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**SOMERS PLANNING BOARD MINUTES
SEPTEMBER 23, 2009**

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ROLL:

PLANNING BOARD

MEMBERS PRESENT: Chairman DeLucia, Mr. Keane,
Ms. Gerbino, Mr. Goldenberg,
Mr. Foley, Ms. Gannon and Mr. Knapp

ALSO PRESENT: Town Engineer Gagné
Town Planner Charney Hull
Town Attorney Holt-Cinque
Planning Board Secretary Murphy

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

Chairman DeLucia noted that Planning Board Secretary prepared and submitted the draft minutes of the August 26, 2009 Planning Board meeting for the Board’s consideration and approval.

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

Ms. Gannon stated that she had watched the August 26, 2009 meeting from home and explained that blue was the color used to describe the cell phone tower (T-Mobile Northeast, LLC). Ms. Gannon opined that the color should be blue/gray. She noted that the correct name of the color should be Rhombus No. 4051.

Chairman DeLucia asked Ms. Gannon if she would like this changed.

Ms. Gannon responded that it should not be changed because the record should reflect what people said.

1 Town Engineer Gagné stated that on page 11, line number 6 the
2 word “drain” should be inserted after the word “yard”.

3

4 The Chair asked if there was a motion to approve the August 26,
5 2009 draft minutes, as amended.

6

7 On motion by Mr. Goldenberg, seconded by Mr. Keane and
8 unanimously carried, the Board moved to approve the minutes of
9 August 26, 2009, as amended.

10

11 The Chair noted that the DVD of the August 26, 2009 Planning Board
12 meeting is made a part of the approved minutes and is available for
13 public viewing at the Somers Public Library and on the Town’s
14 website www.somersny.com. She said that the approved minutes
15 are also available for public review at the Planning and Engineering
16 office at the Town House.

17

18

19 **RICHARD A. AND JOANNA L. NASH AND HENRIETTA COHN**
20 **LOT LINE CHANGE**
21 **[TM: 27.10-1-20.1 AND 20.3]**

22

23 Chairman DeLucia stated that the first item on the agenda was the
24 Public Hearing on the application of Richard A. and Joanna L. Nash
25 and Henrietta Cohn for a Lot Line Change under §150-15
26 Abbreviated Approval Process of the Code of the Town of Somers for
27 property located a 5 Two Penny Lane and 82 Lake Road in the R-80
28 Residential Zoning District. She explained that the applicants
29 propose to adjust the property lines to a location between existing
30 buildings to conform ownership to actual use of building, namely, that
31 the stone building that is situate at the northeast corner of the Cohn
32 property would remain within the property line of the Nash property
33 who utilize the stone building for storage purposes, and that the
34 carport structure on the Cohn property will be demolished and the
35 driveway will be removed. Chairman DeLucia noted that this
36 application was last discussed at the August 26, 2009 Planning Board
37 meeting whereby, after a proper review, discussion and consideration
38 of the project having been had, the Board scheduled a Public Hearing
39 for this meeting and requested staff to prepare a draft resolution for
40 review and consideration for approval.

1 Chairman DeLucia asked Planning Board Secretary Murphy if, prior
2 to the Public Hearing, the legal notice was published, the adjoining
3 property owners notified and the property posted.
4

5 Planning Board Secretary responded that the notice was published in
6 the North County News on September 13, 2009 and the notice of
7 Public Hearing was mailed to the adjoining property owners on
8 September 13, 2009 and that a sign was posted on the site.
9

10 Chairman DeLucia stated that for the record, the Planning Board is in
11 receipt of the following: a letter dated September 17, 2009 received
12 on September 18, 2009 from the applicants' representative, Badey &
13 Watson, Surveying & Engineering, P.C. by Glennon J. Watson, L.S.
14 enclosing a short form EAF, revised subdivision plat and responses
15 to comments made by staff and the Board; a memo dated September
16 23, 2009 from Town Engineer Guy L. Gagné, P.E.; and a memo
17 dated September 18, 2009 from Town Planner Sabrina Charney Hull,
18 AICP.
19

20 Chairman DeLucia asked the applicants' representative to give a brief
21 presentation regarding the application for the benefit of the public.
22

23 Glennon Watson of Badey and Watson Surveying & Engineering,
24 P.C., the applicant's representative, stated that the Nash and
25 Henrietta Cohn seek to adjust the lot line that divides their property by
26 moving it to encompass approximately 3/10 of an acre in what is now
27 the Cohn property and encompass that into the Nash property. He
28 stated that the purpose of the lot line change is to incorporate the
29 building that's been used by the Nash onto their property, so that
30 when Mrs. Cohn sells the property the Nash will own the building that
31 they are using. Mr. Watson explained that there are four (4)
32 variances required, all of which have been granted and the
33 information was provided to the Board and is on the plat. He noted
34 that they have reviewed the Draft Resolution of Approval and that
35 they have one request, that is, rather than the abandonment of the
36 well, to have the plat state "subject to the approval of the Health
37 Department" so the applicant can talk to the Health Department and
38 one of the alternatives would be to take out the first two (2) laterals
39 and swap them to the furthest away lateral to increase the spacing

1 and that would give the required distance and to allow them to keep
2 the well which is a decorative well and has historic value.

3
4 Town Engineer asked Mr. Watson what the well was being used for.

5
6 Mr. Watson responded that it is used for irrigation and decoration and
7 he explained that it is not potable water.

8
9 Engineer Gagné asked if it is inter-connected to the house system.

10
11 Mr. Watson responded that it is not.

12
13 Engineer Gagné stated that normally the Health Department requires
14 that any additional wells that are not being used be abandoned.

15
16 Mr. Watson stated that Mr. Gagné may be correct. However, he
17 explained that it is a Health Department matter and they'd like to deal
18 with the Health Department to try to convince them to keep the well
19 and if not then they will abandon the well.

20
21 Mr. Goldenberg asked if this is the same well that was talked about
22 closing it because of a safety issue. He asked Mr. Watson if he
23 believed it is a safety issue by keeping the well open.

24
25 Mr. Watson explained that what makes it a safety issue is that the
26 well is located just west of the house and it's only 87 feet from the
27 well to the septic field. He noted that the safety issue is that it's
28 lacking 13 feet. Mr. Watson suggested that one of the options is to
29 take out 2 of the laterals and add to the lower end to gain an extra 12
30 feet.

31
32 Mr. Knapp opined that the Health Department will not allow the
33 applicant to have 2 wells on the property. Mr. Watson responded that
34 may be correct and noted that they would like the opportunity to make
35 the application to the Health Department. Mr. Knapp stated that he'd
36 like to see documentation from the Health Department stating that
37 they approve of it. Mr. Watson explained that he is asking to make
38 Health Department approval a condition. He explained that he
39 cannot file the map without going to the Health Department.

40

1 Mr. Keane stated that in the draft Resolution that the Board make it a
2 condition that the applicant abandon the well or get Health
3 Department approval.

4
5 Chairman DeLucia asked Town Engineer Gagné to summarize his
6 memo to the Board for the benefit of the public.

7
8 Town Engineer Gagné stated that the conditions of his memo dated
9 August 20, 2009 have been addressed.

10
11 Town Planner Hull stated that she provided the Board with a Draft
12 Resolution.

13
14 Chairman DeLucia noted that according to Town Planner Hull's
15 memo she stated that she has no objection to the Planning Board
16 waiving the application process for final subdivision plat submission.

17
18 Town Planner Hull noted that Chair DeLucia is correct and that it is
19 an abbreviated application provided there were no public objections.

20
21 Chairman DeLucia asked if there was anyone from the public who
22 wished to be heard and no one responded.

23
24 Chairman DeLucia asked if staff or members of the Planning Board
25 had any objection to closing the Public Hearing. Planning Board and
26 staff had no objection to closing the Public Hearing.

27
28 Mr. Knapp asked with regards to the Short Environmental
29 Assessment Form (EAF), item #8, "*Will the proposed action comply*
30 *with existing zoning or other restrictions?*" and Mr. Watson opined
31 that the existing well would be a restriction. Mr. Knapp suggested
32 that that section of the EAF be revised.

33
34 Mr. Watson stated that he would add the well to item #8 of the EAF.
35 Chairman DeLucia asked if there was a motion to close the Public
36 Hearing.

37
38 On motion by Mr. Keane, seconded by Mr. Goldenberg, and
39 unanimously carried, the Board moved to close the Public Hearing.

40

1 Chairman DeLucia asked if there was a consensus of the Board to
 2 waive the application for final subdivision plat submission, review and
 3 action in accordance with §150-15.I. Abbreviated Approval Process of
 4 the Code of the Town of Somers.

5
 6 On motion by Mr. Keane, seconded by Mr. Goldenberg, and
 7 unanimously carried, the Board moved to waive the application for
 8 final subdivision plat submission, review and action in accordance
 9 with §150-15.I. Abbreviated Approval Process of the Code of the
 10 Town of Somers.

11
 12 Chairman DeLucia stated that they will now proceed to the draft
 13 conditional resolution prepared by Town Planner Hull for comment
 14 and consideration. She asked Town Planner Hull to lead the Board
 15 with the contents of the resolution for any comments from members
 16 of the Board.

17
 18 Town Planner Hull stated that the applicant's representative Glennon
 19 Watson submitted a memo dated September 22, 2009 with some
 20 corrections that he requested to the draft Resolution. She explained
 21 all of the corrections have been incorporated in the draft that the
 22 Planning Board received. She noted that it's a standard resolution
 23 regarding abbreviated approval, highlighting page 2 of 6, the last
 24 three (3) WHEREAS's:

- 25
- 26 • **WHEREAS**, the Zoning Board of Appeals at their July 21, 2009
 27 meeting granted Resolution #BZ07B/09 which provides for
 28 three area variances including a side yard variance of 5.8 feet
 29 for the wood shed, a rear yard variance of 8.6 feet for the wood
 30 shed, a side yard variance for the garage consisting of 8.2 feet,
 31 and an 8.6 foot side yard variance for the stone building. An
 32 area variance for the accessory building located in the front
 33 yard was also granted; and
 - 34
 - 35 • **WHEREAS**, the well house located to the west of the dwelling
 36 on the Nash property Section 27.10, Block 1, Lot 20.3 will be
 37 abandoned; and

38

- 1 • **WHEREAS**, both properties will maintain their existing access
 2 (Cohn property off of Lake Road; Nash property off of Two
 3 Penny Lane); and
 4

5 Town Planner Hull explained that the **WHEREAS** regarding the well
 6 house will be amended to read "**WHEREAS**, the well house, housing
 7 a non-potable water supply, located to the west of the dwelling on the
 8 Nash property Section 27.10, Block 1, Lot 20.3 will be approved by
 9 the Westchester County Health Department or will be abandoned;
 10 and"

11
 12 Town Planner Hull noted that on page 5 of 6, Conditions Required
 13 Prior to Signing of Plat, there are currently two (2) conditions. 1. *The*
 14 *existing well house located on the Nash property Section 27.10 Block*
 15 *1 Lot 20.3 shall be abandoned and should be so noted on the plan.*
 16 She explained that this shall be amended to read "*The existing well*
 17 *house, housing a non-potable drinking water supply, located on the*
 18 *Nash property Section 27.10 Block 1 Lot 20.3 shall either be*
 19 *approved by the Westchester County Health Department's or shall be*
 20 *closed in accordance with the rules and regulations of the*
 21 *Westchester County Health Department. The applicant shall provide*
 22 *documentation regarding the Westchester County Health*
 23 *Departments action"; and 2. The existing driveway associated with*
 24 *the carport on the Cohn property Section 27.10 Lot 1 Block 20.1 and*
 25 *crossing the northern property line of the Nash property Section*
 26 *27.10 Lot 1 Block 20.3 should be removed should be eliminated*
 27 *according to Town Engineer Gagné because it is noted on the plat.*
 28

29 Town Engineer Gagné suggested adding that the well be limited use
 30 for landscaping or non-potable use.

31
 32 Town Planner Hull suggested adding to page 2 of 6 "**WHEREAS**, *the*
 33 *well house, housing a non-potable water supply, located to the west*
 34 *of the dwelling on the Nash property Section 27.10, Block 1, Lot 20.3*
 35 *will be approved by the Westchester County Health Department or*
 36 *will be abandoned; and".*

37
 38 Town Engineer Gagné suggested that on page 4 of 6 the fourth
 39 **WHEREAS**, the words "one acre" should be changed to "5,000
 40 square feet".

1 Chairman DeLucia asked if there was a consensus of the Board to
2 approve the Resolution, as amended, for the Chairman’s signature.

3
4 On motion by Mr. Keane, seconded by Mr. Goldenberg, and
5 unanimously carried, the Board moved to approve Resolution No.
6 2009-14 as amended Granting of Conditional Preliminary and Final
7 Subdivision Approval to Richard A. Nash and Joanna L. Nash and
8 Henrietta Cohn for a Lot Line Change following the Abbreviated
9 Approval Process under §150-15 of the Code of the Town of Somers,
10 for the Chairman’s signature.

11
12 **ST. JOSEPH’S CHURCH AND JOHN F. KENNEDY HIGH**
13 **SCHOOL CAMPUS**
14 **[TM: 28.15-1-8, 9, 10]**

15
16 Chairman DeLucia stated that this is the Public Hearing on the
17 application of the Roman Catholic Archdiocese of New York for
18 Amended Site Plan and permits for Stormwater Management and
19 Erosion and Sediment Control, Tree Preservation, Steep Slopes,
20 Wetlands and Groundwater Protection Overlay District. She
21 explained that the project involves the relocation and construction of
22 a new Church of Saint Joseph and relocation of athletic fields to a
23 portion of the 58.3 acre John F. Kennedy High School Campus
24 located at 54 Goldens Bridge Road, NYS Route 138, in an R-120
25 Residential Zoning District. This application was last discussed at the
26 August 26, 2009 Planning Board meeting whereby site plan issues
27 and details were discussed and the Board then moved to schedule a
28 Public Hearing for the September 23, 2009 meeting.

29
30 Chairman DeLucia asked Planning Board Secretary Murphy if prior to
31 the Public Hearing, was the legal notice published, the adjoining
32 property owners notified and the property posted.

33
34 Planning Board Secretary Murphy responded that the notice was
35 published in the North County News on September 13, 2009 and the
36 notice of Public Hearing was mailed to the adjoining property owners
37 on September 13, 2009 and that a sign was posted on the site on
38 September 13, 2009.

39

1 Chairman DeLucia stated for the record that the Planning Board is in
2 receipt of the following: a letter dated September 10, 2009 from
3 applicant's representative DCK-MSA Architecture by Drazen
4 Cackovic, AIA, Principal, submitting revised drawings and
5 documentation with responses to memoranda from the Town
6 Engineer; a second memo dated September 18, 2009 from Town
7 Engineer Gagné with items to be addressed regarding the
8 Stormwater Pollution Prevention Plan Report; a letter dated
9 September 15, 2009 from Westchester County Deputy Commissioner
10 Edward Buroughs, AICP, regarding site plan alternatives; a memo
11 dated September 22, 2009 from Town Planner Sabrina Charney Hull,
12 AICP, with her review comments and recommendation; and a memo
13 dated September 23, 2009 from the Building Inspector retracting his
14 memo dated August 26, 2009.

15

16 Chair DeLucia explained the manner in which the Public Hearing
17 would be conducted. She stated that the applicant is invited to make
18 a brief presentation on their recent submission for the benefit of the
19 public, the Planning Board's staff is requested to summarize their
20 memoranda for the benefit of the public, and then the Board would
21 accept oral testimony of witnesses. The Chair further explained that
22 everyone will have an opportunity to be heard and those members of
23 the public wishing to testify could do so for a maximum of 3 minutes
24 and the Chair asked that the public address comments directly to the
25 Board, not the public. Chairman DeLucia stated that it is her
26 responsibility as chairman to conduct the hearing in a fair manner and
27 with decorum.

28

29 Chairman DeLucia asked the applicant's representative to give a brief
30 presentation on their recent submission with any additional
31 information for the benefit of the public.

32 Neil Alexander, applicant's attorney, stated that the Planning Board
33 took a major milestone back in June of 2009 when the Planning
34 Board adopted a SEQRA Negative Declaration relative to the
35 environmental review, essentially saying that this project posed no
36 significant adverse environmental impacts. He explained that the
37 Planning Board expeditiously moved the application to a Public
38 Hearing.

39

1 Attorney Alexander explained that the project is made up of two (2)
2 components: one, is the relocation of ball fields at the John F.
3 Kennedy High School which has to do with area provided in the back
4 of the school with the soccer field and since the SEQRA Negative
5 Declaration was adopted there has been a reorientation of the ball
6 field to address a few other issues; and two, the second and larger
7 part of the project is the creation of St. Joseph's Church,
8 approximately 800 seat church, there has been dialogue as outlined
9 in the Town Planner's most recent memo about the 400 parking
10 spaces and about addressing further stormwater concerns beyond
11 those that were addressed in SEQRA by taking some of the spaces,
12 approximately 75 of the 400, and making a pervious type style
13 parking area in order to further alleviate any concerns relative to
14 stormwater quality or quantity.

15

16 Attorney Alexander asked the audience who was there in support of
17 the project. He asked that if a person was there in support of the
18 application to not speak which would just take up time because there
19 was further business to take care of beyond just showing support. He
20 noted that if someone in the audience was not in support of the
21 project, he was not trying to stifle anyone but is trying to close the
22 Public Hearing as quickly as possible.

23

24 Attorney Alexander asked the audience to raise their hand if they
25 were in support of the project. He thanked the audience and
26 addressed the Board stating that the people wanted the Board to
27 know that they are in support of the project.

28

29 Chairman DeLucia stated that there may be people that would like to
30 speak who have comments regarding the project.

31

32 Attorney Alexander agreed that there may be people that are not in
33 support of the project and he explained that he did not ask people to
34 raise their hands to create a "chilling effect". He explained that he
35 just wanted to not have the Board to have to sit through numerous
36 comments that are in favor of the project.

37

38 Chairman DeLucia asked if there was anyone in the audience that
39 would like to speak.

40

1 Bonnie Cohen, residing at 70 Route 138, stated that her property is
2 adjacent to the proposed St. Joseph Church. She noted that she has
3 been waiting to speak and has sent numerous letters outlining her
4 concerns many of which have been addressed. Ms. Cohen stated
5 that back in March she was invited to John F. Kennedy High School
6 to meet with members of the Archdiocese. She noted that she was
7 shown the plans for the church (which she posted on the easel) and
8 the cost of the church would be approximately \$15 million and stated
9 she mentioned the figure only to put into context how small her
10 request is. Ms. Cohen stated that at the meeting in March she voiced
11 her concern about the depreciation of her property value and was told
12 that having a church next door would not cause a reduction in her
13 house's value. Ms. Cohen opined that having a parking lot next to
14 her property would change the country setting of her property; her
15 view would change completely with an increase of noise and light,
16 especially on weekends and would also lose privacy. She stated
17 that the Board and the Archdiocese have put in place many wonderful
18 landscaping ideas that would lessen the impact of the scheduled 400
19 spots. Ms. Cohen turned the Board's attention to the plan she posted
20 on the easel to show them her concerns that still exist. She added
21 her property to the St. Joseph's plan to show how the two relate to
22 each other. Ms. Cohen pointed out to the Board the location of her
23 house, her backyard, the entrance with a circular drive, the front of
24 her house and the back of her house. She noted the deciduous trees
25 that are staying and pointed out the proposed evergreens and
26 Norway spruces.

27

28 Chairman DeLucia asked Ms. Cohen how many feet there is between
29 the back of her house and the property line.

30

31 Ms. Cohen stated that she really does not know but she can find out.
32 Town Engineer Gagné opined that it is approximately 120-130 feet.

33

34 Ms. Cohen stated that on the present plan two (2) existing deciduous
35 trees will remain, evergreens, Norway spruce are planted on both
36 sides of the opening created by these trees and she noted that
37 although it looks small on the drawing the space between the
38 evergreens is actually 60 feet that is opposite her backyard and
39 would give a direct sight line to the cars. She asked the Board to
40 remember that all existing shrub and brush are scheduled for removal

1 and this would have an effect of opening up the view. She requested
2 that shrubbery be planted on the periphery of these two trees
3 adjacent to the parking lot, a combination of evergreen with some
4 deciduous. She noted that she is more than happy to meet with the
5 Archdiocese to explain her ideas more fully and is hopeful that this
6 addition would help to block headlights, view of cars, and protect her
7 country setting.

8
9 Ms. Cohen stated that her second request is not elaborate or
10 expensive and it concerns the view from her circular drive. She noted
11 that her land in the front of her house sits considerably higher than
12 the Kennedy property and requested a continuation of the planned
13 row of Norway spruce for an additional 200-feet although it would not
14 have an immediate effect of blocking the view of the parking lot
15 because of the extra height, however in time she opined that this
16 block would be accomplished. She suggested 12-foot trees in a
17 zigzag pattern for a naturalized effect. Ms. Cohen stated she is
18 looking to her future and trying to avoid the possible reduction in her
19 property value as a result of a parking lot view of her front door. She
20 opined it would be a terrible view as she pulled up to her house
21 especially in the winter when there is not a leaf in sight. She noted
22 that the Town Engineer can attest that she has already put in some
23 shrubs on her own land with the hopes of blocking the view. Ms.
24 Cohen opined that these are not major requests and in light of the
25 overall scope and cost of the project, she opined her requests should
26 be approved and adjustments made to the existing landscape plan.
27 She also questioned if construction is permitted on weekends and if
28 there are specific hours when work is allowed. Ms. Cohen thanked
29 the Board for their consideration of her requests and for helping make
30 Somers an attractive place to live.

31
32 Ms. Gerbino asked Ms. Cohen to point out on the plan where she put
33 her plantings to lessen the impact.

34
35 Ms. Cohen pointed out on the plan where she put in a row of forsythia
36 and at the top of the drive the land that goes higher she planted
37 andromeda.

38
39 Ms. Gerbino asked Ms. Cohen to show her with her hand how high
40 the forsythia is.

1 Ms. Cohen explained that the forsythia is sparse and Ms. Gerbino
2 explained she is familiar with forsythia and know how they grow. Ms.
3 Cohen showed the Board with her hand how high the forsythia is
4 (approximately breast height).

5
6 Ms. Gerbino asked if the forsythia were that height this year. Ms.
7 Cohen responded yes.

8
9 Mr. Goldenberg asked if Ms. Cohen met with a representative of the
10 church to discuss her concerns. Ms. Cohen responded that she did
11 meet with Mr. Casserella.

12
13 Mr. Goldenberg asked if the planting plan was discussed. Ms. Cohen
14 stated it was discussed but she has not received a response to her
15 concerns.

16
17 Attorney Alexander stated that they will figure out how to
18 accommodate Ms. Cohen's concern with regard to plantings.

19
20 Chairman DeLucia asked Town Planner Hull to summarize her
21 memoranda for the benefit of the public.

22
23 Town Planner Hull explained that she had three comments; the first
24 related to building coverage. Town Planner Hull pointed out that the
25 Board has a copy of the Building Inspector's September 23, 2009
26 memo whereby he retracted his memo dated August 26, 2009
27 regarding his determination. She noted that the church being a
28 principal building combined with the school which is also a principal
29 building exceed the maximum allowable building coverage of 4%.
30 Town Planner Hull explained that the total of the two buildings
31 together is 4.6% as such the Board has the ability to make a positive
32 recommendation to the Zoning Board of Appeals so the applicant
33 may seek a variance for the exceeded building coverage. Town
34 Planner Hull stated that she sent the Planning Board a draft letter to
35 the Zoning Board of Appeals which has since been revised due to
36 Planning Board members' comments. She noted that this memo is
37 for the Board's consideration so that the applicant may go to the ZBA
38 with a recommendation from the Planning Board.

39

1 Town Planner Hull stated that her second comment was in relation to
2 the parking. She noted at the last meeting there was a lot of
3 discussion regarding the 400 parking spaces and at the end it was
4 determined that the applicant would provide 75 pervious parking
5 spaces and 325 impervious parking spaces. She noted that the plan
6 submitted demonstrated 71 pervious parking spaces and 329
7 impervious parking spaces. Town Planner Hull stated that the
8 Planning Board should be aware of that change so that they could
9 approve of the change.

10
11 Town Planner Hull stated that her third comment was that she had no
12 objection to the Board closing the Public Hearing provided that there
13 were no outstanding issues raised during the Public Hearing.

14
15 Chairman DeLucia asked that Town Engineer Gagné please
16 summarize his memoranda for the benefit of the public.

17
18 Town Engineer Gagné stated that his September 17, 2009 memo is a
19 summary of the majority of the comments made over the review
20 period. He noted that the first three pages have generally been
21 addressed and on the fourth page most of the items have addressed.
22 He noted that there were a couple of minor items that still need to be
23 addressed. He explained that the dry hydrant tank manhole access
24 has to be detailed; details of the temporary sediment control features
25 must be provided; the posted elevation in the infiltration basin must
26 be corrected.

27
28 Town Engineer Gagné stated that his September 18, 2009 memo
29 deals with the Stormwater Pollution Prevention Plan, he noted that
30 there were minor items in the Notice of Intent that need to be
31 addressed; Tab 4 page 11/24: Construction Sequence Section -
32 include the installation of temporary sediment practices; Tab 4 page
33 4/24 (and on plan- C-10): Incorporate the temporary sediment basins
34 proposed in the 9.0 Ac disturbance associated w/ the church area
35 construction be broken down into smaller components than the
36 restrictive 5 Ac. areas; and all other work areas as needed; provide a
37 copy of the contractor's preliminary certification for review; include the
38 MS4 SPPP acceptance form in the report; provide language about
39 the permanent water quality feature's maintenance schedule and
40 responsible party. He said that the required agreements between the

1 church and or the school must be prepared for review. The approved
 2 document shall be filed with the County Clerk as a deed restriction on
 3 the property; the applicant shall have a qualified inspector on site
 4 during construction to conduct site inspections and document the
 5 effectiveness of all erosion and sediment control practices every
 6 seven days; add such a note to the site plan; on sheet C-10 the last
 7 sentence of the notes must be corrected the town is not responsible
 8 for the management of the permanent maintenance program.

9
 10 Chairman DeLucia asked if there was anyone else who would like to
 11 be heard on the application.

12
 13 Ms. Cohen spoke again and asked what will happen if the only way to
 14 accommodate the shrubs is if the applicant loses 2 or 3 parking
 15 spaces.

16
 17 Town Engineer responded that the solution will be part of the
 18 Resolution and it is something that will not be resolved at a Planning
 19 Board meeting.

20
 21 Chairman DeLucia stated to Ms. Cohen that because she requested
 22 for 200 feet of her property to be shielded, it doesn't necessarily
 23 mean that it will happen. She explained that decision will be between
 24 the applicant and Ms. Cohen.

25
 26 Ms. Cohen asked if it is up to the Board.

27
 28 Town Engineer Gagné responded that ultimately the Board will set
 29 the guidelines but it will be a Board action and will be included as part
 30 of the Resolution on how the landscaping between the properties will
 31 be addressed.

32
 33 Chairman DeLucia asked, again, if there was anyone else that would
 34 like to be heard and no one responded. She stated that everyone
 35 present is in support of the application.

36
 37 Ms. Gerbino stated that there were 67 hands that were up when Mr.
 38 Alexander asked who was present to support the application.

39

1 Ms. Gannon stated for the record that there were an overwhelming
2 number of hands shown that were raised in support of the application.
3 Al Meyer, resident of 164A Heritage Hills, stated that everyone in the
4 audience was present to support the church and hoped that the
5 application be approved.

6
7 Chairman DeLucia explained to Mr. Meyer that the Planning Board
8 has to go through a process and the Public Hearing is part of the
9 process.

10
11 Chairman DeLucia asked if staff or the Board members had any
12 objection to closing the Public Hearing. Neither staff nor the Board
13 members had any objection to the Planning Board closing the Public
14 Hearing.

15
16 Chairman DeLucia asked if there was a motion to close the Public
17 Hearing and extend a 10-day written comment period on the
18 application of the Roman Catholic Archdiocese of New York.

19
20 On motion by Mr. Goldenberg seconded by Ms. Gannon and
21 unanimously carried, the Board moved to close the Public Hearing
22 and extend a 10-day written comment period on the application of the
23 Roman Catholic Archdiocese of New York.

24
25 Chairman DeLucia stated that Town Planner Hull has commented
26 that the current revised plans demonstrate 71 pervious parking
27 spaces and 329 impervious spaces. She asked if the Board agreed
28 with the change.

29
30 Drazen Cackovic, principal of the DCAK-MSA Architecture, explained
31 that at the last meeting the approximate number of 75 pervious
32 parking spaces was discussed, however, the parking spaces along
33 the northerly and easterly perimeter were declared as pervious
34 parking spaces which came out to 71 spaces.

35
36 Mr. Keane stated that he didn't recall setting a specific linear distance
37 within which all the pervious parking spaces would exist and
38 questioned why the number was changed from 75 to 71.
39 Architect Cackovic stated that they will accommodate the 75 spaces.
40

1 Town Engineer Gagné explained that all of the spaces on the
 2 northerly and easterly perimeter of the property are generally where
 3 the stormwater flow will come across and enter the swale. He opined
 4 that is a good space to locate the pervious spaces.

5
 6 Attorney Alexander explained that they followed the logic from the
 7 stormwater management as opposed to the number, which didn't turn
 8 out to be as high, however they are more than willing to create 4
 9 more pervious spaces.

10
 11 Mr. Keane asked if the parking lot is being angled away from the
 12 center towards the perimeter. Architect Cackovic responded yes.

13
 14 On motion by Mr. Keane, seconded by Mr. Goldenberg, and
 15 unanimously carried, the Board moved to approve 329 impervious
 16 parking spaces and 71 pervious parking spaces in accordance with
 17 the drawings revised through August 28, 2009.

18
 19 Chairman DeLucia stated that Town Planner Hull has recommended
 20 that the applicant be referred to the Zoning Board of Appeals (ZBA)
 21 with a positive recommendation for a variance for building lot
 22 coverage at the ZBA Tuesday, October 20, 2009 meeting. The Chair
 23 stated that Town Planner Hull has given the Board a recently revised
 24 draft letter to the ZBA for the Board's review. She asked if there were
 25 any comments from members of the Board.

26
 27 Town Planner Hull pointed out that it is the most recent draft.

28
 29 Mr. Goldenberg stated that he read the most recent draft and he
 30 opined that the ZBA has their meeting on October 20, 2009 and
 31 asked if Chairman DeLucia or Town Planner Hull contact Chairman
 32 Marx of the ZBA and see if there can be an expedited hearing to
 33 move the application along quickly.

34
 35 Chairman DeLucia asked Town Planner Hull to contact Chairman
 36 Marx.

37
 38 Chairman DeLucia asked the Board if there were any comments on
 39 the most recent draft.

40

1 Ms. Gannon stated that she liked the changes.

2

3 Chairman DeLucia explained that the Planning Board highly
4 recommends the variance and would fully support the ZBA in issuing
5 the applicant's request for a variance mentioning the
6 recommendation was discussed and approved at their September 23,
7 2009 meeting.

8

9 Attorney Alexander stated that they have a slightly different principal
10 building coverage than the 4.6% using the same analysis.

11

12 Architect Cackovic stated that the school and the entire proposed
13 building (church) are both considered a principal building, and then
14 they came up with 5.05%.

15

16 Town Planner Hull stated that the 4.6% was based off of the plans
17 that were submitted in the office. She explained that the 5.05% is the
18 revised number based on the recent discussion with the applicant.

19

20 Mr. Keane asked if it was 98,000 square feet for the school and
21 19,000 square feet for the footprint of the church. Architect Cackovic
22 responded that it is 30,000 square feet for the footprint of the church.

23

24 Chairman DeLucia asked Town Engineer Gagné if this number
25 reflects the recently submitted drawings or was this a change.

26

27 Town Engineer Gagné asked Architect Cackovic if the table reflects
28 the new numbers. Architect Cackovic responded yes.

29 Town Planner Hull explained that the draft memo did not include the
30 provisions that Architect Cackovic submitted today. She stated that
31 neither staff nor the Board has seen the revisions.

32

33 *At this point Mr. Foley joined the meeting.*

34

35 Chairman DeLucia asked if there was a consensus of the Board that
36 the applicant be referred to the ZBA with a positive recommendation.
37 Town Engineer added with a memo, as revised.

38

39 On motion by Ms. Gerbino, seconded by Mr. Keane, and
40 unanimously carried the Board moved to refer the applicant to the

1 Zoning Board of Appeals with a positive recommendation from the
 2 Planning Board that the requested variance be granted.

3
 4 Chairman DeLucia explained that the ZBA will have a meeting
 5 Tuesday, October 20, 2009, the night before the Planning Board
 6 meeting, when they will address the variance. The Chair noted that
 7 the Planning Board has given the ZBA a positive recommendation to
 8 grant the variance and noted that the next day the Planning Board will
 9 act upon the ZBA approval.

10
 11 Chairman DeLucia asked if there was a consensus of the Board to
 12 direct staff to prepare a draft conditional resolution for the Board's
 13 decision for approval at a meeting to be held on Wednesday, October
 14 21, 2009 at 7:30 p.m. at the Town House.

15
 16 On motion by Mr. Goldenberg, seconded by Ms. Gerbino, and
 17 unanimously carried, the Board moved to direct staff to prepare a
 18 draft conditional resolution for the Board's decision for approval at its
 19 next meeting.

20
 21 Chairman DeLucia thanked everyone for attending and giving their
 22 testimony. She noted that the Board will review all of the information
 23 and materials, together with the decision by the ZBA as to its action
 24 on the requested variance and, as previously mentioned, the
 25 Planning Board will then make its decision for approval at it's meeting
 26 on Wednesday, October 21, 2009.

27
 28 **T-MOBILE NORTHEAST, LLC (OMNIPOINT COMMUNICATIONS,**
 29 **INC) TOWNE CENTRE AT SOMERS, 325 ROUTE 100**
 30 **TM: 17.15-1-13**

31
 32 Chairman DeLucia noted that she is switching agenda items 3 and 4.
 33 She stated that agenda item number 4 is the decision of the Planning
 34 Board to consider a Resolution of Approval on the application of T-
 35 Mobile Northeast, LLC, formerly known as Omnipoint
 36 Communications, Inc., for amended Site Plan Approval, Special
 37 Exception Use Permit for activity within the Groundwater Protection
 38 Overlay District and Wetland Permit to erect a wireless
 39 telecommunications facility at the Towne Centre located at 325 Route
 40 100 in the Neighborhood Shopping (NS) Zoning District. She

1 explained that this application was last discussed at the August 26,
2 2009 Planning Board meeting whereby the Board directed staff to
3 prepare a draft Resolution of Approval for the Board's review with a
4 condition that a determination regarding the pole coloration pattern be
5 made at a scheduled November 21, 2009 site walk, together with
6 other conditions.

7
8 Chairman DeLucia stated that for the record, the Board is in receipt of
9 the following: a memo dated September 18, 2009 from Town Planner
10 Hull attaching draft Resolution No. 2009-13 for the Board's review,
11 consideration and comment; and a memo dated September 23, 2009
12 from Town Engineer Gagné.

13
14 Chairman DeLucia asked if the applicant's representative reviewed
15 the draft Resolution and if they had any comments or questions.

16
17 Robert Gaudio, applicant's attorney, stated that he had no
18 objection to the draft Resolution or to Town Engineer Gagné's memo.
19 He stated that his goal was to select the color(s) on November 21,
20 2009.

21
22 Mr. Keane asked if there should be a time element on page 7 of 10
23 with regards to visual aspects.

24
25 Mr. Gaudio opined that would be helpful.

26
27 Town Planner Hull stated that on page 7 of 10 under **Conditions of**
28 **Site Plan Approval related to Town of Somers Zoning Board of**
29 **Appeals Area Variance and Special Use Permit** number 1. Visual
30 Aspects, is a reiteration of what the Zoning Board of Appeals (ZBA)
31 approved so she opined that it should not be changed.

32
33 Mr. Keane stated that the Planning Board is not changing the ZBA's
34 approval because the ZBA did not approve of any of the Planning
35 Board's purview.

36
37 Mr. Gaudio suggested that the time element be added to page 9 of
38 10 under **On-going Conditions Required After Signing of Site**
39 **Plan** number 1.

40

1 Town Planner Hull stated that there were changes to the Draft
2 Resolution that she received via email from the Board: on page 4 of
3 10 a new WHEREAS clause second to the bottom was
4 recommended to be added by Mr. Foley which will state:

5
6 **WHEREAS**, on August 7, 2009 the Town of Somers Planning
7 Board received notice that Omnipoint Communications, Inc. is a
8 wholly owned subsidiary of T-Mobile USA. Inc. and that all
9 pending applications by Omnipoint Communications, Inc. have
10 been conveyed to and assumed by T-Mobile Northeast, LLC.
11 and that T-Mobile Northeast, LLC is now the applicant
12 regarding this application; and

13
14 Town Planner Hull noted that on page 6 of 10 two new WHEREAS
15 clauses will be added to the top of the page which will state:

16
17 **WHEREAS** the applicant offered \$1,045.00 to the Town of
18 Somers for use towards water quality improvements as off site
19 wetland mitigation pursuant to §167-9 of the Code of the Town
20 of Somers;

21
22 **WHEREAS**, the sum of the off site wetland mitigation is based
23 on the cost of not installing the infiltration system included in
24 this action;

25
26 Town Planner Hull noted that on page 6 of 10 towards the bottom
27 another WHEREAS clause will be added which will state:

28
29 **WHEREAS**, on August 26,2009 the owner of the Towne Centre
30 Shopping Center, Urstadt Biddle Properties Inc., approved of T-
31 Mobile's amended site plan as last revised on August 25, 2009
32 and approved of utilizing the existing four parking spaces for
33 screening and land banking them if they are to be needed in the
34 future; and

35
36 Town Planner Hull noted that a condition be added on page 9 of 10
37 under **Conditions Required Prior to Signing of Site Plan:**
38 That the \$1,045.00 payment for the one time off-site improvement
39 mitigation amount be paid.
40

1 Mr. Foley asked Town Engineer Gagné what happens to that money
2 when monies are paid for off-site mitigation when on-site mitigation is
3 not possible.

4
5 Town Engineer Gagné responded that this is the first such offer that
6 he is aware of. He stated he will send a memo to the Town Board to
7 set aside the money for the Highway Department's budget, not the
8 General Fund.

9
10 Mr. Keane opined that the money be segregated and that the money
11 be dedicated to a particular site, which he suggested property on Van
12 Renssalaer and that's where it shall be applied.

13
14 Mr. Foley stated he is concerned whether the off-site mitigation
15 practices provided for on the plan can be accomplished by a
16 payment. He stated that he would feel more comfortable if he knew
17 the monies in question will be devoted to an environmental purpose.
18 Mr. Foley stated he interprets the Somers Town Code to read off-site
19 mitigation to be a neighboring property not property miles away from
20 the site.

21
22 Attorney Cinque-Holt mentioned that she will talk to Town Attorney
23 Baroni to get more information on other Towns that have used
24 monies for off-site mitigation.

25
26 Ms. Gerbino stated that she had the same reaction as Mr. Foley.

27
28 Mr. Foley stated he has studied the code and opined that it is less
29 than clear whether or not this activity is permitted. He opined that it
30 should be clarified and he stated he would feel better about it if he
31 knew the money would be segregated and go towards an
32 environmental purpose.

33
34 Town Engineer Gagné stated that his intent to make sure the money
35 is deposited in an account for the Highway Department and will
36 mention that it should be used on the Van Renssalaer site.

37
38 Mr. Keane said that looking at the code he doesn't see where it
39 creates proximity where the remediation takes place.

40

1 Mr. Foley stated that if you look at §167-9.B.5 which is the provision
 2 specifically dealing with articulating the terms of off-site mitigation
 3 practices, what it clearly is envisioning is something on an adjacent
 4 property or something that while it's not on the site is nevertheless
 5 approximate to the sight so that a direct benefit is created, as
 6 opposed to what is proposed here, where money is paid to go
 7 towards an environmentally purpose which may be a distance away
 8 from the site.

9
 10 Mr. Keane stated that he does not see how it says mitigation types.
 11 Mr. Keane read from the code "*Mitigation may take the following*
 12 *forms, either singularly or in combination, for disturbances in*
 13 *wetlands and wetland buffers*" and noted that wetlands are defined as
 14 streams.

15
 16 Mr. Foley noted that according to the code there are two ways to
 17 mitigate disturbance in a wetland buffer:

- 18
 19 *[1] Implementation of preventative practices to protect the natural*
 20 *condition and functions of the wetland; and/or*
 21 *[2] Restoration or enhancement (e.g., improving the density and*
 22 *diversity of native woody plant species) of remaining or other*
 23 *upland buffer to offset the impacts to the original buffer.*
 24

25 Mr. Foley opined that this translates as site specific and opined that it
 26 doesn't envision this concept of paying money for usage somewhere
 27 else in the Town.

28
 29 Mr. Keane opined that one statement opposes the other, if off site
 30 mitigation is allowed and it doesn't define what off-site mitigation
 31 means and you try to bring in the definition of what off-site mitigation
 32 means would be outside of the buffer in question or related to the
 33 wetland related to the buffer in question.

34
 35 Attorney Gaudioso stated that in this case the applicant is not
 36 objecting to it.

37
 38 Mr. Keane opined that the money should not go into the General
 39 Fund and must be dedicated to a particular site.
 40

1 Attorney Gaudioso stated that because of the Architectural Review
2 Board (ARB) approval of the Rhombus color to overrule that would
3 require a supermajority vote of the Board for the November 21, 2009
4 process. Attorney Gaudioso asked for a vote from the Board.

5
6 Town Planner Hull opined that should be incorporated into the
7 Resolution and the Board cannot vote on it tonight because the color
8 has not been definitely determined.

9
10 Town Engineer Gagné suggested that a sentence be added as a
11 condition that should read "*If the determination is made to be a color*
12 *other than Rhombus SW4051 (grey/blue color) a super majority vote*
13 *(majority plus one) of the Planning Board will be required.*" Attorney
14 Gaudioso agreed.

15
16 Ms. Gannon stated that looking at the Resolution and going back to
17 what Mr. Foley had added about the T-Mobile Northeast name
18 change, the very first WHEREAS on page 1 of 10 states "a formal
19 application by Omnipoint Communication, Inc.". She asked if that is
20 to memorialize the original name as it took place. Town Planner Hull
21 responded yes.

22
23 Ms. Gannon asked if UB Somers, Inc. was the name that was used in
24 the EAF. Town Planner Hull responded that UB Somers was the
25 name that was used in the EAF.

26
27 Town Planner Hull stated that she will add the ARB approval of the
28 color and the date they issued their approval of the color as a
29 WHEREAS in the Resolution. She noted that in the On-going
30 Conditions she will add a statement that the color will be chosen and
31 if it is different from Rhombus blue it must be approved by
32 supermajority.

33
34 Attorney Gaudioso opined that statement was already on page 5 of
35 10 in the draft Resolution, the first WHEREAS after number four, so
36 he noted that the statement regarding the supermajority just needs to
37 be added.

38

1 Ms. Gannon stated that on page 5 of 10, the third WHEREAS from
 2 the bottom, she asked if we are moving more to blue as opposed to
 3 gray.

4
 5 Town Planner Hull stated that the applicant presented blues and
 6 browns.

7
 8 Attorney Gaudioso stated that if the Board looked at his prior letter he
 9 noted that he will do both, show the Board the Rhombus color. He
 10 stated that he doesn't know if Rhombus is blue or gray, but it's a blue
 11 gray, so he will start with Rhombus and brown and add colors to
 12 decide what looks best.

13
 14 Mr. Keane suggested using the wording "consisting principally of
 15 blues and browns".

16
 17 Ms. Gannon referred to the fourth WHEREAS from the bottom on
 18 page 6 of 10:

19
 20 **WHEREAS**, at such time that the land banked parking spaces
 21 are deemed necessary, the Applicant has agreed to install the
 22 four spaces lost to screen the wireless facility as shown on the
 23 approved drawing pursuant to a letter from the property owner
 24 approving of the use of the parking spaces for screening
 25 purposes provided they will be replaced if needed; and

26
 27 Ms. Gannon asked who determines the need.

28
 29 Attorney Gaudioso responded that the Planning Board determines
 30 the need, under the Code.

31
 32 Town Planner Hull explained that the applicant would appear before
 33 the Planning Board and the Planning Board would determine the
 34 need.

35
 36 Mr. Keane asked if UB Somers would have to appear before the
 37 Board. Town Planner Hull responded yes, they are the property
 38 owners.

39

1 Town Engineer Gagné suggested that the plan show the spaces
 2 along with the details. Attorney Gaudioso stated that they will revise
 3 the plan to show the spaces.

4
 5 Chairman DeLucia asked Attorney Gaudioso if he agreed with the
 6 changes. Attorney Gaudioso stated that he agreed.

7
 8 On motion by Ms. Gannon, seconded by Mr. Keane, and
 9 unanimously carried, the Board moved to approve draft Resolution
 10 No. 2009-13, as amended, Granting of Conditional Amended Site
 11 Plan Approval and permits to Somers Towne Centre for T. Mobile
 12 Northeast, LLC, formerly Omnipoint Communications, Inc., for the
 13 installation of a wireless telecommunications facility with related
 14 equipment with a condition that the determination regarding the pole
 15 coloration pattern be made at a scheduled November 21, 2009 site
 16 walk, for the Chairman’s signature.

17
 18
 19 **HERITAGE HILLS CONDO 14**
 20 **MAINTENANCE AREA ACCESS ROAD**
 21 **PERFORMANCE BOND**

22
 23 *Mr. Goldenberg recused himself from this matter.*

24
 25 Chairman DeLucia stated that this is a Public Hearing to consider
 26 recommending to the Town Board the release of Heritage Hills Condo
 27 Number 14 Maintenance Area Access Road Performance Bond in the
 28 amount of \$40,000 pursuant to §150-16.G. of the Code of the Town
 29 of Somers. Chairman DeLucia explained that this request was last
 30 discussed at the August 26, 2009 meeting, whereby Town Engineer
 31 Gagné stated that the work on the final four condos and the
 32 maintenance yard are now complete and therefore, it was appropriate
 33 for the Planning Board to consider the release of the remaining bond.
 34 She noted that Town Engineer Gagné also stated that the \$40,000
 35 value was established based on the estimated cost of installing the
 36 top course on the road, curbs and landscaping. Chair DeLucia noted
 37 that after further discussion, the Board moved to schedule a Public
 38 Hearing for this meeting.

1 Chairman DeLucia asked Planning Board Secretary Murphy if, prior
2 to the Public Hearing, if the legal notice was published.

3
4 Planning Board Secretary Murphy stated that prior to the Public
5 Hearing, the legal notice was published in the North County News on
6 September 13, 2009 and a Public Hearing notice was sent to the
7 Condo 14 President, Heritage Hills Society and the applicant.

8
9 Chairman DeLucia noted that the property does not have to be
10 posted.

11
12 Chairman DeLucia asked if Town Engineer Gagné had any
13 comments. Town Engineer Gagné responded that he had no further
14 comments.

15
16 Chairman DeLucia asked if anyone from the public wished to be
17 heard and no one responded.

18
19 Chairman DeLucia asked if there were any comment from members
20 of the Board.

21
22 Ms. Gerbino noted that there was no one present neither from the
23 Heritage Hills Society nor from Condo 14.

24
25 Chairman DeLucia asked Town Engineer Gagné if he had any
26 objection to closing the Public Hearing and recommending to the
27 Town Board that the Performance Bond be released. Town Engineer
28 Gagné responded that he had no objection

29
30 Chairman DeLucia asked if there was a consensus of the Board to
31 close the Public Hearing and recommend to the Town Board that the
32 Performance Bond be released.

33
34 On motion by Ms. Gannon, seconded by Ms. Gerbino, and
35 unanimously carried, the Board moved to close the Public Hearing
36 and recommend to the Town Board that the Performance Bond be
37 released.

38
39 On motion by Mr. Knapp, seconded by Ms. Gerbino, and
40 unanimously carried, the Board moved to recommend to the Town

1 Board the release of Heritage Hills Condo No. 14 Maintenance Area
2 Access Road Performance Bond in the amount of \$40,000 pursuant
3 to §150-16.G. of the Code of the Town of Somers as recommended
4 by the Town Engineer.

5

6 On motion by Mr. Knapp, seconded by Mr. Goldenberg, and
7 unanimously carried, the Board moved to adjourn to Wednesday,
8 October 7, 2009 at 7:30 p.m. at the Town House.

9

10 There being no further business, the meeting adjourned at 9:30 p.m.

11

12

13

14 Respectfully submitted,

15

16 Wendy Getting

17 Senior Office Assistant

18 (on behalf of Planning Board Secretary Marilyn Murphy)

19