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PLANNING DEPARTMENT

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Town of Somers

WESTCHESTER COUNTY, N.Y.

John Currie, *Chairman*
Jan Corning
Fedora DeLucia
Vicky Gannon
Nancy Gerbino
Eugene Goldenberg
Dennis McNamara

SOMERS PLANNING BOARD MINUTES
SEPTEMBER 9, 2015

ROLL:

PLANNING BOARD MEMBERS PRESENT: Chairman Currie, Mrs. DeLucia, Ms. Gerbino, Mr. Goldenberg, Ms. Gannon, Mr. McNamara and Ms. Corning

ALSO PRESENT: Consultant Town Engineer Joseph Barbagallo
Director of Planning Syrette Dym
Consultant Town Planner Sarah Brown
Planning Board Town Attorney Joseph Eriole
Planning Board Secretary Marilyn Murphy

The meeting commenced at 7:30 p.m. Planning Board Secretary Marilyn Murphy called the roll and noted that a required quorum of four members was present in order to conduct the business of the Board.

APPROVAL OF DRAFT MINUTES AND DVD OF THE PLANNING BOARD MEETING HELD ON JULY 22, 2015

Chairman Currie noted that Planning Board Secretary Marilyn Murphy prepared and submitted for the Board's consideration approval of the draft minutes and DVD of the Planning Board meeting held on July 22, 2015.

The Chair asked if there were any comments or corrections from the Board on the draft minutes and DVD and no one replied.

On motion by Chair Currie, seconded by Mr. McNamara (Ms. Gannon abstained) and carried, the draft minutes and DVD of the July 22, 2015 Planning Board meeting were approved.

Chairman Currie stated that the text of the approved minutes is available on the Town's website www.somersny.com and is also available for public review at the Planning & Engineering office at the Town House. The approved DVD is available for public viewing at the Somers Public Library.

PUBLIC HEARING

GRANITE POINTE FINAL SUBDIVISION WETLAND PERMIT [TM: 27.05-3-5]

Chairman Currie said that this is the Public Hearing for the Granite Pointe Wetland Permit to restore the wetland into a proposed project stormwater basin.

Chair Currie asked the applicant's representative to update the Board and the public on the wetland application.

Timothy Allen, the applicant's engineer, explained that on the southeast corner of the property there is a small wetland that is full of debris. He said that the wetland is approximately 900 SF. He noted that it will be cleaned out and is proposed as a stormwater basin. Engineer Allen mentioned that plantings have been proposed as mitigation and the wetland will be restored back to a wetland. He stressed that the wetland is not Town regulated but a former Town Engineer requested that it be declared a wetland and that the applicant process a Town Wetland Permit.

Chair Currie asked Planning Board Secretary Murphy if the legal notice stating the Public Hearing was published and the adjoining property owners notified.

Planning Board Secretary Murphy stated that the Legal Notice was published in the Somers Record on August 27, 2015 and the adjoining property owners were notified via mail on August 31, 2015.

Chair Currie opened the Public Hearing and explained that the Public Hearing is only on the Wetland Permit and there is a 5 minute limit on speakers.

Chair Currie acknowledged correspondence from:

- Edward Miraglia e-mail dated August 17, 2015
- Diane Houslanger e-mail dated August 19, 2015
- Ruth Rosenberg e-mail dated August 21, 2015
- David Clouser e-mail dated August 26, 2015 and September 8, 2015
- Julia Rellou e-mail dated August 13, 2015 and August 26, 2015
- Bibbo Associates memo dated September 1, 2015
- Marc Houslanger e-mail dated August 14, 2015 and September 2, 2015
- Woodard & Curran memo dated September 4, 2015

Engineer Allen interjected that the sign was posted for the subdivision but is not required for a wetland permit. He commented that the sign was clearly visible during the subdivision Public Hearing.

Ms. Gerbino noted that at the last meeting the Board acknowledged that a sign was not required for the Public Hearing on the wetland.

David Clouser, professional engineer and surveyor, said that he has two points to make on the wetland. He noted that it has to be determined if the wetland is hydrologically linked to the Department of Environmental Conservation (DEC) Wetland to the south, if it is within 164 feet of the delineation of the wetland to the south it would be considered linked to the State wetland which requires a 100 foot buffer.

Engineer Clouser said that the existing conditions map and the DEC Mapper with the contours show that the flow out of that area goes toward the wetland. He stated that it is important to find out if the wetland is linked to the DEC. He noted that he does not understand why the wetland is being disturbed because the stormwater basin can be moved. Engineer Clouser mentioned that the best practice is to avoid the disturbance to wetlands. He said that he takes offence to a wetland being called a hole in the ground

as it is an important natural resource and needs to be preserved. He showed the Board photos of the wetland area and said that the contours of the map show that the wetland drains toward the south toward the DEC Wetland and this should be investigated.

Julia Rellou, homeowner, said that the August 13, 2015 letter from Bibbo Associates said that as discussed at our last meeting with the Board the wetland in question is a hole filled with litter and debris but this is in contrast with the Aquatic Resources Delineation Report dated April 2014 conducted by Shaw Environmental & Infrastructure of NY on behalf of NYSDEC. She said that the report determined the presence and extent of State regulated Fresh Water Wetlands on the Granite Pointe site and one on the DEP buffer. Ms. Rellou said that the study also established extensive hydrophilic vegetation whose dominant species exists only in a fresh water environment. She asked herself why in the April 2014 scientific study conducted on behalf of NYSDEC why the applicant never mentions the fresh water wetland on the Granite Pointe site. Ms. Rellou asked what happened from April 2014 to the August 13, 2015 Bibbo letter to the Planning Board where the engineer is claiming that the wetland has been degraded. She mentioned that in December 2013 a NY Times reporter did a site walk on the Granite Pointe property and witnessed the wetland and found no evidence of wetland degradation and he also saw piles of building materials in the center of the site. She said that the building materials should not have been there as the applicant did not have permission to build. Ms. Rellou said that the applicant was issued a violation and was required to remove the material. She stressed that she disagrees with the applicant's engineer determination made by the applicant's engineer in regard to the wetland and asks the Board to investigate and look into the sequence of dates she just mentioned.

Engineer Allen said that in 2003 buildings were taken down on the property. He mentioned that a cottage and restaurant were taken down.

Chair Currie asked if the NY Times reporter had permission to be on the Granite Pointe property. Engineer Allen answered that he did not have permission to be on the property but the applicant had a demolition permit to remove the buildings. He said that to his knowledge no violation was issued.

Consultant Town Engineer Barbagallo said that the buildings are not in the vicinity of the wetland. He said that at one time there may have been a transient use of a contractor's yard in that vicinity.

Ms. Gerbino explained that Route 202 used to be Old Route 118 and people dumped trash on the property but the area is nowhere near the wetland.

Consultant Town Engineer Barbagallo asked Engineer Allen the timeline when the deep test holes were done.

Engineer Allen said that the stormwater basin was tested on June 8th and June 9th of this year. He mentioned that there is a stonewall that separates the area from the DEP parcel. He stated that verification from the DEC that all necessary criteria for the issuance of a NYSDEC Freshwater Wetland Permit if determined to be required will be a condition in the Resolution.

Consultant Town Engineer Barbagallo said that the applicant shall provide documentation to the Army Corp of Engineers pertaining to jurisdictional determination over the 800 SF wetland area on the southwest corner of the Granite Pointe property as a condition of approval.

Consultant Town Engineer Barbagallo said that when he was on the site during the deep test holes the wetland was full of garbage and buried waste that creates a depressed area that water accumulates in. He noted that normally he would agree with Engineer Clouser's comments on the disturbance to the wetland but when you look at this area he feels it is better getting the garbage out of the wetland instead of water ponding on top of buried debris for a long period of time. He recommended replacing it with a well designed treatment system for stormwater running through that area.

Mr. Goldenberg said that he mentioned that the applicant never has an attorney at the meetings so Engineer Allen answers all the legal questions. He said that he mentioned that there was an Article 78 and Engineer Allen stated that there was no Article 78 but the Draft Resolution states that an Article 78 was commenced by the City of New York.

Engineer Allen stated that he is not a lawyer and to his recollection it

was the Department of Environmental Protection (DEP) who filed that suit and that was resolved.

Chair Currie asked if the Board wants to close the Public Hearing for the Wetland application.

Ms. Rellou mentioned that the original wetland application was unsigned and undated and was accepted by the Town.

Consultant Town Engineer Barbagallo said that a new wetland application was submitted on June 30, 2015.

Sarah Brown stated that there was discussion on a 10-day written comment period.

Engineer Allen mentioned that the written commend period was extended for 14 days on the subdivision.

Planning Board Town Attorney Eriole said that the Board may decide they are satisfied because of the 14-day written comment period for the subdivision.

Mr. Goldenberg asked how a Public Hearing can be closed if the record is not complete.

Attorney Eriole explained that there will be conditions in the Resolution that have to be completed before the plat can be signed.

Consultant Town Engineer Barbagallo said that when an application is deemed complete you are looking at Town requirements and the Board's interpretation of other requirements such as the DEC. He reminded the Board and the public that this wetland is not Town regulated and the applicant is going along with a former Town Engineer's recommendation but he would not have required a wetland permit on this wetland because it is too small to be regulated by the Town. He explained that if the Army Corp of Engineers takes jurisdiction that will be a condition that has to be addressed. Consultant Town Engineer Barbagallo explained that if the application has to be modified it has to come back to the Planning Board. He stated that the Board and the public are protected by the reasonableness of the approach that is being taken.

Chair Currie explained that most resolutions have conditions that have not yet been approved and all the risk is on the applicant.
Mr. Goldenberg said that he met with the project manager of the DEC on the Granite Pointe property.

Chair Currie polled the Board on the 10 day written comment period on the wetland application:

- Ms Corning – No 10-day written comment period.
- Mrs. DeLucia- No 10-day written comment period.
- Mr. Goldenberg- Extend the 10-day written comment period.
- Ms. Gerbino – No 10-day written comment period.
- Ms. Gannon – No 10-day written comment period.
- Mr. McNamara – No 10 day written comment period.
- Chair Currie- No 10 day written comment period.

On motion by Mr. McNamara, seconded by Ms. Gannon (Mr. Goldenberg voting nay) and carried, the Board moved to close the Public Hearing on the Granite Pointe Wetland Permit

Chair Currie said that this application will be further discussed at the October 14, 2015 Planning Board meeting.

PROJECT REVIEW

GRANITE POINTE FINAL SUBDIVISION

Chairman Currie noted that this is the application for Final Subdivision Approval, Wetland, Steep Slopes, Tree Removal and Stormwater Management and Erosion and Sediment Control Permits. He mentioned that the property is located on the east side of Route 118/202, adjacent to the Amawalk Reservoir and is in an R-40 Zoning District. He said that the property is owned by Suelain Realty, LLC for the development of 23 lots in a Cluster Subdivision. Chair Currie said that the Board will consider a draft Resolution of Final Subdivision Approval.

Chair Currie asked the applicant's representative if he had a questions or comments on the draft resolution.

Timothy Allen, the applicant's engineer, suggested that the applicant and staff forward their corrections to Consultant Town Planner Brown.

Ms. Gannon referred to Page 11 line 34 of the Resolution, *The Somers Engineering Department shall be notified (914-277-5366) prior to the beginning of any work on the site and also upon completion of the approved work.* She questioned the use of the word **any** work.

Engineer Allen said that a signed plat is needed for the potential sale of the property.

Ms. Gannon suggested that condition 8 and 11 under Conditions Required Prior to Signing the Plat be combined.

Mrs. DeLucia referenced Condition 12 under On-goining Conditions Required After Signing of Plat, Construction activity will be limited from 7:00 a.m.to 6:00 p.m. She was concerned with the work starting so early especially in the winter.

Mr. McNamara suggested that wording be *no heavy equipment operation prior to 8:00 a.m.*

Mr. Goldenberg said that there is a violation by the State of New York Department of Environmental Conservation (DEC) in reference to the Brownfield Cleanup Program and it is not mentioned in the Draft Resolution. He read from the violation *Suelain Realty is in violation of the following: Granite Pointe Subdivision Brownfield Cleanup Agreement under #A3-0620-03-09, of the NY State Codes Rules and Regulations and NYS Conservation Law. These violations are based upon Suelain's failure to provide advance notice of a change of use, and its conducting activities that disrupt and expose contamination and significantly interfere with ongoing remedial actions at the site, and, potentially, off-site.*

Consultant Town Planner Brown said that the condition has to state that any violation be cleaned up on the property before the signing of the plat. She explained that under Conditions Required Prior to Signing the Plat, No. 1 reads, *the cleanup of the site shall be performed in accordance with the approved Remedial Action Plan to the satisfaction of the NYSDEC. The Applicant shall provide documentation from the DEC accepting the site as remediated with no further action required. No construction associated with*

the subdivision shall commence prior to such documentation from the DEC. Consultant Town Planner Brown explained that any violation will have to be addressed before the plat will be signed.

Mr. Goldenberg said that the violation states that Suelain has had significant failures in complying with project schedules and currently is not in compliance with the Department approved revised schedules submitted on March 12, 2015.

Consultant Town Planner Brown said that can be added to the resolution if the Board agrees. She noted that the most important thing is that the violation has to be resolved before the Plat is signed.

Ms. Gannon asked if the Board should ask for specific violations and the curing of specific violations.

Planning Board Town Attorney Eriole said that it should be addressed with specific language as a member of the Board cares deeply about this issue. He said that he will help with the specific language.

Engineer Allen stated that he is working with the DEC to resolve the violation.

Consultant Town Planner Brown noted that the Public Hearing was closed on the Subdivision and the clock has started as the Planning Board has to approve or deny a Resolution within 62 days after the close of the Public Hearing. She mentioned that the Board needs a time extension from the applicant.

On motion by Chair Currie, seconded by Mr. Goldenberg, and unanimously carried, the Board, according to Section 150-13-J, requested a 92-day time extension to the decision on the Resolution.

Engineer Allen agreed to the 92-day time extension for a decision on the Resolution.

Ms. Gerbino explained that the Board will vote on the Resolution but the Chairman cannot sign the Plat until all the conditions are met. She wondered when the Town Assessor can divide the parcels into individual tax numbers.

Consultant Town Engineer Barbagallo explained that the applicant wants to have a discussion on the sequencing of the conditions in the Resolution at the next Planning Board meeting. He said that all the concerns that were raised will be addressed.

AT THIS TIME MRS. DELUCIA LEFT THE MEETING

PROJECT REVIEW

HIDDEN MEADOW AT SOMERS [TM: 15.07-1-6]

Chairman Currie explained that this is an application for Preliminary Subdivision Approval, Site Plan Approval, Steep Slopes, Wetland and Stormwater Management and Erosion and Sediment Control Permits relative to the application of Multifamily Residence Baldwin Place District (MFR-BP) for the proposed development of 53 units of housing, sixteen of which would be affordable, within 45 townhouse buildings on 45 fee simple lots plus one for lands to be owned in common by a Homeowners Association.

The Chair asked the applicant's representative to update the Board on the project.

Richard Williams, the applicant's engineer, said that at the last meeting the Board was leaning toward drafting a Resolution of Preliminary Subdivision Approval, however, a Public Hearing was not held on the preliminary subdivision. He asked that the Public Hearing be scheduled for the October 14, 2015 Planning Board meeting along with the review of the Conditional Resolution of Preliminary Subdivision Approval.

On motion by Mr. Goldenberg, seconded by Ms. Gerbino, and unanimously carried, the Board moved to schedule a Public Hearing on Hidden Meadow at Somers Preliminary Subdivision at the October 14, 2015 Planning Board meeting.

SOMERS REALTY PLANNED HAMLET PHASE 3 [TM: 4.20-1-15]

Chairman Currie said that the application is for Preliminary Subdivision Approval, Steep Slopes, Wetland, Tree Removal and Stormwater

Management and Erosion and Sediment Control Permits to create Lots 3a, 3b, 3c and 3d (45.1 acres) relative to the Site Plan application of AvalonBay Communities, Inc. He mentioned that the property is owned by Somers Realty Corp. and is located on the southeast side of Route 6 and Clayton Blvd and is in the Planned Hamlet (PH) Zoning District. He noted that the applicant would like to discuss sidewalks along Route 6.

Chair Currie asked the applicant's representative to discuss the Department of Transportation (DOT) comments.

Richard Williams, the applicant's engineer, said he would like to discuss the site entrance at Clayton Boulevard and Route 6. He noted that the DOT recommended a right turn only at the exit onto Route 6. Engineer Williams mentioned that there was a meeting with Director of Planning Dym and Michael Galante of F. P. Clark where the applicant submitted their findings. He said that there will be a submission in the near future. Engineer Williams said that he agrees with the DOT findings on the right turn only. He mentioned that it will show with the elimination of the left hand maneuver at the Somers Commons intersection that it will not have significant impact on traffic.

Director of Planning Dym said that she and Town Consultant Engineer Barbagallo felt that Michael Galante should opine on the impact because there is no significant impact from what was originally studied in the DEIS, FEIS and the original Findings Statement. She mentioned that there can be a finding that the elimination of the left hand turn, that was part of the original analysis, that there are no other impacts that were not disclosed in the original environmental review. Director of Planning Dym said that Michael Galante's findings will be discussed at the next Planning Board meeting.

Engineer Williams said that the DOT recommended a sidewalk along the project frontage. He noted that the DOT said there has to be sidewalks along the project frontage. Engineer Williams said that there was a lot of thought in regard to sidewalks in the Planned Hamlet subdivision. He said that a web of sidewalks has been created to interconnect the population centers together to allow for pedestrian movements. Engineer Williams explained that when it comes to a sidewalk along Route 6 there is no destination along the project frontage but the destination is along the other side of Route 6. He stressed that you do not want to create a sidewalk

along the frontage that allows people to run across Route 6. Engineer Williams said that a sidewalk on the north side of Route 6 along the frontage of individual uses at such time as those uses and properties are redeveloped would be helpful. He recommended that DOT include pedestrian access improvements as part of their pending project at the intersection of the Clayton Boulevard and the Route 6 signalized intersection, to provide safe access for pedestrians in a manner similar to that at the Route 118 intersection.

Engineer Williams said that the DOT changed their requirement after the meeting to a recommendation. He mentioned that the DOT defers to local municipalities and their opinion on how it figures into their longtime goals.

Engineer Williams asked that the Planning Board send a letter to the DOT saying that it is not in favor of requiring a sidewalk along the frontage of the Somers Realty property but would consider requiring a sidewalk in the future along the north side of Route 6.

Pete Russillo, applicant's traffic engineer, said that the original report considered left and right turns on Route 6. He said that his view is if you are going to put in a sidewalk it should be on the other side of Route 6 when it gets developed. He said that when the sidewalk is put in there will be a signal with crosswalks. Engineer Russillo said that there will be a balance for pedestrians to cross on either side of the access point. He noted that the DOT is requiring a bike path along Route 6. Engineer Russillo said the volumes of traffic that will be transferred is relatively minor with 14 cars during the morning peak hour up to the Clayton Boulevard intersection and 44 vehicles in the afternoon and on Saturday there will be an additional 31 vehicles. He stated that the traffic is similar to what was studied originally.

Director of Planning Dym agreed with Engineer Williams and Engineer Russillo and said she spoke with DOT today and was told that they are required to ask for sidewalks. She said that it is up to the Town to decide if they do or do not require sidewalks. Director of Planning Dym noted that the Board should state to DOT that they are interested in requiring a sidewalk along the frontage of the Somers Realty property given that there will be a population center.

Linda Whitehead, the applicant's attorney, mentioned that when The Green was proposed across the street sidewalks were proposed along the frontage of Route 6.

Ms. Gerbino said that in the future the Town would like a sidewalk on the north side of Route 6. She commented that residents of the Mews 1 and 2 go across Route 6 to the gas station that houses Dunkin Donuts. Ms. Gerbino opined that there is a need for sidewalks.

Engineer Russillo said that there is time for the Town to petition to have a crosswalk as part of their pending project at the intersection of the Clayton Boulevard and the Route 6 signalized intersection.

Consultant Town Engineer Barbagallo said that in lieu of building a sidewalk all the way down the south side of Route 6 he suggested putting sidewalks on the north side of Route 6. He said that there would have to be a crosswalk from the end of the existing sidewalk. Engineer Barbagallo asked if there is any modification that the applicant should provide to facilitate the crosswalk.

Engineer Russillo said that the applicant would have to extend the sidewalk slightly on the west side.

Director of Planning Dym explained that the Board should say that they are not in favor of requiring a sidewalk along the frontage of the Somers Realty property and requests that DOT include pedestrian access improvements as part of their pending project at the intersection of the Clayton Boulevard and the Route 6 signalized intersection to provide safe access for pedestrians in a manner similar to that at the Route 118 intersection.

Engineer Williams mentioned the Department of Environmental Protection (DEP) variance for crossing a DEP watercourse. He explained that DEP regulates impervious surfaces within a 100 feet of their identified watercourses and in some places prohibits them.

Engineer Williams said that there is a clause in the DEP Code that allows the crossing of a watercourse with a new road if it is deemed necessary or accesses five or more lots. He stated that all through the SEQRA process this was always viewed as a through road. Engineer Williams noted that during the review of the Mews 2 when he was seeking to get the next 600

feet of road built DEP reinterpreted their view of where necessary and said they will tie it to how you build the road. He said that DEP said that the road is no longer considered necessary and a variance is needed. Engineer Williams said that this will require a higher level of stormwater requirements. He said that this is in direct conflict with past precedence that they had set. Engineer Williams said that DEP explained that they changed their policy and it is not a question of not granting the variance. He mentioned that a need or hardship has to be demonstrated in order to get a variance.

Engineer Williams said that DEP requested a second letter from the Town documenting the need for the access because of safety reasons. He said that today he met with the Somers Bureau of Fire Prevention (BFP) and they agreed to send a letter to the DEP stating that a second entrance, the one at Route 6 and Clayton Boulevard, that was always proposed for the Planned Hamlet must be constructed to provide a safe access to and throughout the site. He said that the BFP felt that the Route 6 access also allows for reduced response times as it offers emergency personnel an alternate access into the site that avoids the traffic congestion.

On motion by Chair Currie, seconded by Mr. Goldenberg, and unanimously carried, the Board moved to direct Director of Planning Dym to write a letter to the DOT to explain the Board's concerns on the issue of pedestrian traffic and the need for a sidewalk along the project frontage on Route 6.

REFERRAL FROM TOWN BOARD

PROPOSED ACCESSORY APARTMENT CODE CHANGE

Chairman Currie said that this is a request by the Zoning Board of Appeals (ZBA) to amend a portion of Section 170-70.L of the Somers Town Code relative to accessory apartments. He noted that Somers is the only municipality in the County that requires filing of special exception use permits relative to accessory apartments.

Ms. Gerbino referred to a letter from Edward Buroughs, Commissioner of the Westchester County Planning Board, dated September 8, 2015 and disagreed with his recommendation to eliminate the special exception use permit requirement for accessory apartments.

Chair Currie asked for the consensus of the Board on the elimination of Section 170.70.L from the Code of the Town of Somers.

Chair Currie indicated that it is the consensus of the Board to eliminate Section 170.70.L from the Code of the Town of Somers for the requirement of filing special exception use permits for accessory apartments with the Westchester County Division of Land Records and make that recommendation to the Town Board.

There being no further business, on motion by Ms. Gannon, seconded by Mr. McNamara, and unanimously carried, the meeting adjourned at 9:30 P.M. The Chair announced that the next Planning Board meeting will be held on Wednesday, October 14, 2015 at 7:30 P.M. at the Somers Town House.

Respectfully submitted,

Marilyn Murphy
Planning Board Secretary