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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
SEPTEMBER 11, 2013**

4

5

6

7 **ROLL:**

8

9 **PLANNING BOARD**

10 **MEMBERS PRESENT:**

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

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12

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14 **ALSO PRESENT:**

Director of Planning Syrette Dym
Town Consultant Planner Sarah Brown
Town Consultant Engineer Joseph Barbagallo
Town Attorney Gerry Reilly
Planning Board Secretary Marilyn Murphy

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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 Chairman Currie called for a moment of silence in memory of the events of
25 September 11, 2001.

26

27 **APPROVAL OF DRAFT MINUTES OF JULY 10, 2013**

28

29 Chairman Currie noted that Planning Board Secretary Marilyn Murphy
30 prepared and submitted for the Board's consideration the approval of the
31 draft minutes of the Planning Board meeting held on July 10, 2013.

1 The Chair asked if there were any comments or corrections from the Board
2 and no one replied.

3
4 On motion by Chair Currie, seconded by Mrs. DeLucia, and unanimously
5 carried, the draft minutes of July 10, 2013 were approved.

6
7 The DVD of the July 10, 2013 Planning Board meeting is made a part of
8 the approved minutes and is available for public viewing at the Somers
9 Public Library and that the text of the approved minutes is also on the
10 Town's website and is available for public review at the Planning &
11 Engineering office at the Town House.

12
13 **TIME-EXTENSION**

14
15 **MERRITT PARK ESTATES FINAL SUBDIVISION APPROVAL**
16 **[TM: 5.20-1-1]**

17
18 Chairman Currie explained that this is a request for a 90-day time-
19 extension for the Merritt Park Estates Final Subdivision from October 1,
20 2013 up to and including December 30, 2013 in accordance with §150-
21 13.M. of the Code of the Town of Somers. He noted that this is the
22 thirteenth request for an extension of Final Subdivision Approval.

23
24 Chair Currie acknowledged receipt of a letter dated August 27, 2013 from
25 Geraldine Tortorella, the applicant's attorney, requesting the time-
26 extension. He said that Planning Director Dym submitted a letter dated
27 September 6, 2013 stating that she has no objections to the extension of
28 the subdivision approval.

29
30 Chair Currie asked if there were any comments or questions on the
31 requested time-extension and no one responded.

32
33 On motion by Chair Currie, seconded by Mr. Keane, and unanimously
34 carried, the Board moved to grant a thirteenth 90-day time-extension to
35 Merritt Park Estates Final Subdivision Approval from October 1, 2013 up to
36 and including December 30, 2013 in accordance with Somers Town Code
37 §150-13.M.

38

1 Mr. Goldenberg commented that when the Board decides on granting time-
 2 extensions that a site visit should take place before the time-extension is
 3 granted.

4
 5 Chair Currie suggested that the Principal Engineering Technician Woelfle
 6 do a site inspection before the time-extension is granted by the Planning
 7 Board.

8

9 **RENEWAL OF SPECIAL USE PERMIT**

10

11 **CROWN CASTLE USA, INC.**
 12 **RENEWAL OF SPECIAL USE PERMIT**
 13 **[TM: 16.15-1-1.1]**

14

15 Chairman Currie mentioned that this is the application of Crown Castle
 16 USA, Inc. for renewal of a Special Use Permit for an existing approved
 17 Wireless Facility located at 115 Route 202, Lincoln Hall Property in
 18 accordance with §170-129.6.G. of the Code of the Town of Somers.

19

20 Chair Currie asked the applicant’s representative to update the Board on
 21 the application.

22

23 Neil Alexander, the applicant’s attorney, thanked staff for their work and the
 24 opportunity to have this dialog with the Board. He indicated that there are
 25 several carriers on the Lincoln Hall monopole. Attorney Alexander stated
 26 that Crown Castle is the owner of the monopole and the carriers are
 27 tenants. He explained that during the AT&T upgrade it came to the
 28 attention of the Board that the Special Permit for the tower had not been
 29 renewed. Attorney Alexander commented that the Planning Board has a
 30 different perspective now that it has jurisdiction over the Special Permits.

31

32 Attorney Alexander explained that the applicant came before the Board in
 33 June 2013 and it was determined that there were issues in regard to the
 34 expansion of the facility. The Board requested that Crown Castle have a
 35 tower inspection and safety structural certification. Attorney Alexander
 36 stated that inspection has taken place and a Tower Inspection Report has
 37 been submitted. He acknowledged that staff has reviewed the report and
 38 has requested qualifications made to the structural report.

39

1 The Chair asked Consultant Engineer Barbagallo to discuss his memo for
2 the benefit of the public.

3
4 Consultant Engineer Barbagallo said that on April 23, 2013 he received the
5 Structural Report for the tower. He stated that the Code of the Town of
6 Somers requires that the report be based on a site inspection. Consultant
7 Engineer Barbagallo indicated that the Structural Report issued on April 23,
8 2013 had assumptions which he feels would be resolved through a site
9 inspection. He indicated that a separate company did a site inspection and
10 items were identified that need maintenance. Consultant Engineer
11 Barbagallo also said that there was no one document that tied everything
12 together. He stated that the reports have to be consolidated and
13 mentioned that the Structural Analysis by Paul J. Ford & Company
14 Structural Engineers has to adopt the findings of the specific site inspection
15 and eliminate the assumptions on their certification so the Town has a solid
16 certification of the structural integrity of the tower or that Tectonic adopt and
17 certify the findings of the Structural Report by Paul J. Ford. Consultant
18 Engineer Barbagallo stated that one of these things has to happen in the
19 spirit of the Town Code. He noted that the WHEREAS clause on Page 5,
20 Line 27 of the Resolution describes what he just referenced. He explained
21 that under "Conditions Prior to Signing of the Special Permit" in the
22 Resolution under Compliance with Town Code Chapter 170-129.
23 6.G. that the applicant shall submit a structural report in accordance with
24 Town Code Chapter 170-129.6 (G) *and that specifically certifies that the*
25 *facility is structurally safe based on a site inspection and appropriate testing*
26 *and structural analysis.* The certification shall not include limiting
27 assumptions, and shall be subject to the review and acceptance of the
28 Consulting Town Engineer.

29
30 Attorney Alexander said that he spoke to Crown Castle and they are willing
31 to accept the condition stated by Consultant Engineer Barbagallo.

32
33 Chair Currie asked if the Planning Board had any comments or questions.

34
35 Ms. Gerbino asked if the Town Code can be refined to make these
36 conditions clearer. She said the reason she is asking this question is that
37 the Code is 20 years old and she wants to make sure that it matches the
38 businesses as they function today.

39

1 Mr. Keane suggested that a checklist will make it easier for compliance to
 2 the Town Code.

3
 4 Planning Director Dym stated that her office in conjunction with Consultant
 5 Engineer Barbagallo’s office will formulate a checklist based on the
 6 requirements in the Town Code.

7
 8 Attorney Alexander said that Crown Castle had different consultants
 9 perform different roles instead of one consultant handing all the roles.
 10 He indicated that if one consultant had handled the inspection the
 11 assumptions would not have been in the report.

12
 13 Consultant Engineer Barbagallo said that the Town Code as it relates to
 14 this applicant gives the Board what it needs.

15
 16 Ms. Gerbino asked if the pole is at capacity.

17
 18 Attorney Alexander said that the pole is not at capacity.

19
 20 Mr. Keane said that words matter and he takes exception to the wording in
 21 the draft Resolution that *a report from an engineer specializing in structural*
 22 *engineering certifying that the facility is structurally safe based upon a*
 23 *personal inspection and appropriate testing*. He noted that a site inspection
 24 can be done from a car and is not a personal inspection to the site. He
 25 opined that the words from the Code should be in the approval.

26
 27 Consultant Engineer Barbagallo clarified that he purposely did not include
 28 the word “personal” because the Code says that the structural engineer
 29 in this case, Paul J. Ford who is certifying would need to be the one that
 30 made the personal inspection of the site. He noted that a separate
 31 consultant did the inspection of the site.

32
 33 Attorney Alexander suggested that the wording just read, *The Applicant*
 34 *shall submit a structural report in accordance with Town Code Chapter*
 35 *170-129.6 (G). This certification shall not include limiting assumptions, and*
 36 *shall be subject to the review and acceptance of the Consulting Town*
 37 *Engineer*. The Board agreed to this change.

38
 39 Mr. Foley opined that the Board is correct in their handling of this
 40 application especially with Attorney Alexander’s diligence and the extensive

1 review of the Board. He stated that future resolutions should not have a
2 condition without a report from an engineer who performed a personal
3 inspection of the tower as this is a critical component of a renewal
4 application.

5
6 Mr. Goldenberg said that there should be a file stating when the renewals
7 are up.

8
9 Chair Currie indicated that the Board with the applicant's representative
10 will be reviewing Resolution No. 2013-09.

11
12 Mr. Foley asked that on Page 7 that *telecommunications facility pole of*
13 *Crown Castle USA, Inc.* be deleted from Lines 34 and 35. He requested
14 that the second WHEREAS paragraph on Page 6 be deleted.

15
16 Ms. Gannon asked that on Page 8 line 15 the words *by signing of the*
17 *Resolution* be deleted.

18
19 The Board reviewed and made the suggested corrections to Resolution No.
20 2013-09.

21
22 On motion by Chair Currie, seconded by Mr. Goldenberg, and unanimously
23 carried, the Board moved to determine that the renewal of the Amended
24 Special Permit for the existing approved Crown Castle USA, Inc. Tower is a
25 Type II Action and is therefore exempt pursuant to the New York State
26 Environmental Quality Review Act (SEQRA) §617.5 (c) (26) and §92-6.B.
27 (15) of the Code of the Town of Somers which states that license and
28 permit renewals where there will be no material change in permit conditions
29 or the scope of permitted activities is a Type II Action under SEQRA, and,
30 therefore, that no further action under SEQRA is required.

31
32 On motion by Chair Currie, seconded by Ms. Gannon, and unanimously
33 carried, the Board moved to approve waiving the Special Permit Public
34 Hearing for the Renewal of the Special Permit for Crown Castle USA, Inc.
35 pursuant to §170-129.6.G. of the Code of the Town of Somers.

36
37 On motion by Chair Currie, seconded by Mr. Goldenberg, and unanimously
38 carried, the Board moved to adopt Resolution 2013-09, as amended, and
39 Re-Granting of Conditional Amended Special Permit to Crown Castle USA,

1 Inc. Tower at 115 Route 202, Lincoln Hall School, Section 16.15, Block 1,
2 Lot 1.1 pursuant to §170-129.6.G. of the Code of the Town of Somers.

3

4 **FSEIS COMPLETENESS REVIEW AND DISCUSSION**
5 **ON THE DRAFT SEQRA FINDINGS STATEMENT**
6 **GRANITE POINTE SUBDIVISION**
7 **[TM: 27.05-3-2 & 5]**

8

9 Chairman Currie noted that the Board will be discussing the Final
10 Supplemental Environmental Impact Statement (FSEIS) and the draft
11 SEQRA Findings Statement.

12

13 Chair Currie acknowledged a letter from Peter Harckham and Michael
14 Kaplowitz of the Westchester Board of Legislators dated September 11,
15 2013 and an e-mail from Councilman Richard Clinchy dated September 11,
16 2013 and an e-mail from a resident homeowner.

17

18 Mrs. DeLucia said that numerous documents have been submitted this
19 evening and the Board does not have sufficient time to review them.
20 She suggested that a special Planning Board meeting on this project be
21 scheduled for Tuesday, September 24, 2013.

22

23 Timothy Allen, the applicant's engineer, noted that circumstances of the
24 application will not change and he feels the Board can review the Findings
25 Statement. He stated that the Board's focus should be on the FSEIS which
26 is the clean-up of the lead on the site and is not about the subdivision.
27 Engineer Allen said that the lead has to be cleaned up before the
28 subdivision can be approved. He stressed that the letters that were just
29 received are in reference to the subdivision and not the FSEIS.

30

31 Mr. Foley disagreed as most objections relate to the clean-up of the site.
32 He mentioned that there is concern about the clear cutting which will
33 happen in conjunction with the clean-up.

34

35 Engineer Allen clarified that the clear cutting in conjunction with the clean-
36 up of lead from the site was noted in the Environmental Impact Statement
37 (EIS).

38

39 Mr. Foley asked if the cleanup will take place if this application is
40 withdrawn.

1 Engineer Allen explained that the clean-up is under the Brownfield
2 Program. He said that the NYS Department of Environmental
3 Conservation (DEC) is going forward with the clean-up of the NYC
4 Department of Environmental Protection (DEP) property.

5
6 Mr. Foley asked if the Board has the authority to approve or disapprove
7 the clean-up of the site.

8
9 Engineer Allen said that the authority to approve or disapprove the clean-
10 up of the site is debatable but he feels that because this project has been
11 before the Board for many years that the Board has jurisdiction over the
12 clean up. He noted that since all the documents have been provided he
13 asked that the Board approve the Findings Statement.

14
15 Mr. Goldenberg commented that the Brownfields Program is dated 2010
16 and there have been storms that have taken place that may have changed
17 things and the lead may have moved around on the site.

18
19 Mr. Keane stated that the lead is still on the site and nothing has been done
20 about it. He explained that Paul Muessig, the Board's Consultant Senior
21 Scientist, can address all the technical issues.

22
23 Chair Currie noted that the Brownfield Cleanup Program Proposed
24 Decision Document is dated December 2012.

25
26 Consultant Engineer Barbagallo mentioned that there are some things
27 mentioned in the letters that have changed such as stormwater. He said
28 that the letters that were just received are mixing the issues of the cleanup
29 and the subdivision. He said that the Board should be thinking about which
30 items should be on hold until the final subdivision is being reviewed and
31 which ones are reflective of the FSEIS which is being reviewed now.

32
33 Consultant Engineer Barbagallo stated that the document has been
34 approved by the State under their regulations for the cleanup of the site.
35 He said that the Town has certain environmental permits that are triggered
36 by the work that is being done on their property. He mentioned that the
37 DEC has told the Somers Engineering Department that they are ready to
38 cleanup the DEP property and asked what they have to do. Consultant
39 Engineer Barbagallo stressed that the DEC, because they are a State

1 Agency, does not have to come to the Planning Board but he is trying to
2 get them to come to the September 24, 2013 Special Meeting.

3
4 Mr. Foley said that if the cleanup is going to happen why is the Board
5 talking about it.

6
7 Engineer Allen stated that Mr. Muessig submitted a letter stating that all the
8 comments have been addressed.

9
10 Engineer Allen explained that once the Final Supplemental Environmental
11 Impact Statement (FSEIS) is deemed complete there is a 10-day comment
12 period. He stated that the letters that were just received will have to be
13 addressed by the Board and the applicant.

14
15 Mr. Keane stated that there is a process that has to take place and if there
16 is proof that something has not been addressed and there are real issues
17 in respect to the content of the FSEIS that must be reviewed. He
18 mentioned that the letters that were received this evening are premature
19 and can be held and considered as part of the 10-day comment period.
20 Mr. Keane explained that a Stormwater Pollution Prevention Plan (SWPPP)
21 has to be submitted to the State, DEP and the Town so the issue of
22 phosphorous is being addressed.

23
24 Mr. Keane said that people are saying that the aesthetic and visual impact
25 will result from the removal of trees on the site. He indicated that the DEP
26 will be vested in preserving the trees in the buffer area because of the
27 functional purpose of preventing runoff from going into the reservoir. Mr.
28 Keane opined that the septic and stormwater issues have been dealt with
29 in the original Final Environmental Impact Statement (FEIS) or the FSEIS.

30
31 Engineer Allen mentioned that the DEP property is closer to the reservoir
32 than the applicant's property and the impact from the cutting of trees will be
33 greater.

34
35 Mrs. DeLucia mentioned a letter from Paul Muessig, Senior Scientist from
36 EA Engineering, that says *Based upon this final review, EA has concluded*
37 *that all comments have been adequately addressed and are covered either*
38 *in the Remedial Action Work Plan (RAWP) or in the Final SEIS.*

39

1 Mrs. DeLucia read from the Brownfield Cleanup document, *will the*
2 *prospective owners be notified of past problems and who will be*
3 *responsible if future problems arise from the contamination. The*
4 *Brownfields Cleanup Program is certified clean at the end of the*
5 *remediation project and it will not be necessary to give notice or deed*
6 *restrict property upon successfully remediation of the property.*

7
8 Engineer Allen explained that at the end of the process the property has to
9 be retested and the removal has to be recertified that it is clean. He said
10 his understanding of lead contamination is that it does not migrate.

11
12 Paul Muessig, senior scientist, said that the lead that is on the site is part of
13 the soil matrix with the highest concentration near the surface. He noted
14 that the main focus of the removal is the upper foot 1.5 and 2 feet of soil.
15 Scientist Muessig explained that there has to be sampling that confirms
16 that the target levels required by the Brownfield Program have been met
17 throughout the site before the site is certified clean. He mentioned that the
18 lead may have particles that have been moved by heavy rains but the site
19 is heavily wooded with a good turf layer on top with a lot of organic debris
20 that buffers the site. He said that there is not a lot of surface runoff.
21 Scientist Muessig indicated that no excavating is taking place on the
22 property so no material that is on the site will move significantly. Scientist
23 Muessig mentioned the stone wall that is the boundary between the DEP
24 property and the Granite Pointe property. He indicated that the highest
25 concentration of lead was at the base of the stone wall.

26
27 Mr. Keane said that there are leaf horizons where 50% of the volume is air
28 and the water will fill that up before it begins to move and it would be very
29 difficult to move the lead. He noted that the stone wall acts as a
30 stormwater basin barrier.

31
32 Engineer Allen stated that Mr. Goldenberg should review all three
33 documents that show all the safe guards.

34
35 Consultant Engineer Barbagallo noted that the only way the lead can be
36 mobile is if there are erosion gullies. He said he will walk the site before
37 the next meeting to see if there are any erosion gullies or significant
38 erosion that transported sediment in an area that is not part of the
39 remediation area.

40

1 Mrs. DeLucia reiterated that the Brownfield Cleanup Program (IV-3) states
2 it is certified clean at the end of the remediation project. The RAWP
3 requires post remediation testing for any remediation contaminants beyond
4 the limits of soil remediation.

5
6 Chair Currie noted that the clean up of the DEP property will have to meet
7 the same standards as the Granite Pointe site.

8
9 Engineer Allen noted that because of the lateness of the comments on the
10 Findings Statement he suggested that the Board review the memos that
11 just came in and be ready to discuss them at the next meeting.

12
13 Consultant Planner Brown explained that the Board wanted to get a head
14 start on the Findings Statement and that is the reason she submitted the
15 Findings for the Board's review. She noted that the Findings Statement has
16 to be deemed complete and then there will be a 10-day comment period
17 before the Findings can be adopted and then it will be circulated with a
18 Notice of Completion.

19
20 Consultant Planner Brown stressed that the FSEIS is only reviewing the
21 impacts from the lead and the proposed mitigation and clean-up. She noted
22 that the DEIS and the FEIS is also incorporated into the process. She said
23 that the description of the subdivision has to be in the proposed action
24 because it is part of the overall action that is taking place.

25
26 Engineer Allen indicated that preliminary approval has been granted on the
27 subdivision. He noted that while the property is being cleaned up the final
28 subdivision application will be reviewed by the Planning Board.

29
30 Ms. Gannon suggested that dates for a special meeting after the adoption
31 of the Findings be provided to the Board.

32
33 On motion by Chair Currie, seconded by Ms. Gannon, and unanimously
34 carried, the Board moved to schedule a Special Meeting for Tuesday,
35 September 24, 2013 at 7:30 P.M. at the Somers Town House.

36
37 On motion by Chair Currie, seconded by Mr. Goldenberg, and unanimously
38 carried, the meeting adjourned at 9:20 P.M. and the Chair noted that the
39 next Regular Planning Board meeting will be held on Wednesday,

1 October 9, 2013 and will be held at 7:30 P. M. at the Somers Town House
2 and there being no further business, the meeting is adjourned.

3

4

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6

Respectfully submitted,

7

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9

10

Marilyn Murphy

11

Planning Board Secretary

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13