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PLANNING DEPARTMENT

TOWN HOUSE
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Town of Somers

WESTCHESTER COUNTY, N.Y.



John Currie, *Chairman*
Fedora DeLucia
Christopher Foley
Vicky Gannon
Nancy Gerbino
Eugene Goldenberg
John Keane

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**SOMERS PLANNING BOARD MINUTES
SPECIAL MEETING
SEPTEMBER 24, 2013**

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8 **ROLL:**

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10 **PLANNING BOARD**

11 **MEMBERS PRESENT:**

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

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15 **ALSO PRESENT:**

Town Consultant Planner Sarah Brown
Consultant Engineer Joseph Barbagallo
Town Attorney Roland Baroni
Planning Board Secretary Marilyn Murphy

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20 **ABSENT:**

Chair Currie

21

22 The special meeting commenced at 7:30 p.m. Planning Board Secretary
23 Marilyn Murphy called the roll.

24

25 Acting Chair DeLucia noted that a required quorum of four members was
26 present in order to conduct the business of the Board.

27

28 **FSEIS COMPLETENESS REVIEW AND**
29 **DRAFT SEQRA FINDINGS STATEMENT DISCUSSION**

30

31

1 Acting Chair DeLucia said that this special meeting relates to this evening's
 2 agenda item in connection with the application of Granite Pointe
 3 Subdivision for the completeness review of the Final Supplemental
 4 Environmental Impact Statement (FSEIS) and a discussion on the Lead
 5 Agency's draft State Environmental Quality Review Act (SEQRA) Findings
 6 Statement pursuant to Article 8 of the Environmental Conservation Law,
 7 6 NYCRR Part 617 and Chapter 92 of the Code of the Town of Somers.
 8 Acting Chair DeLucia explained that the Board will be taking an action to
 9 consider the acceptance of the applicant's FSEIS dated revised, July 31,
 10 2013.

11
 12 The Acting Chair indicated that this application was last discussed at the
 13 Wednesday, September 11, 2013 Planning Board meeting whereby due to
 14 receiving new information the Board agreed to continue the review and
 15 discussion at a special meeting for this evening.

16
 17 Acting Chair DeLucia gave a brief summary of this application. She noted
 18 that a new application for Preliminary Subdivision Approval for 25 lots was
 19 submitted to the Planning Board for Suelain Realty, Inc. by Leonard J.
 20 Bibbo Associates on February 16, 1995. She explained that Suelain
 21 Realty, Inc. is the owner and applicant of 28.82 undeveloped acres of
 22 property in an R-40 Zoning District located at Tomahawk Street, Somers,
 23 which serves as a buffer between developed areas and the Amawalk
 24 Reservoir. She said that after having been granted Conditional Final
 25 Subdivision Plan Approval on July 24, 2002 by Resolution No. 2002-26 for
 26 the development of 23 single-family residential lots, it was discovered that
 27 specific areas of the property were impacted with deposited lead from an
 28 old trap shooting range and as a result of this new information, the Board at
 29 its meeting held on June 9, 2004 by Resolution No. 2004-12 rescinded the
 30 final Subdivision Approval and the application reverted to the Preliminary
 31 Subdivision Approval stage. Acting Chair DeLucia confirmed that the
 32 applicant was then required to prepare and submit a draft Supplemental
 33 Environmental Impact Statement (DSEIS). She noted that after many
 34 meetings with the applicant and its representatives, Town staff, consultants
 35 and agencies, the DSEIS was accepted as complete on August 23, 2006
 36 and the applicant was requested to prepare a Final Supplemental
 37 Environmental Impact Statement (FSEIS) following the acceptance of the
 38 DSEIS. The Acting Chair stated that the FSEIS consists of responses to all
 39 substantive comments received on the DSEIS and all other substantive
 40 comments received in a Planning Board "Action Letter". She said that the

1 applicant then applied for and received inclusion into the New York State
 2 Department of Environmental Conservation (DEC) Brownfield Cleanup
 3 Program (BCP) for remedial site cleanup. Acting Chair DeLucia noted that
 4 the DEP submitted a Proposed Decision Document in December 2012 and
 5 the applicant thereafter obtained a permit.

6
 7 Acting Chair DeLucia said that Sarah L. Brown, Senior Associate of Town
 8 Consultant Frederick P. Clark Associates, was present to continue the
 9 FSEIS completeness review with the Board on the applicant's submitted
 10 FSEIS dated and revised July 31, 2013. She noted that if the Board by a
 11 motion determines the document is complete, then a Notice of Completion
 12 with the FSEIS and a written comment period will be distributed to all
 13 Involved Agencies and filed and published in the Environmental Notice
 14 Bulletin (ENB). The Acting Chair said that during the course of Ms. Brown's
 15 review comments with the Board, the applicant's representatives and staff
 16 are encouraged to interject their comments and questions. She mentioned
 17 that Ms. Brown will later discuss the draft Findings Statement with the
 18 Board, the adoption of which is the last step in the SEQRA process.

19
 20 Sarah Brown, the Town's Consultant Planner, stated that the next step in
 21 the process is the review of the FSEIS. She noted that the consultants for
 22 the Board, Woodard & Curran, EA Engineering and Frederick P. Clark
 23 Associates, reviewed the FSEIS to make sure that all the comments that
 24 were raised during the DSEIS review have been addressed in the FSEIS.
 25 Consultant Planner Brown stated that the consultants have reviewed the
 26 FSEIS and all comments have been addressed. She indicated that the next
 27 step for the Board is to deem the document complete and after it is deemed
 28 complete it will be distributed to all the interested and involved agencies
 29 with a required written comment period. Consultant Planner Brown
 30 mentioned that on the advice of counsel that the comment period be
 31 extended to 20-days instead of the SEQRA requirement of 10-days.

32
 33 Mr. Goldenberg asked Consultant Planner Brown if she read the letter that
 34 was received late today from James Bryan Bacon, Esq., representing the
 35 Croton Watershed Clean Water Coalition. He noted that Attorney Bacon
 36 recommended that the FSEIS not be approved.

37
 38 Consultant Planner Brown said that she received the letter from Attorney
 39 Bacon but did not have time to read it.

40

1 Mr. Goldenberg asked if Consultant Engineer Barbagallo conducted a site
2 walk on the site.

3
4 Consultant Engineer Barbagallo stated that together with Engineer Allen
5 they did a comprehensive walk of the entire perimeter of the remediation
6 area. He said that the purpose of the site walk was to determine if anything
7 has changed. He indicated that the only mechanism for change would be a
8 function of sediment transport which would be erosion that would extend
9 beyond the previously identified remediation area. Consultant Engineer
10 Barbagallo stated that there was no erosion or conditions that suggest that
11 sediment transport has occurred. He said that it is fortunate that the entire
12 remediation area is bounded by stonewalls that provide a natural barrier.
13 Consultant Engineer Barbagallo noted that his site visit showed that the
14 limits of the remediation area identified in the remediation documents are
15 consistent with what exists in the field today.

16
17 Mr. Keane submitted an e-mail dated September 19, 2013 for the record on
18 issues at Granite Pointe that was sent to Planning Board members from a
19 homeowner.

20
21 Acting Chair DeLucia asked if there are any comments on the
22 completeness review.

23
24 Mr. Foley noted that this special meeting was to review comment letters
25 that were received from Legislators Peter B. Harckham and Michael B.
26 Kaplowitz of the Westchester County Board of Legislators making the
27 argument that the FSEIS should not be certified as complete.

28
29 Consultant Planner Brown stated that the review of the correspondence
30 was one of the reasons for this special meeting.

31
32 Paul Muessig, Consultant Senior Scientist, said that the Environmental
33 Impact Statement was completed and approved under SEQRA. He
34 explained that the reason the process went to an FSEIS was because an
35 additional environmental issue, the contamination of lead, on the site was
36 identified. Senior Scientist Muessig indicated that the FSEIS had to
37 address soil contamination at the site. He stated that there was a Public
38 Hearing and comment period on the FSEIS which has closed. Senior
39 Scientist Muessig stressed that the focus of the FSEIS is narrow and is
40 only to address the contamination and the proposed remedial action to

1 remove the contamination from the site and does not deal with subdivision
2 issues or stormwater programs that were raised in the recent letters that
3 were received.

4
5 Mr. Goldenberg said that the laws have changed in the last 10 years
6 and the Board is saying that it is only the contamination of lead that is of
7 interest.

8
9 Mr. Keane asked Mr. Goldenberg if the SEQRA Regulations are being
10 followed then everything should be alright.

11
12 Mr. Goldenberg replied that the applicant and the Board should be
13 following the SEQRA Regulations. He said the rules are in the details and
14 he does not see any detail that the Board is following the rules.

15
16 Ms. Gerbino stated that she fully respects the letters that the Board just
17 received but the reason the Board is not discussing them is that they are
18 not the subject of the legal document that the Board is forced by law to deal
19 with. She explained that the Board is forced by law to deal with the lead
20 and how the lead is going to be removed. Ms. Gerbino noted that the
21 Board will address the letters that were received and the problems that are
22 mentioned in the letters. She stressed that the letters are pre-mature and
23 the Board is not reviewing the subdivision at this time but is reviewing a
24 problem at the subdivision in a separate legal document.

25
26 Mr. Foley said that the remediation as proposed will devastate the property.
27 He noted that the tree removal will take place under the context of the
28 remediation.

29
30 Acting Chair DeLucia asked if the applicant's representative would like to
31 interject his comments into the discussion.

32
33 Adam Wekstein, the applicant's attorney, said that the Board is following
34 procedure. He mentioned that SEQRA does not provide an opportunity for
35 comments on the completion of an FSEIS. Attorney Wekstein stated that
36 allowing the public to review a draft of the FSEIS is not required. He
37 stressed that it is not contemplated that a new set of comments be issued
38 on whether the FSEIS is complete or not. He suggested that if the Board
39 approves the completeness of the Final SEIS that a twenty (20) day
40 comment period to submit written comments be authorized to help with the

1 conclusion that the action should move ahead. He said that the letter from
2 Attorney Bacon that was received today is not relevant to what is
3 happening tonight.

4
5 Attorney Wekstein said that the process is that the Board adopted a scope
6 and the DEIS complied with the scope and there were hearings on the
7 DEIS. He mentioned that comments were received on the DEIS that were
8 reviewed by the Board's consultants. Attorney Wekstein indicated that if the
9 Board found that the analysis was in compliance with the scope it is time to
10 adopt the Notice of Completion.

11
12 Engineer Allen opined that all the comments in the FSEIS have been
13 addressed and the comments in the letter from the Board of Legislators are
14 premature and should be addressed in the 20-day comment period.

15
16 Ms. Gannon mentioned the letter dated September 11, 2013 from the
17 Westchester County Board of Legislators signed by Legislator Peter
18 Harckham and Legislator Michael Kaplowitz. She indicated that they tried
19 to frame their concerns on the FSEIS and the mitigation that will take place
20 with the lead contamination. She asked Consultant Engineer Barbagallo
21 and Consultant Planner Brown to respond to the comments in the letter.

22
23 Consultant Engineer Barbagallo referred to the Board of Legislators letter
24 and answered their questions.

- 25
26
- *The Granite Pointe promontory is unique in its undeveloped state and aesthetically-pleasing quality, which also promotes habitat for wildlife and migratory birds. Efforts to conserve these characteristics- possibly in collaboration with the owner, town, interested organizations, and the community-should be encouraged.*
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31

32 Consultant Engineer Barbagallo said that this is not a comment on the
33 FSEIS.

- 34
35
- *Impacts to wildlife and ecosystems should be assessed by qualified scientist. The FSEIS states that any analysis of fish and wildlife impacts was not undertaken nor warranted. This is in contrast to the obvious natural attributes of this location.*
- 36
37
38
39

1 Consultant Planner Brown stated that the scoping document referred to the
2 Bald Eagle habitat on the site and was discussed in the FSEIS by Tim
3 Miller Associates (qualified scientist).

4
5 Mr. Foley stated that an analysis of fish and wildlife impacts was conducted
6 and was not limited to the Bald Eagle.

- 7
8 • *An analysis of visual impacts from remediation and site development*
9 *should be part of the FSEIS and a revised FEIS. Such analyses are*
10 *common in land development proposals. An updated visual impact*
11 *analysis helps complete the record and provides all parties with a*
12 *clear expectations of the project effects.*

13
14 Consultant Engineer Barbagallo said that we are not talking about the FEIS
15 tonight but there is a remediation proposal that was approved by the DEC,
16 the regulatory body. He indicated that the DEC approval was in December
17 2012. Consultant Engineer Barbagallo stated that the Board's consultant
18 said that the remedial approach is proper and the removal of trees is
19 required to clean up the land and he does not understand why a visual
20 analysis will change that. He noted that the land development proposal is
21 the subdivision.

22
23 Ms. Gerbino mentioned that the Town will issue a Tree Permit and as part
24 of the permit the trees can be replaced.

- 25
26 • *The large quantity of contaminated soil removal adjacent to a drinking*
27 *water body and to nearby residents with children requires the most*
28 *effective techniques to prevent any dispersal of contaminants during*
29 *excavation and hauling procedures.*

30
31 Consultant Engineer Barbagallo said that the entire FSEIS is focused on
32 the removal of contaminated soil and Consultant Scientist Muessig
33 determined that the removal of soil is appropriate.

34
35 Consultant Scientist Muessig said that the procedures comply with the DEC
36 Regulations for the Brownfield Cleanup and the methods for removal of soil
37 from the site comply with State regulations. He mentioned that haulers are
38 licensed to haul hazardous materials and trucks and vehicles are washed
39 down before they leave the site and that there is a manifest before the
40 materials are transported to the site that is receiving the materials. He said

1 that the Plan lays out the trees that are to be preserved under the
 2 Remediation Plan but if heavy contamination is found around the roots of
 3 the trees they will have to be removed.

4
 5 Engineer Allen indicated that there will be a few additional trees that will
 6 have to be removed. He said that the lots are small and if trees have to be
 7 removed for remediation unfortunately that will happen. He noted that you
 8 will not be able to see tree removal on the Granite Pointe property and from
 9 a visual standpoint you will not be able to see that the trees have been
 10 removed.

11
 12 Mr. Goldenberg said this is just a statement by Engineer Allen and he
 13 asked why there is nothing in writing. He said that Engineer Allen is
 14 saying that there will be no visual impact by cutting 45 trees.

15
 16 Engineer Allen explained that there is 300 feet to the reservoir edge. He
 17 mentioned that the DEP will cut down trees in order to clean up their site.
 18 Engineer Allen noted that there is a 100-yard buffer of undisturbed
 19 woodland.

20
 21 Mr. Keane said that when you go west on Route 202 and to the left when
 22 you see the Amawalk Reservoir you are basically looking at Granite Pointe.
 23 He indicated that you have to look beyond the first 100 yards of trees to
 24 see anything in the site.

25
 26 Consultant Engineer Barbagallo said the choice the Board weighed as part
 27 of the DEIS and FSEIS is that there is lead contamination near the trees
 28 they will have to be removed. He asked if it is better to leave the trees with
 29 the lead there or is it better to remove the lead and the trees. Consultant
 30 Engineer Barbagallo opined that the best thing for the environment is to
 31 remove the lead.

32
 33 Mr. Goldenberg said that for 30 years this property has been contaminated
 34 by lead because of the shooting range. He said that the Brownfield
 35 Program was okayed in 2010 and now three years later nothing has been
 36 done. He said that there are special meetings in order for the Board to
 37 make a decision and this is happening too fast.

38
 39 Consultant Engineer Barbagallo stated that the application was accepted
 40 into the Brownfield Program in 2010 and was approved in December 2012.

1 He stressed that the DEC in 2012 stated that the Remediation Plan was the
2 right plan for the site.

3
4 Acting Chair DeLucia reiterated that that the applicant applied for and
5 received inclusion into the New York State Department of Environmental
6 Conservation (DEC) Brownfield Cleanup Program (BCP) for remedial site
7 cleanup and that the DEP submitted a Proposed Decision Document in
8 December 2012 and the applicant thereafter obtained a permit.

- 9
- 10 • *The number of trees removed should be limited to the greatest*
11 *degree possible to preserve wildlife habitat and maintain ecosystem*
12 *stability. The Findings Statement states that 30 Town regulated trees*
13 *are proposed for removal but this FSEIS states that trees on lots will*
14 *be “clear cut”. No clear cutting should be permitted, and each tree in*
15 *the affected area should be individually evaluated to prevent*
16 *unnecessary removal.*

17
18 Consultant Engineer Barbagallo said that there are procedures in place to
19 preserve trees in the event they can be preserved.

- 20
- 21 • *Monitoring wells should be installed at the site and periodic sampling*
22 *should be required in order to identify the potential migration of*
23 *residual contaminants to the Amawalk Reservoir. The draft Findings*
24 *Statement states that monitoring wells are not required. Over time,*
25 *precipitation can result in leaching of contaminants to groundwater*
26 *and to the Amawalk Reservoir, thus necessitating a monitoring*
27 *program.*

28
29 Consultant Engineer Barbagallo indicated that the draft Findings Statement
30 says that monitoring is not required. He said that the mechanism for
31 transport is not through leaching but through physical transport through
32 sediment deposition.

33
34 Consultant Senior Scientist Muessig said that part of the Remediation
35 process is confirmatory sample of soils that are removed to the extent that
36 is identified and if contamination is found above the target levels further
37 excavation is required until it gets to the remedial requirements.

- 38
- 39 • *The high levels of groundwater observed at some parts of the site*
40 *indicate that septic system operations might become impaired. The*

1 *FSEIS states that groundwater levels range from 7.51 ft. below grade*
2 *to 16.02 ft. below grade. However, the February 2013 NYSDEC*
3 *Decision Document for the adjacent "Off-Site" remediation indicated*
4 *groundwater levels range from 1 to 6 ft. below grade. An adequate*
5 *analysis of groundwater levels is paramount to evaluating septic*
6 *system feasibility and proper design.*

7
8 Consultant Engineer Barbagallo said this has nothing to do with the FSEIS.

- 9
- 10 • *New York State Department of Environmental Conservation has*
11 *implemented a rigorous permit program for certain municipalities*
12 *within the East of Hudson watershed, including Somers. Neither the*
13 *FSEIS nor the FEIS address the enhanced requirements for*
14 *phosphorous reduction. The documents shall be updated to account*
15 *for those requirements and to include necessary mitigation.*

16
17 Consultant Engineer Barbagallo said that as part of the subdivision the
18 applicant has to look at the phosphorous issue and that will be reviewed in
19 the updated Stormwater Pollution Prevention Plan (SWPPP) in compliance
20 with State and local regulations.

21
22 Mr. Keane noted that the DEC will have to have their own SWPPP for the
23 cleanup of the DEP property. He indicated that the Stormwater Manual
24 Section 10 for the enhanced phosphorous regulations identifies what has
25 to be done for the no increase in phosphorous discharge.

26
27 Consultant Engineer Barbagallo said that with the FSEIS action the
28 Planning Board will issue a Stormwater Management and Erosion and
29 Sediment Control Permit

30
31 Mr. Goldenberg said that the Draft Lead Agency's SEQRA Findings
32 Statement Suelain Realty Application for Granite Pointe Subdivision
33 Approval under "Mitigation Provided" reads The Applicant has applied for
34 and received inclusion into the NYSDEC Brownfield Clean-up Program
35 (BCP) for remedial site clean-up. The project was accepted in the BCP on
36 February 22, 2010. A Remedial Action Work Program has been accepted
37 for the site resulting in the excavation and removal of impacted soil.

38
39 Consultant Planner Brown explained that Granite Pointe made application
40 to the Brownfield Cleanup Program in 2010 and was accepted into the

1 program in December 2012.

2

3 Ms. Gannon referred to Page 6 of the Findings Statement under Mitigation
4 Provided, *A Remedial Action Work Plan has been accepted for the site*
5 *resulting in the excavation and removal of impacted soils.* She suggested
6 that it read *A Remedial Action Work Plan has been accepted for the site*
7 ***which will result in the excavation and removal of impacted soils.***

8

9 Consultant Planner Brown said that she gave the Board and the applicant a
10 copy of the Draft Findings Statement but the Board is not ready to adopt
11 the Findings. She asked that the Board review the Draft Findings
12 Statement and let her know their concerns and comments.

13

14 Acting Chair DeLucia asked if there was a consensus of the Board for a
15 motion to accept the FEIS as complete.

16

17 On motion by Ms. Gerbino, seconded by Mr. Keane, (Mr. Goldenberg voting
18 nay), and carried, the Board acting as Lead Agency moved to determine
19 that the proposed Final SEIS dated revised July 31, 2013 is accepted as
20 complete with respect to all comments which have been adequately
21 addressed and that the Notice of Completion with a 20-day written comment
22 period be distributed with the Final SEIS to all Involved and Interested
23 Agencies and filed and published in the Environmental Notice Bulletin (ENB)
24 on October 2, 2013, the beginning of the 20-day written comment period
25 ending on October 22, 2013.

26

27 Acting Chair DeLucia noted that this application will continue with the review
28 of the SEQR Findings Statement at the next Planning Board meeting on
29 Wednesday, October 9, 2013.

30

31 The Chair mentioned that immediately following this special meeting, there
32 will be a joint meeting between the Town Board, Planning Board, consultants
33 and the applicant regarding the Somers Crossing application.

34

35 On motion by Ms. Gannon, seconded by Ms. Gerbino, and unanimously
36 carried, the meeting adjourned at 8:45 P.M. and the Acting Chair noted that
37 the next Regular Planning Board meeting will be held on Wednesday,
38 October 9, 2013 at 7:30 P. M. at the Somers Town House. There being no
39 further business the meeting adjourned.

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Respectfully submitted,

Marilyn Murphy
Planning Board Secretary