pipes, property line and an existing parking lot. He
2 commented that the inside of the property is the back end of a
3 shopping center. He noted that it is very difficult to screen a 100-foot
4 pole from inside an 11 acre shopping center.

5
6 Attorney Gaudioso explained that he came in with a design that was
7 approved by the Planning and Zoning Boards. He said that the flag
8 pole design is one of the minimized designs with the antennae
9 included inside the pole. He said that the ARB recommended taking
10 the ball and flag off the design and after showing the ARB 90 colors
11 they picked Rhombus blue and, as requested, landscaping was
12 provided as part of wetland mitigation.

13
14 The Chair said that the diameter of the trees has not been mentioned
15 and they should be good stock and mature trees.

16
17 Attorney Gaudioso noted that he will change the plan and show the
18 species of trees that the Board wants.

19
20 Mr. Keane commented that in a perfect world the Board would be
21 looking for screening in front of the pole between Route 100 and the
22 vegetation behind the pole looking toward the school.

23
24 Attorney Gaudioso said that if he could put more screening in front of
25 the pole he would have but there is no room because of the parking
26 lot. He noted that behind the pole are the wetlands, utility easement
27 and the property line. Attorney Gaudioso mentioned that the
28 monopole is not visible from the school.

29
30 *At this point Town Attorney Baroni left the meeting.*

31
32 Mr. Keane clarified that his concern is from Route 100 towards the
33 school (east to west) and if you are at the bank in the shopping center
34 and looking towards Fireman's field and the school you will see the
35 monopole.

36
37 Ms. Gannon noted that Attorney Gaudioso in his letter referenced
38 another monopole in Town and she reviewed the file and found a
39 separate landscape plan. She suggested that a landscape architect
40 can give his opinion on the type, size, dimension and durability of the

1 most suitable trees for this site. Ms. Gannon mentioned that in the
2 parking lot there are decorative islands where possibly a tree could
3 be put in between the island and the proposed trees on Route 100
4 could have the effect of providing a visual blockage. She opined that
5 it will be a combination of things that can be done to best trick the
6 eye.

7

8 Attorney Gaudioso said that Ms. Gannon's suggestion is constructive
9 and he suggested a field visit to look at the issues.

10

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

13

14 Town Engineer Gagné said he asked that landscaping be provided to
15 screen the pole, say 20 to 25' high trees and that has been partially
16 addressed. He requested that screening be provided for the east
17 view and depicted on the Wetland Buffer Mitigation Plan and Detail Z-
18 6 and add the words "Landscape Plan". Town Engineer Gagné said
19 that additional mitigation could be offered to further reduce the
20 potential impact of impervious surfaces by the installation of an
21 infiltration system incorporated in the gravel compound area.

22

23 Attorney Gaudioso said that there is approximately 150-square feet of
24 impervious surface in the wetland buffer pertaining to a stormwater
25 detention pond. He indicated that a mitigation plan was submitted
26 based on comments of the Town's consultants. He asked if the
27 Board wants revised plans to show an infiltration system.

28

29 Mr. Keane suggested that mitigation be performed at another site.
30 He noted that there is a 112 square foot pad, the monopole pad and
31 disturbance to 300 square feet of grassed area. He noted that rather
32 than infiltration mitigation, implement off-site mitigation. Mr. Keane
33 explained that a donation to do the work would be provided by the
34 applicant. He noted that the Town has certain MS4 requirements that
35 it has to meet. Mr. Keane proposed a site at 6 Van Rensselaer Road
36 that has a significant erosion gully.

37

38 Attorney Gaudioso said that the applicant can provide a donation to
39 the town in lieu of mitigation on site and the Town Highway
40 Department will do the work.

1 Town Engineer Gagné recommended that the applicant's engineer
2 provide an estimate on the cost of installation of an infiltration practice
3 and gravel and that will be the value of the donation.
4

5 Mr. Keane stated that the plantings for screening of the monopole
6 have to remain.
7

8 Town Engineer Gagné returned to his memo saying the Planning
9 Board will want to discuss the potential visual impacts observed
10 during the April 18, 2009 site walk and those impacts have been
11 discussed this evening. He said that there are several view points
12 the Planning Board must consider when reviewing the aesthetic
13 impacts of the pole; the first at close range being from on-site; second
14 at mid range say from Route 100 and 202; and finally from a more
15 distant point of view say Route 684 or the top of Heritage Hills. He
16 said that it is important to decide which viewshed is the most
17 important to the Planning Board. He asked that the rear yard label
18 with the side yard label on drawing Z-2 be replaced. Town Engineer
19 Gagné said that a note should be added to the site plan stating that
20 the SEUP expires five (5) years from the date of issuance.
21

22 Mr. Keane said that there is a concern if the Alexan Somers Woods
23 Development is approved and they cut down all the trees in the
24 background and now the pole is exposed and can be seen
25 significantly from the school and Fireman's field. He said if you are
26 looking at the pole from the east there is no backdrop or screening.
27 Mr. Keane said that the Board is struggling with this and is trying to
28 do the right thing for everybody.
29

30 Attorney Gaudioso said he wants to put everything in context and
31 said that Alexan Somers Woods Development is not a permitted use
32 now and needs rezoning by the Town Board and ultimate approval by
33 the Planning Board. He noted that the Planning Board will not allow
34 the Alexan Woods Development to take out screening without
35 replacing it and that is the protection. He opined that there are issues
36 to consider but will not lead to denial of the Omnipoint application.
37 Mr. Keane opined that the full story was not given to the Board on the
38 camflaunging of the pole. He said that there are other web sites
39 besides Invisible Towers. Mr. Keane noted that the Board did not
40 know that camouflage of the pole was even a potential option.

1 He said that the Board will come to a decent conclusion if they have
2 all the information.

3

4 Attorney Gaudioso said that options have been provided. He
5 explained that the ZBA prefers a certain design and that is what was
6 submitted. He noted that the ZBA hired a consultant at the
7 applicant's expense who provided a report with multiple options
8 including tree options. He said that the ZBA was not interested in the
9 options and preferred the original design that was submitted with the
10 application. Attorney Gaudioso stressed that he would not have
11 submitted something that wasn't the best option to be approved.
12 He noted that he never heard of the Invisible Tower technology and
13 immediately looked it up on the Internet when it was mentioned by
14 Ms. Gannon. He said that he showed the Board a sample of the
15 material that is just contact paper. Attorney Gaudioso indicated that
16 the contact paper look is not what he would like to see in the
17 proposed location, however, if that is what the Board wants the
18 applicant will use it.

19

20 Mr. Keane mentioned that if you go on the Invisible Tower website
21 you see T-Mobil logo as one on their preferred clients. He said that it
22 was surprising that T Mobil used Invisible Towers and that technology
23 was never mentioned.

24

25 The Chair mentioned that the Alexan Woods Development is
26 proposing to build 50 units and they will be looking right at this pole.

27

28 Attorney Gaudioso said that the Omnipoint application has been
29 before the Town for 2 ½ years and there were meetings with the ZBA
30 and Planning Board to keep them updated. He mentioned that in a
31 meeting in July 2008 the applicant was told that they could make a
32 presentation but not ask any questions.

33

34 The Chair said that because there was a full agenda in July and when
35 the applicant asked to be on the agenda she agreed but because of
36 the time issue only a presentation could be made without questions
37 from staff or Board members.

38

1 Attorney Gaudioso replied that was not the applicants fault and he is
2 explaining that the applicant provided information to the Board to the
3 best of its ability.

4
5 The Chair said that the information was insufficient and incomplete.
6 She noted that she told Attorney Bonomolo to discuss visual impacts
7 and she just discussed the project and not the visual impacts.

8
9 Attorney Gaudioso explained that the applicant's plan was modified to
10 show the Alexan Woods Development and provided an alternative on
11 the site. He noted that an application was submitted to place the
12 monopole at Heritage Hills but the ZBA determined that was not the
13 preferred location.

14
15 The Chair asked Town Planner Hull to share her memo to the Board
16 for the benefit of the public.

17
18 Town Planner Hull said most of her comments have been addressed
19 except for the revision that is required for the bulk requirements
20 table to be consistent with the Town Code in relation to the side
21 columns by changing the columns to reflect side and both (sides)
22 columns. She said that the Planning Board should determine that the
23 alternative location along Route 100 is not the preferred location and
24 that should be noted for the record because the plans are showing
25 that location as an option.

26
27 Town Engineer Gagné opined that the alternative location along
28 Route 100 should stay as an option. He said that by moving the
29 monopole closer to Route 100 cars will go by quickly and if the pole is
30 painted a dark color the pole will not be visible.

31
32 Town Attorney Holt-Cinque said that she discussed the issue with
33 Town Attorney Baroni that the Board would like to discuss an
34 alternate location and advised that the Planning Board should not
35 supplant the ZBA's authority by choosing an alternate location other
36 than the site that was approved by the ZBA.

37
38 Mr. Keane suggested the preferred location for the monopole should
39 have closely positioned coniferous trees on the banking on Route 100
40 because during the leaf-off season there will be a lot more screening.

1 He said that after the site walk the applicant will receive an action
2 letter.

3

4 The Chair noted that at the time of the site walk the Board did not
5 have all the information to make a decision.

6

7 Attorney Gaudioso said that at the site walk locations that need
8 screening will be determined and he will have his engineer and a
9 representative from Urstadt Biddle's office attend the site walk.

10 He reiterated that he should provide a revised plan, landscape plan
11 and the cost of infiltration practice.

12

13 The Chair directed that a site walk be scheduled for Omnipoint at the
14 Towne Centre for Saturday, June 27, 2009 at 10:00 A.M.

15

16 The Chair asked if there was a consensus of the Board to schedule a
17 Public Hearing on the application of Omnipoint Communications Inc.
18 at the Towne Centre if all the information that the Board requested
19 has been provided. She said that staff will determine if all the
20 information is complete.

21

22 On motion by Mr. Goldenberg, seconded by Ms. Gerbino, and
23 unanimously carried, the Board moved to schedule a Public Hearing
24 on the application of Omnipoint Communications Inc. at the Towne
25 Centre for Wednesday, August 26, 2009 a 7:30 P.M. at the Somers
26 Town House, provided that the applicant submits by Friday August 7,
27 2009, all of the information and documentation requested by the
28 Board and staff, and if acceptable and complete by staff, that the
29 Public Hearing be held and that the notice be published, mailed and
30 the property posted.

31

32 *At this time the Board took a five minute break.*

33

34 **REQUEST FOR BUILDING PERMITS**

35

36 **WOODED ACRES SUBDIVISION**

37 **BUILDING PERMITS**

38 Chair DeLucia said that the Planning Board will be considering the
39 recommendation to the Town Board to grant 5 building permits to
40 Wooded Acres Subdivision by applicant F. Travis Hopkins of

1 Lafayette Street Properties. The Chair noted that the Board received
2 a joint memo dated June 17, 2009 from Town Engineer Gagné and
3 Superintendent of Highways Thomas Chiaverini giving their report to
4 the Planning Board and recommending that the developer establish
5 an escrow account in the amount of \$1,000 per year per 1,000 feet of
6 roadway be posted and an escrow account to guarantee the
7 developer will provide safe and adequate operation and maintenance
8 and snow removal for a period of two years from the date of the
9 report or as long as may become necessary in the amount of \$1,950
10 as a deposit.

11
12 The Chair asked if there were any comments or questions from
13 members of the Board and no one responded.

14
15 The Chair asked if there was a consensus of the Board to send a
16 memo to the Town Board with the recommendations.

17
18 On motion by Mr. Keane, seconded by Mr. Goldenberg, and
19 unanimously carried, the Board moved to send a memo to the Town
20 Board that the Planning Board at its June 24, 2009 meeting, and
21 pursuant to a joint memo dated June 17, 2009 of the Town Engineer
22 and Highway Superintendent, unanimously recommends that the
23 Town Board grant the issuance of the 5 building permits to Wooded
24 Acres Subdivision designated on the Town Tax Map as Sheet 48.13,
25 Block 1, Lot 49; Sheet 48.17, Block 1, Lots 32, 36, 37 and 38.

26 27 **PROJECT REVIEW**

28 29 **ST. JOSEPH'S CHURCH AND** 30 **JOHN F. KENNEDY HIGH SCHOOL**

31 **[TM: 28.15-1-8, 9, 10]**

32 Chairman DeLucia mentioned that this is the project review of the
33 application of the Roman Catholic Archdiocese of New York for
34 Amended Site Plan Approval, Stormwater Management and Erosion
35 and Sediment Control, Tree Preservation, Steep Slopes, Wetlands
36 and Groundwater Protection Overlay District permits. She explained
37 that the project involves the relocation and reconstruction of a new St.
38 Joseph's Church from the current location on Croton Falls Road to a
39 portion of the 58.3 acre JFK Catholic High School campus on
40 Goldens Bridge Road, NYS Route 138, in an R-120 Residential

1 Zoning District. The Chair said that this application was last
2 discussed at the June 10, 2009 meeting whereby the Board
3 determined that the proposed action under SEQRA will not result in a
4 significant adverse environmental impact and therefore, a Negative
5 Declaration be prepared for the Chairman's signature and filed and
6 published. She mentioned that the applicant's representative will be
7 presenting for the staff's and Board's review and discussion a
8 supplemental submission with a June 16, 2009 hand delivered
9 transmittal letter attaching, among other documents, a revised Site
10 Plan that reflects the relocation of the baseball fields and the septic
11 system and how there will be a lesser environmental impact than the
12 proposed action that warranted a Negative Declaration at the June
13 10, 2009 meeting. The Chair noted that also for review is Town
14 Planner Hull's final revised Part 3 of the EAF and a draft Negative
15 Declaration for the Board's consideration for approval.

16
17 Mr. Keane taking over for Chair DeLucia acknowledged for the record
18 receipt of the following: a memo dated June 19, 2009 to the Board
19 from Town Engineer Gagné with items to be addressed; a hand
20 delivery submission received today, June 24, 2009 from the
21 applicant's engineer, Rudolph Petruccelli, with revised Onsite
22 Wastewater Treatment System Plan and Tree Plan in response to
23 Town Engineer Gagné's June 19, 2009 memo to the Board; a letter
24 dated June 17, 2009 received June 22, 2009 from Westchester
25 County Planning Board Deputy Commissioner Edward Burroughs
26 requesting exploring site plan alternatives; a letter dated June 22,
27 2009 from IQ Landscape Architect, P.C. regarding the trees in
28 relation to the relocation of the septic system; and a memo to the
29 Board dated June 19, 2009 from Town Planner Hull with review
30 project comments and attaching a final draft of Part 3 of the EAF and
31 a draft Negative Declaration for the Board's consideration for
32 approval.

33
34 Mr. Keane said that perhaps the best way to review the supplemental
35 submission is that during the course of the applicant's representatives
36 making their presentation, our staff, our attorney, and the Board
37 interject their comments and/or questions and making it an "open
38 discussion".

39

1 Mr. Keane said that the applicant and the Board should agree that the
2 applicant withdraw their supplemental submission and that the
3 applicant and the Board, et al., should continue the meeting by going
4 over Part 3 of the EAF and reviewing the Neg Dec for approval for the
5 Chairman's signature.

6
7 Neil Alexander, the applicant's attorney, explained that at the last
8 meeting the Board approved the Negative Declaration. He
9 mentioned that he heard certain concerns that need evaluation as
10 part of site plan approval. Attorney Alexander noted that there was
11 concern relating to the fence and netting along Route 138 and the
12 trajectory analysis. He said that the applicant decided to reconfigure
13 the baseball field in order to have a dialog with the Board. He noted
14 that the Board is at site plan review and when the Board reviews the
15 baseball field reorientation they may decide they do not like it.
16 Attorney Alexander commented that after the review of the
17 reconfiguration of the baseball field the Board may vacate the
18 Negative Declaration and adopt a new Negative Declaration.

19
20 Town Attorney Holt-Cinque said that unless there is a significant
21 change and an environmental impact there is no need to revisit
22 SEQRA.

23
24 Town Engineer Gagné said that the latest layout of the septic system
25 makes a lot of sense. He mentioned that some clearing has to be
26 done and the expansion area will remain in the original location.

27
28 Drazen Cackovic, the applicant's architect, said that two changes
29 have been proposed, the reorientation of the baseball field and the
30 relocation of the septic system. He said that 9 trees will have to be
31 removed for the new septic system location.

32 Town Engineer Gagné noted that in reference to the forcemain
33 instead of going straight up the hill can the forcemain follow the open
34 field and service road.

35
36 Architect Cackovic said that unless there are financial restraints the
37 forcemain can follow the edge of the road. He mentioned that his
38 hope is that the Health Department will not require the removal of the
39 trees in the expansion area until needed.

40

1 The Chair asked if the applicant has any concerns or issues in
2 reference to Town Engineer Gagné's memos dated June 10, 2009
3 and June 19, 2009.

4
5 Architect Cackovic said that he will work with Town Engineer Gagné
6 to resolve any issues or concerns. He mentioned that he will do a
7 trajectory study to determine the height of the fence that is needed.
8 He noted that preliminary information has been done but with the
9 orientation of the baseball field the 70' netting will not be necessary
10 and the height of the net can potentially be reduced.

11
12 Ms. Gannon said that all of the trees that are marked to be removed
13 are not correctly indicated on the table and plans.

14
15 Architect Cackovic said that the revised table will correctly reflect the
16 number of trees to be removed as part of the construction activity and
17 correctly tabulated.

18
19 Mr. Knapp asked that the utilities on the site be located and a
20 surveyor coordinate the utilities on site so there is a Master Plan.

21
22 Mr. Keane asked Architect Cackovic if he had any issues with the
23 reconfiguration of the baseball field.

24
25 Architect Cackovic indicated that the ballfield is shortened by 10 feet
26 but is within the regulation guidelines. He noted that the retaining
27 wall was reduced and the height of the net will be determined based
28 on the trajectory study.

29
30 Mr. Keane said that if the Board decides on the reconfigured baseball
31 field there will be no need for a 70 foot netting as long as most of the
32 vegetation that is currently along the border of Route 138 is retained.
33 He noted that the trees will be the primary barrier for any balls
34 winding up on Route 138.

35
36 Ms. Gerbino stated she was speaking for Mr. Foley, who was absent,
37 who raised a question by e-mail, concerning the baseball field saying
38 *that regardless if the field is oriented as currently proposed or as*
39 *proposed when the Board completed the SEQRA review it is clear*
40 *that a great many baseballs are going to end up in the pond. Unlike*

1 *golf balls, baseballs are rendered worthless the second they hit the*
2 *water and because of that I suspect that once they enter the pond*
3 *they are never coming out. And that leads me to my point; the outer*
4 *covering of a baseball is composed of tanned cowhide and the*
5 *tanning process I believe implements several noxious chemicals,*
6 *such as formaldehyde and chromium, among others. What is the*
7 *impact of 100 or plus baseballs per season decomposing in a body of*
8 *water that feeds into the New York City watershed?*
9

10 Ms. Gerbino commented that High Schools use a specific ball to meet
11 the athletic requirements. She noted that the baseball used is Grade
12 C full grain leather covers.
13

14 Architect Cackovic said that he will provide a material safety data
15 sheet. He noted that the sheet will list potential chemicals in the
16 material that can cause harm. He explained that the manufacturer
17 informed him that the baseballs float for a certain period (1-2
18 months). Architect Cackovic mentioned if the baseballs sink; tanning
19 is done by using aluminum oxide which is not a harmful chemical.
20

21 Mr. Keane noted that the issue is a water quality issue and if the
22 massing of the balls altogether constitutes a potential breaching of
23 the threshold for a particular pollutant or grouping of compounds. He
24 said that it had to be determined if chromium by itself will interact
25 with other substances and form a different toxic compound and will
26 leave the site and go someplace else. Mr. Keane explained that if it
27 does not interact with other substances and forms a toxic compound
28 and leaves the site it probably will not be an issue. He said that this
29 should be explained in the context of the water quality comments.

30 Ms. Gerbino opined that an expert is needed to make the
31 determination if the balls going into the pond are a water quality
32 issue.
33

34 Mr. Keane suggested a trash rack to catch the baseballs in the pond.
35 He said that it will be a maintenance issue. Mr. Keane noted that the
36 baseballs going into the pond do not rise to a level of significance.
37

38 The Chair said that the baseballs going into the trash rack is a
39 maintenance issue and the applicant should disregard going to
40 experts per the Boards direction.

1 The Chair stated that Town Planner Hull submitted the final revised
2 Part 3 of the EAF.

3
4 Town Planner Hull explained that she revised Part 3 of the EAF from
5 the changes from the June 10, 2009 Planning Board meeting and she
6 added documents that came in relation to the June 10th meeting.

7
8 Town Planner Hull referenced Page 9 of the EAF, lines 24, 25 and
9 26, and changed the sentence structure to read *The wall construction*
10 *will utilize erosion control features, such as erosion control fencing, to*
11 *eliminate soil loss and immediate seeding and mulching will occur in*
12 *order to establish turf after soil disturbance has been completed.*

13
14 Town Planner Hull referred to Page 10, paragraph D. Tree Removal,
15 she said that it should be based on the revised tree removal
16 numbers.

17
18 Town Planner Hull said that on Page 11, lines 18 and 19, she
19 restructured the sentence to read, *This eliminates any adverse*
20 *impacts and creates a positive water quality impact from the*
21 *proposed action on the pond.* She noted that on Page 12, line 30,
22 the word *actually* was removed from the sentence.

23
24 Town Planner Hull mentioned that on Page 14, she added
25 paragraphs B and C regarding site distance and access issues. She
26 said that in relation to Page 15 and noted on Page 16 paragraphs B
27 and C have been restated on Page 16.

28
29 Ms. Gannon noted that under Noise and Odor Impact the new tree
30 information has to be included.

31
32 Town Planner Hull said that in reference to the last page of the
33 Negative Declaration the paragraph is a modification of the paragraph
34 in Part 3 of the EAF which specifically speaks to the Negative
35 Declaration.

36
37 The Chair asked if there was a consensus of the Board to accept the
38 final revised Part 3 of the EAF and approve the Neg Dec as amended
39 and prepare a Resolution for the Chairman's signature.

40

1 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and
2 unanimously carried, the Board moved to accept the final revised Part
3 3-Evalatuion of the Importance of Impacts of the Environmental
4 Assessment Form, and the draft Negative Declaration, as amended,
5 based on the June 10, 2009 Planning Board meeting, and prepare a
6 Resolution for the Chairman's signature.

7
8 Town Planner Hull said that she will respond to the letter from the
9 Westchester County Planning Department and noted that the
10 applicant has requested a meeting with staff, Building Inspector and
11 the Town Attorney in reference to variances that may be needed from
12 the ZBA.

13
14 Attorney Alexander said that he believes that there are credible
15 arguments that variances are not needed but he would like to have a
16 meeting to discuss the interpretation of the Code. He mentioned that
17 Town Planner Hull in her memo states that a variance for building
18 coverage is needed from the ZBA. Attorney Alexander opined that
19 the use classification for the zone as a permitted use is incredibly
20 broad and he feels that this application meets Code. He said that in
21 reference to Section 170-38 parking, he has questions in regard to
22 the applicability in reference to this application. Attorney Alexander
23 explained that the proposal is for parking spaces in excess of what is
24 required by Code.

25
26 Mr. Keane noted that the Board will discuss site plan issues and
27 details the next time this application is on the agenda. He suggested
28 that screening be provided for the home across the railroad bed.
29 Town Engineer Gagné said that the most effective screening should
30 be on Mrs. Cohn's property and should be discussed during site plan
31 review.

32
33 Attorney Alexander mentioned that if there is no room for screening
34 on the applicant's property he suggested depositing money at a
35 nursery for screening on the neighbor's property thereby the warranty
36 for the shrubs stays with the neighbor.

37
38 Mrs. Cohn, adjoining property owner, said that due to the
39 configuration of her property it is easier for the applicant to do the

1 blocking on their side. She agreed to discuss screening with the
2 applicant.

3
4 The Chair referenced Deputy Commissioner of the Westchester
5 County Planning Board Edward Buroughs' letter dated June 17,
6 2009, *This latest submission again highlights our previous*
7 *recommendation that the Town review alternative site plans for this*
8 *project, particularly those addressing the potential for shared parking*
9 *and driveway access. For example, exploring the placement of the*
10 *church on the site of the currently proposed ballfield could allow*
11 *shared use of the parking and driveways while eliminating concerns*
12 *about traffic safety caused by errant baseballs. While such an option*
13 *may or may not be feasible, we continue to point out a previous*
14 *statement made by the applicant noting "alternatives by the applicant*
15 *in the early stages of the project are available for review upon request*
16 *of the Planning Board." The Town should require that these*
17 *alternatives be formally submitted and reviewed as part of the site*
18 *plan approval process so that at least these alternatives can be*
19 *considered.*

20
21 Town Planner Hull said that the applicant should write a response
22 letter to the County addressing the comments from the Westchester
23 County Planning Board. She noted that she will comment on the bike
24 path issue, North County Trailway, and will circulate a draft letter to
25 the Board for review.

26
27 Mr. Keane opined that the bike path is better suited for New York City
28 (DEP) land.

29
30 The Chair directed that this application be placed on the August 26,
31 2009 Planning Board meeting.

32
33 There being no further business, on motion by Ms. Gerbino,
34 seconded by Mr. Goldenberg, and unanimously carried, the meeting
35 adjourned at 10:30 P. M.

36
37 Chairman DeLucia noted that the next meeting of the Planning Board
38 will be held on Wednesday, August 26, 2009 at 7:30 P. M. at the
39 Somers Town House.

40

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2
3
4
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8

Respectfully submitted,

Marilyn Murphy
Planning Board Secretary