OFFICE OF THE SUPERVISOR

Telephone
(914) 277-3637
Fax
(914) 276-0082

RICK MORRISSEY
SUPERVISOR

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

SOMERS TOWN BOARD
REGULAR MEETING
THURSDAY, OCTOBER 13, 2016 6:30PM

www.somersny.com

6:30pm – Executive Session – Personnel

7:00pm – Regular Meeting

I. PLEDGE OF ALLEGIANCE:

II. ROLL CALL:

III. PUBLIC HEARINGS:

1. Public Hearing: To consider amending the Special Exception use Permit (SEUP) for Best Plumbing.
2. Public Hearing: To amend Chapter 74 entitled Building Construction, Section74-11 entitled Fire Safety and Property Maintenance Inspections adding sub-section E to the Code of the Town of Somers.
3. Public Hearing; The acquisition of a Conservation Easement over lands of Stuart's Farm

PUBLIC COMMENT

SOMERS TOWN BOARD
REGULAR MEETING
THURSDAY, OCTOBER 13, 2016 6:30PM

www.somersny.com

IV. APPROVAL OF MINUTES: June 9, 2016 Public Hearing re: Continuation of Public Hearing from March 5,2016 & April 9, 2016 Proposed Local Law to amend Chapter 170, Zoning, Section 170-13C Multifamily Residence Downtown Hamlet (MFR-DH) ; June 9, 2016 Regular Meeting; July 14, 2016 Public Hearing re: Proposed Local Law to amend Chapter 170 entitled Zoning, Article V Neighborhood Shopping NS District; July 14, 2016 Public Hearing re: reclassification of Tax Lot 17.15-1-15.1 and July 14, 2016 Work Session/Regular meeting; July 20, 2016 Special Meeting

V. DEPARTMENT REPORTS: The Town Clerk announces receipt of the following monthly reports: Town Clerk, Building Inspector, Zoning Board of Appeals, Plumbing, Bureau of Fire Prevention, Parks & Recreation, Planning & Engineering, Tax Receiver, Director of Finance and Department Heads

VI. BUSINESS OF THE BOARD:

A. PARKS & RECREATION: No additional business.

B. TOWN BOARD:

1. NYS DEC Atlantic Bridge Public Notice.

2. Crossroads – PILOT

3. Calendrucci modification of the Restrictive Covenant.

4. Inter-Municipal Developer Agreement (IMDA) – Hidden Meadows.

5. Authorize the supervisor to execute the following per October 6, 2016 memo from Joseph Barbagallo, Woodard & Curran:
   a. Hidden Meadows Roads & Drainage Acceptance Letter
   b. NYS DOH – Form 348 for Public Water Supply Main Letter.
   c. NYS DEC – Form BSP-5 – for approval of wastewater Sewage Disposal System.

6. Somers Crossing – Schedule the following Public Hearings for November 10, 2016:
   a. Formations of Somers Sewer District #__.
   b. Expansion of Heritage Hills Special Water District to include Somers Crossing.

C. ***FINANCIAL:*** - No additional business.

D. ***HIGHWAY:*** No additional business.

E. ***PERSONNEL:***

1. Current Vacancies:
   Somers Energy Environment Committee
   Affordable Housing Board (3 – unexpired 2 year terms ending 7/11/2017)
   Board of Ethics -(1term- to serve at the pleasure of the Town Board.)
   Assessment Board of Review (1 - 5 year term ending 9/30/2021)

2. Upcoming Vacancies:
   a. Library Board of Trustees (2 -5 year terms – ending 12/31/2021)
   b. Planning Boards (1-7 year term ending 2023)
   c. Partner in Prevention 3 – (3 year terms ending 12/31/2019.)
   d. Zoning Board of Appeals 1 (5year term ending 12/31/2021)

3. Authorize hiring of Jennifer Kisslinger, Intermediate Clerk in the Planning and Engineering Office at an hourly rate of $15.00, per October 12, 2016 memo from Steven Woelfle.

F. ***PLANNING & ENGINEERING:***

1. For review and Comment: - Somers Public Safety Center.

G. ***POLICE:*** - No additional business.

H. ***CONSENSUS AGENDA***:

1. Authorize the following per September 27, 2016 memo from Steve Ralston.
   a. Increase budget for Reis Park Playground Budget $3,223.91to a total of $76,973.91.
   b. Increase budget for Reis Park Tennis Court $3,111.00 to a total of $121,111.00.

2. Authorize hiring of Tyler Silva Park Attendant seasonal at an hourly rate of $12.00.

SOMERS TOWN BOARD
REGULAR MEETING
THURSDAY, OCTOBER 13, 2016 6:30PM

www.somersny.com

3. Authorize Supervisor to execute September 23, 2016 letter from Constellation, providing the parties adhere to the requirements of Para 18.1 of the Electric Service Agreement.

4. Acknowledge Receipt of Summons: Re: Whispering Pines/Refer to Roland Baroni, Town Attorney.

5. Authorize change of Holiday pay dates for Somers Police effective 2017.

6. DASNY Solar Paned grant Excess Funding Resolution.

7. Authorize unclaimed driveway bond deposit in the amount of $1,000.00 from C & C Land (Section 5.13 Block 16 Lot 1) be transferred to the General Fund Account per memo dated 7/19/10 from Thomas Chiaverini, Supt. of Highway.

8. Authorize purchase of new 9 ft. Low Pro Z509 HSL Salt Spreader purchase off Oneida County Contract #1685 for the sum of $12,500.00 per memo dated from Thomas Chiaverini, Supt. Of Highway.

9. Authorize the Sale of Surplus Equipment and Old Junk equipment per memo dated 9/28/16 from Thomas Chiaverini, , Supt. Of Highway.

10. Acknowledge resignation of Keeva Young-Wright from The Partners in Prevention effective September 21, 2016.

11. Authorize refund in the amount of $581.20 to Maryellen Olin Myers per Bob Kehoe, Director of Finance.

12. Authorize the Supervisor to execute the following:
    a. Justice Court Assistance Program Grant.
    b. Application to reserve Temporary Use of Town House Green:
        1. Knights of Columbus (Nativity Scene.)
        2. Mitch Kaufman (Menorah.)
    c. Financial Advisory Services Agreement from Capital Markets Advisors, LLC.

13. Authorize escrow for Boniello Land and Realty for the Somers Crossing Site Plan Review in the amount of $12,000.00 per letter dated September 16, 2016 from Fred Wells.

14. Authorization to return of the following Erosion Control Bonds:
    a. $200.00 Narendra Rao TM: 17.14-2-13.
    b. $500.00 Palumbo TM: 38.13-2-12.

15. Accept the following Steep Slope, Stormwater Management and Erosion and Sediment Control and Tree Preservation.
    a. $500.00 North County Homes Inc./Andrew Papazian. TM:17.13-2-3

16. Certificate of No Referendum for 3 Geranium Drive.

17. Certificate of No Referendum for 11 Geranium Drive.

18. Authorization to Erosion Control Bond to Andrew Papazian in the amount of $500.00 per October 5, 2106 memo from Wendy Getting, Senior Office Assistant.

19. Adopt resolution re- Banning the Barges.

20. Authorize Budget transfers per October 11, 2016 memo from Supervisor Rick Morrissey.

21. Authorize hiring of Xavier Lloyd as Clerk at an hourly rate of $12.00 to work for a total of 222 hours on the Records Management Grant per October 5, 2016 email from Patricia Kalba, Town Clerk.

SOMERS TOWN BOARD
REGULAR MEETING
THURSDAY, OCTOBER 13, 2016 6:30PM

www.somersny.com

2016 CALENDAR

October 6, 2016	7:00pm	Town Board Work Session
October 13, 2016	7:00pm	Town Board Regular Meeting 1. Public Hearing: To consider amending the Special Exception use Permit (SEUP) for Best Plumbing. 2. Public Hearing: To amend Chapter 74 entitled Building Construction, Section74-11 entitled Fire Safety and Property Maintenance Inspections adding sub-section E to the Code of the Town of Somers. 3. Public Hearing; The acquisition of a Conservation Easement over lands of Stuart's Farm
October 19, 21 & 25, 2016	1:00pm	Department Budget Hearings
November 3, 2016	7:00pm	Town Board Work Session
November 10, 2016	7:00pm	Town Board Regular Meeting
December 1, 2016	7:00pm	Town Board Work Session
December 8, 2016	7:00pm	Town Board Regular Meeting

2017 CALENDAR

January 5, 2017	7:00pm	Town Board Organization Meeting
January 5, 2017	7:00pm	Town Board Work Session
January 12, 2017	7:00pm	Town Board Regular Meeting

10/12/2016 3:42 PM
Z:\Supervisor\bditieri\Agendas\2016\October 13, 2016 Regular Meeting.docx

Oct agenda
EC Town Board ✓
Town Attorney ✓
Town Clerk ✓
File
Date 9/22/16 bp

PUBLIC HEARING NOTICE:

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Somers, Westchester County, New York, has scheduled a Public Hearing on Thursday, October 13, 2016 at 7:00 PM. at the Somers Town House, 335 Route 202, Somers, New York, to consider amending the Special Exception Use Permit (SEUP) for Best Plumbing Supply, Inc. (owner) which will allow Best Plumbing, Inc. to conduct showroom sales activities on Sundays from 11:00 AM to 5:00 PM, conduct supply sales and pick-ups on Saturdays from 8:00 AM to 5:00 PM and remove truck activity restriction from 7:40 AM to 8:15 AM. The subject Property is located on the northerly side of Goldens Bridge Road, (NYS Route 138) directly opposite the John F. Kennedy Catholic High School in the R-80 Residential District and the Groundwater Protection Overlay District and is designated on the Town Map as Sheet 28.15, Block 1, Lots 2 and 4.

Anyone is invited to attend and will be heard on the aforesaid matter.

BY ORDER OF THE TOWN BOARD

Patricia Kalba
Town Clerk

Dated: September 29, 2016

PH # 1-6

TEL: 914-277-3323
FAX: 914-277-3960

TOWN CLERK'S OFFICE

Town of Somers

WESTCHESTER COUNTY, N.Y.

Town House
335 Route 202
Somers, N.Y. 10589

PATRICIA KALBA
TOWN CLERK

RESOLUTION

RESOLVED, that the Town Board does hereby schedule a public hearing for October 13, 2016 with regard to the Best Plumbing & Supply request for revision of the Special Exception Use Permit.

I hereby certify that the foregoing copy of resolution was unanimously adopted by the Town Board of the Town of Somers at a Regular Meeting held on September 8, 2016.

Dated: September 13, 2016

Patricia Kalba
Town Clerk

Ec: Supervisor
Director of Finance
Cc: Director of Planning
Best Plumbing

PH #1 2-6

Barbara Sherry

From: Syrette Dym
Sent: Wednesday, August 10, 2016 3:28 PM
To: Marilyn Murphy; Wendy Getting; vanessa Agueldo (v.agudelo@live.com); Tammi Savva; Barbara Sherry
Cc: Rick Morrissey
Subject: FW: Application for Modifications to Best Plumbing operation restrictions

EC - TB TC TA 8/15/16 DP

Marilyn – Please distribute the e-mail below to Planning Board by e-mail and hard copy for tonight's meeting and to Joe, Rob, Roland and the Best Plumbing Applicant

Tammi/Barbara – Please distribute e-mail below to the Town Board and Town Clerk. Thank you.

Syrette Dym, AICP
Director of Planning
Town of Somers
335 Route 202
Somers, NY 10589

914-277-5366 (phone)
914-277-4093 (fax)
sdym@somersny.com
www.somersny.com

From: Mark Vaillancour[illegible]
Sent: Wednesday, August 10, 2016 1:27 PM
To: Syrette Dym
Subject: Application for Modifications to Best Plumbing operation restrictions

Dear Ms. Dym:

I am in receipt of the application by Best Plumbing Supply to remove trucking activity restrictions from 7:40 am to 8:15 am on Mondays to Fridays. Please be advised that our school has strong objections to removal of any such restrictions placed on Best Plumbing during that period of operation. The period of time stipulated in the restrictions is one that has the highest volume of commuter traffic in and out of the main entrance. Kennedy currently services 40 school districts, 18 of which bus children to or school every day. Other students arrive either by way of our shuttle service or drop off from parents. A significant portion of the student population also drives to the school. With such a diverse commuter population entering and exiting an already dangerous intersection, the removal of trucking restrictions would only further aggravate the problem and increase the likelihood of pedestrian and automotive accidents.

Thank you for the opportunity to voice my concern to the Board.

Sincerely:
Fr. Vaillancourt

Rev. Mark G. Vaillancourt, Ph.D.
President/Principal

PH#1 3-6

NEW YORK STATE OF OPPORTUNITY | Department of Transportation

ANDREW M. CUOMO
Governor

MATTHEW J. DRISCOLL
Commissioner

TODD WESTHUIS, P.E.
Regional Director

EC - TBTCTA 9/21/16 bp

RECEIVED
SEP 21 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

September 19, 2016

Ms. Syrette Dym, AICP, Director of Planning
Town of Somers
Town House
335 Route 202
Somers, New York 10589

Re: NYSDOT SEQRA# 16-159
Best Plumbing Supply
Town of Somers, Westchester County

Dear Ms. Dym:

We have received Site Plan and Shorty Environmental Assessment Form for the referenced proposal from the applicant, dated July 13, 2016 and received on August 2, 2016. We have completed our review of this proposal and would like to inform you that the referenced proposal has minimal impact on the existing State Highway System and we have no additional comments to offer at this time. We appreciate your effort for involving us in the review process.

Thank you,

Akhter A. Shareef
Senior Transportation Analyst

New York State Department of Transportation, Hudson Valley Region
4 Burnett Boulevard, Poughkeepsie, NY 12603
(845) 431-5793 | Akhter.shareef@dot.ny.gov
www.dot.ny.gov

NEW YORK STATE OF OPPORTUNITY | Department of Transportation

cc: Mike LeRose, Permit Field Engineer, Residency 8-8

PH #1 5-6

Belinda DiTieri

syrette dym
Wednesday, September 28, 2016 5:22 PM
Belinda DiTieri; Barbara Sherry; Tammi Savva
Rick Morrissey
Items for Town Board Agenda

Barbara and Belinda – The following are two items in **addition to the approval of the additional escrow funds for Fred Wells for Somers Crossing that** need to be on the Town Board agenda for October:

1. **Best Plumbing** – Public Hearing is already scheduled for October 13. After taking testimony and closing public hearing (unless hearing is to remain open), Town Board needs to identify that more than 30 days has passed since it declared intent to be lead agency and accept role as lead agency. Depending on position of Town Board (which I will pre-discuss with Rick), I will prepare a resolution for modification of the special exception use permit that that Board will take action or (or not – depending on Rick). I will follow this e-mail up with a memorandum to the Town Board.
2. **DASNY Solar Panel Grant for Highway Garage Annex Building** – The second step in securing the $100,000 grant from Senator Murphy's office for solar panels at the highway garage annex building has been explained in correspondence from DASNY. In order to take these next steps the Town Board must do the following at its October meeting(s):
    a. Establish itself as lead agency under SEQRA, circulate to interested agencies and then make an environmental determination
    b. Provide Evidence of Committed funding sources. This would be to provide funds that may be required over and above the $100,000 grant to complete the project. Based on input from the cooperating solar provider, this amount could conservatively range about $15,000. Therefore, as corroborated with Bob Kehoe, the Town Board must pass a resolution that" commits an amount not to exceed $15,000 to fund costs to be incurred to provide solar panels on the highway garage annex building over and above the $100,000 grant funds to be received". This will all be explained in a memorandum to the Town board.
    c. Authorize the Supervisor Execute the documents required to secure the SAM Grant including the following:
        i. Project information Sheet
        ii. Copy of Deed
        iii. Resolution identifying evidence of committed funding sources
        iv. SEQRA documentation

Put with Best Plumbing

PH #1 6-6

TOWN BOARD TOWN OF SOMERS

RESOLUTION

Action:	Amended Special Use Permit
Application Name:	Best Plumbing Supply, Inc.
Owner/Applicant:	Best Plumbing Supply, Inc.
Designation:	Tax Lot 28.15, Block 1, Lots 2 and 4
Zone:	R80 Residence Zoning District
Location:	49 Route 138 (Goldens Bridge Road)
Date of Approval:	October 13, 2016

WHEREAS, Best Plumbing Supply, Inc., a pre-existing non-conforming use in an R80 residential district, has made application to the Town Board of the Town of Somers for an amendment to its existing Special Use Permit in connection with its use of the above subject property; and

WHEREAS, such modifications relate to its Special Exception Use Permit of June 10, 2004 as modified in September 3, 2010 and seek to further modify restrictions pertaining to days and hours of operation; and

WHEREAS, the proposed modifications seek the following:

1. To conduct Showroom Sales activities on Sundays from 11:00 am to 5:00pm
2. To conduct Supply Sales and Pick-Ups on Saturdays from 8:00am to 5:00pm
3. To remove the trucking activity restriction from 7:40am to 8:15 am on Mondays to Fridays

WHEREAS, the application consists of the following:

- Letter Application from Best Plumbing dated July 13, 2016 requesting special permit modification and requesting to be added to the Town Board agenda of August 4, 12016
- Short Form EAF
- Property Survey

WHEREAS, the Town Board considered the application and declared its intent to be Lead Agency under SEQRA at its meeting of August 4, 2016, identified the project as an Unlisted Action and determined to conduct a coordinated SEQRA review; and

WHEREAS, at its meeting of August 4, 2016, the Town Board also referred the application to the Planning Board for its review and recommendation; and

WHEREAS, the Director of Planning received correspondence on August 10, 2016 from Rev. Mark G. Vaillancourt, President/Principal of Kennedy Catholic High School objecting to the proposed removal of trucking restrictions from 7:40 to 8:15 AM Mondays to Friday due to high volumes of traffic into and out of the main school entrance and such correspondence was circulated to the Planning Board and Town Board and consulting Town Engineer; and

WHEREAS, the Planning Board discussed the proposed action at its meeting of August 10, 2016 and was in receipt of the above correspondence and heard testimony from Rev. Vaillancourt regarding his objection to removal of the requested trucking restrictions; and

WHEREAS, after consideration and discussion, the Planning Board made a recommendation of approval to the Town Board of all the applicant's requested modifications to the special permit due to its determination that the changes to the site and entrances to the High School since the last request for modifications to the special permit were significant improvements that mitigated future impacts and that the projected three 24 foot box trucks that would leave the site during Kennedy morning peak arrival times were minor and would have no traffic impact; and

WHEREAS, the Planning Board expressed it had no problem with the Town board granting the requested special exception use permit modifications in correspondence to the Town Board of August 30, 2016;

WHEREAS, at its meeting of September 8, 2016, the Town Board scheduled a public hearing for October 13, 2016; and

WHEREAS, by letter of September 19, 2016 to the Director of Planning, NYS Dot after review of the EAF and Site Plan, sent as part of the SEQR coordinated review, determined that the proposed special permit modifications have minimal impact on the exiting State Highway System; and

WHEREAS, the Town Board conducted a duly noticed Public Hearing on the subject application on October 13, 2016, and all those wishing to be heard were heard, at which time the public hearing was closed; and

NOW, THEREFORE, BE IT RESOLVED, that in accordance with Article 8 of the State Environmental Quality Review Law and 6 NYCRR Part 617, and Town Law Chapter 92 Environmental Quality Review, the Town Board hereby made a determination that the proposed development will not have a significant negative adverse impact on the environment as any impacts shall be minimized or avoided due to the limited number of box trucks leaving the site during the morning peak hour and due to prior improvements made to the site as a result of previous site plan approvals;

RESOLVED that the application for an Amended Special Use Permit with all requested permit modifications be granted. (The Board should determine if this is so, or if some not all are granted and whether are subject to conditions and/or modifications.)

Oct Agenda
Town Board ✓
Town Attorney ✓
Town Clerk ✓
File
Date 9/22/16 bp

PUBLIC HEARING NOTICE

PLEASE TAKE NOTICE that the Town of Somers will conduct a public hearing on October 13, 2016 at 7:00 p.m. at the Town House, 335 Route 202, Somers, New York on a Local Law to amend Chapter 74 entitled Building Construction, Section 74-11 entitled Fire Safety and Property Maintenance Inspections adding sub-section E to the Code of the Town of Somers.)

All persons having an interest in the proposed local law are invited to attend the public hearing and will be afforded an opportunity to be heard. A copy of the proposed local law will be available and may be examined in the Office of the Town Clerk during regular business hours.

By Order of the Town Board
of the Town of Somers

Patricia Kalba
Town Clerk

Dated: September 29, 2016

PH2 1-5

TEL: 914-277-3323
FAX: 914-277-3960

PATRICIA KALBA
TOWN CLERK

TOWN CLERK'S OFFICE

Town of Somers

WESTCHESTER COUNTY N.Y.

Town House
335 Route 202
Somers, N.Y. 10589

RESOLUTION

RESOLVED, that the Town Board does hereby schedule a public hearing for October 13, 2016 with regard to the proposed amendment to Chapter 74, entitled Building Construction of the Code of the Town of Somers to retain a 45 Minute Fire Break.

I hereby certify that the foregoing copy of resolution was unanimously adopted by the Town Board of the Town of Somers at a Regular Meeting held on September 8, 2016.

Dated: September 13, 2016

Patricia Kalba
Town Clerk

Ec: Supervisor
Director of Finance
Cc: Building Inspector

PH #2 2-5

EC Oct Agenda
Town Board ✓
Town Attorney ✓
Town Clerk ✓
File
Date 9/22/16 bp

Last Revised 9/22/16

TOWN OF SOMERS

Local Law _____ for the Year 2016

A Local Law to amend Chapter 74 of the Code of the Town of Somers entitled Building Construction.

Be It Enacted by the Town Board of the Town of Somers as follows:

1. Section 74-11 entitled Fire Safety and Property Maintenance Inspections is amended by adding sub-section E. to read as follows:

E. **Garages and Carports.**

1. Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with ¾-hour fire-protection-rated assemblies equipped with self-closing devices.

1.1 Duct penetration. Ducts in the garage and ducts penetrating the walls or ceilings separating the dwelling from the garage shall be constructed of a minimum No. 26 gage (0.48 mm) sheet steel or other approved material and shall have no openings into the garage.

1.2 Other penetrations. Penetrations through the separation required in paragraph 2 shall be protected by filling the opening around the penetrating item with approved material to resist the free passage of flame and products of combustion.

2. Separation required. The garage shall be separated from the residence and its attic area by horizontal or vertical separations conforming to subsections 2.1 and 2.2.

2.1 Vertical separations. Where partitions are used to separate an attached garage from a living space or its attic, the partition assembly shall have a ¾-hour fire-resistance rating.

Exception: In lieu of providing partitions that have a ¾-hour fire-resistance rating, one layer of ⅝-inch thick, type-X, gypsum board may be installed on the garage side and one layer of ½-inch, type X, gypsum board may be installed on the opposite side. Application shall be in accordance with Section R702.3 of the International Residential Code for One and Two Family Dwellings (2015) (hereinafter the "Residential Code").

2.2 Horizontal separations. Where horizontal construction is used to separate the garage from the living space or its attic, such construction shall be protected with one layer of ⅝-inch thick, type X, gypsum board, installed in accordance with the requirements of Section R805.1 of the Residential Code. Openings in horizontal separations shall not be permitted except where the residence is otherwise protected by vertical separations. Where the horizontal separation is a floor-ceiling assembly, the structure supporting the separation shall also be protected by not less than ⅝-inch (15.87 mm) type X gypsum board or equivalent.

3. Floors. Garage floor surfaces shall be of approved noncombustible material. The area of floor used for parking of automobiles or other vehicles shall be sloped to facilitate the movement of liquids to a drain or toward the main vehicle entry doorway.

4. Carports. Carports shall be open on not less than two sides. Carport floor surfaces shall be of *approved* noncombustible material. Carports not open on two or more sides shall be considered to be a garage and shall comply with the provisions of this section for garages.

Exception: Asphalt surfaces shall be permitted at ground level in carports. The area of floor used for parking of automobiles or other vehicles shall be sloped to facilitate the movement of liquids to a drain or toward the main vehicle entry doorway.

5. Flood hazard areas. For building located in flood hazard areas as established by Table R301.2(1) of the Residential Code, garage floors shall be:

1. Elevated to or above the design flood elevation as determined in accordance with Section R322 of the Residential Code; or

2. Located below the design flood elevation provided that the floors are at or above *grade* on not less than one side, are used solely for parking, building access or storage, meet the requirements of Section R322 and are otherwise constructed in accordance with this code.

6. Automatic garage door openers. Automatic garage door openers, if provided, shall be *listed* and *labeled* in accordance with UL 325.

7. Fire sprinklers. Private garage shall be protected by fire sprinklers where the garage wall has been designed based on Table R302.1(2) of the Residential Code, Footnote a. Sprinklers in garages shall be connected to an automatic sprinkler system that complies with Section P2904 of the Residential Code. Garage sprinklers shall be residential sprinklers or quick-response sprinklers, designed to provide a density of 0.05 gpm/ft^2. Garage doors shall not be considered obstructions with respect to sprinkler placement.

2. Conflicting Standards. Where the requirements of this Local Law impose a different restriction or requirement than imposed by other sections of the Somers Town Code or other applicable laws, rules or regulations, the requirements of this Local Law shall prevail.

3. Severability. The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law that can be given effect without such invalid part or parts.

4. Filing. This Local Law shall be filed with the Secretary of State of the State of New York.

5. Effective Date: This Local Law shall be effective sixty (60) days subsequent to receipt of approval of said local law by the New York State Fire Prevention and Building Code Council.

EC Oct Agenda
To B
To A ✓
To C ✓
File
Date 9/22/16 bp

PUBLIC HEARING NOTICE

PLEASE TAKE NOTICE that the Town of Somers will conduct a Public Hearing on October 13, 2016, at 7:00 p.m. at the Town House located at 335 Route 202, Somers, New York 10589 pursuant to General Municipal Law Section 247 in connection with the Town's acquisition of a Conservation Easement over lands of Stuart's Farm located at 62 Granite Springs Road, Somers, New York, Sheet 26.11, Block 1, Lot 2.

All persons having an interest in the proposed acquisition are invited to attend the public hearing and will be afforded an opportunity to be heard. A copy of the proposed Conservation Easement will be available and may be examined in the Office of the Town Clerk during regular business hours.

BY ORDER OF THE TOWN BOARD

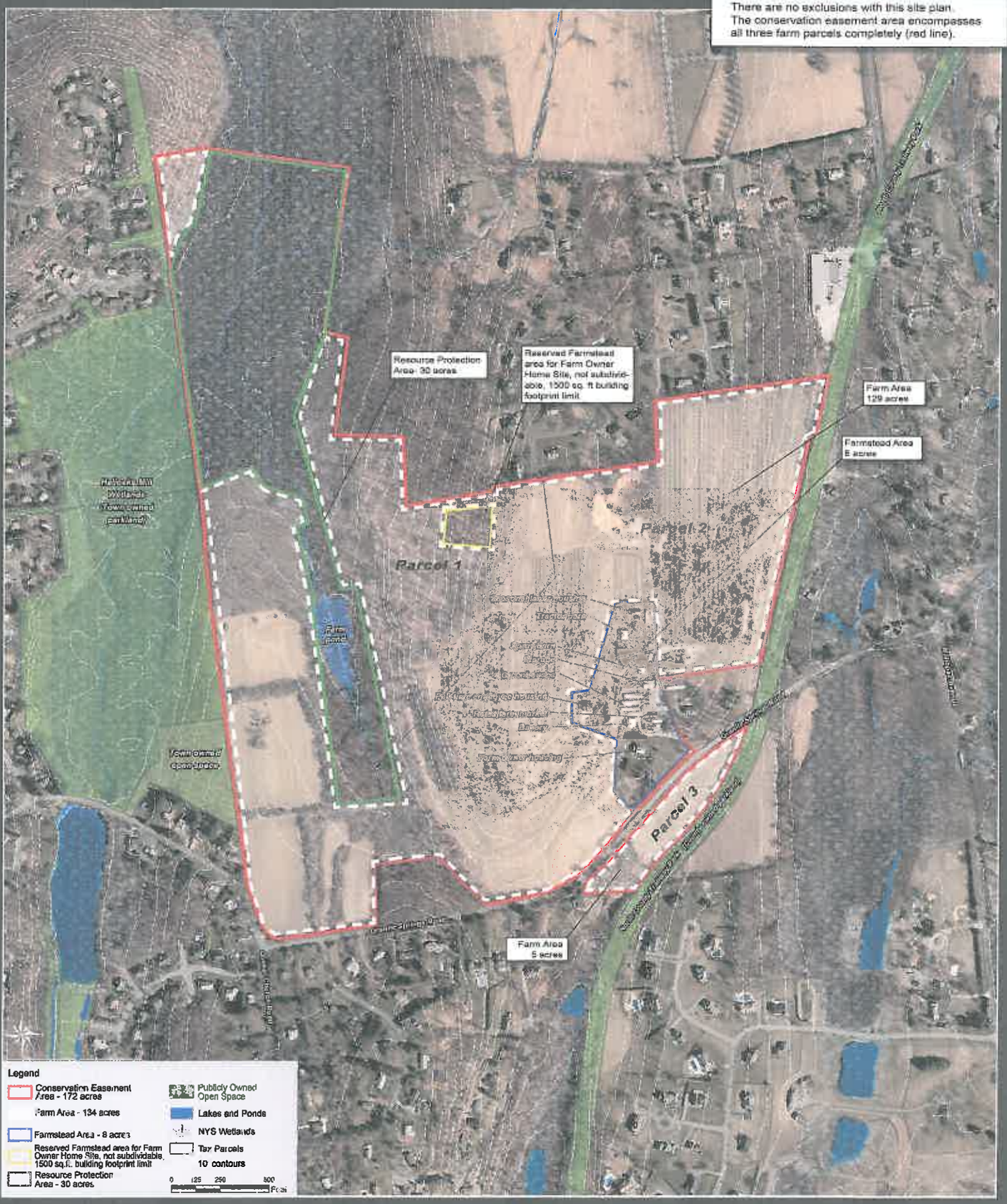
Patricia Kalba
Town Clerk

Dated: September 29, 2016

PH3 1-5

Stuart's Fruit Farm
Town of Somers

Site Plan



TEL: 914-277-3323
FAX: 914-277-3960

TOWN CLERK'S OFFICE

Town of Somers

WESTCHESTER COUNTY, N.Y.

Town House
335 Route 202
Somers, N.Y. 10589

PATRICIA KALBA
TOWN CLERK

RESOLUTION

RESOLVED, that the Town Board does hereby schedule a Public Hearing for October 13, 2016 with regard to a Conservation Easement for Stuarts Farm.

I hereby certify that the foregoing copy of resolution was unanimously adopted by the Town Board of the Town of Somers at a Regular Meeting held on September 8, 2016.

Dated: September 13, 2016

Patricia Kalba
Town Clerk

Ec: Supervisor
Director of Finance
Cc: Stuarts Farm

PH 3-2-5

Barbara Sherry

From: Barbara Sherry
Sent: Wednesday, July 13, 2016 1:07 PM
To: Roland Baroni; Patricia Kalba; Bob Kehoe; Anthony Cirieco; Bill Faulkner; Richard Clinchy; 'Rick Morrissey'; Tom Garrity
Cc: Tammi Savva
Subject: FW: Stuart's Farm

Good Afternoon,
This item will be placed on the September Agenda to schedule the public hearing for October 13, 2016.

Barbara J. Sherry
Secretary to the Supervisor
Rick Morrissey, Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
phone: (914) 277-3637
fax: (914) 276-0082
bsherry@somersny.com

From: Rick Morrissey
Sent: Wednesday, July 13, 2016 12:26 PM
To: Tammi Savva <tsavva@somersny.com>; Barbara Sherry <bsherry@somersny.com>
Subject: FW: Stuart's Farm

Please put setting a public hearing date on the Oct agenda.

Thanks,

Rick Morrissey, MPA
Town Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
Ph: 914-277-3637
Fax: 914-276-0082
supervisor@somersny.com
www.somersny.com

From: Rick Morrissey
Sent: Wednesday, July 13, 2016 12:25 PM
To: 'Roland Baroni'
Cc: Tammi Savva; Barbara Sherry
Subject: RE: Stuart's Farm

PH 3 5

Yes, it has changed. Initially I brought up that scenario so that the $300,000 could be spread over two budget cycles. Our Finance Director informed me this is not necessary and a full payment can be made when requested and need by the WLT.

I will set a PH for the Fall and get that out of the way so that we are in a position to move ahead on the payment & easement when it becomes necessary.

Rick

Rick Morrissey, MPA
Town Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
Ph: 914-277-3637
Fax: 914-276-0082
supervisor@somersny.com
www.somersny.com

From: Roland Baroni [redacted]
Sent: Wednesday, July 13, 2016 11:51 AM
To: Rick Morrissey
Subject: Re: Stuart's Farm

The PH would have to be prior to the TB accepting the easement as a Grantee, prior to you signing anything and prior to the Town committing any funds. Susan mentioned to me that 150,000 was to be paid in 2016 and the remainder in 2017. Has that changed? Roland

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From:supervisor@somersny.com
Sent: July 13, 2016 9:23 AM
To:rbaroni@[redacted]
Subject:RE: Stuart's Farm

Roland:

As far as just participating as grantees the Town should have the Somers Land Trust (SLT) have back-up rights as they do with the Windsor Farm Property. Michael Barnhart, President of the SLT will speak with Susan Carpenter regarding the issue.

My understanding from Lori Hasinger is that the funds from the Town will not be required until September 017. When then should we schedule a PH?

Rick
Rick Morrissey, MPA
Town Supervisor

PH 3 4-5

Town of Somers
335 Route 202
Somers, NY 10589
Ph: 914-277-3637
Fax: 914-276-0082
supervisor@somersny.com
www.somersny.com

From: Roland Baroni [redacted]
Sent: Tuesday, July 12, 2016 10:29 AM
To: Rick Morrissey
Subject: Stuart's Farm

I spoke to Susan Carpenter about the Conservation Easement. She is drafting a document which makes WLT the lead grantee with the other participants being "just grantees". WLT will have the power of monitoring and of enforcement. She wanted me to check with you to make sure you knew that Somers would not have those rights and obligations. I also wanted to remind you that prior to executing the CE and paying the Town's share of funding the TB must conduct a PH. Roland

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PH 3 5-5

Oct 13 Agenda TB 10/11 BP

Rick Morrissey

RECEIVED
OCT 11 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

From: Roland Baroni
Sent: Wednesday, October 05, 2016 11:41 AM
To: Rick Morrissey
Cc: Patricia Kalba
Subject: Stuart's Farm Conservation Easements
Attachments: Site Plan.jpg; conservation easement 1.pdf; conservation easement 2.pdf

Enclosed please find draft documents for the two easements with my notes in the margins.

Second drafts incorporating my comments are in process and will be delivered prior to 10/14.

Roland

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Conservation Easement

THIS CONSERVATION EASEMENT ("Easement") is granted this ____ day of _____ 2017, by Mary Lee Gerlach, fka Mary Lee Stuart (the "Grantor") with an address at 615 Mt Olivet Court, Clayton, California 94517 to Westchester Land Trust, Inc. a New York not-for-profit corporation having an address of 403 Harris Road, Bedford Hills, New York 10507 (the "Lead Grantee") and to Westchester County, a New York municipal having an address of Michaelian Office Building, 148 Martine Ave., White Plains, New York 10601 and to the Town of Somers, with offices at 335 Route 202, Somers, New York 10589 (collectively the "Grantees").

WHEREAS:

A. Grantor is the owner of certain real property (the "Property") consisting of approximately 97 acres, in *1* tax map parcel, identified on the tax map of the Town of Somers as 26.11-1-1, located on Granite Springs Road in the Town of Somers, Westchester County, New York, more fully described in the legal survey description of the property – survey awaiting completion--("Exhibit A") and shown on the Easement Map ("Exhibit B"), both attached hereto and as depicted on a survey of the Property to be filed with the Westchester County Clerk simultaneously herewith.

B. Lead Grantee Westchester Land Trust, Inc. is a New York not-for-profit conservation organization within the meaning of Article 49, Title 3 of the Environmental Conservation Law of the State of New York (together with any successor statute, the "ECL"), is organized for, among other purposes, conserving real property, is a tax exempt and qualified organization within the meaning of Sections 501(c)(3), 509(a) and 170(b)(1)(A)(vi) of the Internal Revenue Code (the "Code"), and is a "qualified organization" to accept, purchase, and hold conservation easements under Section 170(h) of the Code and Treasury Regulation Section 1.170A-14(c).

C. Grantees County of Westchester and Town of Somers are municipal corporations and have the authority pursuant to Section 247 of the General Municipal Law and Article 49, Title 3 of the ECL to acquire conservation easements.

D. The Scenic Hudson Land Trust, Inc. ("Scenic Hudson"), is a New York not-for-profit corporation with a business address of One Civic Center Plaza, Suite 200, Poughkeepsie, New York, 12601, and is qualified to hold and enforce conservation easements pursuant to the New York State Environmental Conservation Law ("ECL") and the Internal Revenue Code. Scenic Hudson has provided $XXXX towards the purchase of this Conservation Easement and is granted an assignee right pursuant to Section 24 ("Transfer of Easement").

E. Article 14, Section 4 of the New York State Constitution states: "The policy of this state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products;"

F. Section 49-0301 of the ECL states: "The legislature hereby finds and declares that in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and manmade resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands, ..., is fundamental to the maintenance, enhancement and improvement of...balanced economic growth and the quality of life in all areas of the state;"

G. The Property is located within Westchester County's Agricultural District #1, created pursuant to Article 25-AA of the New York State Agriculture and Markets Law (the "AML"). Section 300 states: "It is hereby found and declared that many of the agricultural lands in New York State are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited resources results. ... It is, therefore, the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. ... It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York State's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance;"

H. Article 25-AAA, Section 321 of the AML states: "It is hereby found and declared that agricultural lands are irreplaceable state assets. In an effort to maintain the economic viability, and environmental and landscape preservation values associated with agriculture," the Commissioner is authorized to administer programs to assist counties in developing agricultural and farmland protection plans and to assist both county and municipal governments in the implementation of such plans. The Commissioner gives priority to projects that will preserve viable agricultural land, are located in areas facing significant development pressure and serve as a buffer for a significant natural public resource containing important ecosystem or habitat characteristics;

I. The Property is located within Westchester County, which adopted an Agricultural and Farmland Protection Plan in November 2010. The Plan identifies the importance of Agriculture for not only the provision of agricultural products but also for establishing rural character and protecting drinking water quality in the Croton Reservoir watershed, and recommends, among other initiatives, pursuing participation in the New York Farmland Implementation Grants Program.

J. The Property is located within the Town of Somers, which adopted a Comprehensive Plan in February 2016. The Plan recommends that the Town acquire lands as available seeking partnerships with Westchester Land Trust and Westchester County, as appropriate, and to use conservation easements to create linear parks and preserve farmland (Chapter 2, Goal 5). In addition the Plan recommends keeping the low density character of the western quadrant of the town (where the Property is located) and recommends keeping property with open space qualities in their current use through outright purchase, purchase of development rights or transfer of conservation easements or conservation or cluster development. The Plan indicated in particular that it was exploring working with Westchester Land Trust to purchase the development rights to the Property. (Chapter 5) In addition the Town of Somers Open Space Committee has listed the Property as its top priority of properties for potential acquisition by the Town. (Chapter 9);

K. The Property consists primarily of productive agricultural land. The Property contains approximately 34 acres of prime soils, and approximately 13 acres of soils of statewide importance as defined by the U.S. Department of Agriculture Natural Resources Conservation Service.

L. The Property also contains approximately 30 acre of wooded wetland with a small pond designated a Resource Protection Area which provides a source of water for supplemental irrigation, and protection of the wooded wetland draining into the pond helps preserve the quantity and quality of water in the pond. The wooded area also provides timber for select harvesting of low quality trees for firewood which is done consistent with a Forest Management Plan which is part of the Conservation Plan for the Property. The berm and outlet structure for the pond allow access for farm vehicles that use it to cross the wetlands to access agricultural land on the west side of the farm.

M. Lead Grantee determined that accepting this Easement on the Property will enhance the long-term agricultural values of the Property and promote the use of soil conservation practices, which will further Lead Grantee's charitable purposes of protecting the distinctive rural character of Westchester County and its land. The Lead Grantee's land preservation priorities identify preservation of existing farmland as a priority and determines that key strategies for attaining this goal include establishing conservation easements enabling continuation of farming activities where they currently occur so these lands will be permanently protected, and feature farmland preservation in funding requests submitted to foundations, potential donors, and other sources of financial support including New York State Farmland Protection Grants. Therefore, the Board of Directors of the Lead Grantee approved the permanent conservation of this Property, as reflected in the August 22, 2016 minutes of the organization

N. Grantor has received independent legal and financial advice regarding this Easement to the extent that Grantor has deemed necessary. Grantor freely signs this Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing, One million two hundred twelve thousand five hundred Dollars ($1,212,500) and the mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows:

1. **Grant of Conservation Easement.**
Grantor hereby grants and conveys to Lead Grantee and Grantees a conservation easement (the "Easement"), an immediately vested interest in real property defined by Article 49 of Title 3 of the ECL of the nature and character described herein, for the benefit of the general public, which Easement shall run with and bind the Property in perpetuity. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Lead Grantee to enforce these covenants in the manner described below.

2. **Purpose.**
The Purpose of this Easement is to conserve Viable Agricultural Land by preventing the conversion of the Property to non-farm uses, except for those allowed herein. In achieving

such prevention the Property shall be forever reserved for continued Agricultural Use.

3. **Implementation.**
This Easement shall be implemented by limiting and restricting the non-agricultural development and non-farm use of the Property in accordance with its provisions. The Property remains subject to all applicable local, state and federal laws and regulations. This Easement and the administration of its provisions shall not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML.

4. **Definitions.**

4(a). **"Agricultural Use"** shall be defined as those activities necessary to:

(i.) produce "Crops, Livestock and Livestock Products"; or

(ii.) use the Property as a "Farm Operation" to the extent permitted by this Easement; or

(iii.) be actively enrolled in any federal or state or local program whose intent is to temporarily suspend (for a specified period of one or more years or crop seasons) the production of Crops, Livestock and Livestock Products for the stipulated purpose of soil and water conservation, wildlife habitat, or similar conservation purpose; or

(iv.) manage the Property or a portion thereof in a fallow or otherwise idled manner provided such management is described in a Conservation Plan.

4(b). **"Conservation Plan"** shall be defined as an Agricultural Environmental Management (AEM) Conservation Plan (Tier 3 or higher), or such equivalent document that has been prepared by the local Soil and Water Conservation District, or other qualified conservation professional, in cooperation with the Grantor.

4(c). **"Crops, Livestock and Livestock Products"** shall be defined pursuant to Article 25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter.

4(d). **"Farm Labor Housing"** means dwellings or structures, together with accessory improvements used to house seasonal and/or full-time employees where such residences are provided by the farm owner and/or operator, the worker is an essential employee of the farm owner and/or operator employed in the operation of the farm and the farm worker is not a partner or owner of the Farm Operation. For instance, a structure used as the primary residence of a farm owner and/or operator is not "Farm Labor Housing".

4(e). **"Farm Operation"** shall be defined pursuant to Article 25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter.

4(f). **"Grantor"** includes the original Grantor and his/her/its heirs, successors and assigns.

4(g). **"Grantee"** includes the original Grantee(s) and its successors and assigns. The term "Lead Grantee" is the Grantee designated by mutual agreement between the Grantees to give and receive all notices and other communications to and from the Grantor as specifically indicated in this Easement and to pursue any legal action to enforce this Easement. The Westchester Land Trust, Inc. shall be Lead Grantee unless the Grantor receives written notice of a change in such designation executed by all Grantees.

4(h). **"Impervious Surfaces"** are defined as structures or improvements that permanently cover soil resources. Impervious Surfaces do not include permeable surfaces such as gravel roads and parking areas; structures whose principal purpose is to protect soil and water resources, such as manure storage areas; and structures and improvements lacking permanent foundations. As used herein, "permanent foundations" are defined to be any continuous hardened surface (e.g., concrete, asphalt, or other similar stabilizing material) that is attached to, placed on or inserted in the ground and that underlies such building, structure or improvement.

4(i). **"Owner"** is defined as any individual or entity, including any heir, successor or assign, of any legal or equitable interest in all or any portion of the Property, and any party entitled to the possession or use of all or any part thereof.

4(j). **"Recreational Uses"** are defined as lawful personal or commercial activities including, but not limited to, hunting, fishing, cross-country skiing, camping, horseback riding and snowmobiling. Recreational Uses shall not include golf courses and ranges.

4(k). **"Residential Dwelling"** means dwellings or structures, together with accessory improvements that comprise single-family, multi-family, apartments, "in-law" apartments, guest houses and Farm Labor Housing, whether or not the structure(s) are used as the primary residence of a farm owner and/or operator.

4(l). **"Rural Enterprises"** are defined as commercial activities conducted on the Property, which are clearly incidental, secondary, and subordinate to the Agricultural Use of the Property, and are owned by, and primarily operated by, the Grantor and other residents of the Property, with limited outside employees, including, but not limited to, professional office, home office of salesperson, artist's studio, arts instruction, bed and breakfast, crafts production and sales, computer repair, small engine repair, firewood distribution, and beauty salon.

4(m). The following **"Use Areas"** are defined for the Easement:
"Zone for Future Farmstead Area" is defined as area(s) depicted on Exhibit B within which a future Farmstead Area may be designated in accordance with the process set forth in Section 8 or pursuant to Section 26..

"Resource Protection Area" is defined as the area(s) depicted on Exhibit B that contains unique or special natural features including, but not limited to, streams, wetlands, habitat or steep slopes and their supporting buffer lands.

"Farm Area" is defined as the remaining area of the Property, as depicted on Exhibit B, which Exhibit may be revised from time to time pursuant or pursuant to Section 26 ("Amendment of Easement") of this Easement.

4(n). "Viable Agricultural Land" is defined as land highly suitable for a Farm Operation.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

5. Reserved Rights Retained by Grantor.

Grantor reserves all customary rights and privileges of ownership, including the right of exclusive use, possession and enjoyment of the Property, the rights to sell, lease, mortgage, and devise the Property. In addition, Grantor reserves other rights compatible with the Purpose set forth in Section 2 ("Purpose") that are not specifically prohibited or limited by this Easement and which do not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML.

5(a). Right to Use Property for Agricultural Uses.

Grantor has the right to engage in Agricultural Use of the Farm Area and Farmstead Area and to use the Farm Area and Farmstead Area as a Farm Operation provided that any processing, marketing or retailing of any Crops, Livestock and Livestock Products and that any similar activities involving any processed product associated with crops or livestock are not permitted in the Farm Area. As used in this Section 5(a), "processing" shall not include activities such as (i) boiling maple sap or (ii) grinding and mixing of any materials that result in feed for the livestock kept on the Property or on other properties owned or operated by the Grantor, provided that any such "processing" shall be conducted on a di minimus portion of the Farm Area. Said farming practices shall be carried out consistent with the Conservation Plan and conducted in accordance with sound agricultural practices, which are practices necessary for on-farm production, preparation and marketing of agricultural commodities, provided such practices are legal, necessary, do not cause bodily harm or property damage off the farm, and achieve the intended results in a reasonable and supportable way. With permission of Lead Grantee, Grantor may engage in Agricultural Use of the Resource Protection Area and use the Resource Protection Area as Farm Operation provided that any processing, marketing or retailing of any Crops, Livestock and Livestock Products and that any similar activities involving any processed product associated with crops or livestock are not permitted in the Resource Protection Area. Said farming practices shall be carried out consistent with the Conservation Plan and conducted in accordance with sound agricultural practices, which are practices necessary for on-farm production, preparation and marketing of agricultural commodities, provided such practices are legal, necessary, do not cause bodily harm or property damage off the farm, and achieve the intended results in a reasonable and

supportable way.

5(b). Right to Use Property for Rural Enterprises.
Grantor has the right to operate otherwise lawful Rural Enterprises, subject to the limitations set forth in this Easement, including Section 8 ("Construction of Buildings and Other Improvements"). In all cases, such Rural Enterprises must be compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property.

5(c). Right to Use Property for Recreational Uses.
Grantor retains the right to use the Property for Recreational Uses, subject to the limitations set forth in this Easement, including Section 8 ("Construction of Buildings and Other Improvements"). In all cases, Recreational Uses must be compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property.

6. Conservation Plan.
Grantor and Lead Grantee and Grantees recognize that changes in economic and environmental conditions, in agricultural technologies, in accepted farm management practices and in the Farm Operations of Grantor may result in changes in the Agricultural Uses of the Property. It is the intention of this Easement to maintain Grantor's discretion to employ its choices of farm uses and management practices so long as those uses and practices are conducted in accordance with sound agricultural practices (as described in Section 4(a)) and in a manner consistent with a Conservation Plan prepared by a qualified conservation professional or by the local Soil and Water Conservation District in cooperation with the Grantor. Further, all farm uses and farming practices identified in the Conservation Plan shall be consistent with the Purpose of this Easement and shall be only those not otherwise specifically prohibited by this Easement. The Conservation Plan shall address adverse environmental impacts of agricultural activities and it will also consider enhancements to the agricultural productivity and economic viability of the Property. The Conservation Plan shall be updated periodically and whenever the Farm Operation changes substantially. Upon request, Grantor shall provide a copy of the most current Conservation Plan to Lead Grantee.

7. Access.
Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

8. Construction of Buildings and Other Improvements.
The Property consists of 1) the Zone for Future Farmstead Area; and 2) the Farm Area; and 3) the Resource Protection Area. Grantor may undertake construction, erection, installation, removal or placement of buildings, structures, or other improvement to the Property within these areas only as provided in this Easement and set forth below.

8(a). Impervious Surfaces.
It is the intention of this Easement to limit the extent of construction or placement of Impervious Surfaces on the Property. Subject to the limitations set forth below,

Impervious Surfaces may be constructed or placed on up to a maximum of five percent (5%) of the Farm Area and as provided in 8(c) within the designated Zone for Future Farmstead Area. Impervious Surfaces are prohibited in any designated Resource Protection Area.

8(b). Fences.

Existing fences may be repaired, removed and replaced. New customary fencing and gates may be built anywhere on the Property for the purposes of safety or to prevent trespassing on the Property, for wildlife management and as may otherwise be required by law. New fences may be built anywhere within the Zone for Future Farmstead Area and Farm Area for purposes of reasonable and customary management of livestock and wildlife, safety and general management and to prevent trespassing on the Property; such fences are only permitted within the Resource Protection Area with permission of Lead Grantee.

8(c). Agricultural Structures and Improvements.

Agricultural structures and improvements are those structures and improvements in which any Agricultural Use is conducted therein. Such structures and improvements may be placed or constructed on the Property in accordance with the provisions of this Section 8(c) and may be repaired, removed, enlarged and replaced at their respective locations, subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces").

Zone for Future Farmstead Area: Without permission of Lead Grantee or Grantees, one single family residential structure with a footprint not to exceed 1500 square feet, along with accessory roads and parking areas, are permitted within the designated Zone for Future Farmstead Area.

Resource Protection Area: With permission of Lead Grantee, Grantor may place or construct agricultural structures and improvements within a designated Resource Protection Area provided each agricultural structure or improvement shall not contain Impervious Surfaces.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), Grantor may place or construct agricultural structures and improvements on up to two percent (2%) of the Farm Area without permission of Grantee. However, no building, structure or improvements on the Farm Area shall be used in any manner that is associated with the processing, marketing or retailing of any Crops, Livestock and Livestock Products and no similar activities involving any processed product associated with crops or livestock shall be permitted on the Farm Area. As used in this Section 8(c), "processing" shall not include activities such as (i) boiling maple sap or (ii) grinding and mixing of any materials that result in feed for the livestock kept on the Property or on other properties owned or operated by the Grantor, provided that any such "processing" shall be conducted on a di minimus portion of the Farm Area. With permission of Lead Grantee, Grantor may place or construct agricultural structures and improvements that would cover up to an additional three percent (3%) of the Farm Area. In order to secure the approval of Lead Grantee to exceed the 2% Impervious Surfaces limit as specified above, Grantor must demonstrate

to the satisfaction of Lead Grantee: (a) a credible need; (b) that the proposed Structure or Improvement could not otherwise be located within the Farmstead Complex; and (c) that the proposed agricultural structures and/or improvements would not significantly disturb farm soils or otherwise adversely affect Agricultural Use. In the construction or placement of any Impervious Surfaces within the Farm Area, the Grantor shall use all practical means to minimize the extent of coverage over or associated impacts to prime soils and soils of statewide importance.

8(d). Residential Dwellings.

Residential Dwellings may be placed or constructed on the Property in accordance with the provisions of this Section 8(d). Each such Residential Dwelling may be repaired, removed, enlarged and replaced at its respective location. Residential uses shall be compatible with the Purpose of this Easement and subordinate to the Agricultural Uses of the Property.

Zone for Future Farmstead Area: Without permission of Lead Grantee or Grantees, one Residential Dwellings with a footprint not to exceed 1500 square feet is permitted within the designated Zone for Future Farmstead Area, subject to any applicable local, state or federal laws and regulations.

Resource Protection Area: Any Residential Dwellings, including those for Farm Labor Housing, are prohibited within any designated Resource Protection Area.

Farm Area: With the permission of Lead Grantee and subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), Grantor may place or construct Residential Dwellings without an excavated foundation to be used exclusively for Farm Labor Housing as proven necessary to conduct current Farm Operations. The land on which these dwellings, structures and improvements stand shall not be subdivided, except as permitted in Section 11 ("Subdivision").

8(e). Rural Enterprises.

Rural Enterprises may only be established and carried out within a designated Zone for Future Farmstead Area. In all cases, such uses and any necessary structures or improvements, shall be compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property. Prohibited enterprises include, but are not limited to those that market non-agricultural petroleum or chemical products. Rural Enterprises shall not include the operation of a junk yard, gas station or any similar enterprise. The land on which these structures and improvements stand shall not be subdivided, except as permitted in Section 11 ("Subdivision").

8(f). Structures and Improvements associated with Recreational Uses.

Structures and improvements associated with Recreational Uses are permitted on the Property in accordance with the provisions of this Section 8(f) so long as such structures and improvements are compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property. No structures or improvements associated with Recreational Uses shall impair in any way the Agricultural Use of the Farm Area. Structures and improvements may be repaired, removed, enlarged and replaced at their respective locations subject to the Impervious Surface coverage limitations set forth in

Section 8(a) ("Impervious Surfaces").

Zone for Future Farmstead Area: Without permission of Lead Grantee or Grantees, and subject to the limitations of 8 (c) and 8 (d)structures and improvements associated with Recreational Uses are permitted within a designated Zone for Future Farmstead Area.

Resource Protection Area: Permission of Lead Grantee is required prior to the placement or construction of any structure or improvement associated with Recreational Uses within any designated Resource Protection Area.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), Grantor may place or construct structures and improvements associated with Recreational Uses in the Farm Area . All structures and improvements associated with Recreational Uses shall be located in a manner that minimizes the impact to prime soils or soils of statewide importance.

8(g). Utility Services and Septic Systems.

Wires, lines, pipes, cables, tanks, or other facilities providing electrical, gas, water, sewer, sanitary sewer, septic, communications, or other like services solely to or from the improvements permitted in this Easement may be installed, maintained, repaired, removed, relocated and replaced for such purposes within the Farm Area and the Zone for Future Farmstead Area. All such services and systems shall be compatible with the Purpose of this Easement, subordinate to the Agricultural Use of the Property and located in a manner that minimizes the impact to prime soils or soils of statewide importance and to any Resource Protection Area. With the permission of Lead Grantee, utility lines solely to serve permitted uses on the Property, and reasonable accessory utility Improvements essential to facilitating Permitted uses and activities on the Property may be constructed, maintained, repaired, and replaced within the Resource Protection Area, provided they cannot be sited within the Zone for Future Farmstead Area or the Farm Area.

8(h). Structures and Improvements associated with Renewable Energy and Telecommunications.

Pursuant to this Section 8(h), renewable energy and telecommunications shall have the meanings and be considered in relation to this Easement as described herein. Renewable energy is derived from a fuel source that readily restores over short periods of time and typically does not diminish. Such fuel sources include the sun, wind, moving water, organic plant and waste material (e.g., biomass) and the earth's heat (i.e., geothermal). Telecommunications is the transmission, receipt, or exchange of information through the use of technology involving the Property and any other location.

With the permission of the Lead Grantee, structures and improvements necessary to undertake renewable energy generation or telecommunications (including access roads and other accessory improvements) are permitted within Zone for Future Farmstead Area and Farm Area to service on-property uses (and scaled accordingly) provided they are compatible with the Purpose of this Easement, subordinate to the

Agricultural Use of the Property and located in a manner that minimizes the impact to prime soils or soils of statewide importance. Such structures and improvements may be placed or constructed on the Property in accordance with the provisions of this Section 8(h) and may be maintained, repaired, removed, enlarged and replaced at their respective locations subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"). Commercial-scale alternative electrical generation and telecommunications structures are prohibited, but Grantor may sell to or exchange with third parties any incidental surplus electricity that is generated by renewable electrical generation facilities approved by the Lead Grantee

9. Maintenance and Improvement of Water Sources.
Grantor may use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement. Grantor may alter the natural flow of water over the Farm Area in order to improve drainage of agricultural soils, reduce soil erosion and/or flooding, provide irrigation for the Property or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the Conservation Plan and is conducted in accordance with sound agricultural practices (as described in Section 5(a)), is compatible with the Purpose of this Easement, and is carried out in accordance with applicable local, state and federal laws and regulations.

10. Water Rights.
Grantor may use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property in accordance with applicable local, state and federal laws and regulations. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

11. Subdivision.
The Property is currently comprised of *1* tax map parcels owned by Grantor.

Any division, partition, subdivision, or other legal or de facto creation of lots or parcels of any portion of the Property into separate ownership is hereafter referred to as "Subdivision" or to "Subdivide" and any portion of the Property subject to Subdivision as "Subdivided." However, under no circumstance shall any designated Zone for Future Farmstead Area be solely Subdivided from the Property and shall not be internally Subdivided.

With prior written permission of the Lead Grantee, Grantor may Subdivide the Property and convey a portion of the Property to a new owner or owners. Grantor's request for permission to Subdivide will be governed by the provisions set forth in Section 16 ("Permission of Grantee") of this Easement and the provisions of this Section. In addition, Lead Grantee shall grant such permission only if Lead Grantee determines that the Subdivision: (a) is for agricultural purposes; (b) is compatible with the Purpose of this Easement; (c) will not diminish or substantially impair the agricultural viability of the Property; and (d) shall ensure that all parcels of land thereby created will remain Viable Agricultural Land either individually, or as part of an established Farm Operation. Any such Subdivision shall not include the right to construct, place or relocate any structures on the Property, except as otherwise permitted by this Easement, and shall explicitly limit any existing Farm Labor Housing in the Farm Area to that exclusive use. Any Subdivision also must comply with all applicable local, state or federal regulations, and any Subdivided parcels shall be subject to the

terms of this Easement.

In the event that any Subdivision of the Property is approved by the Lead Grantee, any portion of the Property so Subdivided shall remain subject to this Easement and approval by the Lead Grantee must allocate to the Subdivided portion of the Property any portion of the following rights then remaining which are to be applied to the Subdivided portion:

(a) Construction of Impervious Surfaces as set forth in Section 8(a) ("Impervious Surfaces");
(b) Construction or placement of agricultural structures and improvements under Section 8(c), ("Agricultural Structures and Improvements");
(c) Construction or placement of Residential Dwellings under Section 8(d), ("Residential Dwellings");
(d) Construction or placement of recreational improvements under Section 8(f), ("Recreational Structures and Improvements"); and
(e) Construction of renewable energy and telecommunications structures and improvements under Section 8(h), ("Renewable Energy and Telecommunications Structures and Improvements").

Such allocation of the rights in the noted sections shall not result in allowances greater than those allowed under each such section. At the discretion of Lead Grantee, a functionally and materially equivalent Easement covering the Subdivided portion of the Property may be required and, if so, it shall be recorded immediately following its conveyance.

Lot line adjustments, which do not create additional building lots, are permitted only with the prior written permission of the Lead Grantee, which permission shall ensure that such lot line adjustments shall not result in a material reduction in the size of the Property.

Mortgages, or other non-possessory interests in land do not constitute "Subdivision" as intended in this Section 11 herein, provided such interests encompass the whole Property or such portion of the Property for which the Lead Grantee has approved a Subdivision as noted above.

12. Forest Management.

Without permission of Lead Grantee or Grantees, Grantor may clear forested areas in the Zone for Future Farmstead and the Farm Areas for conversion to farmland, and without permission of Lead Grantee or Grantees Area may harvest wood for use on the Property including heating or construction of buildings and improvements, manage forested areas for wildlife habitat and recreation, and remove trees that are fallen, dead, diseased or invasive, so long as such activities are consistent with generally accepted forest best management practices.
Without permission from Lead Grantee or Grantees, in the Farm and Zone for Future Farmstead Areas, Grantor may carry out commercial forestry activities including timber and wood products harvesting and timber stand improvements and construct, maintain, remove, and repair unpaved access roads and "staging areas", those areas where logs are temporarily stored for transport necessary for such activities. All such activities shall be in accordance with generally-accepted forestry best management practices. Such commercial timber harvests and timber stand improvements shall be carried out in accordance with a forest

management plan and harvest plan prepared by a forester who is certified by the Society of American Foresters or such successor organization as is later created, a Cooperating Consulting Forester with the New York State Department of Environmental Conservation or a qualified forester approved by Lead Grantee.

Grantor shall give Lead Grantee, its successors or assigns, written notice not less than forty-five (45) days prior to the anticipated commencement of any commercial timber harvest or timber stand improvement. Such written notice shall include submission of the current forest management plan and harvest plan.

13. Mining and other Detrimental Uses on the Property.
There shall be no placement of commercial cell phone towers, above or below-ground electrical and other utility distribution lines or pipelines, or other land uses detrimental to the Conservation Values of the Property, except (i) as Permitted pursuant to Subsection 8g; and (ii) placement resulting from the lawful exercise of eminent domain.

Enterprises which produce or market petroleum or chemical products are prohibited. Athletic fields, golf courses or ranges, off-road recreational vehicle race tracks or parks, commercial airstrips and commercial helicopter pads are prohibited. Other commercial recreational Structures and Improvements that disturb Viable Agricultural Land or otherwise adversely impact Agricultural Use on a continuing basis are prohibited.

Surface and subsurface exploration for, and development, storage, mining, extraction and removal, in any manner, of minerals, natural deposits or hydrocarbons (including, but not limited to, oil, gas, soil, sand, gravel, rock, peat, sod and coal) is prohibited, whether originating on or off the Property, except in accordance with Subsection 13(a) ("Removal and Use of Topsoil, Stone, Sand and Gravel") herein. Grading, blasting, filling, and any other activity that disturbs the soil surface or alters the topography of the Property is prohibited, except as otherwise permitted in this Easement, or pursuant to an erosion and sediment control plan or Conservation Plan.

13(a).Removal and Use of Topsoil, Stone, Sand and Gravel on the Property. Grantor's removal of stone, sand or gravel for purposes as necessary and incidental to the construction or maintenance of Permitted Structures and Improvements and the conduct of Permitted uses and activities may be undertaken only with Lead Grantee's Prior Written Approval, which approval shall be in Lead Grantee's sole and absolute discretion, provided, in addition, that Grantor verifies to the satisfaction of Lead Grantee, and Lead Grantee determines that said removal will meet or exceed the following requirements:

(a) will not take place in or disturb the *Resource Protection Area*;
(b) will be limited and localized in impact, such that the surface disturbed by such extraction will not exceed more than ½ (one half) acre of the Property at one time;
(c) will be Conservation-Compatible;
(d) minimizes, to the extent practicable, impacts to the prime and statewide important soils on the Property; and
(e) is not prohibited under applicable provisions of Section

170(h) of the Internal Revenue Code.

The removal and use of topsoil, stone, sand and gravel as approved by Lead Grantee must conform and meet all such requirements, failing which Lead Grantee may enjoin additional extraction and otherwise enforce the provisions of this Subsection in accordance with Subsection 22 ("Enforcement") hereof. All practical means to mitigate any adverse impact on the agricultural values shall be used in carrying out any Permitted extractive activities. Upon completion of said Permitted extractive activities, Grantor shall promptly restore any portion of the Zone for Future Farmstead Complex and Farm Area affected thereby as nearly as possible to its condition existing prior to commencement thereof, except where such activities precede the construction of a Permitted Structure or Improvement.

Surface and/or subsurface mineral rights may not be sold, leased, or otherwise transferred to another party. Notwithstanding anything to the contrary herein, no quarry, gravel pit, mining or drilling, or other mining or drilling activities prohibited under applicable provisions of Section 170(h) of the IRC are Permitted on or under the Property.

These restrictions shall not prevent the installation of septic systems as may be reasonably necessary to serve permitted uses, activities, structures and improvements, or the construction of permitted ponds, driveways and farm roads.

14. Road Construction.

Subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), Grantor may, within the Zone for Future Farmstead Area and Farm Area construct, maintain and repair roads for residential driveways, barnyards, farm markets or other improvements necessary to provide access to, and parking for, permitted buildings or improvements, or to conduct other activities permitted by this Easement. Roads constructed in the Farm Area shall be unpaved and shall be located in a manner that minimizes impacts to prime soils and soils of statewide importance. With permission of Lead Grantee, roads essential to facilitating Permitted uses and activities on the Property may be constructed, maintained, repaired, and replaced within the Resource Protection Area, provided they cannot be practicably sited within the Zone for Future Farmstead Area or the Farm Area.

15. Dumping and Trash.

The dumping, land filling, burial, application, injection, or accumulation of any kind of garbage, trash or debris on the Property is prohibited, other than agriculturally-related waste or biodegradable material as described below. Without permission of Lead Grantee or Grantees, Grantor may (i) store, compost, apply or inject agriculturally-related waste or biodegradable material; (ii) store old farm equipment to be used for parts; (iii) temporarily store trash or household waste in receptacles for periodic off-site disposal and (iv) compost or re-use biodegradable materials generated off the Property for use on the Property or commercial use or sale. All such activities shall be conducted in accordance with sound agricultural practices (as described in Section 5(a)) and in a manner consistent with the Conservation Plan and all applicable local, state or federal laws and regulations. Notwithstanding the foregoing, the storage and treatment of sewage associated with buildings permitted on the Property is permitted by this Easement within the Zone for Future Farmstead Area and Farm Area.

16. Permission of Lead Grantee.

When Grantor is required to obtain Lead Grantee's permission for a proposed action pursuant to the Easement, such permission shall be requested in writing. Such approval shall be in Lead Grantees' sole but reasonable discretion and shall be valid only if in writing and duly executed on behalf of Lead Grantee. Lead Grantee shall respond with a decision in writing within forty-five (45) days of receipt of the Grantor's written request provided Grantor has supplied sufficient information upon which Lead Grantee may reasonably base a decision. If mutually agreed upon by Lead Grantee and Grantor, this timeline may be reasonably extended.

17. Ongoing Responsibilities of Grantor and Lead Grantee and Grantees.

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Lead Grantee or Grantees, or in any way to affect any obligations of Grantor as owner of the Property, including, but not limited to, the following:

17(a). Taxes.

Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.

17(b). Upkeep and Maintenance.

Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law and this Easement. Lead Grantee and Grantees shall have no obligation for the upkeep or maintenance of the Property.

17(c). Liability and Indemnification.

Grantor agrees to indemnify and hold Lead Grantee, Grantees and Scenic Hudson harmless from any and all costs, claims or liability, including but not limited to reasonable attorney's fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence of Lead Grantee, Grantees or Scenic Hudson or their agents, in which case liability shall be apportioned accordingly.

18. State as Intervenor and Mediator Regarding Interpretation of Selected Definitions and Terms and Selected Implementation of Provisions.

Consistent with the policy of this state as contained in Section 4 of Article 14 of the New York State Constitution and as (i) articulated in Section 300 of Article 25-AA of the AML, and (ii) demonstrated by the New York State share of the consideration paid for this Easement as authorized by Section 325 of Article 25-AAA of the AML, the New York State Department of Agriculture and Markets shall perpetually retain the right to intervene on any of the matters listed below provided any such intervention or mediation shall also be specifically limited as set forth below:

(i.) advise the Grantor and Lead Grantee and Grantees of the State's interpretation of the following specific terms and definitions contained in and as used throughout this Easement –

a. Agricultural Use,
b. Conservation Plan,
c. Crops, Livestock and Livestock Products,
d. Farm Labor Housing,

e. Farm Operation,
f. sound agricultural practices (as described in Section 4(a)), and
g. Viable Agricultural Land;

(ii.) advise the Grantor and Lead Grantee and Grantees of the State's interpretation of the Purpose of this Easement; and

(iii.) advise the Grantor and Lead Grantee and Grantees of the State's interpretation of the Lead Grantees and/or Grantees' proposed or demonstrated administration of the provisions of this Easement that the Department would deem as unreasonably restrictive on the Farm Operation on this Property so as to be in contravention of the purposes of Article 25-AA of the AML.

Any such intervention by the Department shall be offered and intended to serve as non-binding advice to the Grantor and Lead Grantee and Grantees in an effort to avoid potential violations of this Easement that would have arisen from either party's misinterpretation of any specific item noted above.

Furthermore, if a dispute arises between the Grantor and the Lead Grantee and/or Grantees concerning the consistency of any proposed use or activity with the Purpose(s) of this Easement or any of the specific provisions contained herein, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties and the New York State Department of Agriculture and Markets for mediation. Within ten (10) days of such request, Grantor and Lead Grantee and Grantee shall schedule a meeting with the New York State Department of Agriculture and Markets, which will recommend potential resolutions of the dispute.

Notwithstanding anything in Section 3 ("Implementation"), nothing in this clause shall [preempt or prohibit the Grantor or the Lead Grantee or Grantees from requesting mediation pursuant to Section 23 ("Dispute Resolution") or to otherwise] diminish Lead Grantee and Grantees' rights under Section 22 ("Enforcement").

19. Extinguishment of Development Rights.

Except as otherwise reserved to the Grantor in this Easement, all non-agricultural development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

20. Baseline Documentation.

By its execution of this Easement, Grantees acknowledge that the present uses of, and related structures and improvements on the Property are permitted by this Easement. In order to evidence the present condition of the Property so as to facilitate future monitoring and enforcement of this Easement, a Baseline Documentation Report (the "Report"), including relevant maps and photographs, describing such condition at the date hereof, has been prepared and subscribed by both parties, and a copy thereof has been delivered to Grantor and a copy will be kept on file with Lead Grantee. The Report may be used by Lead Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Lead Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

21. Right of Inspection.

Lead Grantee shall have the right to enter upon the Property at reasonable times, in a reasonable manner, and where practicable, after giving reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. In the instance of a violation or suspected violation of the terms of this Easement which has caused or threatens to cause irreparable harm to any of the agricultural or other resources this Easement is designed to protect, no such advance notice is required.

22. Enforcement.

If Lead Grantee determines that a violation of this Easement has occurred, Lead Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation. Notwithstanding the foregoing, where Lead Grantee in Lead Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the Purpose of this Easement, Lead Grantee may bring an action to enjoin the violation.

Lead Grantee shall also be entitled to seek the following remedies in the event of a violation: 1) money damages, including damages for the loss of the resources protected under the Purpose of this Easement; and 2) restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Lead Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of Lead Grantee to discover a violation or to take immediate legal action shall not bar Lead Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

Nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by law, and nothing in this Easement shall require Grantor to take any action to restore the condition of the Property from damage or change that could not be reasonably anticipated by Grantor or that is beyond Grantor's reasonable control and occurring without Grantor's fault or negligence, including but not limited to natural disasters such as earthquakes, hurricanes or floods or to political or social upheavals such as wars or riots.

23. Transfer of Easement.

Lead Grantee agrees that if it decides to transfer or assign its interest in this Easement, it shall transfer or assign its interest to Scenic Hudson, which is a qualified organization as that term is used in the Environmental Conservation Law and Internal Revenue Code. If Scenic Hudson declines to accept the Grantee's interest, then Lead Grantee shall have the right to transfer this Easement to any private non-governmental organization or public agency that, at the time of transfer is a "public body" or a "not-for-profit conservation organization" as defined by Article 49 of the ECL or a "qualified organization" under Section 170(h) of the Code or a soil and water conservation district board pursuant to Section 9 (4-a) of the Soil and Water Conservation Districts Law, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Lead Grantee ceases to exist or qualify under Article 49 of the ECL and Section 170(h) of the Code, it shall assign its interest to Scenic Hudson. If Scenic Hudson declines to accept Lead Grantee's interest, then a court of competent jurisdiction shall transfer this Easement to another qualified

organization having similar purposes that agrees to assume the responsibilities imposed by this Easement.

24. Transfer of Property.

Any subsequent conveyance, including, without limitation, transfer, lease or mortgage of the Property, shall be subject to this Easement, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This {conveyance, lease, mortgage, easement, etc.} is subject to a Conservation Easement which runs with the land and which was granted to Westchester Land Trust, Inc., Westchester County, and the Town of Somers by instrument dated _____, and recorded in the office of the Clerk of Westchester County at Control Number_____." Grantor shall notify Lead Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. The failure to notify Lead Grantee, or to include said language in any deed or instrument shall not, however, affect the validity or applicability of this Easement to the Property or limit its enforceability in any way.

25. Amendment of Easement.

This Easement may be amended only with the written consent of Lead Grantee and the then current owner of the Property. Any such amendment shall be compatible with the Purpose of this Easement and shall comply with the ECL or any regulations promulgated thereunder, and shall not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML or such successor law as enacted or amended. Any such amendment shall result in a neutral or positive effect on the protection of the conservation values that are protected by this Conservation Easement. Further, any such amendment to this Easement shall be duly recorded.

26. Proportionate Share.

For purposes of this Subsection and Subsection 27, Grantor and Grantees stipulate that as of the Effective Date of this easement, Grantees are vested with a real property interest in the Property, which is agreed to be a stipulated proportionate share in the fair market value of the Property (the "Proportionate Share"). Said Proportionate Share is the ratio of the value of the Easement on the Effective Date of this easement to the value of the Property, without deduction for the value of the Easement, on the Effective Date, as determined in accordance with the valuation substantiation requirements of Treas. Reg. Section 1.170A-14(h)(3) or as may be determined by a court of competent jurisdiction and in accordance with all appropriate applicable laws. For purposes of this Subsection, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the Proportionate Share of Grantees in the fair market value of the Property thereby determinable shall remain constant, except that the value of any improvements made by Grantor after the Effective Date of this easement is reserved to Grantor to the extent allowed by Treas. Reg. Section 1.170A-14(g)(6).

27. Extinguishment of Easement.

Grantor and Lead Grantee and Grantees hereby recognize that unexpected circumstances may arise that may make impossible or impractical the continued use of the Property in a manner consistent with the Purpose of this Easement and necessitate extinguishment of this Easement pursuant to the provisions of Treas. Reg. Section 1.170A-14(g)(6) and the Conservation Law. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction.

Lead Grantee, Grantees and Scenic Hudson shall be entitled to a share of the proceeds of any post-extinguishment sale, exchange or involuntary conversion of the Property, in an amount at least equal to the Lead Grantee, Grantees' and Scenic Hudson's Proportionate Share. Until such time as the Lead Grantee, Grantees and Scenic Hudson receive the proceeds from the Grantor or Grantor's successors or assigns, Lead Grantee, Grantees and Scenic Hudson shall have a lien against the Property for the amount of the each parties' Proportionate Share. Any extinguishment of this Easement in accordance with the provisions of this Subsection shall be recorded in the Westchester County Clerk's Office and Lead Grantee shall, upon request, promptly and without charge, execute in recordable form and deliver to Grantor such instruments as Grantor may reasonably request for this purpose.

On the subsequent sale, exchange, or involuntary conversion of the Property following such extinguishment, and after the payment and satisfaction of any costs or expenses associated with such sale, exchange or involuntary conversion, Lead Grantee, Grantees and Scenic Hudson shall be entitled to receive their Proportionate Share resulting from the gross proceeds of such sale, exchange, or involuntary conversion in priority to the owner of the Property at the time of such post-extinguishment sale, exchange, or involuntary conversion, and in priority to any other lien or claim encumbering the Property, as the value of such Grantee's Proportionate Share is determined under the provisions of Section 26 ("Proportionate Share") herein.

The owner of the Property at the time of such post-extinguishment sale, exchange, or involuntary conversion shall bear the responsibility for the payment and satisfaction of any claims or liens against the Property. If Lead Grantee, Grantees and/or Scenic Hudson do not receive their Proportionate Share from the proceeds of such post-extinguishment sale, exchange, or involuntary conversion, then Lead Grantee, Grantees and/or Scenic Hudson shall be entitled to recover the resulting deficiency from the post-extinguishment owner of the Property at the time of such post-extinguishment sale, exchange, or involuntary conversion. Lead Grantee, Grantees and/or Scenic Hudson may record a lien to secure its recovery of such deficiency.

All such proceeds received by Grantees shall be used by Grantees in a manner consistent with the Conservation Purpose of this Conservation Easement. In the event of extinguishment, the provisions of this Subsection shall survive. Grantor and Grantees agree that each Party shall promptly provide written notice to the other of any extinguishment events or proceeding.

In such event, Lead Grantee shall receive X% of the proceeds of the Proportionate Share, with the County of Westchester receiving X%, the Town of Somers X% and Scenic Hudson 12.5%. With regard to the portion of such Proportionate Share equal to that paid using State grant funds, Lead Grantee agrees to use such portion in a manner compatible with the Primary Purpose of this Easement. Prior to such re-use, Lead Grantee must provide written notification to the New York State Department of Agriculture and Markets and to the Westchester County Agricultural and Farmland Protection Board.

28. Interpretation.

This instrument is intended to create a "conservation easement" as defined by the Conservation Law and shall be interpreted consistently with such intention. In the event any provision has been omitted from this instrument which is necessary to qualify the interest hereby granted as such "conservation easement" such provision shall be deemed incorporated herein to the extent

necessary to cause the interest hereby granted to be so qualified. The parties to this Easement agree to construe this Easement as having been drafted jointly. If any provision in said Easement is found to be ambiguous, an interpretation consistent with the Purposes of said Easement that would render the provision valid must be favored over any interpretation that would render it invalid.

If a dispute arises between the Grantor and the Lead Grantee concerning the interpretation of any clause of this Easement such that there is a conflict between the clauses required by the New York State Department of Agriculture and Markets ("Department"), listed in the attached Exhibit D, and the remaining clauses of the Easement, an interpretation consistent with the Department clauses that would render the Department clauses valid shall be favored over any interpretation that would render such clauses invalid.

29. Recitals and Exhibits Incorporated Herein.

Any and all recitals in this Easement are agreed by the parties to be accurate, are incorporated into this Easement by this reference, and shall constitute integral terms and conditions of this Easement. Any and all exhibits and addenda attached to and referred to in this Easement are hereby incorporated into this Easement as if fully set out in their entirety herein.

30. Successors.

Every provision of this Easement that applies to Grantor, Lead Grantee or Grantees shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest, and shall continue as a servitude running in perpetuity with the Property.

31. Severability.

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

32. Notices.

Any notice required or desired to be given under this Easement shall be in writing and shall be sent (i) by personal delivery, (ii) via registered or certified mail, return receipt requested, or (iii) via Federal Express or other private courier of national reputation providing written evidence of delivery. Notice shall be deemed given upon receipt in the case of personal delivery, and upon delivery by the U.S. Postal Service or private courier. All notices shall be properly addressed as follows: 1) if to Lead Grantee and Grantees, at the addresses set forth above; 2) if to Grantor, at the address set forth above; or 3) if to any subsequent owner, at the address of the Property. Any party can change the address to which notices are to be sent to him, her or it by duly giving notice pursuant to this Section 32.

33. Title.

The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Easement; that the Property is free and clear of any and all mortgages not subordinated to this Easement, and that the Lead Grantee and the Grantees shall have the use of and enjoyment of the benefits derived from and existing out of the aforesaid Easement.

34. Subsequent Liens on Property.

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property, or a portion thereof encompassing entire separately deeded parcels, as collateral for a subsequent borrowing. Any subsequent liens on the Property must be subordinate to this Easement.

35. Grantor's Environmental Warranty.

Grantor represents and warrants that it has no knowledge of a release or threatened release of any Hazardous Materials (as defined below) on the Property and hereby promises to hold harmless, defend and indemnify the Lead Grantee and Grantees from and against all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable Attorneys' Fees, arising from or connected with the presence and/or any release of Hazardous Materials or violation of federal, state or local Environmental Laws (as defined below) on, under, or from the Property.

If at any time after the Effective Date of this Easement there occurs a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps that may be required under federal, state, or local law necessary to assure its containment and remediation, including any cleanup.

36. Duration of Easement.

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to any Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Lead Grantee or Grantees. In the event the Lead Grantee takes legal title to Grantor's interest in the Property, the Lead Grantee must commit the monitoring and enforcement of the Easement to another qualified organization within the meaning of Section 170(h)(3) of the United States Internal Revenue Code (1986), as amended, which organization has among its purposes the conservation and preservation of land and water areas.

Furthermore, the fact that any use of the Property that is expressly prohibited by the terms of this Easement may become more economically valuable than uses permitted by the terms of the Easement, or that neighboring properties may in the future be put entirely to uses that are prohibited by this Easement, have been considered by Grantor in granting this Easement and by Lead Grantee and Grantees in accepting it. Grantor and Lead Grantee and Grantees believe that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Conservation Easement, and Grantor and Lead Grantee and Grantees intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of Grantor to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

37. Entire Agreement.

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings and agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 25 ("Amendment of Easement").

38. Binding Effect.

The provisions of this Easement shall run with the Property in perpetuity and shall bind and be enforceable against the Grantor and all future owners and any party entitled to possession or use the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. Notwithstanding the foregoing, upon any transfer of title, the transferor shall, with respect to the Property transferred, cease being a Grantor or Owner with respect to such Property for purposes of this Easement and shall have no further responsibility, rights or liability hereunder for acts done or conditions arising thereafter on or with respect to such Property, but the transferor shall remain liable for earlier acts and conditions done or occurring during the period of his or her ownership or conduct.

39. Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

IN WITNESS WHEREOF, Grantor Lead Grantee, Grantees and Scenic Hudson intending to be legally bound hereby, have hereunto set their hands on the date first above written.

Grantor: _____
Robert L. Stuart

Lead Grantee: Westchester Land Trust, Inc.

By: _____
Lori Ensinger

Grantee: County of Westchester

By: _____

Grantee Town of Somers

By: _____

State of New York)

County of), ss:

On the ____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Signature/office of individual taking acknowledgement

State of New York)

County of), ss:

On the ____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Signature/office of individual taking acknowledgement

State of New York)

County of), ss:

On the ____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within

instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Signature/office of individual taking acknowledgement

State of New York *)*

County of ***), ss:***

On the ____day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Signature/office of individual taking acknowledgement

THE SCENIC HUDSON LAND TRUST, INC.

By: _____

Steve Rosenberg
Executive Director

By:

Seth McKee
Land Conservation Director

STATE OF NEW YORK)
)ss
COUNTY OF_____

On , before me, the undersigned, a notary public in and for said State, personally appeared Steve Rosenberg personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
)ss
COUNTY OF_____

On , before me, the undersigned, a notary public in and for said State, personally appeared Seth McKee personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

APPENDIX ___ *{letter or # to be inserted}*
DEPARTMENT CLAUSES

required "WHEREAS" provisions
"Purpose"
"Implementation"
"Definitions": "Agricultural Use," "Conservation Plan," "Crops, Livestock and Livestock Products," "Farm Labor Housing," "Farm Operation," and "Viable Agricultural Land."
"State as Intervenor and Mediator Regarding Interpretation of Selected Definitions and Terms and Selected Implementation of Provisions"
Other miscellaneous policies: "Impervious Surfaces," "Land Disturbances Associated with Non-Agricultural Activities," "sound agricultural practices," "Proceeds" and "Interpretation"

Conservation Easement

THIS CONSERVATION EASEMENT ("Easement") is granted this ____ day of _____ 2017, by Robert L. Stuart, residing at 62 Granite Springs Road Granite Springs, New York 10527, in the Town of Somers, NY, (the "Grantor") to Westchester Land Trust, Inc. a New York not-for-profit corporation having an address of 403 Harris Road, Bedford Hills, New York 10507 (the "Lead Grantee") and to Westchester County, a New York municipal corporation having an address of Michaelian Office Building, 148 Martine Ave., White Plains, New York 10601 and to the Town of Somers, a New York municipal corporation with offices at 335 Route 202, Somers, New York 10589 (collectively the "Grantees").

WHEREAS:

A. Grantor is the owner of certain real property (the "Property") consisting of approximately 75 acres, in *2* tax map parcel(s), identified on the tax map of the Town of Somers as 26.11-1-2 and 26.11-1-3, located on Granite Springs Road in the Town of Somers, Westchester County, New York, more fully described in the legal survey description-*description to be inserted when the survey is done-* of the property ("Exhibit A") and shown on the Easement Map ("Exhibit B"), both attached hereto and as depicted on a survey of the Property to be filed with the Westchester County Clerk simultaneously herewith.

B. Lead Grantee Westchester Land Trust, Inc. is a New York not-for-profit conservation organization within the meaning of Article 49, Title 3 of the Environmental Conservation Law of the State of New York (together with any successor statute, the "ECL"), is organized for, among other purposes, conserving real property, is a tax exempt and qualified organization within the meaning of Sections 501(c)(3), 509(a) and 170(b)(1)(A)(vi) of the Internal Revenue Code (the "Code"), and is a "qualified organization" to accept, purchase, and hold conservation easements under Section 170(h) of the Code and Treasury Regulation Section 1.170A-14(c).

C. Grantees County of Westchester and Town of Somers are municipal corporations and have the authority pursuant to Section 247 of the General Municipal Law and Article 49, Title 3 of the ECL to acquire conservation easements.

D. The Scenic Hudson Land Trust, Inc. ("Scenic Hudson"), is a New York not-for-profit corporation with a business address of One Civic Center Plaza, Suite 200, Poughkeepsie, New York, 12601, and is qualified to hold and enforce conservation easements pursuant to the New York State Environmental Conservation Law ("ECL") and the Internal Revenue Code. Scenic Hudson has provided $XXXX towards the purchase of this Conservation Easement and is granted an assignee right pursuant to Section 24 ("Transfer of Easement").

E. Article 14, Section 4 of the New York State Constitution states: "The policy of this state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products;"

F. Section 49-0301 of the ECL states: "The legislature hereby finds and declares that in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and manmade resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands, ..., is fundamental to the maintenance, enhancement and improvement of...balanced economic growth and the quality of life in all areas of the state;"

G. The Property is located within Westchester County's Agricultural District #1, created pursuant to Article 25-AA of the New York State Agriculture and Markets Law (the "AML"). Section 300 states: "It is hereby found and declared that many of the agricultural lands in New York State are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited resources results. ... It is, therefore, the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. ... It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York State's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance;"

H. Article 25-AAA, Section 321 of the AML states: "It is hereby found and declared that agricultural lands are irreplaceable state assets. In an effort to maintain the economic viability, and environmental and landscape preservation values associated with agriculture," the Commissioner is authorized to administer programs to assist counties in developing agricultural and farmland protection plans and to assist both county and municipal governments in the implementation of such plans. The Commissioner gives priority to projects that will preserve viable agricultural land, are located in areas facing significant development pressure and serve as a buffer for a significant natural public resource containing important ecosystem or habitat characteristics;

I. The Property is located within Westchester County, which adopted an Agricultural and Farmland Protection Plan in November 2010. The Plan identifies the importance of Agriculture for not only the provision of agricultural products but also for establishing rural character and protecting drinking water quality in the Croton Reservoir watershed, and recommends, among other initiatives, pursuing participation in the New York Farmland Implementation Grants Program.

J. The Property is located within the Town of Somers, which adopted a Comprehensive Plan in February 2016. The Plan recommends that the Town acquire lands as available seeking partnerships with Westchester Land Trust and Westchester County, as appropriate, and to use conservation easements to create linear parks and preserve farmland (Chapter 2, Goal 5). In addition the Plan recommends keeping the low density character of the western quadrant of the town (where the Property is located) and recommends keeping property with open space qualities in their current use through outright purchase, purchase of development rights or transfer of conservation easements or conservation or cluster development. The Plan indicated in particular that it was exploring working with Westchester Land Trust to purchase the development rights to the Property. (Chapter 5) In

addition the Town of Somers Open Space Committee has listed the Property as its top priority of properties for potential acquisition by the Town. (Chapter 9);

K. The Property consists primarily of productive agricultural land. The Property contains approximately 33 acres of prime soils, and approximately 32 acres of soils of statewide importance as defined by the U.S. Department of Agriculture Natural Resources Conservation Service.

L. The Property also contains approximately 1/2 acre of Resource Protection Area which consists of wooded wetland and a stream connected hydrologically to a small pond on the adjacent farmland parcel being preserved simultaneously with this conservation easement, The stream draining the pond on this adjacent parcel flows into the Croton Reservoir, which is a drinking water resource for over 8 million people

M. Lead Grantee determined that accepting this Easement on the Property will enhance the long-term agricultural values of the Property and promote the use of soil conservation practices, which will further Lead Grantee's charitable purposes of protecting the distinctive rural character of Westchester County and its land. The Lead Grantee's land preservation priorities identify preservation of existing farmland as a priority and determines that key strategies for attaining this goal include establishing conservation easements enabling continuation of farming activities where they currently occur so these lands will be permanently protected, and feature farmland preservation in funding requests submitted to foundations, potential donors, and other sources of financial support including New York State Farmland Protection Grants. Therefore, the Board of Directors of the Lead Grantee approved the permanent conservation of this Property, as reflected in the August 22, 2016 minutes of the organization

N. Grantor has received independent legal and financial advice regarding this Easement to the extent that Grantor has deemed necessary. Grantor freely signs this Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing, One million six hundred twelve thousand nine hundred Dollars ($1,612,900) and the mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows:

1. **Grant of Conservation Easement.**
Grantor hereby grants and conveys to Lead Grantee and Grantees a conservation easement (the "Easement"), an immediately vested interest in real property defined by Article 49 of Title 3 of the ECL of the nature and character described herein, for the benefit of the general public, which Easement shall run with and bind the Property in perpetuity. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Lead Grantee to enforce these covenants in the manner described below.

2. **Purpose.**
The Purpose of this Easement is to conserve Viable Agricultural Land by preventing the conversion of the Property to non-farm uses, except for those allowed herein. In achieving such prevention the Property shall be forever reserved for continued Agricultural Use.

3. **Implementation.**
This Easement shall be implemented by limiting and restricting the non-agricultural development and non-farm use of the Property in accordance with its provisions. The Property remains subject to all applicable local, state and federal laws and regulations. This Easement and the administration of its provisions shall not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML.

4. **Definitions.**

4(a). **"Agricultural Use"** shall be defined as those activities necessary to:

(i.) produce "Crops, Livestock and Livestock Products"; or

(ii.) use the Property as a "Farm Operation" to the extent permitted by this Easement; or

(iii.) be actively enrolled in any federal or state or local program whose intent is to temporarily suspend (for a specified period of one or more years or crop seasons) the production of Crops, Livestock and Livestock Products for the stipulated purpose of soil and water conservation, wildlife habitat, or similar conservation purpose; or

(iv.) manage the Property or a portion thereof in a fallow or otherwise idled manner provided such management is described in a Conservation Plan.

4(b). **"Conservation Plan"** shall be defined as an Agricultural Environmental Management (AEM) Conservation Plan (Tier 3 or higher), or such equivalent document that has been prepared by the local Soil and Water Conservation District, or other qualified conservation professional, in cooperation with the Grantor.

4(c). **"Crops, Livestock and Livestock Products"** shall be defined pursuant to Article 25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter.

4(d). **"Farm Labor Housing"** means dwellings or structures, together with accessory improvements used to house seasonal and/or full-time employees where such residences are provided by the farm owner and/or operator, the worker is an essential employee of the farm owner and/or operator employed in the operation of the farm and the farm worker is not a partner or owner of the Farm Operation. For instance, a structure used as the primary residence of a farm owner and/or operator is not "Farm Labor Housing".

4(e). **"Farm Operation"** shall be defined pursuant to Article 25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter.

4(f). **"Grantor"** includes the original Grantor and his/her/its heirs, successors and assigns.

4(g). **"Grantee"** includes the original Grantee(s) and its successors and assigns. The term "Lead Grantee" is the Grantee designated by mutual agreement between the Grantees to give and receive all notices and other communications to and from the Grantor as specifically indicated in this Easement and to pursue any legal action to enforce this Easement. The Westchester Land Trust, Inc. shall be Lead Grantee unless the Grantors receive written notice of a change in such designation executed by all Grantees.

4(h). **"Impervious Surfaces"** are defined as structures or improvements that permanently cover soil resources. Impervious Surfaces do not include permeable surfaces such as gravel roads and parking areas; structures whose principal purpose is to protect soil and water resources, such as manure storage areas; and structures and improvements lacking permanent foundations. As used herein, "permanent foundations" are defined to be any continuous hardened surface (e.g., concrete, asphalt, or other similar stabilizing material) that is attached to, placed on or inserted in the ground and that underlies such building, structure or improvement.

4(i). **"Owner"** is defined as any individual or entity, including any heir, successor or assign, of any legal or equitable interest in all or any portion of the Property, and any party entitled to the possession or use of all or any part thereof.

4(j). **"Recreational Uses"** are defined as lawful personal or commercial activities including, but not limited to, hunting, fishing, cross-country skiing, camping, horseback riding and snowmobiling. Recreational Uses shall not include golf courses and ranges.

4(k). **"Residential Dwelling"** means dwellings or structures, together with accessory improvements that comprise single-family, multi-family, apartments, "in-law" apartments, guest houses and Farm Labor Housing, whether or not the structure(s) are used as the primary residence of a farm owner and/or operator.

4(l). **"Rural Enterprises"** are defined as commercial activities conducted on the Property, which are clearly incidental, secondary, and subordinate to the Agricultural Use of the Property, and are owned by, and primarily operated by, the Grantor and other residents of the Property, with limited outside employees, including, but not limited to, professional office, home office of salesperson, artist's studio, arts instruction, bed and breakfast, crafts production and sales, computer repair, small engine repair, firewood distribution, and beauty salon.

4(m). The following **"Use Areas"** are defined for the Easement:
"Farmstead Area" is defined as area(s) depicted on Exhibit B, that centers on existing farm structures or future planned structures.

"Resource Protection Area" is defined as the area(s) depicted on Exhibit B that contains unique or special natural features including, but not limited to, streams, wetlands, habitat or steep slopes and their supporting buffer lands.

"Farm Area" is defined as the remaining area of the Property, as depicted on

Exhibit B, which Exhibit may be revised from time to time pursuant or pursuant to Section 26 ("Amendment of Easement") of this Easement.

4(a). **"Viable Agricultural Land"** is defined as land highly suitable for a Farm Operation.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

5. Reserved Rights Retained by Grantor.

Grantor reserves all customary rights and privileges of ownership, including the right of exclusive use, possession and enjoyment of the Property, the rights to sell, lease, mortgage, and devise the Property. In addition, Grantor reserves other rights compatible with the Purpose set forth in Section 2 ("Purpose") that are not specifically prohibited or limited by this Easement and which do not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML.

5(a). Right to Use Property for Agricultural Uses.

Grantor has the right to engage in Agricultural Use of the Farm Area and Farmstead Area and to use the Farm Area and Farmstead Area as a Farm Operation provided that any processing, marketing or retailing of any Crops, Livestock and Livestock Products and that any similar activities involving any processed product associated with crops or livestock are not permitted in the Farm Area. As used in this Section 5(a), "processing" shall not include activities such as (i) boiling maple sap or (ii) grinding and mixing of any materials that result in feed for the livestock kept on the Property or on other properties owned or operated by the Grantor, provided that any such "processing" shall be conducted on a di minimus portion of the Farm Area. Said farming practices shall be carried out consistent with the Conservation Plan and conducted in accordance with sound agricultural practices, which are practices necessary for on-farm production, preparation and marketing of agricultural commodities, provided such practices are legal, necessary, do not cause bodily harm or property damage off the farm, and achieve the intended results in a reasonable and supportable way. With permission of Lead Grantee, Grantor may engage in Agricultural Use of the Resource Protection Area and use the Resource Protection Area as Farm Operation provided that any processing, marketing or retailing of any Crops, Livestock and Livestock Products and that any similar activities involving any processed product associated with crops or livestock are not permitted in the Resource Protection Area. Said farming practices shall be carried out consistent with the Conservation Plan and conducted in accordance with sound agricultural practices, which are practices necessary for on-farm production, preparation and marketing of agricultural commodities, provided such practices are legal, necessary, do not cause bodily harm or property damage off the farm, and achieve the intended results in a reasonable and supportable way.

5(b). Right to Use Property for Rural Enterprises.
Grantor has the right to operate otherwise lawful Rural Enterprises, subject to the limitations set forth in this Easement, including Section 8 ("Construction of Buildings and Other Improvements"). In all cases, such Rural Enterprises must be compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property.

5(c). Right to Use Property for Recreational Uses.
Grantor retains the right to use the Property for Recreational Uses, subject to the limitations set forth in this Easement, including Section 8 ("Construction of Buildings and Other Improvements"). In all cases, Recreational Uses must be compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property.

6. Conservation Plan.
Grantor and Lead Grantee and Grantees recognize that changes in economic and environmental conditions, in agricultural technologies, in accepted farm management practices and in the Farm Operations of Grantor may result in changes in the Agricultural Uses of the Property. It is the intention of this Easement to maintain Grantor's discretion to employ its choices of farm uses and management practices so long as those uses and practices are conducted in accordance with sound agricultural practices (as described in Section 4(a)) and in a manner consistent with a Conservation Plan prepared by a qualified conservation professional or by the local Soil and Water Conservation District in cooperation with the Grantor. Further, all farm uses and farming practices identified in the Conservation Plan shall be consistent with the Purpose of this Easement and shall be only those not otherwise specifically prohibited by this Easement. The Conservation Plan shall address adverse environmental impacts of agricultural activities and it will also consider enhancements to the agricultural productivity and economic viability of the Property. The Conservation Plan shall be updated periodically and whenever the Farm Operation changes substantially. Upon request, Grantor shall provide a copy of the most current Conservation Plan to Lead Grantee.

7. Access.
Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

8. Construction of Buildings and Other Improvements.
The Property consists of 1) the Farmstead Area; and 2) the Farm Area; and 3) the Resource Protection Area. Grantor may undertake construction, erection, installation, removal or placement of buildings, structures, or other improvement to the Property within these areas only as provided in this Easement and set forth below.

8(a). Impervious Surfaces.
It is the intention of this Easement to limit the extent of construction or placement of Impervious Surfaces on the Property. Subject to the limitations set forth below, Impervious Surfaces may be constructed or placed on up to a maximum of five percent

(5%) of the Farm Area and without limitation within any designated Farmstead Area. Impervious Surfaces are prohibited in any designated Resource Protection Area.

8(b). Fences.

Existing fences may be repaired, removed and replaced. New customary fencing and gates may be built anywhere on the Property for the purposes of safety or to prevent trespassing on the Property, for wildlife management and as may otherwise be required by law. New fences may be built anywhere within the Farmstead Area and Farm Area for purposes of reasonable and customary management of livestock and wildlife, safety and general management and to prevent trespassing on the Property; such fences are only permitted within the Resource Protection Area with permission of Lead Grantee.

8(c). Agricultural Structures and Improvements.

Agricultural structures and improvements are those structures and improvements in which any Agricultural Use is conducted therein. Such structures and improvements may be placed or constructed on the Property in accordance with the provisions of this Section 8(c) and may be repaired, removed, enlarged and replaced at their respective locations, subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces").

Farmstead Area: Without permission of Lead Grantee or Grantees, agricultural structures and improvements, including accessory roads and parking areas, are permitted within a designated Farmstead Area.

Resource Protection Area: With permission of Lead Grantee, Grantor may place or construct agricultural structures and improvements within a designated Resource Protection Area provided each agricultural structure or improvement shall not contain Impervious Surfaces.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), Grantor may place or construct agricultural structures and improvements on up to two percent (2%) of the Farm Area without permission of Grantee. However, no building, structure or improvements on the Farm Area shall be used in any manner that is associated with the processing, marketing or retailing of any Crops, Livestock and Livestock Products and no similar activities involving any processed product associated with crops or livestock shall be permitted on the Farm Area. As used in this Section 8(c), "processing" shall not include activities such as (i) boiling maple sap or (ii) grinding and mixing of any materials that result in feed for the livestock kept on the Property or on other properties owned or operated by the Grantor, provided that any such "processing" shall be conducted on a di minimus portion of the Farm Area. With permission of Lead Grantee, Grantor may place or construct agricultural structures and improvements that would cover up to an additional three percent (3%) of the Farm Area. In order to secure the approval of Lead Grantee to exceed the 2% Impervious Surfaces limit as specified above, Grantor must demonstrate to the satisfaction of Lead Grantee: (a) a credible need; (b) that the proposed Structure or Improvement could not otherwise be located within the Farmstead Complex; and (c) that the proposed agricultural structures and or improvements would not significantly disturb farm soils or otherwise adversely affect Agricultural Use. In the construction or

placement of any Impervious Surfaces within the Farm Area, the Grantor shall use all practical means to minimize the extent of coverage over or associated impacts to prime soils and soils of statewide importance.

8(d). Residential Dwellings.

Residential Dwellings may be placed or constructed on the Property in accordance with the provisions of this Section 8(d). Each such Residential Dwelling may be repaired, removed, enlarged and replaced at its respective location. Residential uses shall be compatible with the Purpose of this Easement and subordinate to the Agricultural Uses of the Property.

Farmstead Area: Without permission of Lead Grantee or Grantees, Residential Dwellings, together with accessory structures and improvements, are permitted within a designated Farmstead Area, subject to any applicable local, state or federal laws and regulations.

Resource Protection Area: Any Residential Dwellings, including those for Farm Labor Housing, are prohibited within any designated Resource Protection Area.

Farm Area: With the permission of Lead Grantee and subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), Grantor may place or construct Residential Dwellings without an excavated foundation to be used exclusively for Farm Labor Housing as proven necessary to conduct current Farm Operations. The land on which these dwellings, structures and improvements stand shall not be subdivided, except as permitted in Section 11 ("Subdivision").

8(e). Rural Enterprises.

Rural Enterprises may only be established and carried out within a designated Farmstead Area. In all cases, such uses and any necessary structures or improvements, shall be compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property. Prohibited enterprises include, but are not limited to those that market non-agricultural petroleum or chemical products. Rural Enterprises shall not include the operation of a junk yard, gas station or any similar enterprise. The land on which these structures and improvements stand shall not be subdivided, except as permitted in Section 11 ("Subdivision").

8(f). Structures and Improvements associated with Recreational Uses.

Structures and improvements associated with Recreational Uses are permitted on the Property in accordance with the provisions of this Section 8(f) so long as such structures and improvements are compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property. No structures or improvements associated with Recreational Uses shall impair in any way the Agricultural Use of the Farm Area. Structures and improvements may be repaired, removed, enlarged and replaced at their respective locations subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces").

Farmstead Area: Without permission of Lead Grantee or Grantees, structures and improvements associated with Recreational Uses are permitted within a designated

Farmstead Area.

Resource Protection Area: Permission of Lead Grantee is required prior to the placement or construction of any structure or improvement associated with Recreational Uses within any designated Resource Protection Area.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), Grantor may place or construct structures and improvements associated with Recreational Uses in the Farm Area. All structures and improvements associated with Recreational Uses shall be located in a manner that minimizes the impact to prime soils or soils of statewide importance.

8(g). Utility Services and Septic Systems.

Wires, lines, pipes, cables, tanks, or other facilities providing electrical, gas, water, sewer, sanitary sewer, septic, communications, or other like services solely to or from the improvements permitted in this Easement may be installed, maintained, repaired, removed, relocated and replaced for such purposes within the Farm Area and the Farmstead Area. All such services and systems shall be compatible with the Purpose of this Easement, subordinate to the Agricultural Use of the Property and located in a manner that minimizes the impact to prime soils or soils of statewide importance and to any Resource Protection Area. With the permission of Lead Grantee, utility lines solely to serve permitted uses on the Property, and reasonable accessory utility Improvements essential to facilitating Permitted uses and activities on the Property may be constructed, maintained, repaired, and replaced within the Resource Protection Area, provided they cannot be sited within the Farmstead Area or the Farm Area.

8(h). Structures and Improvements associated with Renewable Energy and Telecommunications.

Pursuant to this Section 8(h), renewable energy and telecommunications shall have the meanings and be considered in relation to this Easement as described herein. Renewable energy is derived from a fuel source that readily restores over short periods of time and typically does not diminish. Such fuel sources include the sun, wind, moving water, organic plant and waste material (e.g., biomass) and the earth's heat (i.e., geothermal). Telecommunications is the transmission, receipt, or exchange of information through the use of technology involving the Property and any other location.

With the permission of the Lead Grantee, structures and improvements necessary to undertake renewable energy generation or telecommunications (including access roads and other accessory improvements) are permitted within the Farmstead Area and Farm Area to service on-property or research uses (and scaled accordingly) provided they are compatible with the Purpose of this Easement, subordinate to the Agricultural Use of the Property and located in a manner that minimizes the impact to prime soils or soils of statewide importance. Such structures and improvements may be placed or constructed on the Property in accordance with the provisions of this Section 8(h) and may be maintained, repaired, removed, enlarged and replaced at their respective locations subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"). Commercial-scale alternative electrical generation and

telecommunications structures are prohibited, but Grantor may sell to or exchange with third parties any incidental surplus electricity that is generated by renewable electrical generation facilities approved by the Lead Grantee

9. Maintenance and Improvement of Water Sources.
Grantor may use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement. Grantor may alter the natural flow of water over the Farmstead Area and the Farm Area in order to improve drainage of agricultural soils, reduce soil erosion and/or flooding, provide irrigation for the Property or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the Conservation Plan and is conducted in accordance with sound agricultural practices (as described in Section 5(a)), is compatible with the Purpose of this Easement, and is carried out in accordance with applicable local, state and federal laws and regulations.

10. Water Rights.
Grantor may use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property in accordance with applicable local, state and federal laws and regulations. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

11. Subdivision.
The Property is currently comprised of *2* tax map parcels owned by Grantor.

Any division, partition, subdivision, or other legal or de facto creation of lots or parcels of any portion of the Property into separate ownership is hereafter referred to as "Subdivision" or to "Subdivide" and any portion of the Property subject to Subdivision as "Subdivided." Under no circumstance shall any designated Farmstead Area be solely Subdivided from the Property and shall not be internally Subdivided.

With prior written permission of the Lead Grantee, Grantor may Subdivide the Property and convey a portion of the Property to a new owner or owners. Grantor's request for permission to Subdivide will be governed by the provisions set forth in Section 16 ("Permission of Grantee") of this Easement and the provisions of this Section. In addition, Lead Grantee shall grant such permission only if Lead Grantee determines that the Subdivision: (a) is for agricultural purposes; (b) is compatible with the Purpose of this Easement; (c) will not diminish or substantially impair the agricultural viability of the Property; and (d) shall ensure that all parcels of land thereby created will remain Viable Agricultural Land either individually, or as part of an established Farm Operation. Any such Subdivision shall not include the right to construct, place or relocate any structures on the Property, except as otherwise permitted by this Easement, and shall explicitly limit any existing Farm Labor Housing in the Farm Area to that exclusive use. Any Subdivision also must comply with all applicable local, state or federal regulations, and any Subdivided parcels shall be subject to the terms of this Easement.

In the event that any Subdivision of the Property is approved by the Lead Grantee, any portion of the Property so Subdivided shall remain subject to this Easement and approval by the Lead Grantee must allocate to the Subdivided portion of the Property any portion of the following rights then remaining which are to be applied to the Subdivided portion:

(a) Construction of Impervious Surfaces as set forth in Section 8(a) ("Impervious

Surfaces");

(b) Construction or placement of agricultural structures and improvements under Section 8(c), ("Agricultural Structures and Improvements");
(c) Construction or placement of Residential Dwellings under Section 8(d), ("Residential Dwellings");
(d) Construction or placement of recreational improvements under Section 8(f), ("Recreational Structures and Improvements"); and
(e) Construction of renewable energy and telecommunications structures and improvements under Section 8(h), ("Renewable Energy and Telecommunications Structures and Improvements").

Such allocation of the rights in the noted sections shall not result in allowances greater than those allowed under each such section. At the discretion of Lead Grantee, a functionally and materially equivalent Easement covering the Subdivided portion of the Property may be required and, if so, it shall be recorded immediately following its conveyance.

Lot line adjustments, which do not create additional building lots, are permitted only with the prior written permission of the Lead Grantee, which permission shall ensure that such lot line adjustments shall not result in a material reduction in the size of the Property.

Mortgages, or other non-possessory interests in land do not constitute "Subdivision" as intended in this Section 11 herein, provided such interests encompass the whole Property or such portion of the Property for which the Lead Grantee has approved a Subdivision as noted above.

12. **Forest Management.**
Without permission of Lead Grantee or Grantees, Grantor may clear forested areas in the Farmstead and the Farm Areas for conversion to farmland, and, without permission of Lead Grantee or Grantees, may harvest wood for use on the Property including heating or construction of buildings and improvements, manage forested areas for wildlife habitat and recreation, and remove trees that are fallen, dead, diseased or invasive, so long as such activities are consistent with generally accepted forest best management practices. Without permission from Lead Grantee or Grantees, in the Farm and Farmstead Areas, Grantor may carry out commercial forestry activities including timber and wood products harvesting and timber stand improvements and construct, maintain, remove, and repair unpaved access roads and "staging areas", those areas where logs are temporarily stored for transport necessary for such activities. All such activities shall be in accordance with generally-accepted forestry best management practices. Such commercial timber harvests and timber stand improvements shall be carried out in accordance with a forest management plan and harvest plan prepared by a forester who is certified by the Society of American Foresters or such successor organization as is later created, a Cooperating Consulting Forester with the New York State Department of Environmental Conservation or a qualified forester approved by Lead Grantee.

Grantor shall give Lead Grantee, its successors or assigns, written notice not less than forty-

five (45) days prior to the anticipated commencement of any commercial timber harvest or timber stand improvement. Such written notice shall include submission of the current forest management plan and harvest plan.

13. Mining and other Detrimental Uses on the Property.

There shall be no placement of commercial cell phone towers, above or below-ground electrical and other utility distribution lines or pipelines, or other land uses detrimental to the Conservation Values of the Property, except (i) as Permitted pursuant to Subsection 8g; and (ii) placement resulting from the lawful exercise of eminent domain.

Enterprises which produce or market petroleum or chemical products are prohibited. Athletic fields, golf courses or ranges, off-road recreational vehicle race tracks or parks, commercial airstrips and commercial helicopter pads are prohibited. Other commercial recreational Structures and Improvements that disturb Viable Agricultural Land or otherwise adversely impact Agricultural Use on a continuing basis are prohibited.

Surface and subsurface exploration for, and development, storage, mining, extraction and removal, in any manner, of minerals, natural deposits or hydrocarbons (including, but not limited to, oil, gas, soil, sand, gravel, rock, peat, sod and coal) is prohibited, whether originating on or off the Property, except in accordance with Subsection 13(a) ("Removal and Use of Topsoil, Stone, Sand and Gravel") herein. Grading, blasting, filling, and any other activity that disturbs the soil surface or alters the topography of the Property is prohibited, except as otherwise permitted in this Easement, or pursuant to an erosion and sediment control plan or Conservation Plan.

13(a).Removal and Use of Topsoil, Stone, Sand and Gravel on the Property. Grantor's removal of stone, sand or gravel for purposes as necessary and incidental to the construction or maintenance of Permitted Structures and Improvements and the conduct of Permitted uses and activities may be undertaken only with Lead Grantee's Prior Written Approval, which approval shall be in Lead Grantee's sole and absolute discretion, provided, in addition, that Grantor verifies to the satisfaction of Lead Grantee, and Lead Grantee determines that said removal will meet or exceed the following requirements:

(a) will not take place in or disturb the *Resource Protection Area*;
(b) will be limited and localized in impact, such that the surface disturbed by such extraction will not exceed more than ½ (one half) acre of the Property at one time;
(c) will be Conservation-Compatible;
(d) minimizes, to the extent practicable, impacts to the prime and statewide important soils on the Property; and
(e) is not prohibited under applicable provisions of Section 170(h) of the Internal Revenue Code.

The removal and use of topsoil, stone, sand and gravel as approved by Lead Grantee must conform and meet all such requirements, failing which Lead Grantee may enjoin additional extraction and otherwise enforce the provisions of this Subsection in accordance with

Subsection 22 ("Enforcement") hereof. All practical means to mitigate any adverse impact on the agricultural values shall be used in carrying out any Permitted extractive activities. Upon completion of said Permitted extractive activities, Grantor shall promptly restore any portion of the Farmstead Complex and Farm Area affected thereby as nearly as possible to its condition existing prior to commencement thereof, except where such activities precede the construction of a Permitted Structure or Improvement.

Surface and/or subsurface mineral rights may not be sold, leased, or otherwise transferred to another party. Notwithstanding anything to the contrary herein, no quarry, gravel pit, mining or drilling, or other mining or drilling activities prohibited under applicable provisions of Section 170(h) of the IRC are Permitted on or under the Property.

These restrictions shall not prevent the installation of septic systems as may be reasonably necessary to serve permitted uses, activities, structures and improvements, or the construction of permitted ponds, driveways and farm roads.

14. Road Construction.

Subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), Grantor may, within the Farmstead Area and Farm Area construct, maintain and repair roads for residential driveways, barnyards, farm markets or other improvements necessary to provide access to, and parking for, permitted buildings or improvements, or to conduct other activities permitted by this Easement. Roads constructed in the Farm Area shall be unpaved and shall be located in a manner that minimizes impacts to prime soils and soils of statewide importance. With permission of Lead Grantee, roads essential to facilitating permitted uses and activities on the Property may be constructed, maintained, repaired, and replaced within the Resource Protection Area, provided they cannot be practicably sited within the Farmstead Area or the Farm Area.

15. Dumping and Trash.

The dumping, land filling, burial, application, injection, or accumulation of any kind of garbage, trash or debris on the Property is prohibited, other than agriculturally-related waste or biodegradable material as described below. Without permission of Lead Grantee or Grantees, Grantor may (i) store, compost, apply or inject agriculturally-related waste or biodegradable material; (ii) store old farm equipment to be used for parts; (iii) temporarily store trash or household waste in receptacles for periodic off-site disposal and (iv) compost or re-use biodegradable materials generated off the Property for use on the Property or commercial use or sale. All such activities shall be conducted in accordance with sound agricultural practices (as described in Section 5(a)) and in a manner consistent with the Conservation Plan and all applicable local, state or federal laws and regulations. Notwithstanding the foregoing, the storage and treatment of sewage associated with buildings permitted on the Property is permitted by this Easement within the Farmstead Area and Farm Area.

16. Permission of Lead Grantee.

When Grantor is required to obtain Lead Grantee's permission for a proposed action pursuant to the Easement, such permission shall be requested in writing. Such approval shall be in Lead Grantees' sole but reasonable discretion and shall be valid only if in writing and duly executed on behalf of Lead Grantee. Lead Grantee shall respond with a decision in writing within forty-five (45) days of receipt of the Grantor's written request provided Grantor has

supplied sufficient information upon which Lead Grantee may reasonably base a decision. If mutually agreed upon by Lead Grantee and Grantor, this timeline may be reasonably extended.

17. Ongoing Responsibilities of Grantor and Lead Grantee and Grantees.
Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Lead Grantee or Grantees, or in any way to affect any obligations of Grantor as owner of the Property, including, but not limited to, the following:

17(a). Taxes.
Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.

17(b). Upkeep and Maintenance.
Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law and this Easement. Lead Grantee and Grantees shall have no obligation for the upkeep or maintenance of the Property.

17(c). Liability and Indemnification.
Grantor agrees to indemnify and hold Lead Grantee, Grantees and Scenic Hudson harmless from any and all costs, claims or liability, including but not limited to reasonable attorney's fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence of Lead Grantee or Grantees or their agents, in which case liability shall be apportioned accordingly.

18. State as Intervenor and Mediator Regarding Interpretation of Selected Definitions and Terms and Selected Implementation of Provisions.
Consistent with the policy of this state as contained in Section 4 of Article 14 of the New York State Constitution and as (i) articulated in Section 300 of Article 25-AA of the AML, and (ii) demonstrated by the New York State share of the consideration paid for this Easement as authorized by Section 325 of Article 25-AAA of the AML, the New York State Department of Agriculture and Markets shall perpetually retain the right to intervene on any of the matters listed below provided any such intervention or mediation shall also be specifically limited as set forth below:

(i.) advise the Grantor and Lead Grantee and Grantees of the State's interpretation of the following specific terms and definitions contained in and as used throughout this Easement –
   a. Agricultural Use,
   b. Conservation Plan,
   c. Crops, Livestock and Livestock Products,
   d. Farm Labor Housing,
   e. Farm Operation,
   f. sound agricultural practices (as described in Section 4(a)), and
   g. Viable Agricultural Land;

(ii.) advise the Grantor and Lead Grantee and Grantees of the State's interpretation of the Purpose of this Easement; and

(iii.) advise the Grantor and Lead Grantee and Grantees of the State's interpretation of

the Lead Grantees and/or Grantees' proposed or demonstrated administration of the provisions of this Easement that the Department would deem as unreasonably restrictive on the Farm Operation on this Property so as to be in contravention of the purposes of Article 25-AA of the AML.

Any such intervention by the Department shall be offered and intended to serve as non-binding advice to the Grantor and Lead Grantee and Grantees in an effort to avoid potential violations of this Easement that would have arisen from either party's misinterpretation of any specific item noted above.

Furthermore, if a dispute arises between the Grantor and the Lead Grantee and/or Grantees concerning the consistency of any proposed use or activity with the Purpose(s) of this Easement or any of the specific provisions contained herein, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties and the New York State Department of Agriculture and Markets for mediation. Within ten (10) days of such request, Grantor and Lead Grantee and Grantee shall schedule a meeting with the New York State Department of Agriculture and Markets, which will recommend potential resolutions of the dispute.

Notwithstanding anything in Section 3 ("Implementation"), nothing in this clause shall [preempt or prohibit the Grantor or the Lead Grantee or Grantees from requesting mediation pursuant to Section 23 ("Dispute Resolution") or to otherwise] diminish Lead Grantee and Grantees' rights under Section 22 ("Enforcement").

19. Extinguishment of Development Rights.

Except as otherwise reserved to the Grantor in this Easement, all non-agricultural development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

20. Baseline Documentation.

By its execution of this Easement, Grantees acknowledge that the present uses of, and related structures and improvements on the Property are permitted by this Easement. In order to evidence the present condition of the Property so as to facilitate future monitoring and enforcement of this Easement, a Baseline Documentation Report (the "Report"), including relevant maps and photographs, describing such condition at the date hereof, has been prepared and subscribed by both parties, and a copy thereof has been delivered to Grantor and a copy will be kept on file with Lead Grantee. The Report may be used by Lead Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Lead Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

21. Right of Inspection.

Lead Grantee shall have the right to enter upon the Property at reasonable times, in a reasonable manner, and where practicable, after giving reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. In the instance of a violation or suspected violation of the terms of this Easement which has caused or threatens to cause irreparable harm to any of the agricultural or other resources this Easement is designed to

protect, no such advance notice is required.

22. Enforcement.

If Lead Grantee determines that a violation of this Easement has occurred, Lead Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation. Notwithstanding the foregoing, where Lead Grantee in Lead Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the Purpose of this Easement, Lead Grantee may bring an action to enjoin the violation.

Lead Grantee shall also be entitled to seek the following remedies in the event of a violation: 1) money damages, including damages for the loss of the resources protected under the Purpose of this Easement; and 2) restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Lead Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of Lead Grantee to discover a violation or to take immediate legal action shall not bar Lead Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

Nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by law, and nothing in this Easement shall require Grantor to take any action to restore the condition of the Property from damage or change that could not be reasonably anticipated by Grantor or that is beyond Grantor's reasonable control and occurring without Grantor's fault or negligence, including but not limited to natural disasters such as earthquakes, hurricanes or floods or to political or social upheavals such as wars or riots.

23. Transfer of Easement.

Lead Grantee agrees that if it decides to transfer or assign its interest in this Easement, it shall transfer or assign its interest to Scenic Hudson, which is a qualified organization as that term is used in the Environmental Conservation Law and Internal Revenue Code. If Scenic Hudson declines to accept the Grantee's interest, then Lead Grantee shall have the right to transfer this Easement to any private non-governmental organization or public agency that, at the time of transfer is a "public body" or a "not-for-profit conservation organization" as defined by Article 49 of the ECL or a "qualified organization" under Section 170(h) of the Code or a soil and water conservation district board pursuant to Section 9 (4-a) of the Soil and Water Conservation Districts Law, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Lead Grantee ceases to exist or qualify under Article 49 of the ECL and Section 170(h) of the Code, it shall assign its interest to Scenic Hudson. If Scenic Hudson declines to accept Lead Grantee's interest, then a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Easement.

24. Transfer of Property.

Any subsequent conveyance, including, without limitation, transfer, lease or mortgage of the Property, shall be subject to this Easement, and any deed or other instrument evidencing or

effecting such conveyance shall contain language substantially as follows: "This {conveyance, lease, mortgage, easement, etc.} is subject to a Conservation Easement which runs with the land and which was granted to Westchester Land Trust, Inc., Westchester County, and the Town of Somers by instrument dated _____, and recorded in the office of the Clerk of Westchester County at Control Number_____." Grantor shall notify Lead Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. The failure to notify Lead Grantee, or to include said language in any deed or instrument shall not, however, affect the validity or applicability of this Easement to the Property or limit its enforceability in any way.

25. **Amendment of Easement.**
This Easement may be amended only with the written consent of Lead Grantee and the then current owner of the Property. Any such amendment shall be compatible with the Purpose of this Easement and shall comply with the ECL or any regulations promulgated thereunder, and shall not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML or such successor law as enacted or amended. Any such amendment shall result in a neutral or positive effect on the protection of the conservation values that are protected by this Conservation Easement. Further, any such amendment to this Easement shall be duly recorded.

26. **Proportionate Share.**
For purposes of this Subsection and Subsection 28, Grantor and Grantees stipulate that as of the Effective Date, Grantees are vested with a real property interest in the Property, which is agreed to be a stipulated proportionate share in the fair market value of the Property (the "Proportionate Share"). Said Proportionate Share is the ratio of the value of the Easement on the Effective Date to the value of the Property, without deduction for the value of the Easement, on the Effective Date, as determined in accordance with the valuation substantiation requirements of Treas. Reg. Section 1.170A-14(h)(3) or as may be determined by a court of competent jurisdiction and in accordance with all appropriate applicable laws. For purposes of this Subsection, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the Proportionate Share of Grantees in the fair market value of the Property thereby determinable shall remain constant, except that the value of any improvements made by Grantor after the Effective Date is reserved to Grantor to the extent allowed by Treas. Reg. Section 1.170A-14(g)(6).

27. **Extinguishment of Easement.**
Grantor and Lead Grantee and Grantees hereby recognize that unexpected circumstances may arise that may make impossible or impractical the continued use of the Property in a manner consistent with the Purpose of this Easement and necessitate extinguishment of this Easement pursuant to the provisions of Treas. Reg. Section 1.170A-14(g)(6) and the Conservation Law. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction. Lead Grantee, Grantees and Scenic Hudson shall be entitled to a share of the proceeds of any post-extinguishment sale, exchange or involuntary conversion of the Property, in an amount at least equal to the Lead Grantee, Grantees' and Scenic Hudson's Proportionate Share. Until such time as the Lead Grantee, Grantees and Scenic Hudson receive the proceeds from the Grantor or Grantor's successors or assigns, Lead Grantee, Grantees and Scenic Hudson shall have a lien against the Property for the amount of the each parties' Proportionate Share. Any extinguishment

of this Easement in accordance with the provisions of this Subsection shall be recorded in the Westchester County Clerk's Office and Lead Grantee shall, upon request, promptly and without charge, execute in recordable form and deliver to Grantor such instruments as Grantor may reasonably request for this purpose.

On the subsequent sale, exchange, or involuntary conversion of the Property following such extinguishment, and after the payment and satisfaction of any costs or expenses associated with such sale, exchange or involuntary conversion, Lead Grantee, Grantees and Scenic Hudson shall be entitled to receive their Proportionate Share resulting from the gross proceeds of such sale, exchange, or involuntary conversion in priority to the owner of the Property at the time of such post-extinguishment sale, exchange, or involuntary conversion, and in priority to any other lien or claim encumbering the Property, as the value of such Grantee's Proportionate Share is determined under the provisions of Section 27 ("Proportionate Share") herein.

The owner of the Property at the time of such post-extinguishment sale, exchange, or involuntary conversion shall bear the responsibility for the payment and satisfaction of any claims or liens against the Property. If Lead Grantee, Grantees and/or Scenic Hudson do not receive their Proportionate Share from the proceeds of such post-extinguishment sale, exchange, or involuntary conversion, then Lead Grantee, Grantees and/or Scenic Hudson shall be entitled to recover the resulting deficiency from the post-extinguishment owner of the Property at the time of such post-extinguishment sale, exchange, or involuntary conversion. Lead Grantee, Grantees and/or Scenic Hudson may record a lien to secure its recovery of such deficiency.

All such proceeds received by Grantees shall be used by Grantees in a manner consistent with the Conservation Purpose of this Conservation Easement. In the event of extinguishment, the provisions of this Subsection shall survive. Grantor and Grantees agree that each Party shall promptly provide written notice to the other of any extinguishment events or proceeding.

In such event, Lead Grantee shall receive X% of the proceeds of the Proportionate Share, with the County of Westchester receiving X%, the Town of Somers X% and Scenic Hudson 12.5%. With regard to the portion of such Proportionate Share equal to that paid using State grant funds, Lead Grantee agrees to use such portion in a manner compatible with the Primary Purpose of this Easement. Prior to such re-use, Lead Grantee must provide written notification to the New York State Department of Agriculture and Markets and to the Westchester County Agricultural and Farmland Protection Board.

28. Interpretation.

This instrument is intended to create a "conservation easement" as defined by the Conservation Law and shall be interpreted consistently with such intention. In the event any provision has been omitted from this instrument which is necessary to qualify the interest hereby granted as such "conservation easement" such provision shall be deemed incorporated herein to the extent necessary to cause the interest hereby granted to be so qualified. The parties to this Easement agree to construe this Easement as having been drafted jointly. If any provision in said Easement is found to be ambiguous, an interpretation consistent with the Purposes of said Easement that would render the provision valid must be favored over any interpretation that would render it invalid.

If a dispute arises between the Grantor and the Lead Grantee concerning the interpretation of any clause of this Easement such that there is a conflict between the clauses required by the New York State Department of Agriculture and Markets ("Department"), listed in the attached Exhibit D, and the remaining clauses of the Easement, an interpretation consistent with the Department clauses that would render the Department clauses valid shall be favored over any interpretation that would render such clauses invalid.

29. Recitals and Exhibits Incorporated Herein.

Any and all recitals in this Easement are agreed by the parties to be accurate, are incorporated into this Easement by this reference, and shall constitute integral terms and conditions of this Easement. Any and all exhibits and addenda attached to and referred to in this Easement are hereby incorporated into this Easement as if fully set out in their entirety herein.

30. Successors.

Every provision of this Easement that applies to Grantor, Lead Grantee or Grantees shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest, and shall continue as a servitude running in perpetuity with the Property.

31. Severability.

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

32. Notices.

Any notice required or desired to be given under this Easement shall be in writing and shall be sent (i) by personal delivery, (ii) via registered or certified mail, return receipt requested, or (iii) via Federal Express or other private courier of national reputation providing written evidence of delivery. Notice shall be deemed given upon receipt in the case of personal delivery, and upon delivery by the U.S. Postal Service or private courier. All notices shall be properly addressed as follows: 1) if to Lead Grantee and Grantees, at the addresses set forth above; 2) if to Grantor, at the address set forth above; or 3) if to any subsequent owner, at the address of the Property. Any party can change the address to which notices are to be sent to him, her or it by duly giving notice pursuant to this Section 32.

33. Title.

The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Easement; that the Property is free and clear of any and all mortgages not subordinated to this Easement, and that the Lead Grantee and the Grantees shall have the use of and enjoyment of the benefits derived from and existing out of the aforesaid Easement.

34. Subsequent Liens on Property.

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property, or a portion thereof encompassing entire separately deeded parcels, as collateral for a subsequent borrowing. Any subsequent liens on the Property must be subordinate to this Easement.

35. Grantor's Environmental Warranty.

Grantor represents and warrants that it has no knowledge of a release or threatened release of any Hazardous Materials (as defined below) on the Property and hereby promises to hold harmless, defend and indemnify the Lead Grantee, Grantees and Scenic Hudson from and against all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable Attorneys' Fees, arising from or connected with the presence and/or any release of Hazardous Materials or violation of federal, state or local Environmental Laws (as defined below) on, under, or from the Property.

If at any time after the Effective Date of this Easement there occurs a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps that may be required under federal, state, or local law necessary to assure its containment and remediation, including any cleanup.

36. Duration of Easement.

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to any Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Lead Grantee or Grantees. In the event the Lead Grantee takes legal title to Grantor's interest in the Property, the Lead Grantee must commit the monitoring and enforcement of the Easement to another qualified organization within the meaning of Section 170(h)(3) of the United States Internal Revenue Code (1986), as amended, which organization has among its purposes the conservation and preservation of land and water areas.

Furthermore, the fact that any use of the Property that is expressly prohibited by the terms of this Easement may become more economically valuable than uses permitted by the terms of the Easement, or that neighboring properties may in the future be put entirely to uses that are prohibited by this Easement, have been considered by Grantor in granting this Easement and by Lead Grantee and Grantees in accepting it. Grantor and Lead Grantee and Grantees believe that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Conservation Easement, and Grantor and Lead Grantee and Grantees intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of Grantor to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

37. Entire Agreement.

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings and agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall

be valid or binding unless contained in an amendment that complies with Section 25 ("Amendment of Easement").

38. Binding Effect.

The provisions of this Easement shall run with the Property in perpetuity and shall bind and be enforceable against the Grantor and all future owners and any party entitled to possess or use the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. Notwithstanding the foregoing, upon any transfer of title, the transferor shall, with respect to the Property transferred, cease being a Grantor or Owner with respect to such Property for purposes of this Easement and shall have no further responsibility, rights or liability hereunder for acts done or conditions arising thereafter on or with respect to such Property, but the transferor shall remain liable for earlier acts and conditions done or occurring during the period of his or her ownership or conduct.

39. Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

IN WITNESS WHEREOF, Grantor and Grantees, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

Grantor: _____
Robert L. Stuart

Lead Grantee: Westchester Land Trust, Inc.

By: _____
Lori Ensinger

Grantee: County of Westchester

By: _____

Grantee Town of Somers

By: _____

State of New York)

County of), ss:

On the _____day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Signature/office of individual taking acknowledgement

State of New York)

County of), ss:

On the _____day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Signature/office of individual taking acknowledgement

State of New York)

County of), ss:

On the _____day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Signature/office of individual taking acknowledgement

State of New York)

County of), ss:

On the _____day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Signature/office of individual taking acknowledgement

THE SCENIC HUDSON LAND TRUST, INC.

By: _____

Steve Rosenberg
Executive Director

By:

Seth McKee
Land Conservation Director

STATE OF NEW YORK)
)ss
COUNTY OF_____

On , before me, the undersigned, a notary public in and for said State, personally appeared **Steve Rosenberg** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
)ss
COUNTY OF_____

On , before me, the undersigned, a notary public in and for said State, personally appeared **Seth McKee** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

APPENDIX ___ *{letter or # to be inserted}*
DEPARTMENT CLAUSES

required "WHEREAS" provisions
"Purpose"
"Implementation"
"Definitions": "Agricultural Use," "Conservation Plan," "Crops, Livestock and Livestock Products," "Farm Labor Housing," "Farm Operation," and "Viable Agricultural Land."
"State as Intervenor and Mediator Regarding Interpretation of Selected Definitions and Terms and Selected Implementation of Provisions"
Other miscellaneous policies: "Impervious Surfaces," "Land Disturbances Associated with Non-Agricultural Activities," "sound agricultural practices," "Proceeds" and "Interpretation"

Barbara Sherry

From: Rick Morrissey
Sent: Wednesday, October 12, 2016 3:23 PM
To: Belinda DiTieri; Barbara Sherry
Subject: FW: NYS Mesonet

Please put this in the backup for Stuarts farm.

Thanks,

[illegible]
Town Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
Ph: 914-277-3637
Fax: 914-276-0082
supervisor@somersny.com
www.somersny.com

From: syrette dym[illegible]
Sent: Sunday, October 09, 2016 6:24 PM
To: rbaroni[illegible]
Cc: Rick Morrissey
Subject: NYS Mesonet

Roland - Stuarts Farm has been selected as the one, most appropriate site for erection of the Westchester County portion of the NYS Mesonet System.

There was initial discussion with Efrem regarding how such an application should be processed and it was then passed on to me for a determination. I have had several calls with the project managers and then this was put on the back burner over the last weeks while I have dealt with other things and my own situation. I just got a call on Friday from NYS Homeland Security requesting that I move this along for approval by the end of the year and indicate to the provider what type of application they should make to process this before the Town.

Based on information I have received as well as that on the State website, the Mesonet installations are not regulated under the Telecommunication Act of 1996 and the installation will not feature any personal communication service (PCS) transmitter, repeaters or antenna, nor will any equipment on the station require an FCC license. As a weather station, it is not designed to solely measure wind speed and velocity for the purposes of a commercial wind farm.

In my discussions with the provider, they indicated that localities across the state have processed these in a variety of ways including under site plan review as well as under their own telecommunications facilities regulations . After review of both sections of the Somers code as well as others these are some of the facts as I see them to help determine how best to process this application in a judicious manner

1. Use –Stuart's Farm is located in an R___ district. Since this is not proposed to be a subdivision then presumably the Mesonet tower and enclosure would not be considered a principal use. Even if it were, it does not fit any category of a permitted use including any of those identified as Special Exception Uses in Article

XII. Therefore, it would have to be considered an accessory use on the farm. As such, the only category it might fit in although not specifically specified, would be as 170-11.B (8) Oher accessory structures. This would not typically be considered an accessory use to this particular farm, however, one of the purposes of the Mesonet is to aid agricultural uses by helping to predict weather patterns. If it fit in this category, we cold process it as only a site plan approval. Permitted height in the district might be a problem for the 33 foot tower but it could qualify under Section 170-47 Height exception B. which states: " The limitations of this chapter shall not apply to chimneys, church spires, standpipes, or water towers, flagpoles, monument, transmission towers and cable or radio or television antennas or towers."

So , if it is not a permitted accessory use in the residential district, does it fit as a Telecommunication Facility as defined in Section 170-129 and therefore, be better processed as a special use permit and site plan for such. Section 170-129.3 Applicability says that the regulation of this article shall apply to all wireless and attached wireless telecommunications facilities in town but not apply to:

(1) Communications facility used solely and exclusively for police communication, fire communication, private radio, private television reception, private citizen's ban, private amateur Ham radio and other similar private, residential communications system, serving users on an individual property except if designed for a commercial purpose
(2) A wireless or attached wireless telecommunications facility proposed to be located on the property of a governmental agency, which facility has been not subject to the zoning and planning jurisdiction of the Town for which a resolution has been adopted by the Town Board to the extent of waiving special permit and site plan review approvals.

If we think of this as a communications tower, however, it could fit nicely into some of the requirements mandated by this special permit. The definition of a "wireless telecommunications facility" in Section 170-129.2 is: " An unstaffed facility for the transmission and/or reception of wireless telecommunications services consisting of an antenna array connection cables an equipment facility and a support structure to achieve the necessary elevation, the primary use of which is for a wireless telecommunications facility ". The definition of "Support Structure" is: Any structure designed and constructed to support an antenna array, including self-supporting lattice towers, guy wire support towers, or monopole towers. That would include those requirements of section 170-129.5 such as E. Lights, F. Signs, G, Facility limits per site, H. Certificate of occupancy, I. Responsible parties, J. Maintenance, K. Abandonment, N. Staffing and equipment, O. Noise,. Also Section 170-129.7 regarding special permit standards also have several applicable requirements including A. Necessity, E. Operation and Security, G. New Support Structure, H. Height Standards, I. Setback and distance standards , J. visual mitigation, K. landscaping, l. accessway and parking, M. Other. Also there is the requirement for a 5 year permit renewal.

So ----- I would like to call and discuss these options for processing so I can get back to these people on Tuesday afternoon since I am not available late Tuesday afternoon or Wednesday. . I will be available to talk between 12:30 and 3:30 on Tuesday. Is there a time in there that works for you? Please let me know.

JUNE 9, 2016 – PUBLIC HEARING

Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening June 9, 2016 at 7:05 PM at the Town House, 335 Route 202, Somers, New York.

ROLL CALL:

PRESENT:	Supervisor	Rick Morrissey
	Councilman	Richard G. Clinchy
	Councilman	Thomas A. Garrity, Jr.
	Councilman	Anthony J. Cirieco
	Councilman	William G. Faulkner

ABSENT:

Also present were Patricia Kalba, Town Clerk and Roland A. Baroni, Jr., Town Attorney.

The Supervisor explained that this was a continuation of a public hearing that was opened on March 5, 2015 and continued on April 9, 2015 with regard to the proposed Local Law to amend Chapter 170 entitled Zoning, Section 170-13C Multifamily Residence Downtown Hamlet (MFR-DH) District of the Code of the Town of Somers.

The Supervisor declared the hearing open and asked for comments from the public.

There being no one to be heard on motion of Supervisor Morrissey, seconded by Councilman Clinchy, the hearing was declared closed at 7:06 PM.

_____

Town Clerk

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Minutes of a regular meeting of the Town Board of the Town of Somers held on Thursday evening June 9, 2016 at 7:00 PM at the Town House, 335 Route 202, Somers, New York.

ROLL CALL:

PRESENT:	Supervisor	Rick Morrissey
	Councilman	Richard G. Clinchy
	Councilman	Thomas A. Garrity, Jr.
	Councilman	Anthony J. Cirieco
	Councilman	William G. Faulkner

ABSENT:

Also present were Patricia Kalba, Town Clerk and Roland A. Baroni, Jr., Town Attorney.

The Supervisor said that it was in order for the Board to continue a public hearing from March 5, 2015 and continued to April 9, 2015 with regard to the proposed Local Law to amend Chapter 170 entitled Zoning, Section 170-13C Multifamily Residence Downtown Hamlet (MFR-DH) District of the Code of the Town of Somers.

7:05 PM – hearing opened
7:06 PM – meeting reconvened

PUBLIC COMMENT:

Mr. Joseph Sencen, Summit Circle, said that he had questions about the presentation that was made at the work session with regard to the Stone House property. He asked who was notified about that meeting and what the procedure was for that notification. The Supervisor explained that the Town was approached by potential purchasers of the property about the possibility of making the location an Event Venue. He invited them to a Town Board work session to make a presentation for the public and the Town Board. He said that he sent a letter out to the surrounding residents as if it was a Zoning matter and he used the radius that they would use for that notification. The Supervisor said that if the potential purchaser's proposal was to go further there would be special permits and permission from the Town to have a Commercial Use in the area. He explained for those permits to be issued all the neighbors would have to be notified, there would be public hearings and there would be ample time for the neighbors to come in and address their issues and concerns. Councilman Garrity stated that the potential purchasers gave an informal presentation at the work session. He continued that the Supervisor sent out notifications informally and that was not required.

Mr. Sencen said according to the article in the Somers Record, it was stated that the property should not be used for commercial use. He asked if he was reading that information correctly. The Supervisor explained that the Town Board would not be changing the Zoning of the property. He said that they would entertain a request for a Special Exemption Use Permit in recognition of the proposed new owners preserving the integrity and historical nature of the Homestead and surrounding property. He continued that the permit would allow a Commercial Special Events business to be run at that location.

The Supervisor said that as an update, the proposed property owners were conducting decibel level testing and when and if they came back to the Board with the results they would move forward with the process.

Mr. Michael Kimpel, Stonehouse Road, said that he did not receive notification about any hearing or meeting with regard to the Stone House property. He stated that he was concerned with regard to the proposal and he had some questions with regard to the

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article that was printed in the Somers Record Newspaper. Councilman Clinchy explained that the comments were with regard to the development and subdivision of the property.

Mr. Kimpel stated that he was concerned with regard to all of the elements of the proposal, the parking and the activity at that location.

There being no one else to be heard on motion of Supervisor Morrissey, seconded by Councilman Clinchy the public comment session was declared closed.

Monthly reports

The Town Clerk presented monthly reports from the Town Clerk, Building Inspector, Zoning Board of Appeals, Plumbing, Bureau of Fire Prevention, Parks and Recreation, Planning and Engineering, Tax Receiver and Director of Finance.

Solarize 2, Library Solar Panel Ribbon Cutting Ceremony, Solar Garden Project

The Supervisor said that the next item on the agenda was a discussion with Michael Blum, Chairman of Somers Energy Environment Committee with regard to Solarize 2, Library Solar Panel Ribbon Cutting Ceremony and the Solar Garden Project. Mr. Blum stated that the Somers Energy Environment Committee had three proposals they would like to present to the Board to get both their support and, if needed, resolutions.

Mr. Blum said that the first proposal was with regard to Solarize 2. He said that they had been discussing with the Town of New Castle and Direct Energy Solar, the installer that was selected for the Solarize Program, the interest there seemed to still be in the program. He said that they believed that there was still a demand and if they combined the two Towns and set a goal for the number of installations he thought that Direct Energy Solar was prepared to offer them a discount for the installations. Mr. Blum said that along with the Town of New Castle and Direct Energy Solar they put together a plan to have a Kick-Off Event at the Ribbon Cutting of the Solar Panels on the Library. He stated that this was going to be an express Solarize Program, they were not looking anywhere near the timeline of the first Solarize Program. Discussion ensued with regard to the first Solarize Program and the funding sources for the outreach and the program.

Mr. Blum said that the next item he wanted to discuss was with regard to Solar Gardens. He explained that there were 30 to 40 residents who did not meet the solar requirements, either their roofs were shaded or in the wrong position. He said that these people still expressed a desire to access the technology. Mr. Blum said that they would like to initiate a Solar Phase II which would be an initiative around Solar Gardens. He explained what a Solar Garden was, how it worked and how residents would benefit from the technology. He said that they started looking into properties where a Solar Garden was possible and had made some contacts. Mr. Blum stated that there were various ways to achieve Solar Gardens within the Town. The Town Attorney explained some issues other municipalities were experiencing with regard to Solar Gardens and stated that they were becoming the new cell tower when it came to aesthetics. He said that there was still work to be done by the Town if they were going to start entertaining Solar Gardens. He said that it was his knowledge that Solar Gardens could not be installed on recreation property.

Mr. Blum said that the last item he wanted to discuss was a Climate Smart Communities RFP that the Grant Consultant asked them to look into. He explained that it was for Climate Smart Communities that had been certified and Somers was certified. He continued that there was an RFP due on June 29th which they looked into and it was a huge effort. Mr. Blum said that they did not believe that they could meet that deadline. He said that at that point they were taking a step back from Complete Streets because they did not feel they had the full support of the Town Residents. He said that they were gearing up to revitalize the Complete Streets Program and once they had the full support of the Town they would seek out grants for funding. Discussion ensued with regard to how Complete Streets was being supported and the support that was needed for funding.

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Somers Crossing

The next item on the agenda was with regard to Somers Crossing. The Supervisor asked Mr. Fred Wells of Tim Miller Associates, Town's Planning Consultant, to walk the Board through the series of items that were on the agenda. Mr. Wells said that he sent that day the Findings Statement which they had tweaked after the meeting. The Town Attorney said that he heard back from the Water Inspector General (WIG) and he asked for some additional language. He said that the WIG would like to add the following phrase to last week's discussed changes, "and incorporate them into the SWPPP, provided that they do not conflict with the requirements of the New York City Department of Environmental Protection (NYCDEP)". He said that the applicant wanted the Town Board to consider a further amendment which read, "provided they do not conflict nor exceed the requirements of the NYCDEP". The Town Attorney said that the Applicant's request was reasonable because the WIG was there to protect the NYCDEP Watershed not exceed the NYCDEP. The Supervisor said that he felt that they could move forward with the proposed amendments.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Garrity, it was unanimously,

RESOLVED, that the Town Board does hereby adopt and authorize the Statement of Findings for Somers Crossing Development pursuant to the New York State Environmental Review Act (SEQRA).

Execute the Community Benefits Agreement

The Supervisor said that it was in order for the Board to authorize the execution of the Community Benefits Agreement. He said that his concern was that if any of the benefits changed during the process they did not lose the financial benefit included in the agreement. He said that he wanted to add an amendment that would address that to the agreement. The Town Attorney said that he looked into that and paragraph nine on page 14 addressed that concern. Councilman Clinchy asked where the details of each Community Benefit was addressed and was the Developer obligated to a dollar amount. The Town Attorney explained that the dollar amounts listed in the Community Benefit Agreement were estimates of the work being done by a subcontractor. He continued that if the Developer could do a project on their own at a cost saving that was allowed. He said that the numbers had not been verified by the Town Engineer although they are fair estimates.

Mr. Judson Siebert, Keane & Beane, PC, Attorney for the Developer, explained that the agreement was written in good faith and they did the best they could to provide the Town with what was wanted in terms of the benefits. He said that there were a lot of items that were going to be changing during the planning process. He said that the values were placed in the agreement to show the total package. Mr. Siebert said that there would be changes during the planning process and they would work out what was needed to preserve the benefits for everyone. The Town Attorney said that nothing could be changed unless there was a separate agreement that the Town Board authorized. He said that the Planning Board could not change what was in the agreement, they could make a recommendation to the Town Board and then it was up to the Board to discuss a solution with the Applicant.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Garrity, it was unanimously,

RESOLVED, that the Town Board does hereby authorize the Supervisor to execute the Community Benefits Agreement for Somers Crossing between Boniello Land and Realty, LTD. and the Town of Somers.

Local Law to amend Chapter 170

The Supervisor said that it was in order for the Board to adopt a Local Law to amend Chapter 170 entitled Zoning, Section 170-13C Multifamily Residence Downtown Hamlet (MFR-DH) District of the Code of the Town of Somers.

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Thereupon motion of Supervisor Morrissey, seconded by Councilman Garrity, it was unanimously,

RESOLVED, that the Town Board does hereby adopt a Local Law to amend Chapter 170 entitled Zoning, Section 170-13C Multifamily Residence Downtown Hamlet (MFR-DH) District of the Code of the Town of Somers as follows:

A Local Law to amend Chapter 170 entitled ZONING of the Code of the Town of Somers.

BE IT ENACTED, by the Town Board of the Town of Somers, as follows:

Section 1. Chapter 170 of the Code of the Town Code, entitled "Zoning," is hereby amended as follows:

§ 170-13 Multifamily Residence MFR Districts.

Multifamily residence districts are hereby established in order to provide suitable opportunities within the Town for the development of housing designed to satisfy the needs of households maintained by the young, the elderly and families earning less than 80% of the county's median income, and to permit a broad array of housing types, dwelling unit sizes and forms of ownership/occupancy. These districts are intended to provide for the construction of multifamily housing on sites determined to be appropriate based upon criteria established in the Town Development Plan and in conformance with the standards recommended therein, which standards are designed to promote the public health, safety and general welfare and to require the development of housing which is responsive to the variety of special size, design, locational and affordability needs of present and future residents of the Town. To help assure the achievement of this goal with proper protection for existing and future neighboring development and infrastructure, all multifamily residence districts shall be established on a floating-zone basis, subject to approval by the Town Board and in accordance with an approved preliminary development concept plan, as described and defined herein.

C. Multifamily Residence Downtown Hamlet MFR-DH District. It is the specific purpose and intent of the Multifamily Residence Downtown Hamlet MFR-DH District to provide opportunity for the development of low-to-medium-density multifamily housing, as defined herein, on sites within an existing, expanded or new sanitary sewer district, capable of being served with a central water system, and have convenient access to shopping, major roads and community facilities and services. Property with direct access to US Route 202 or New York State Route 100 and within 2,500 feet of the intersection of such US and State highways shall be eligible for MFR-DH designation provided such property meets all other eligibility requirements of this Section. It is the Town's further objective that the Multifamily Residence Downtown Hamlet MFR-DH District include additional shopping opportunities for the residential development in the MFR-DH District and in nearby areas, recognizing the mixed use nature of the downtown area. To help achieve these goals, the Town Board shall apply the basic planning standards set forth in Subsections A(1), A(2), A(4), A(5) and A(7) to A(17) for the Multifamily Residence Baldwin Place MFR-BP District in determining and establishing the specific site and building development controls for multifamily housing within each individual Multifamily Residence Downtown Hamlet MFR-DH established pursuant to this section, as modified below:

(1) Permitted Uses. The following uses shall be permitted in the MFR-DH District subject to the following restrictions:

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(a) Multifamily residential housing.

[1] Development Density. The basic density for multifamily residential housing in the Multifamily Residence Downtown Hamlet MFR-DH District shall be calculated as in the Multifamily Residence Baldwin Place MFR-BP District, with the exception that the basic average gross density shall not exceed two density units per acre of net land area and shall not consist of affordable housing units.

[2] Coverage. The maximum permitted building coverage for multifamily residential housing within a Multifamily Residence Downtown Hamlet MFR-DH District shall be 15% and the maximum permitted combined coverage of buildings and paved surfaces (roads, driveways and parking areas) shall be 35%. The net site area to be used in this calculation shall be established in the same manner as set forth for the Multifamily Residence Baldwin Place MFR-BP District in Subsection A(6).

(b) Grocery store or other neighborhood retail use that compliments retail use on abutting lands and expands shopping opportunities for residents in the housing proposed as part the MFR-DH, and housing in the surrounding areas, provided that:

[1] Lot Location and Size. The site shall have frontage on, and direct access to a United States and/or New York State Highway, at a signalized intersection. The minimum lot area for the retail use shall be 4 acres.

[2] Building Coverage. The maximum building coverage shall be 15% of the lot area.

[3] Yard Requirements. The retail building may be located directly on the front lot line and directly on a side lot line that abuts an adjacent shopping area. A front yard along US Route 100 shall have a minimum depth of 75 feet. Other yards shall have a minimum depth of 20 feet.

[4] Building Height. The maximum height shall be two stories or 35 feet.

[5] Maximum Store Size. The maximum footprint of an individual store shall be 25,000 square feet, which is sufficient for a specialty grocery store.

D. Application procedure. The procedure for planning and zoning approval of a proposed multifamily development in accordance with this section shall involve a two-stage review process: approval of a preliminary development concept plan and the reclassification of a specific parcel or parcels of land for development in accordance with that plan by the Town Board; and approval of a detailed final site development plan as well as a subdivision plan, if appropriate, by the Planning Board.

Section 2. Severability. If any clause, sentence, paragraph, section, article or part of this Local Law shall be adjudicated in any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, article or part thereof directly involved in the controversy in which such judgment shall have been rendered, and such invalidity shall not be deemed to affect the remaining portions thereof.

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Section 3. This local law shall take effect immediately upon filing with the Office of the Secretary of State.

Refer application of Multifamily Residence Downtown Hamlet District (MFR-DH) to the Somers Crossing Site

The Supervisor said it was in order for the Board to refer the application of MFR-DH District to Somers Crossing Site to both the Planning Board and Open Space Committee pursuant to Application procedure under Section 170-13C of Somers Town Code.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Clinchy, it was unanimously,

RESOLVED, that the Town Board does hereby refer the application of Multifamily Residence Downtown Hamlet District (MFR-DH) to the Somers Crossing Site to the Planning Board and Open Space Committee pursuant to Section 170-13D, Application Procedures of the Code of the Town of Somers.

Authorize additional escrow of $3,000.00.

The Supervisor said that it was in order for the Board to authorize an additional escrow in the amount of $3,000 for Consultant Review Services for Tim Miller Associates.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Faulkner, it was unanimously,

RESOLVED, that the Town Board does hereby authorize an additional escrow of $3,000.00 for Tim Miller Associates, Inc. for their SEQRA Review Services for the Somers Crossing Application and authorize the Supervisor to execute the request from Tim Miller Associates, Inc. per letter dated June 8, 2016 from Frederick Wells, Senior Vice President, Tim Miller Associates, Inc.

Authorize additional escrow of $7,650.00.

The Supervisor said that it was in order for the Board to authorize a $7,650.00 escrow account for Tim Miller Associates for review of Landscape & Aesthetics Consulting Services. He asked if the escrow was for items moving forward and not for anything that had been done prior. Mr. Wells said that was correct, it was moving forward with the Planning Board review.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Faulkner, it was unanimously,

RESOLVED, that the Town Board does hereby authorize a $7,650.00 escrow account for Tim Miller Associates, Inc. for Land Architecture and Aesthetics Consulting Services for the Somers Crossing Site Plan Review and authorize the Supervisor to execute the request from Tim Miller Associates, Inc. per letter dated June 9, 2016 from Frederick Wells, Senior Vice President, Tim Miller Associates, Inc.

Schedule a public hearing for July 14 on the reclassification of Tax Lot

The Supervisor said that it was in order for the Board to schedule a public hearing for July 14, 2016 contingent on receipt of reports from the Planning Board and Open Space Committee for reclassification of Tax Lot 17.15-1-15.1 pursuant to Section 170-13C of the Code of the Town of Somers consisting of 26.68 acres located on Route 100 and Route 202 in the Somers Hamlet from R80 and R40 to the MFR-DH District to facilitate construction of the Somers Crossing proposed development.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Faulkner, it was unanimously,

RESOLVED, that the Town Board does hereby schedule a public hearing for July 14, 2016, on the reclassification of Tax Lot 17.15-1-15.1 pursuant to Section 170-13C of the Code of the Town of Somers consisting of 26.68 acres located on Route 100 and Route 202 in the Somers Hamlet from R80 and R40 to the MFR-DH District to facilitate construction of the Somers Crossing proposed development, contingent on receipt of reports from the Planning Board and Open Space Committee.

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Amend Chapter 74, Building Construction

The Supervisor said that the next item was with regard to an amendment to Chapter 74, Building Construction of the Code of the Town of Somers to authorize all sheds regardless of size be required to have a building permit. He said that the Town Board asked for the Building Inspector to be at the meeting that evening. He continued that he met with the Building Inspector and had him draft an additional memo to the Town Board clarifying that the only change to the Code was that sheds were required to have a permit. Discussion ensued with regard to what the amendment addressed, grandfathering existing sheds and how this Code would be enforced with regard to new and existing sheds. It was agreed that the Board would like to have further discussion with the Building Inspector before they moved forward with the amendment.

Refer all Town Personnel Policies to the Risk Management Committee

The next item was to refer all Town Personnel Policies to the Risk Management Committee for their review and updating. The Supervisor explained that he would like to have all of the policies be in one document and in a binder.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Faulkner, it was unanimously,

RESOLVED, that the Town Board does hereby refer all Town Personnel Policies to the Risk Management Committee for their review and update.

Schedule a public hearing for July 14, 2016 with regard to a proposed text amendment

The Supervisor said that the next item on the agenda was with regard to scheduling a public hearing with regard to a Text Amendment to the current Neighborhood Shopping (NS) Zone for July 14, 2016.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Faulkner, it was unanimously,

RESOLVED, that the Town Board does hereby schedule a public hearing for July 14, 2016 with regard to a proposed text amendment modifying the parameters of the Neighborhood Shopping (NS) Zoning District of the Town of Somers.

PERSONNEL:

Current Vacancies:

Somers Energy Environment Committee
Affordable Housing Board (3 – unexpired 2 year terms ending 7/11/2017)

Upcoming Vacancies:

Assessment Board of Review (1 – 5 year term ending September 30, 2021)

Hire F. Strandling as part-time Chauffer, for the Adult Transportation

The Supervisor said that it was in order to authorize the hiring of Mr. Fred Stradling as part-time Chauffer as needed for the Adult Nutrition Transportation Program.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Faulkner, it was unanimously,

RESOLVED, that the Town Board does hereby authorize the hiring of Mr. Fred Strandling as a part-time Chauffer, on an as needed basis, for the Adult Transportation Program effective June 9, 2016 at an hourly rate of $15.00 per hour per memo dated June 7, 2016 from Barbara Taberer, Program Director.

Hire B. Sherry as part-time Confidential Secretary to the Supervisor

The Supervisor said that it was in order to authorizing the hiring of Ms. Barbara J. Sherry as part-time Confidential Secretary to the Supervisor.

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Thereupon motion of Supervisor Morrissey, seconded by Councilman Faulkner, it was unanimously,

RESOLVED, that the Town Board does hereby authorize the hiring of Ms. Barbara J. Sherry as part-time Confidential Secretary to the Supervisor effective July 5, 2016 at an hourly rate of $35.57 per hour.

Consensus agenda

The next item was the consensus agenda.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Garrity, it was unanimously,

Go to bid replace of the "Omni" Tennis Court surface

1. RESOLVED, that the Town Board does hereby authorize the request for permission to go to bid for the replacement of the "Omni" Tennis Court surface, to be paid from Recreation Fees, per memo dated May 25, 2016 from Steven Ralston, Superintendent of Parks and Recreation.

Hiring of Day Camp and Tusker Trax (Teen Travel) Staff

2. RESOLVED, that the Town Board does hereby authorize the hiring of Day Camp and Tusker Trax (Teen Travel) Staff from June 25, 2016 through August 5, 2016 and continue to hire for these programs on an as-needed basis pursuant to the Westchester County Health Department Counselor-to-Camper Ratio Regulation per memo dated May 25, 2016 from Steven Ralston, Superintendent of Parks and Recreation.

Request for permission to create position of Assistant Supt of Parks & Recreation

3. RESOLVED, that the Town Board does hereby authorize a request for permission to create the position of Assistant Superintendent of Parks and Recreation per memo dated May 26, 2016 from Steven Ralston, Superintendent of Parks and Recreation.

modification of Resolutions adopted 5/18/95 and 12/2/96

4. RESOLVED, that the Town Board does hereby authorize the modification of Resolutions adopted May 18, 1995 and December 12, 1996 providing part-time Police Officers Health, Life, Dental and Vision Insurance to only include part-time Police Officers hired prior to May 1, 2016.

Acknowledge retirement of B.J. Sherry, Confidential Secretary to the Supervisor

5. RESOLVED, that the Town Board does hereby acknowledge the retirement of Ms. Barbara J. Sherry, Confidential Secretary to the Supervisor effective June 29, 2016.

Acknowledge receipt of the Crossroads at Baldwin Place Site Plan

6a. RESOLVED, that the Town Board does hereby acknowledge the receipt of the Crossroads at Baldwin Place Site Plan and returns no comments to the Planning Department.

Receipt of Deutsch Wetland, Steep Slope, Stormwater Management, Erosion & Sediment Control & Tree Preservation Application

6b. RESOLVED, that the Town Board does hereby acknowledge receipt of the Deutsch Wetland, Steep Slope, Stormwater Management, Erosion and Sediment Control and Tree Preservation Application and returns no comments to the Engineering Department.

Execute addendum to the 2016 Agreement with Garden State Fireworks for Annual Fireworks

7a. RESOLVED, that the Town Board does hereby authorize the Supervisor the execute an addendum to the 2016 Agreement with Garden State Fireworks for the Annual Fireworks on June 25, 2016 to add a rain date of June 26, 2016.

Execute the AAA Transportation Program Agreement for the period of April 1, 2016 through March 31, 2017

7b. RESOLVED, that the Town Board does hereby authorize the Supervisor to execute the AAA Transportation Program Agreement for the period of April 1, 2016 through March 31, 2017 in the amount of $2,224.00 per memo dated May 26, 2016 from Barbara Taberer, Program Director.

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2016 Retirement reporting

8. RESOLVED, that the Town Board does hereby adopt resolution for standard work day reporting for Elected and Appointed Officials for the NYS Retirement System:

BE IT RESOLVED, that the Town of Somers, Location Code 30038 hereby establishes the following as standard work days for elected and appointed officials and will report the following days worked to the New York State and Local Employees' Retirement System based on record of activities maintained and submitted by these officials to the Clerk of this body:

Title	Name	Standard Work Day (Hrs/Day)	Term Begins/Ends	Participants in Employers' Time Keeping System (Y/N)	Days/Months (based on Record of Activities)	Tier 1 (Check only if member is in Tier 1)	Not Submitted (Check box if no record of activities completed or timekeeping system)
Elected Officials							
Town Board	Thomas A. Garrity, Jr	6	1/1/16-12/31/19	N	11.67		
Town Board	Anthony J Cirieco	6	1/1/14-12/31/17	N	5.25		
Town Board	William G. Faulkner	6	1/1/14-12/31/17	N	4.03		
Town Clerk	Patricia Kalba	6	1/1/16-12/31/19	N	27.54		
Highway Superintendent	Thomas E. Chiaverini	6	1/1/16-12/31/19	N	29.50		
Tax Receiver	Joan Ribaudo	6	1/1/14-12/31/17	N	31.50		
Judge	Michael J. McDermott	6	1/1/16-12/31/19	N	17.00		
Appointed Officials							
Assessor	Teresa Stegner	7	10/1/13-9/30/19	Y			
Parks & Rec Board Chair	James Papa	7	1/1/16-12/31/16	N	1.26		
Director of Finance	Robert Kehoe	7	1/1/16-12/31/16	Y			
Deputy Town Clerk	Geraldine Gilmore	7	1/1/16-12/31/16	Y			
Deputy Highway Superintendent	Louis Noto	7	1/1/16-12/31/16	Y			
Deputy Receiver of Taxes	Michele A. McKenney	7	1/1/16-12/31/16	Y			
Zoning Board of Appeals Chair	Victor Cannistra	7	1/1/16-12/31/16	N	.55		

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On this 10th day of June, 2016

Signature: Patricia Kalba Date enacted: June 9, 2016

I, Patricia Kalba, Town Clerk of the governing board of the Town of Somers, of the State of New York, do hereby certify that I have compared the foregoing with the original resolution passed by such board, at a legally convened meeting held on 9th day of June, 2016, on file as part of the minutes of such meeting, and that same is a true copy thereof and the whole of such original.

IN WITNESS WHEREOF, I have hereunto
Set my hand and the seal
Of the Town of Somers.

9. RESOLVED, that the Town Board does hereby authorize the return of the following Erosion Control Bond per memo dated May 26, 2016 from Steve Woelfle, Principal Engineering Technician:

   a. $300.00 Crook – Erosion Control Bond – 47.12-1-18

The Supervisor said that the Shift Masters of Westchester Charity Car Show was going to be held on the rain date of June 12th from 10:00 AM to 3:00 PM at the Somers Town Center. He said that all proceeds benefited the VFW.

The Supervisor said that Relay for Life was being held on Friday, June 17th from 7:00 PM to 7:00 AM at the Somers Middle School. He stated that this was a well-attended Community Event and expected that to continue.

The Supervisor that the Independence Day Celebration was going to be Saturday, June 25th at 3:00 PM with a rain date of Sunday, June 26th at Reis Park.

The Supervisor said that on Wednesday, June 29th from 2:30 PM to 8:00 PM there was going to be a Blood Drive at the Town House.

Councilman Garrity said that he was aware that Barbara Sherry was staying on part-time in the Supervisor's Office although he wanted to point out the article in the Somers Record. He said that he had been involved in the Town for 17 years and she had always been extremely helpful. He said that she was always smiling when you went into her office and she did phenomenal work. Councilman Garrity said that it had been a pleasure working with her all of those years and she was going to be greatly missed.

Councilman Clinchy said that he had been with Councilman Garrity on the Town Board for the last 9 years and Barbara had always been helpful.

Councilman Cirieco and Councilman Faulkner thanked Barbara for all she had done for them.

The Supervisor said that he had worked with Barbara for over 20 years in several different capacities. He said that the last 2 ½ years had been a learning experience for him and Barbara had made that process so much easier. He said that Barbara was someone you wanted backing you up and he knew that he was not going to be able to replace her. The Supervisor said that he was going to miss her greatly.

Claims for the payment of all Town Bills in the amount of $659,180.78 were presented and allowed for payment as shown on the Abstract of Audited Claims on file in the office of the Town Clerk.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Cirieco, the meeting was adjourned at 8:40 PM.

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Town Clerk

JULY 14, 2016 – PUBLIC HEARING

Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening July 14, 2016 at 7:02 PM at the Town House, 335 Route 202, Somers, New York.

ROLL CALL:

PRESENT:	Supervisor	Rick Morrissey
	Councilman	Thomas A. Garrity, Jr.
	Councilman	Anthony J. Cirieco
	Councilman	William G. Faulkner
ABSENT:	Councilman	Richard G. Clinchy

Also present were Patricia Kalba, Town Clerk, Geraldine Gilmore, Deputy Town Clerk and Roland A. Baroni, Jr., Town Attorney.

The Supervisor said that this was a public hearing with regard to a proposed Local Law to amend Chapter 170 entitled Zoning, Article V entitled Neighborhood Shopping NS District to the Code of the Town of Somers. He explained that the proposed text amendment was modifying the parameters of the Neighborhood Shopping (NS) Zoning District.

The Town Clerk presented affidavit of public notice of the public hearing that appeared in the Somers Record on June 30, 2016 and posted on the Town Clerk's bulletin board the same day.

The Supervisor declared the hearing open and asked for comments from the public.

Mr. Ken Kearney, President of Kearney Realty and Development Group, Inc., introduced his partner Shawn Kearney, their partner Rose Noonan, Project Architect A. J. Capolla, Project Engineer Rich Williams and Ms. Linda Whitehead, representing current owner of the site. He explained that the text amendment would allow the Crossroads at Baldwin Place project to move forward. He said that the Kearneys partnered with Rose Noonan and the Housing Action Council to produce the Mews at Baldwin Place Phase I and Phase II and they were currently working on Hidden Meadow. Mr. Kearney said that the Planned Hamlet was evolving and the other side of Route 6 was not, there were some vacant buildings and he believed that was due to the lack of infrastructure and access. He said that the most important objective was to add sewer to the other side of Route 6 and he explained where the sewer line would be placed and the properties that would benefit from that line. He continued that he obtained funds to run the sewer line and a sidewalk that would connect at a crosswalk at Clayton Boulevard to Baldwin Farm. Mr. Kearney said that they stopped that sidewalk at Baldwin Farms because there were some grade issues in that area. He said that they were going to take another look at extending the sidewalk to the corner of Mahopac Avenue and they were looking to place the Westchester County Bus Stop in front of their property. He explained that would be a bus shelter unlike what was currently at Mahopac Avenue.

Mr. Kearney said that in working with the Department of Transportation (DOT) a traffic light would be required. He said that when Avalon Bay was finished Clayton Boulevard would be brought out to Route 6 and he pointed out where the proposed stop light and crosswalk were going to be located. He said that the infrastructure improvements that were being proposed were a new sewer line, sidewalks and crosswalk. Mr. Kearney said that this would all be funded from money from Westchester County. He said that Ms. Noonan and he worked to secure that funding and all of the work would be by them. He said that at that time there was no cost to the property owners.

Mr. Kearney said that there was going to be a petition sent to the Town Board to have the properties placed into the Somers Sewer District #1 which would then have to be sent from the Town to Westchester County. He said that Westchester County was very protective of expanding the Sewer District. He said that they were going to try their best to get all of the

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properties approved although it might have to be done in phases. Mr. Kearney said that the infrastructure work would not be done in phases.

Mr. Kearney said that the project consisted of four (4) buildings; one (1) commercial building on Route 6 that the Kearneys will own and partially occupy and three (3) residential buildings of mixed senior and non-senior affordable and retail rental units.

Mr. Rich Williams said the property was 11 acres of which a ½ acre was located in Carmel and there was no development proposed on that portion. He stated that the property was in the Amawalk Shenorock Water District and they were petitioning to be included in Somers Sewer District No. 1. He said with regard to the sewering there was going to be an onsite sewage collection system with a pump station located in the rear of the property. Mr. Williams continued to explain where the sewage went further in the process and the sewer infrastructure offsite.

Mr. Williams said that they had developed a Stormwater Pollution Prevention Plan, met the requirements of the New York City Department of Environmental Protection (DEP) and the New York State Department of Conservation (DEC). He said that as required by the Town they prepared a loading analysis. He said that there was a pocket wetland located at the rear of the property and the reasoning for that was to reclaim the wetland buffer disturbance that was currently present.

Mr. William said with regard to the requested text change, the Neighborhood Shopping (NS) District Zoning currently did not permit residential and commercial to be separate buildings. He said that their property was large in size with a small frontage and that created a problem for commercial spaces. He said that commercial spaces required frontage on Route 6.

Mr. Williams said that the other unique concept about the project was that it was a Senior Affordable project, which was great from a traffic standpoint although it was not desirable to have residential above commercial. He said that the most desirable units in a senior development were located on the first floor. He went over with the Board their proposal to work within the existing confines, including the Floor Area Ratio (FAR) which will be increased and the one section that would be changed.

The Supervisor explained that the major change was the Code called for retail on the first floor and residential on the second floor of the buildings. He said that Mr. Williams was indicating that type of application would not work in for the buildings located in the rear on the site.

Mr. A. J. Cappola explained the four buildings located on the site and went over the elevations, aesthetics and floor plans for each building.

Councilman Garrity asked Mr. Kearney if there was going to be a caretaker located on the property as the Mews had or would the Mews Caretaker responsibilities include the new property. Mr. Kearney said that as it was currently, he did not have a Superintendent planned. He said that their plan was to hire an Assistant for the Superintendent at the Mews.

The Supervisor said that he had comments with regard to the architecture. He said that he liked the look of the front building, he was concerned that the residential buildings in the rear of the property were going to mirror Mews I and Mews II. Mr. Cappola said that he shared the Supervisor's concerns and pointed out the difference between the properties and stated that was something they would be aware of when they were doing the final designs.

Councilman Cirieco said that when they first discussed the project there was a possibility that there might be some funding from the State that they could obtain through Senator Murphy for road improvements. He asked Mr. Kearney where they were with regard to

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that funding. Mr. Kearney explained that the funds they were working on for the infrastructure were not from the State. He said that it was his understanding that the funds that Senator Murphy could access would not work for that portion of Route 6. He said that he believed that the New York State Department of Transportation (DOT) had a long term plan for that area. Mr. Kearney explained that his funds were coming from Westchester County and they had been working very closely with his team and the Town.

Mr. Larry Levine, property owner of 250 Mahopac Avenue, read a prepared statement with regard to how the project would benefit his commercial property, the current challenges the commercial property owners had to deal with and his support for the project.

Mr. Anthony Melito, Mahopac Avenue, questioned what the Town was doing. He said that he moved to Somers in 1981 and fought for the traffic light on Route 6 and Mahopac Avenue. He said that the road was two lanes and the current building and proposed building was a concern. Mr. Melito said that the road cannot handle the current traffic on the road. He asked if a traffic study had been done because according to the DOT there was no money to address any of the traffic issues that currently were on Route 6. He stated that the Board should take the traffic issues into consideration when they were making their decisions.

Ms. Wendy Nastasi, Heritage Hills, said that she was astonished by the project. She said that the Zoning was already changed for that part of the Town to allow the development that currently existed. She said that the fact that the Town Board was going to amend the Zoning again was appalling. Ms. Nastasi said that the traffic in that area was unacceptable and she did not feel a turning lane was going to help with the through traffic. She said that road should be 4 lanes to address what was currently on the road.

Mr. Dennis Persico, Mahopac Avenue, said that he was present that evening to discuss the proposed text amendment. He said he was not against the project, necessarily, the property had Zoning guidelines to follow and he was aware of what they were. He said that with this amendment his worst case scenario was going to get worse. Mr. Persico said that the amendment was essentially doubling the number of residential units. He said that he believed that if the text amendment passed the values of his property would decrease. He submitted a petition to the Town Board, which he presented to the Planning Board the evening prior and he asked that the Town Board take the petition into consideration. He said that in theory it was a good project and it would be beneficial to have sewer going down Route 6. Mr. Persico stated that he believed that the project was being rushed through and he understood that there were financial concerns with regard to the funding. He said what seemed to be driving the text amendment was that commercial spaces located in the rear of the property would not be marketable. He said that was not true Somers Commons was fully occupied and that would be a similar shopping center.

There being no one else to be heard on motion of Supervisor Morrissey, seconded by Councilman Faulkner, the public hearing was closed at 7:58 PM with a 10 day written comment period.

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Town Clerk

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Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening July 14, 2016 at 8:00 PM at the Town House, 335 Route 202, Somers, New York.

ROLL CALL:

PRESENT:	Supervisor	Rick Morrissey
	Councilman	Thomas A. Garrity, Jr.
	Councilman	Anthony J. Cirieco
	Councilman	William G. Faulkner
ABSENT:	Councilman	Richard G. Clinchy

Also present were Patricia Kalba, Town Clerk, Geraldine Gilmore, Deputy Town Clerk and Roland A. Baroni, Jr., Town Attorney.

The Supervisor said that this was a public hearing with regard to the reclassification of Tax Lot 17.15-1-15.1 pursuant to Section 170-13C of the Code of the Town of Somers consisting of 26.68 acres located on Route 100 and Route 202 in the Somers Hamlet from R80 and R40 to the MFR-DH District to facilitate construction of the Somers Crossing proposed development. He explained that the Board had created the Zone and it needed to be applied to the property.

The Town Clerk presented affidavit of public notice of the public hearing that appeared in the Somers Record on June 30, 2016 and posted on the Town Clerk's bulletin board the same day.

The Supervisor declared the hearing open and asked for comments from the public.

Mr. Richard O'Rourke of Keane and Beane, PC, representative for the applicant of Somers Crossing, said that everyone was aware that the application and the review had been ongoing since April 2013. He said that there had been a number of public hearing with regards to their compliance with SEQRA in connection with the text amendments of the Town Code. He explained that the property was a 26.68 acre parcel that was located on both Route 202 and Route 100. Mr. O'Rourke said that they were there that evening to apply the Zoning so that they could have Multi-Family Residence – Downtown Hamlet District. He explained that would allow a 19,000 square foot Grocery Store, located on Route 202, near the main entrance of Heritage Hills at a controlled traffic light intersection. He continued that they were proposing 66 Town House Units with 1 Special Needs Residential Unit. Mr. O'Rourke said that there were very particular requirements that needed to be met to apply the Zoning to the property and he explained what they were and stated that the property met each of them.

Ms. Audrey Hoffman, Heritage Hills, stated that she was not very informed with regard to the project. She asked what the density and the height of the units that were proposed for that property was, that they were proposing across from Heritage Hills.

Mr. Gus Boniello, Applicant, explained that the residential units were two-stories and they were being proposed on Route 100 and the grocery store was a single-story building located on Route 202 across from the entrance on Heritage Hills.

Councilman Garrity explained that they were also moving the current entrance to the Shopping Center, therefore all of the traffic would be directed to the traffic light. He said that would create a safer entrance and exit of the Shopping Center.

Mr. John Brooks, David Road, asked if there was going to be a traffic light on Route 100 as well into the development. Mr. Boniello said that there was not going to be a traffic light in that location.

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The Town Attorney mentioned that the Community Benefits Agreement had been full executed and he would be filing it with the Town Clerk that evening.

There being no one else to be heard on motion of Supervisor Morrissey, seconded by Councilman Faulkner, the public hearing was closed at 8:10PM.

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Town Clerk

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Minutes of a work session/regular meeting of the Town Board of the Town of Somers held on Thursday evening July 14, 2016 at 7:00 PM at the Town House, 335 Route 202, Somers, New York.

ROLL CALL:

PRESENT:	Supervisor	Rick Morrissey
	Councilman	Thomas A. Garrity, Jr.
	Councilman	Anthony J. Cirieco
	Councilman	William G. Faulkner
ABSENT:	Councilman	Richard G. Clinchy

Also present were Patricia Kalba, Town Clerk, Geraldine Gilmore, Deputy Town Clerk and Roland A. Baroni, Jr., Town Attorney.

The Supervisor said that it was in order for the Board to open a public hearing with regard to a proposed Local Law to amend Chapter 170 entitled Zoning, Article V entitled Neighborhood Shopping NS District to the Code of the Town of Somers.

7:02 PM – hearing opened
7:58 PM – meeting reconvened

The Supervisor said that it was in order for the Board to open a public hearing with regard to the reclassification of Tax Lot 17.15-1-15.1 pursuant to Section 170-13C of the Code of the Town of Somers consisting of 26.68 acres located on Route 100 and Route 202 in the Somers Hamlet from R80 and R40 to the MFR-DH District to facilitate construction of the Somers Crossing proposed development.

8:00 PM – hearing opened
8:10 PM – meeting reconvened

The Supervisor said that it was in order to adopt the reclassification of Tax Lot 17.15-1-15.1 pursuant to Section 170-13C of the Code of the Town of Somers consisting of 26.68 acres located on Route 100 and Route 202 in the Somers Hamlet from R80 and R40 to the MFR-DH District to facilitate construction of the Somers Crossing proposed development.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Garrity, it was unanimously,

GRANTING OF APPROVAL OF A PRELIMINARY DEVELOPMENT CONCEPT PLAN AND THE RECLASSIFICATION OF A SPECIFIC PARCEL TO THE MULTIFAMILY RESIDENTIAL DOWNTOWN HAMLET DISTRICT (MFR-DH) FLOATING ZONE

Pursuant to § 170-13 Multifamily Residence MFR Districts of the Code of the Town of Somers

WHEREAS, the Town Board is considering the approval of a preliminary development concept plan ("Conceptual Site Plan") and the reclassification of a specific parcel to the Multifamily Residence Downtown Hamlet MFR-DH District, a Floating Zone, pursuant to Section 170-13 Multifamily Residence MFR Districts of the Code of the Town of Somers to the property located at 307 New York State Route 100, and identified as Tax Lot 17.15-1-15.1 on the tax maps; and

WHEREAS, the Project depicted on the applicant's Conceptual Site Plan consists of a mixed use development with multi-family housing, a grocery store and associated site appurtenances, consisting of (6) duplex buildings with (12) units, (10) triplex buildings with (30) units, and (6) quadruplex buildings with (24) units, totaling (22) residence

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buildings containing (66) residence units, each with garage and its own individual entry; an approximate 2,000 square foot recreation building; and an approximate 19,000 square foot grocery store building; and

WHEREAS, the Project includes one (1) two-bedroom residence unit to be built fully accessible for a special needs resident; and

WHEREAS, the Project includes public water and sewer connections and onsite stormwater management infrastructure; and

WHEREAS, multifamily residence districts were established to provide suitable opportunities within the Town for the development of housing designed to satisfy the needs of households maintained by the young, the elderly and families earning less than 80% of the county's median income, and to permit a broad array of housing types, dwelling unit sizes and forms of ownership/occupancy; and

WHEREAS, these districts are intended to provide for the construction of multifamily housing on sites determined to be appropriate based upon criteria established in the Town Development Plan and in conformance with the standards recommended therein, which standards are designed to promote the public health, safety and general welfare and to require the development of housing which is responsive to the variety of special size, design, locational and affordability needs of present and future residents of the Town; and

WHEREAS, it is the specific purpose and intent of the Multifamily Residence Downtown Hamlet MFR-DH District to provide opportunity for the development of low-to-medium-density multifamily housing on sites within an existing, expanded or new sanitary sewer district, capable of being served with a central water system, and have convenient access to shopping, major roads and community facilities and services; and to include additional shopping opportunities for the residential development in the MFR-DH District and in nearby areas, recognizing the mixed use nature of the downtown area; and

WHEREAS, all multifamily residence districts are established on a floating-zone basis, subject to approval by the Town Board and in accordance with an approved preliminary development concept plan; and

WHEREAS, on or about April 19, 2013, the Town Board received a Petition for creation and placement of the MFR-DH District and a Conceptual Site Plan for development relative to that district on the subject site; and

WHEREAS, the Town Board referred the proposed Conceptual Site Plan and the Petition for reclassification of the subject site to the MFR-DH District to the Town of Somers Planning Board on May 13, 2013 and the Town of Somers Open Space Committee on May 31, 2013 as part of the lead agency determination for review and comment; and

WHEREAS, the Town Board, in accordance with the New York State Environmental Quality Review Act (SEQRA), initiated a coordinated review and undertook the following steps of the environmental review process:

- Upon receipt of the Project Sponsor's Petition and Conceptual Site Plan[1], the Town of Somers Town Board circulated its Letter of Intent to be Lead Agency on or about May 10, 2013;
- Having received no objection, the Town Board assumed Lead Agency status on July 11, 2013, and made a Determination / Positive Declaration requiring the preparation of a Draft Environmental Impact Statement (DEIS) on August 1, 2013, whereupon a Notice of Public Scoping Session was filed;
- A public Scoping session was held on September 12, continued on September 24, and October 3, 2013, and a Scope for the DEIS was adopted on October 10, 2013;

[1] The initial conceptual plan accompanying the Petition proposed 60 townhouse-style dwelling units, 19,000 square foot grocery store, and 75-bed memory care facility.

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- Upon receipt of the Project Sponsor's Amended Petition and revised Conceptual Site Plan[2], the Lead Agency adopted an amended Scope for the DEIS on February 20, 2014;
- A DEIS, prepared by the Project Sponsor and reviewed and revised by the Lead Agency and its consultants, was accepted for public review on February 12, 2015;
- A Notice of Completion and Public Hearing and the accepted DEIS (dated last revised January 28, 2015) were duly filed and circulated;
- A Public Hearing on the DEIS and associated Conceptual Site Plan; and proposed zoning text amendment and mapping was held by the Lead Agency on March 5, 2015 and April 9, 2015, at which time public comments were received and the hearing on the DEIS was closed;
- A review and comment period was afforded the public until April 20, 2015;
- A Final Environmental Impact Statement (FEIS) (which incorporated the Draft EIS by reference), prepared by the Project Sponsor and reviewed and revised by the Lead Agency and its consultants, was accepted for public review on March 10, 2016;
- A Notice of Completion and the accepted FEIS were duly filed and circulated on March 10, 2016;
- A Revised FEIS (which incorporated a DEIS comment letter not previously received), prepared by the Project Sponsor and reviewed by the Lead Agency and its consultants, was accepted for public review on April 7, 2016;
- A Notice of Completion and the accepted Revised FEIS (dated last revised April 7, 2016) were duly filed and circulated;
- A review period on the Revised FEIS was afforded the public for more than the requisite 10 calendar days prior to the consideration and adoption of a Findings Statement by the Lead Agency;
- The Town Board adopted a SEQRA Findings Statement on June 9, 2016; and

WHEREAS, in correspondence dated June 9, 2016, the Town of Somers Planning Board supported the reclassification of the subject site to the MFR-DH district to facilitate the development of Somers Crossing; and

WHEREAS, in correspondence dated June 14, 2016, the Town of Somers Open Space Committee supported the reclassification of the subject site to the MFR-DH district to facilitate the development of Somers Crossing; and

WHEREAS, on June 9, 2016, the Town Board reopened the adjourned public hearing of April 9, 2015, on the preliminary development concept plan, proposed zoning text amendment and the reclassification of the subject site to the MFR-DH, at which time public comments were taken and the hearing was closed; and

WHEREAS, the Town Board reviewed the intent of the 1994 Comprehensive Master Plan and the 2016 Comprehensive Plan Update in light of the changes in the Town and the hamlet over the last 20 years; and

WHEREAS, the Town Board has carefully considered all of the comments raised by the public and other interested agencies, organizations and officials, including those presented at meetings of the Board as well as those submitted separately in writing; and

WHEREAS, the Town Board acknowledges that the applicant also proposes a number of off-site improvements proposed to be implemented by the applicant explicitly for the benefit of the Town of Somers, which is the subject of a separate community benefits agreement between the Town and the applicant.

NOW, THEREFORE, BE IT RESOLVED, that the foregoing WHEREAS clauses are incorporated herein by reference and are fully adopted as part of this approval; and

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[2] The revised conceptual plan accompanying the amended Petition proposed 80 townhouse-style dwelling units, open space and 19,000 square foot grocery store (and removed the memory care facility). This is the plan evaluated in the DEIS.

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BE IT FURTHER RESOLVED, that the Town Board makes the following findings pursuant to §170-13 of the Town of Somers Zoning Law:

1. Minimum site area. The proposed project site meets the minimum site area of 10 acres to receive consideration for designation within the MFR-DH District. The site has an area of 26.68 acres.

2. Underlying Zoning. For consideration for designation within the MFR-DH District, a tract shall have an underlying zoning of R-40 Residence District or R-80 Residence District. The proposed site is located in the R-40 and R-80 districts.

3. Development Density. The proposed project complies with the allowable development density of two density units per acre of net land area (which calculates to a maximum of 80 units) and does not consist of affordable housing units or utilize the allowable incentive density.

4. Coverage. The proposed project complies with the maximum permitted building coverage of 15% and the maximum permitted combined coverage of buildings and paved surfaces of 35%. The project proposes 12.8% of building coverage and 29% of buildings and paved surfaces.

5. Maximum building height. The proposed project complies with the maximum permitted building height of 2.5 stories or 30 feet.

6. Setbacks (multifamily residential buildings). All buildings within an MFR-DH District (except a retail building) shall be set back at least 75 feet from any street line and 50 feet from any other lot line, except that the minimum setback from a common property line shared with land in an adjoining single-family residence district shall be at least 100 feet. Where the Planning Board determines that the objectives of such setbacks can be appropriately met with lesser distances, taking into consideration the nature of neighboring land uses, topographic conditions, existing vegetation, or other such similar factors, it may permit reduction in such setback requirements. The proposed project complies with the required minimum 75' front yard and 50' yard on the north and east side lot lines. The proposed project seeks a waiver to permit a 50' setback instead of 100' setback adjacent to the R-80 residential zone on the south and west side lot lines where undeveloped R-80 IBM-owned lands exist. The proposed setbacks will be subject to Planning Board approval as part of its review of the detailed site development plans.

7. Lot location and size (retail use). The retail site complies with the requirement to have frontage on, and direct access to a US and/or NY State highway, at a signalized intersection. Minimum lot area for a retail use shall be 4 acres. The retail and residential uses in the proposed project are sited on one 26.68 acre parcel. This requirement will apply should the retail use be subdivided from the residential use.

8. Building Coverage (retail use). The proposed project complies with the maximum permitted building coverage of 15% of the lot area of a minimum 4-acre lot.

9. Setbacks (retail use). A retail building may be located directly on the front lot line (except a front yard along Route 100 shall have a minimum depth of 75 feet), and directly on a side lot line that abuts an adjacent shopping area. Other yards shall have a minimum depth of 20 feet. The proposed retail building is located 20' from the front lot line along Route 202 and 15' from the side lot line abutting the adjacent shopping center, and well over 20 feet from the other lot lines.

10. Maximum building height (retail use). The proposed retail building complies with the maximum permitted building height of 2 stories or 35 feet.

11. Maximum store size (retail use). The proposed retail building at 19,000± square feet complies with the maximum permitted footprint of 25,000 square feet.

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12. Traffic Access. The site has frontage on major roads, NY State Route 100 and US Route 202, and the project will have access from both roadways. The traffic generated by Somers Crossing can be accommodated on the roadway system in the vicinity of the Site with the following proposed improvements to be provided by the applicant. There will also be cross access between the residential portion and grocery store with the adjacent Towne Centre at Somers.

US Route 202 and Heritage Hills Drive/Site Access:

- Signalized access to the grocery store opposite Heritage Hills Drive, with a separate westbound left turn lane for entering traffic.
- The driveway (northbound approach) will have two exiting lanes -- a left turn lane and a through/right turn lane.
- Modification to the existing traffic signal as needed.
- Signal improvements on U.S. Route 202 at the site access, including restriping and signal upgrade, and will share its future maintenance with Heritage Hills Condo Association.

US Route 202 and NYS Route 116:

- The existing semi-actuated traffic signal may require signal timing adjustments; the Applicant will coordinate the necessary improvements with the NYSDOT.

US Route 202 and NYS Route 100:

- The existing fully actuated traffic signal may require signal timing adjustments along with pavement re-striping; the Applicant will coordinate the necessary improvements with the NYSDOT.

13. Water and sewerage Facilities. The site will be connected to the Heritage Hills Water District water supply system and the Heritage Hills Sewer District wastewater treatment system.

14. Drainage. Peak rates of stormwater runoff calculated to be reaching the identified hydrologic design line under the post development condition have been determined to be equal to or less than such rates calculated under the predevelopment condition. The calculations of runoff rate, nutrient loading, and other various details of the stormwater drainage system design will be subject to the approval of the Town Engineer.

15. Refuse collection, storage and disposal. The plans for the collection, storage, and disposal of refuse within the proposed project shall be subject to Planning Board approval as part of its review of the detailed site development plans.

16. Utilities. The site will be connected to the Heritage Hills Water District water supply system and the Heritage Hills Sewer District wastewater treatment system. All utilities, including electric, telephone and cable television service, will be placed underground.

17. Fire Protection. The site plan(s) for the proposed project, which shall provide proper access for firefighting equipment and personnel, and the locations and number of hydrants, shall be determined as adequate by the Bureau of Fire Prevention and approved by the Planning Board as part of its review of the final site development plans.

18. Off-street Parking. The proposed project shall comply with the number of required off-street parking spaces. The multifamily residential project proposes four (4) parking spaces for each dwelling unit (two inside and two outside) plus approximately 36 parking spaces for visitors and guests. The grocery store proposes 122 spaces.

19. Recreation area and Open Space. The proposed project exceeds the MFR-DH Zoning District requirements for active recreation (at least 0.31 acre) and meets the requirement that an unspecified amount of open space be provided. The

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proposed project is providing approximately 0.5 acre of recreational area, which will include a playground and a recreation building. Approximately 40% of the site, 10.58 acres of land, will be dedicated as permanent open space, with a walking trail. In addition, a recreation fee will be paid to the Town of Somers.

20. Individual Unit Access. Each individual dwelling unit will have its own separate entrance leading directly to the outside.

21. Central antenna system. The proposed project will have cable telecommunications service.

22. Minimum Floor Area. All proposed dwelling units will meet the required minimum floor area requirements.

23. Exterior lighting will be provided according to a lighting plan approved by the Planning Board.

BE IT FURTHER RESOLVED, that the Town Board of the Town of Somers, hereby approves the preliminary development concept plan and the reclassification of a Tax Lot 17.15-1-15.1 to the Multifamily Residence Downtown Hamlet (MFR-DH) Floating Zone.

This Resolution shall have an effective date of July 14, 2016.

ROLL CALL:	Supervisor Rick Morrissey	AYE
	Councilman Richard G. Clinchy	ABSENT
	Councilman Thomas A. Garrity, Jr.	AYE
	Councilman Anthony J. Cirieco	AYE
	Councilman William G. Faulkner	AYE

PUBLIC COMMENT:

Ms. Pamela Prisco, Heritage Hills, read a prepared statement with regard to her opposition to Verizon's Planning Board application to increase the height of the existing pole by 15 feet. She also stated that the Planning Board suggested that she come to the Town Board to have the Town Code changed. She said that they were not asking for the Code to be changed, they were asking for enforcement of the Code.

Councilman Garrity said that he was also frustrated with what little the Town could do with regard to cell towers.

The Town Attorney explained that the Federal Government passed the Economic Tax Relief Act and there were provisions that addressed cell towers. He continued that the provision stated that extension to existing towers that were 20 feet or less was an administrative process only. He said that they were not subject to coverage maps and all of the other items required under a typical review. The Town Attorney said that in addition that particular tower was non-conforming because it was approved and built prior to the Town regulation. He said that in 2002 the Town did not have regulations with regard to cell towers and this was approved as a public utility. He continued that if it was approved as a Use Variance they would have to go back to the Zoning Board because it was an expansion of a non-conforming use. The Town Attorney said that did not apply in this situation. Discussion ensued with the Town Board with regard to how home rule did not apply in this situation.

Ms. Prisco stated that they implore and commission the Town Board to protect and serve the residents and find a way to deny the application. The Town Attorney explained that the application was not before the Town Board and it was part of a lease agreement. He said that this was a modification of an existing tower not new construction.

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The Supervisor said that they would look into the lease the company had with Heritage Hills Water and Sewer.

Mr. Joseph Prisco, Heritage Hills, said that Heritage Hills was a community of people who cared about one another. He said that they needed someone to look at the issue from all sides and bring the community together to find alternatives. He said that they were depending on the Board to use their expertise to help them.

Ms. Shirley Kesselman, Heritage Hills, said she was a representative of Tamar Hadassah, which was a Worldwide Organization that had about 300 Somers members. She said that it came to their attention that a statement had been put out entitled Mayors United Against Anti-Semitism. She said that this had been signed by over 500 community leaders in the United States. Ms. Kesselman said that her committee notified the Supervisor with regard to this and she was hopeful that the Town of Somers would support this initiative as well. The Supervisor said that the item was on the agenda.

Ms. Wendy Nastasi, Heritage Hills, said that there was a comment that there should be an escrow account for cell towers that could be used by the Town to do studies. She said that any study that had been done was done by Verizon. She said that it was pointed out at the Planning Board meeting and again at this meeting that there was nothing that could be done to fight the application. The Town Attorney said not on the basis of the extension. Ms. Nastasi said that there were many guidelines on the FCC website that were required to be followed. She said to prove that they were followed, they presented their own Engineering Reports. She said that those studies should be done by outside Engineers.

Councilman Cirieco asked where the Planning Board left off with the application. Ms. Nastasi said that they left it open for a 10-day written comment period. Councilman Garrity said that they would look into this further although it seemed that there was not much the Town could do with regard to this application.

The Supervisor summarized what they heard that evening. He said that the Board was going to look into the lease agreement and the health, safety and economic impact to the residents.

There being no one else to be heard on motion of Supervisor Morrissey, seconded by Councilman Cirieco, public comment was declared closed.

Approval of minutes

The first item on the agenda was the approval of the minutes.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Cirieco, it was unanimously,

RESOLVED, that the Town Board does hereby approve the minutes of the April 14, 2016 Public Hearing regarding a Local Law to amend Chapter 46 entitled Police Department, the April 14, 2016 Regular Meeting, the May 5, 2016 Work Session, the May 12, 2016 Regular Meeting, the June 2, 2016 Special Meeting and the June 2, 2016 Work Session.

Monthly reports

The Town Clerk presented monthly reports from the Town Clerk, Building Inspector, Zoning Board of Appeals, Plumbing, Bureau of Fire Prevention, Parks and Recreation, Planning and Engineering, Tax Receiver and Director of Finance.

Purchase of John Deere PR15 – Gator TS (Turf Tires) MY16 with Allies Rahn

The Supervisor said that the next item on the agenda was to authorize the purchase of a John Deere Gator with an Allied Rahn TSC (landscape and grounds related equipment) for Parks. He said that the current equipment was going to cost about $5,000.00 to repair and was about 15 years old; they were getting a brand new one for about $9,000.00.

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Thereupon motion of Supervisor Morrissey, seconded by Councilman Faulkner, it was unanimously,

RESOLVED, that the Town Board does hereby authorize the purchase of a John Deere PR15 – Gator TS (Turf Tires) MY16 with Allies Rahn TSC in the amount of $9,053.95 from Deere & Company per memo dated June 10, 2016 from Steven Ralston Superintendent of Parks and Recreation.

Mayors and Municipal Leaders United Fight Against Anti-Semitism

The next item was a discussion with regard to the Mayors United Against Anti-Semitism. The Supervisor said that he applauded the effort and they would send a resolution of support to the Organization.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Cirieco, it was unanimously,

RESOLVED, that the Town Board of the Town of Somers does hereby support and authorizes the Supervisor to execute the Mayors and Municipal Leaders United Fight Against Anti-Semitism; and

WHEREAS, as Mayors and Municipal Leaders, we have a special responsibility to speak out against the growing menace of anti-Semitism and the statement affirms that:

The Town of Somers,

- Condemn anti-Jewish hatred, in all its forms;
- Reject the notion that anti-Semitic acts, while sometimes carried out in the name of a political cause, may ever be justified or excused by one's opinions about the actions or existence of the State of Israel;
- Declare that prejudices against Jews or others due to differences in religious faith are inconsistent with our core values;
- Support government efforts directed at eradicating anti-Semitism and preventing extremist indoctrination and recruitment; and support expanded education programs, including Holocaust programs, that increase awareness and counter intolerance and discrimination;
- Recognize the ever-present need to be vigilant about efforts to prevent and report acts of anti-Semitism, and other hate crimes; and
- Believe that communities that promote a climate of mutual understanding and respect among all citizens are essential to good governance and democratic life.

Sale of 11 Geranium Dr. & 3 Geranium Dr. and 6 Hemlock Dr

The Supervisor said that the next item was to authorize, subject to permissive referendum, the conveyance of real property known as 11 Geranium Drive to Mr. Joe Currie for consideration of $2,400.00 and 3 Geranium Drive and 6 Hemlock Drive to Mr. Douglas Lee for consideration of $4,820.00. The Town Attorney explained that those were the strip parcels that were previously approved, in order for the Town to liquidate any property it had to go through a permissive referendum. He continued that the Town Clerk would notice the permissive referendum in the newspaper and 30 days had to elapse and if the Town received a petition they would have to call for a referendum.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Cirieco, it was unanimously,

RESOLVED, that the Town Board of the Town of Somers hereby authorizes the conveyance of real property known as 11 Geranium Drive to Mr. Joe Currie for consideration of $2,400.00 and 3 Geranium Drive and 6 Hemlock Drive to Mr. Douglas Lee for consideration of $4,820.00, both subject to permissive referendum; and that the Supervisor be authorized to execute all conveyance documents to effectuate same.

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Schedule public hearing regarding enforcement of house numbering

The next item on the agenda was to authorize the Building Department and Bureau of Fire Prevention to enforce house numbering regulations and to name streets serving three (3) houses or more with a named street. The Supervisor said that the enforcement of the house numbering was already in the Town Code. He said that they would like to add the naming of streets to the Town Code. The Town Attorney asked if they were going to schedule a public hearing for the amendment. The Supervisor said that they were and discussion ensued with regard to the timing of the notice. It was agreed that they would schedule the public hearing for the September regular meeting.

New York State Uniform Fire Prevention and Building Code update

The Supervisor said that the next item on the agenda was a discussion with regard to the New York State Uniform Fire Prevention and Building Code update. He said that in the existing New York State Uniform Fire Prevention and Building Code there was a provision that required a 45-minute separation between garages and inhabitable spaces in residential construction. He continued that the State had revised and adopted new regulations which are effective as of September and that requirements had been changed. The Supervisor said that the Assistant Building Inspector caught this change and suggested that the Town update the Town Code Chapter 74. He suggested that the Town Attorney contact the Assistant Building Inspector to draft something for the Board's consideration and possible scheduling of a public hearing for September. The Town Attorney said that he was unsure if a more stringent standard than the State without the State Board giving the Town authority to do so could be adopted. He said that he would look into that for the next meeting.

Escrow for TRC Solutions – Somers Crossing

The next item was to authorize an escrow in the amount of $7,800.00 for TRC Solutions' review of the Site Plan traffic matters for the Somers Crossing Site Plan. The Supervisor said that he wanted to make an addition to the agreement. He said that he did not want TRC Solution to do these studies independently, he wanted it to be on referral from the Town Engineer or the Director of Planning. He read the language that was going to be added to the agreement.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Faulkner, it was unanimously,

RESOLVED, that the Town Board does hereby authorize an escrow in the amount of $7,800.00 to TRC Engineers, Inc. for Traffic Engineering Consulting Services for Boniello Land & Realty, Ltd. – Somers Crossing Site Plan Review upon referral of the Town Engineer and/or the Director of Planning.

Application for funds from the Water Quality Improvement Program

The Supervisor said that the next item was to authorize an application be made for funds from the Water Quality Improvement Program administered by the New York State Department of Environmental Conservation (DEC) regarding the Lake Shenorock Stormwater Improvement Project and commits the Town to providing 25 percent of the project cost. He explained that the Northern Westchester Watershed Committee passed resolution and they petitioned the Board of Legislators to approve the $10,000,000.00 allocation for the Somers Water Quality Improvement Program. He explained what would be included and the history of the funding.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Faulkner, it was unanimously,

RESOLVED, that the Town Board does hereby authorize an application to be made for funds from the Water Quality Improvement Program administered by the New York State Department of Environmental Conservation (DEC) regarding the Lake Shenorock Stormwater Improvement Project and commits the Town to providing 25 percent of the project cost and authorize Supervisor to execute same.

Enact Property Maint. Code - 2608 Quaker Church Road

The next item on the agenda was to discuss and authorize any necessary work to be done to 2608 Quaker Church Road, Section: 26.19, Block: 1, Lot: 6 and any incurred cost be

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paid from the General Town funds appropriated by the Town Board for such purpose, per the Town Code §135-5 of the Town of Somers. The Supervisor explained that this was the Town of Somers Property Maintenance Code that was recently enhanced. He said that this was the first time the Town had to enact the Code; the property was owned by a bank and had fallen into disrepair. He continued that the Bank had been noticed on a number of occasions with no response. The Town Attorney said that this had worked well in other Towns. He asked if they were going to do the work with in-house staff or contract the work out. The Supervisor said that was to be determined. The Town Attorney said that they needed to be aware if they contracted the work out, the contractor had to pay prevailing wage and submit certified payrolls to the Town. The Supervisor said that this was going to be a tax lien and the Town was required to pay prevailing wages. The Town Attorney said that in April the Town Board was going to have to pass a resolution authorizing the Tax Receiver to place a lien on the property.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Cirieco, it was unanimously,

RESOLVED, that the Town Board does hereby authorize any necessary work be done to 2608 Quaker Church Road, Section: 26.19, Block: 1, Lot: 6 and any incurred cost be paid from the General Town funds appropriated by the Town Board for such purpose, per the Town Code §135-5 of the Town of Somers, per memo dated June 28, 2016 from Efrem Citarella, Building Inspector.

PERSONNEL:

Current Vacancies:

Somers Energy Environment Committee
Affordable Housing Board (3 – unexpired 2 year terms ending 7/11/2017)

Upcoming Vacancies:

Assessment Board of Review (1 – 5 year term ending September 30, 2021)

Acknowledge promotion of J. Decrenza to Motor Equipment Operator, Highway Department

The Supervisor said that it was in order to acknowledge the promotion of Jaycen Decrenza to Motor Equipment Operator, Highway Department.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Cirieco, it was unanimously,

RESOLVED, that the Town Board does hereby acknowledge the promotion of Jaycen Decrenza to Motor Equipment Operator at an hourly rate of $32.7836 effective June 22, 2016 per memo dated June 20, 2016 from Thomas E. Chiaverini, Superintendent of Highways.

Terminate probationary appointment of R. Persaud, Senior Account Clerk in Finance Office; hire as permanent Senior Account Clerk

The Supervisor said that it was in order to authorize the termination of the probationary appointment of Mr. Robert Persaud, Senior Account Clerk in the Finance Office and hire him as permanent Senior Account Clerk in the Finance Office. He said that Mr. Persaud had been an asset to the Town; he was a very diligent employee and a very hard worker.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Cirieco, it was unanimously,

RESOLVED, that the Town Board does hereby authorize the termination of the probationary appointment of Mr. Robert Persaud, Senior Account Clerk in the Finance Office and hires him permanent Senior Account Clerk in the Finance Office effective July 20, 2016, per memo dated June 21, 2016 from Robert Kehoe, Director of Finance.

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Consensus agenda

The Supervisor said that the next item on the agenda was the consensus agenda. Councilman Faulkner asked with regard to item number 1, was that the total amount or an additional amount. The Supervisor explained that was an additional amount.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Cirieco, it was unanimously,

Additional payments for the Van Tassell Roof project in

1. RESOLVED, that the Town Board does hereby authorize additional payments for the Van Tassell Roof project in the amount of $5,390.00, per memo dated June 23, 2016 from Efrem Citarella, Building Inspector, as follows:

Bee & Jay Plumbing	(re-pipe HVAC)	$1,180.00
C.F. Air Conditioning & Heating	(new drainage line)	$1,450.00
L. Mark Construction	(new plywood and door)	$1,860.00
L. Mark Construction	(manufacturer's warranty)	$ 900.00

Execute agreement with Underwater Solutions, Inc.

2a. RESOLVED, that the Town Board does hereby authorize the Supervisor to execute an agreement with Underwater Solutions, Inc. to conduct an inspection and remove sediment from the Ross Drive Storage Tank in the amount of $4,490.00 per memo dated June 24, 2016 from Adam Smith, Water Superintendent.

Contracts for Nutrition Service

2b. RESOLVED, that the Town Board does hereby authorize the Supervisor to execute WIN/NSIP Contract for Nutrition Service, PY 2016-2017 funding, WIN (Wellness in Nutrition) $74,915.00/NSIP (Nutrition Service Incentive Program) $24,262.00, for the fiscal year 2016/2017, per memo dated June 24, 2016 from Barbara Taberer, Program Director.

2016/2017 Westchester Co Dept of Health Permit to Operate

2c RESOLVED, that the Town Board does hereby authorize the Supervisor to execute the 2016/2017 Westchester County Department of Health Permit to Operate, per memo dated June 24, 2016 from Barbara Taberer, Program Director.

Release of Erosion Control Bond

3. RESOLVED, that the Town Board does hereby authorize the release of an Erosion Control Bond, per memo dated June 23, 2016 from Steven Woelfle, Principal Engineer Technician:

a. Meichner Steep Slope/Tree Preservation Permit
AST#2014-18 – 6.14-1-13.2 $500.00

30 day Waiver for Luna Bar

4. RESOLVED, that the Town Board does hereby authorize waiving the 30 day waiting period for the issuance of a new liquor license to Luna Bar and Lounge 208 Tomahawk Street Yorktown Heights, New York 10598 (formally Roadhouse Tavern).

Accept Performance Bond No.: 106481274

5. RESOLVED, that the Town Board does hereby accept the Performance Bond No.: 106481274 dated May 18, 2016 for AvalonBay Communities, Inc. Site Plan, Somers Realty Planned Hamlet Subdivision 3 in the amount of $3,032,000.00 issued by Travelers Casualty and Surety Company of America and signed by Joanne M. Lockridge, Senior Vice President of Travelers Casualty and Surety Company of America and Mark W. Edwards, II, Attorney-in-Fact, per memo dated June 29, 2016 from Steven Woelfle, Principal Engineer Technician.

Councilman Garrity said that on Saturday, July 16th at 6:00 PM the Somers Historical Society was presenting the 13th Annual Woody Guthrie Hootenannies at the Mt. Zion Church, in Reis Park. He said that admission was free, bring a picnic dinner.

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Councilman Cirieco said that on Friday evenings during the summer there were concerts at Ladson Park at 5:00 PM.

Councilman Cirieco said that on Wednesday, July 20th from 6:00 PM to 7:30 PM, the Somers Energy Environment Committee was sponsoring an event at the Somers Community Center. He said that they were going to have an Energy Coach and discuss how to save energy in the home and the programs they had available.

Councilman Faulkner said that St. Luke's Church was hosting an Antique Appraisal Event on Saturday, August 6th from 10:00 AM to 4:00 PM.

Councilman Faulkner wished his wife Jill a Happy Birthday, which was July 15th.

The Supervisor said that he received a letter of Thanks from the New York Blood Center for the Wednesday, June 29th Blood Drive. He said the Blood Drive was very successful with 46 Somers Donors.

The Supervisor said that they may be having a Special Meeting in July and that would be published when the date and documents were set and complete.

Councilman Cirieco said that last week was the Stephanie Crispinelli fundraising event. He said that it was a huge event with a lot of fundraising. He said that it was a great event and he thanked all those who participated and the Parks Staff for all of their hard work.

Claims for the payment of all Town Bills in the amount of $479,930.05 were presented and allowed for payment as shown on the Abstract of Audited Claims on file in the office of the Town Clerk.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Faulkner, the meeting was adjourned at 9:15 PM.

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Town Clerk

JULY 20, 2016 – SPECIAL MEEING

Minutes of a special meeting of the Town Board of the Town of Somers held on Thursday evening July 20, 2016 at 5:00 PM at the Town House, 335 Route 202, Somers, New York.

ROLL CALL:

PRESENT:	Supervisor	Rick Morrissey
	Councilman	Richard G. Clinchy
	Councilman	Anthony J. Cirieco
ABSENT:	Councilman	Thomas A. Garrity, Jr.
	Councilman	William G. Faulkner

Also present were Patricia Kalba, Town Clerk and Roland A. Baroni, Jr., Town Attorney.

The Supervisor explained that this was a special meeting to acknowledge the receipt of Petition from Kearney Development Group and others to extend Somers Sewer District #1.

The Supervisor explained that this extension was part of a Community Benefits Package that the Developer of Crossroads at Baldwin Place was proposing. He said that this would bring water and sewer lines as well as sidewalks to residents and businesses in that area. He continued that this will be of great benefit to the businesses that were limited by their water usage.

Councilman Cirieco explained that the petition defined the scope of the project and there was no cost to the Town of Somers.

Councilman Clinchy asked if there was a dollar value to the Benefits Package. The Town Attorney explained that in the Order Calling for the Public Hearing they estimated a cost of $700,000.00. Councilman Clinchy asked if there was a breakdown of that cost. The Town Attorney said that Mr. Barbagallo, Town Engineering Consultant might have a breakdown. Councilman Clinchy asked if they could be provided with a copy of the breakdown. The Town Attorney said that he would ask the Developer's Attorney for a copy of the breakdown.

The Supervisor said that the Town Board had not adopted or signed off on a Benefits Package at that point. He said that would be done at another meeting.

The Supervisor explained that the hurdle they were facing was not with the County allowing the Crossroads at Baldwin Place project into the Sewer District, it was them packaging the other eight to nine properties into the District. He said that the projected usage numbers were not tremendous. He said that he would like the request that was being sent to the Board of Legislators to be inclusive of the other properties. The Supervisor said that they did not have the signatures of all the parcels that would be included in the petition. The Town Attorney explained that after the meeting the Town Clerk was required to send each property owner a notice of the Public Hearing where at that time they could come to the public hearing and express their support or objections. He continued that the majority of assessed value supported the extension and that was what controlled the vote.

Discussion ensued with regard to the opposition of the proposed Code change that was received during the public hearing at the last meeting. It was agreed that they would ask the Developer to contact the resident and try to address some of his concerns.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Cirieco, it was unanimously,

RESOLVED, that the Town Board of the Town of Somers does hereby adopt an Order Calling for a Public Hearing to Extend Somers Sewer District #1 for Thursday, August 4, 2016 at 7:00 PM as follows:

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At a Special Meeting of the Town Board of the Town of Somers at the Town Hall, 335 Route 202, Somers, New York in the Town of Somers, Westchester County, New York, on the 20th day of July, 2016, at 5:00 p.m.

PRESENT:

Hon. Rick Morrissey
Anthony J. Cirieco
Richard G. Clinchy

----------X

In the Matter of the Extension of the Somers Sewer District #1 in the Town of Somers Westchester County, New York, pursuant to Article 12 of the Town Law.

ORDER CALLING PUBLIC HEARING

----------X

WHEREAS, a petition, a map and plan have been prepared by KEARNEY REALTY AND DEVELOPMENT GROUP, INC. and others in such manner and in such detail as has heretofore been determined by the Town Board relating to the extension of the Somers Sewer District #1, and

WHEREAS, said petition, map and plan have been prepared by an engineer, duly licensed by the State of New York, showing the boundaries of the proposed extension and a general plan of the water system connection, and

WHEREAS, said petition, map and plan have been duly filed in the office of the Town Clerk of said Town and are available for public inspection during normal business hours, and

WHEREAS, said map shows the transmission mains and appurtenant facilities to be connected to the existing sewer mains, and

WHEREAS, the boundaries of the proposed extension to said district to be known as "The Crossroads at Baldwin Place Extension" are as follows:

SEE SCHEDULE A

WHEREAS, the improvements proposed are as set forth in the petition, and

WHEREAS, the cost of the improvements, including professional fees, will be paid for by the applicant, and

WHEREAS, the maximum amount proposed to be expended for said improvements is Seven Hundred Thousand ($700,000.00) Dollars, and

DRAFT

NOW, on motion of Supervisor Morrissey, seconded by Councilman Cirieco, it is hereby

ORDERED, that the Town Board of the Town of Somers shall meet and hold a public hearing at the Somers Town Hall, 335 Route 202 in said Town on the 4th day of August, 2016, at 7:00 p.m. in that day to consider said petition, map and report and to hear all persons interested in the subject thereof concerning the same and to take such action thereon as is required or authorized by law.

The adoption of the foregoing order was duly put to vote, and on a roll call the vote was as follows:

Hon. Rick Morrissey	voting	Aye
Anthony J. Cirieco	voting	Aye
Richard G. Clinchy	voting	Aye
William G. Faulkner	voting	Absent
Thomas A. Garrity, Jr.	voting	Absent

and the order was thereupon declared duly adopted.

BY ORDER OF THE TOWN BOARD

Dated: Somers, New York
July 20, 2016

TOWN OF SOMERS
Patricia Kalba, *Town Clerk*

SEE SCHEDULE A

i. Tax Parcel Number 4.20-1-3.1	57 US Route 6	Petitioner
ii. Tax Parcel Number 4.19-2-20	250 Mahopac Ave.	Petitioner
iii. Tax Parcel Number 4.19-2-19	51 US Route 6	
iv. Tax Parcel Number 4.20-1-1	55 US Route 6	
v. Tax Parcel Number 4.20-1-5	63 US Route 6	Petitioner
vi. Tax Parcel Number 4.20-1-6	71 US Route 6	Petitioner
vii. Tax Parcel Number 4.20-1-7	75 US Route 6	Petitioner
viii. Tax Parcel Number 4.20-1-8	Vacant	Petitioner
ix. Tax Parcel Number 4.20-1-9	77 US Route 6	Petitioner
x. Tax Parcel Number 4.20-1-10	81 US Route 6	Petitioner
xi. Tax Parcel Number 4.16-1-1	85 US Route 6	
xii. Tax Parcel Number 4.16-1-2	87 US Route 6	

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The Supervisor said that Steven Ralston, Superintendent of Parks and Recreation had asked for the Board to approve to go to bid for the resurfacing Tennis Court. He explained the issue that had occurred with the current bid and why it was thought that the project was going to be rebid. He said that how they were going to address the situation was to send an addendum to the Companies that received a bid package. The Supervisor said that this item was being removed from that evening's agenda.

Thereupon motion of Supervisor Morrissey, seconded by Councilman Cirieco the meeting was adjourned at 5:20 PM.

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Town Clerk

DRAFT

Belinda DiTieri

From: Rick Morrissey
Sent: Wednesday, September 28, 2016 4:43 PM
To: Tom Garrity; Richard Clinchy; Anthony Cirieco; Bill Faulkner
Cc: Belinda DiTieri
Subject: FW: NYS DEC Atlantic Bridge Public Notice

FYI

Rick Morrissey, MPA
Town Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
Ph: 914-277-3637
Fax: 914-276-0082
supervisor@somersny.com
www.somersny.com

RECEIVED
OCT - 4 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

From: Christian DiPalermo [mailto:christian@cddstrategies.com]
Sent: Wednesday, September 28, 2016 2:26 PM
To: mgrace@yorktownny.org; Rick Morrissey
Cc: mcmanniello@yorktownny.org
Subject: NYS DEC Atlantic Bridge Public Notice

Dear Supervisors Grace and Morrissey,

I wanted to let you know that the NYS Department of Environmental Conservation just posted a notice for public comment and a hearing date for Algonquin Gas Transmission's application for the following permits: Freshwater Wetlands, Part 401 Water Quality Certification and Stream Disturbance as part of the proposed Atlantic Bridge Project.

The full notice can be found at the following link: http://www.dec.ny.gov/enb/20160928_not3.html

Let me know if you have any questions.

Best,

Christian

Christian DiPalermo
CDD STRATEGIES
485 Madison Avenue, Suite 1300
New York, NY 10022

(914) 715-1241 (Cell Phone)
Christian@cddstrategies.com (E-mail)

EC - TB TC TA
10/4/16 DJS

Notice of Complete Application
Notice of Legisiative Public Comment Hearing

RECEIVED
OCT - 4 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

Applicant:
Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC

Project Title:
Atlantic Bridge Project

Permit and Application Numbers:
Application ID: 3-5599-00078/00001 - Freshwater Wetlands
Application ID: 3-5599-00078/00003 - Part 401 Water Quality Certification
Application ID: 3-5599-00078/00002 - Stream Disturbance

Project Description:
Algonquin Gas Transmission, LLC, a subsidiary of Spectra Energy Partners, LP, and Maritimes & Northeast Pipeline, LLC (collectively, the Applicants) filed applications for a Certificate of Public Convenience and Necessity (Certificate) with the Federal Regulatory Commission (FERC) on October 22, 2015 to construct and operate the Atlantic Bridge Project (Project) which involves the expansion of its existing pipeline systems located in New York, Connecticut, Massachusetts and Maine. The Project includes the replacement of approximately 6.3 miles of 26-inch pipeline with 42-inch pipeline in New York and Connecticut; construction of a new compressor station in Massachusetts and modifications to three existing compressor stations in New York and Connecticut to install an additional total of 26,500 horsepower (hp) for the Project; modifications to five existing metering and regulating (M&R) stations and one existing regulator station in New York, Connecticut, Massachusetts and Maine; and construction of one new M&R station in Connecticut The Project will create 132,705 dekatherms per day (Dth/d) of firm pipeline capacity.

New York State (NYS) Portion of the Project
The NYS portion of the Project consists of 4.0 miles of the replacement of 26-inch diameter pipeline with 42-inch diameter pipeline in the existing ROW, with the exception of two locations in the Town of Yorktown. The first being where new pipelines will be installed under the Taconic State Parkway using the horizontal directional drill (HDD) method and the second being a short segment near Willow Pond where the new pipeline would shift to avoid disturbing the pond thereby minimizing impacts to the pond. At both of these locations, the existing pipeline would be taken out of service.

The project also includes the uprating of an existing compressor unit at the existing Stony Point Compressor Station, from 12,600 hp to 15,900 hp, which only involves a modification to existing software. This proposed uprating does not require any modification to the applicable NYS air permits. Modifications are also proposed to the existing Yorktown Meter and Regulating (M&R) station involving the installation of overpressure protection facilities.

Surface Water/Stream Disturbance
The pipeline portion of the Project will cross 21 surface waterbodies in NYS, including 8 perennial streams, 8 intermittent streams and 5 ephemeral streams. Three (3) of these 21 surface waterbodies are considered "protected streams" as defined 6NYCRR Part 608, Use and Protection of Waters. With the exception of one crossing, all stream crossings will

involve dry crossing construction methods and range in width from 1 to 10 feet. The remaining stream runs adjacent to the Taconic Parkway and will be crossed using the HDD method. The HDD length under the Taconic, including the stream, will be approximately 3,500 feet.

Wetland Disturbance
The Project will cross a total of 15 wetlands in NYS, including nine (9) federally-regulated wetlands and six (6) NYS-regulated Freshwater Wetlands (A-34, A-4, A-39, A-2 and ML-10), though three (3) of these wetlands will not be crossed by the proposed replacement pipeline.

Wetland Mitigation
Algonquin has also filed a Wetland Mitigation Plan (Plan) to be implemented during and after construction of the Atlantic Bridge project to avoid and minimize impacts to wetlands and waterbodies. No permanent wetland fill is proposed and the plan involves implementation of an onsite restoration plan to address replanting and the control of invasive plant species.

A separate Notice of Complete Application for the Freshwater Wetlands, Stream Disturbance and Part 401 Water Quality Certifications applications can be viewed at: http://www.dec.ny.gov/enb/20160928_reg3.html.

National Environmental Policy Act (NEPA) Determination
FERC is the lead agency for the environmental review of interstate gas pipelines. FERC staff prepared an Environmental Assessment (EA), dated May 2, 2015, for the Project, proposed by the Applicants, in Docket No. CP16-9-000, in accordance with the requirements of NEPA. The EA can be viewed and downloaded at: http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20160502-4001

New York State Department of Environmental Conservation (NYS DEC) relies upon the federal review process conducted by FERC pursuant to NEPA and the permit applications submitted by applicants to NYS DEC to ultimately make a determination regarding issuing its authorizations.

National Historic Preservation Act (NHPA)
These applications are being reviewed in accordance with Section 106 of the NHPA. The applications are not subject to the New York State Historic Preservation Act.

NYS DEC Policy 29, Environmental Justice and Permitting (CP-29)
The permit applications for the Project are not subject to review and approval in accordance with NYS DEC Commissioner's Policy 29.

Statutory and Regulatory Provisions
The above referenced applications were filed and reviewed pursuant to Environmental Conservation Law (ECL) Article 3, Title 3 (General Functions, Powers, Duties and

Jurisdiction), and Article 70 (Uniform Procedures Act or UPA); and pursuant to Title 6 of Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 621- Uniform Procedures. The relevant regulations are found at: Part 608 (Protection of Waters), Part 663 (Freshwater Wetlands) and Section 401 of the federal Clean Water Act (CWA) (33 USCA 1341). In addition to these permits being considered under UPA, the project is required to demonstrate the ability to obtain coverage under the State Pollutant Discharge Elimination System Stormwater General Permit for Construction Activities (GP-0-10-001) prior to conducting any construction activities that disturb greater than one acre.

Legislative Hearing
Pursuant to 6 NYCRR 621.8, legislative public hearings for the receipt of public comments on the permit applications will be held on October 19, 2016 at the location listed below. The public hearing will commence at 6:00 p.m. All persons, organizations, corporations, or government agencies which may be affected by the proposed project are invited to attend the hearing and to submit oral or written comments. It is not necessary to notify NYS DEC in advance to speak at the legislative hearing. Equal weight will be afforded to both oral and written statements. Lengthy statements should be in writing and summarized for oral presentation.

The presiding Administrative Law Judge (ALJ) may set reasonable time limits for each speaker to afford everyone an opportunity to be heard. The hearings are fully accessible to persons with a mobility impairment. Interpreter services will be made available to the hearing impaired at no charge upon written request to the NYS DEC contact person named below, no less than one week prior to the hearing.

The Legislative Public Hearings are scheduled as follows:
Date: Wednesday, October 19, 2016
Time: 6:00 p.m.
Location: The Mansion at Colonial Terrace
119 Oregon Road
Cortlandt, Manor, NY 10567

Parties may also file written comments to the NYS DEC representative listed below. **All written comments must be postmarked or submitted electronically by fax or email no later than October 28, 2016.**

Public Hearing and Comment
Written comments submitted to NYS DEC during this comment period and oral comments given at the Legislative Hearing are considered part of the record. At the conclusion of the public comment period NYS DEC will determine pursuant to 6 NYCRR 621.8 whether substantive or significant issues have been raised in the public comments or legislative hearing to warrant an Adjudicatory Hearing, or whether the permits should be issued without any further review. If no issues are raised to warrant further adjudication, NYS DEC will proceed to develop a response to comments, provide public notice of the approval of the permits and issue the requested permits.

Notice of Complete Application
Notice of Legislative Public Comment Hearing

Availability of Documents
Filed application documents, and NYS DEC draft permits where applicable, are available for inspection during normal business hours at the address of the contact person listed below. To ensure timely service at the time of inspection, it is recommended that an appointment be made with the contact person.
Application documents, and NYS DEC draft permits where applicable, are also available for inspection during normal business hours at the public libraries listed below:

John C. Hart Memorial Library
1130 Main Street
Shrub Oak, NY 10588

Somers Public Library
82 Primrose Street
Katonah, NY 10536

In addition, application documents can be viewed on-line at:
http://www.spectraenergy.com/Operations/US-Natural-Gas-Operations/New-Projects-US/Atlantic-Bridge/

Contact: Michael Higgins, Project Manager, NYS DEC - Division of Environmental Permits, 625 Broadway, 4th Floor, Albany, NY 12233-1750, Phone: (518) 402-9179, Fax: (518) 402-9168, E-mail: AtlanticBridgeProject@decny.gov.

Notice of Complete Application

Applicant:
Algonquin Gas Transmission LLC
PO Box 1642
Houston, TX 77251 -1642

Facility:
Atlantic Bridge Project
Pipeline Route from Stoney St in Yorktown to Mahopac Ave in Somers
Yorktown and Somers, NY

Application ID:
3-5599-00078/00001

Permit(s) Applied for:
Article 24 Freshwater Wetlands
Article 15 Title 5 Stream Disturbance
Section 401 - Clean Water Act - Water Quality Certification

Project is Located:
Yorktown, Westchester County

Project Description:
The applicant is proposing the replacement of approximately 4 miles of existing 26-inch diameter mainline pipeline with 42-inch diameter pipeline in an existing gas pipeline right-of-way in New York State in the Towns of Yorktown and Somers, Westchester County. The project known as the Atlantic Bridge Project includes the crossing of eight (8) perennial streams, eight (8) intermittent streams and five (5) ephemeral streams. Three (3) of these streams are considered "protected streams" as defined 6NYCRR Part 608, Use and Protection of Waters. All but one of the stream crossings will involve dry crossing construction methods and range in width from 1 feet to 10 feet. The remaining stream will be crossed using a horizontal directional drill (HDD) method.

The project also involves the disturbance to fifteen (15) wetlands including nine (9) federally regulated wetlands and six (6) State regulated Freshwater Wetlands (A-34, A-4, A-39, A-2 and ML-10), though three (3) of these wetlands will not be crossed by the proposed replacement pipeline.

Algonquin has also filed a Wetland Mitigation Plan (Plan) to be implemented during and after construction of the Atlantic Bridge project to avoid and minimize impacts to wetlands and waterbodies. No permanent wetland fill is proposed and the plan involves implementation of an onsite restoration plan to address replanting and the control of invasive plant species.

A separate Notice of Complete Application and Notice of Legislative Public Comment Hearing can be viewed at: http://www.dec.ny.gov/enb/20160928_not3.html

Notice of Complete Application

Availability of Application Documents:
Filed application documents, and Department draft permits where applicable, are available for inspection during normal business hours at the address of the contact person. To ensure timely service at the time of inspection, it is recommended that an appointment be made with the contact person.

State Environmental Quality Review (SEQR) Determination:
Project is not subject to SEQR because it is a Type II action.
SEQR Lead Agency: None Designated

State Historic Preservation Act (SHPA) Determination:
The proposed activity is not subject to review in accordance with SHPA. The activity is being reviewed in accordance with federal historic preservation laws (Section 106 of NHPA) and the project area of potential impact is substantially the same.

Coastal Management:
This project is not located in a Coastal Management area and is not subject to the Waterfront Revitalization and Coastal Resources Act.

DEC Commissioner Policy 29, Environmental Justice and Permitting (CP-29)
It has been determined that the proposed action is not subject to CP-29.

Opportunity for Public Comment:
Comments on this project must be submitted in writing to the Contact Person no later than *October 28, 2016*.

Contact:
Michael Higgins
Project Manager
NYSDEC Headquarters
625 Broadway
Albany, NY 12233

(518) 402-9167

email: AtlanticBridgeProject@dec.ny.gov

Barbara Sherry

From:	Roland Baroni
Sent:	Tuesday, September 27, 2016 12:12 PM
To:	Rick Morrissey; Bob Kehoe
Subject:	Crossroads at Baldwin Place
Attachments:	Crossroads.PILOT docx.docx

Enclosed please find a draft PILOT Agreement for the residential portion of the captioned project.

The annual payment and escalator are nearly identical to the payments for Mews I and II. I am not sure how that was pre-determined.

Roland Baroni

NOTE: This message and any attachments from the law firm of Stephens, Baroni, Reilly & Lewis, LLP may contain confidential and legally protected information. If you are not the addressee and an intended recipient, please do not read, copy, use or disclose this communication to others; also, please notify the sender by replying to this message, and then delete it from your system. Thank you.

AGREEMENT FOR PAYMENT IN LIEU OF TAX ("PILOT")
BY AND AMONG
THE TOWN OF SOMERS, CROSSROADS AT BP, LP AND
CROSSROADS HOUSING DEVELOPMENT FUND COMPANY, INC.

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES (hereinafter "PILOT Agreement" or "Agreement") dated _____, 2016 by and among the **Town of Somers, New York**, a New York incorporated municipality, having its principal office located at 335 Route 202, Somers, NY 10589 (the "Town"), and **Crossroads Housing Development Fund Company, Inc.**, a corporation formed pursuant to Article XI of the New York Private Housing Finance Law and Section 402 of the New York Not-for-Profit Corporation Law, having its principal office located at 55 South Broadway, Tarrytown, NY 10591 ("HDFC"), which such entity will hold a fee interest in the Property (as hereinafter defined) for the benefit of **Crossroads at BP, LP**, a New York limited partnership, having its principal office located at 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505 (the "Corporation").

WHEREAS, HDFC is, or will become, the owner of a fee interest in, and the Corporation is, or will become, the beneficial and equitable owner of a fee interest in certain real property identified as Residential Tax Lot A on Map filed in the Land Records Division of the Office of the Clerk of the County of Westchester under Control Number _____ (the "Property')(*Note: proper legal description of the residential component of property will be inserted when available)*; and

WHEREAS, the HDFC and the Corporation have each been formed for the purpose of providing residential rental accommodations for households of low and moderate incomes; and

WHEREAS, the Corporation will develop, own, construct, maintain and operate a housing project at the Property to consist of fifty-two (52) residential rental units for senior citizens age 55 years and older having household incomes at or below 60% of area median income; and twelve (12) residential units of family housing which consists of six (6) units having household incomes below 60% of area median income; and four (4) units having household incomes below 90% of area median income; and two (2) units with no income qualification criteria (the "Project");

WHEREAS, the HDFC's and the Corporation's plan for the use of the Land constitutes a "housing project" as that term is defined in the PHFL; and

WHEREAS, the HDFC is a "housing development fund company" as that term is defined in Section 572; and

WHEREAS, pursuant to Section 577 of the PHFL, the local legislative body of a municipality may exempt the real property of a housing project of a housing development fund company from local and municipal taxes, including school taxes, other than assessments for local improvements, to the extent of all or a part of the value of the property included in the completed Project; and

WHEREAS, the Members of the Town Board, by resolution adopted _____, 2016, approved and authorized the execution of this Agreement;

NOW THEREFORE, it is agreed as follows:

BS 2-5

1. Pursuant to Section 577 of the PHFL, the Town hereby exempts from Local and Municipal Taxes (as hereinafter defined), other than assessments for local improvements, one hundred percent (100%) of the value of the Property, including both land and improvements. "Local and Municipal Taxes" shall mean any and all real estate taxes levied by Westchester County (the "County"), the Town, the Somers Central School District (the "School District") or other applicable taxing authority.

2. This tax exemption will commence on the date of the HDFC's and the Corporation's acquisition of fee title to the Property and shall continue for a period of forty (40) years following the date on which a temporary or permanent certificate of occupancy is issued for all of the residential rental units comprising the Project. This Agreement shall not limit or restrict the HDFC's or the Corporation's right to apply for or obtain any other tax exemption to which it might be entitled upon the expiration of this Agreement.

3. So long as the exemption hereunder continues, following the completion of construction of the Project, as evidenced by the issuance of a temporary or permanent certificate of occupancy, the Corporation shall make annual payments in lieu of taxes ("PILOT") to the Town in the amount of Thirty Seven Thousand Dollars and No Cents ($37,000) increased by three percent (3%) annually for a period of forty (40) years. The aforementioned PILOT payments shall cover and be in lieu of all Local and Municipal Taxes owed in connection with the Property and the Project. So long as the tax exemption remains in effect, tenant rental charges shall not exceed the maximum established or allowed by law, rule or regulation, and the Property shall be operated in conformance with the provisions of Article XI of PHFL.

4. The tax exemption provided by this Agreement will continue for the term described above provided that (a) the Property continues to be used as housing facilities for individuals and families of low income as described herein; and (b) any of the following occur (i) the HDFC and/or the Corporation operate the Property in conformance with Article XI of the PHFL, or (ii) in the event an action it brought to foreclose a mortgage upon the Property, and the legal and beneficial interest in the Property shall be acquired at the foreclosure sale or from the mortgagee, or by a conveyance in lieu of such sale by a housing development fund corporation organized pursuant to Article XI of the PHFL, or by the Federal government or an instrumentality thereof, or by a corporation which is, or by agreement has become subject to the Superintendent of the NYS Department of Financial Services or the Commissioner of NYS Housing & Community Renewal, such successor in interest shall operate the property in conformance with Article XI of the PHFL.

5. The failure to make the required PILOT payment will be treated as a failure to make payment of taxes and will be governed by the same provisions of law as apply to the failure to make payment of taxes including, but not limited to, enforcement and collection of taxes to the extent permitted by law.

6. All notices and other communications hereunder shall be in writing and shall be sufficiently given when delivered to the applicable address stated above (or such other address as the party to whom notice is given shall have specified to the party giving notice) by registered or certified mail, return receipt request, or by such other means as shall provide the sender with documentary evidence of such delivery.

85 3-5

7. This Agreement shall incur to the benefit of and shall be binding upon the Town, the Corporation, the HDFC and their respective successors and assigns, including the successors in interest of the Corporation and the HDFC. There shall be no assignment of this Agreement except with consent of the Town which consent shall not be unreasonably withheld.

8. If any provision of this Agreement or its application is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances shall be enforced to the greatest extent permitted by law.

9. This Agreement may be executed in any number of counterparts with the same effects as if all the signing parties had signed the same document. All counterparts shall be construed together and shall constitute the same instrument.

10. This Agreement constitutes the entire agreement of the parties relating to payments in lieu of taxes with respect to the above-described property and supersedes all prior contracts, or agreements, whether oral or written, with respect thereto.

11. Each of the parties individually represents and warrants that the execution, delivery and performance of this Agreement: (i) has been duly authorized by proper action of its governing body and does not require any other consent or approval; (ii) does not violate any article, by-law or organizational document or any law, rule, regulation, order, writ, judgement or decree by which it is bound; and (iii) will not result in or constitute a default under any indenture, credit agreement, or any other agreement or instrument to which it is a party. Each party represents that this Agreement shall constitute the legal, valid and binding agreement of such party enforceable in accordance with its terms.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Town, the Corporation and the HDFC have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date above-written.

DATED:_____, 2016

TOWN OF SOMERS, NEW YORK

BY:_____
Rick Morrissey, Supervisor

B5 4-5

DATE:_____, 2016

CROSSROADS HOUSING DEVELOPMENT FUND COMPANY, INC.

BY: _____
NAME: Rosemarie Noonan
ITS: President

DATE:_____, 2016

CROSSROADS AT BP, LP
BY: Crossroads at BP Member LP,
ITS: Manager
BY: Crossroads at BP Associates, LP
ITS: Operating Manager

BY: _____
NAME: Kenneth Kearney
ITS: Manager

BS 5-5

Oct 13 Agenda sc - TBTC 10/11/16 bp

RECEIVED
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

Barbara Sherry

From:	Rick Morrissey
Sent:	Tuesday, October 11, 2016 1:24 PM
To:	Belinda DiTieri
Cc:	Barbara Sherry
Subject:	Fwd: Calandrucci Conservation Easement
Attachments:	Draft Amendment to Conservation Easement.10.6.16.doc; ATT00001.htm

Please add to 10/13 agenda.
Thanks,
Rick

Rick Morrissey

Begin forwarded message:

From: Roland Baroni <rbaroni@
Date: October 11, 2016 at 11:58:44 AM EDT
To: Rick Morrissey <supervisor@somersny.com>
Subject: Calandrucci Conservation Easement

Attached please find a proposed amendment to the captioned easement which removes the requirement in the original document that the driveway not be constructed of impervious material.

The Planning Board has eliminated this requirement by Resolution #2016 on 10/4/16.

That being the case we must now amend the original conservation easement document which has been recorded with the County Clerk.

If possible, this should be added to the 10/13 agenda for authorization to the Supervisor to execute same.

Roland

NOTE: This message and any attachments from the law firm of Stephens, Baroni, Reilly & Lewis, LLP may contain confidential and legally protected information. If you are not the addressee and an intended recipient, please do not read, copy, use or disclose this communication to others; also, please notify the sender by replying to this message, and then delete it from your system. Thank you.

AMENDMENT TO CONSERVATION EASEMENT AND RESTRICTIVE COVENANT

THIS AMENDMENT, made on the __th day of October, 2016, by, between and among ANN and THOMAS CALANDRUCCI, residing at 470 Westlake Drive, Valhalla, New York 10595 (collectively, the "Grantor"), and the TOWN OF SOMERS, a municipal corporation of the State of New York with offices at 335 Route 202, Somers, New York 10589 (the "Grantee," and together with Grantor, the "Parties").

WITNESSETH:

WHEREAS, the Grantor is the owner in fee simple of certain real property situate, lying and being in the Town of Somers (the "Town"), County of Westchester, State of New York, located on and along Amawalk Point Road, known and designated on the Town Tax Map as Section 36.12, Block 2, Lot 3 (the "Property"); and

WHEREAS, the Grantor obtained certain approvals from the Town Planning Board, by Resolution #2005-23, dated October 20, 2005 (the "Resolution"), in connection with the construction of a single-family residence on the Property and related improvements; and

WHEREAS, pursuant to the Resolution, the Grantor caused a "Conservation Easement and Restrictive Covenant" to be recorded against the Property in the Office of the County Clerk of Westchester County, Division of Land Records, on November 30, 2007, Control Number 473300042 (the "Conservation Easement"); and

WHEREAS, also pursuant to the Resolution, Section 8 of the Conservation Easement contained a restriction that the driveway to be constructed on the Property shall not be improved with impervious material, except that the first 20 feet of the driveway off of Amawalk Point Road may be improved with impervious material; and

WHEREAS, by Resolution #2016-____, dated October 4, 2016, the Town Planning Board approved the Grantor's request to eliminate said restriction prohibiting the use of

impervious material for construction of the driveway, subject to amending the Conservation Easement to delete the restriction contained in Section 8 thereof; and

WHEREAS, the Parties are desirous, therefore, of entering into this Amendment in order to amend the Conservation Easement; and

WHEREAS, this Amendment is not intended to change, modify, or alter any of the terms and conditions of the Conservation Easement unless specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Section 8 of the Conservation Easement, entitled "Driveway Improvement," shall be deleted in its entirety.

2. This Amendment shall run with the land and be binding upon all successors and assigns in perpetuity.

3. All terms and conditions set forth in the Conservation Easement are incorporated herein by reference and are in full force and effect, except to the extent they are modified or amended as set forth in this Amendment.

4. In the event there is any conflict between the terms of the Conservation Easement and this Amendment, the terms of this Amendment shall govern and control.

5. This Amendment may be executed in counterparts by the Parties, and each part will be considered the original.

[intentionally left blank; signature page follows]

DRAFT

IN WITNESS WHEREOF, the Parties have executed this instrument, intending that the same be recorded in the Office of the Clerk of the County of Westchester, Division of Land Records, on the day and date first above mentioned.

_____
Ann Calandrucci, Grantor

_____
Thomas Calandrucci, Grantor

TOWN OF SOMERS (Grantee)

By: _____
Rick Morrissey, Town Supervisor

STATE OF NEW YORK)
):ss.:
COUNTY OF WESTCHESTER)

On the ____ day of October, in the year 2016, before me, the undersigned personally appeared ANN CALANDRUCCI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

DRAFT

STATE OF NEW YORK)
):ss.:
COUNTY OF WESTCHESTER)

On the ____ day of October, in the year 2016, before me, the undersigned personally appeared THOMAS CALANDRUCCI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

STATE OF NEW YORK)
):ss.:
COUNTY OF WESTCHESTER)

On the ____ day of October, in the year 2016, before me, the undersigned personally appeared RICK MORRISSEY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

RECORD AND RETURN MAIL TO:

ROLAND A. BARONI, JR., ESQ.
Stephens Baroni Reilly & Lewis LLP
175 Main Street
White Plains, New York 10601
(914) 761-0300

DRAFT

Belinda DiTieri

From: Joe Barbagallo <jbarbagallo
Sent: Wednesday, October 05, 2016 3:52 PM
To: Rick Morrissey
Cc: syrette dym; Barbara Sherry; Belinda DiTieri; Marilyn Murphy
Subject: Calendrucci
Attachments: Memo to PB 9.2016.doc

Hi Rick, Hope all is well!

At the Planning Board meeting of October 4, 2016 the Planning Board approved the modification to the Restrictive Covenant on the Calendrucci parcel.

The original restrictive covenant required the use of a pervious driveway for stormwater purposes. This afforded the applicant limited options – a gravel driveway or porous pavement. The gravel driveway was not workable for the homeowner and the porous pavement would be unlikely to be maintained over the long term and therefore neither scenario was really going to accomplish the goals that the original approval was seeking. Steve Woelfle and I have been working with the Calendrucci's to develop a solution that accomplishes an equivalent level of treatment that was contemplated with a standard asphalt driveway, and that is a more sustainable solution for both the resident and the Town. Toward this end, the applicant has installed sufficient stormwater collection and treatment systems as part of the project that satisfies the equivalency in treatment while being a system that the Town has much more confidence will be maintained and perform over the long term. As such both Steve and I were supportive of the Planning Board's actions. I have attached a memorandum prepared by Steve which provides additional context.

I believe, based on Steve's representations and discussions with Roland, that the next step is for the Applicant to refile the restrictive covenant with the Town Board approval. The applicant is seeking to pave the driveway this year before the plants close in mid-November. As such, it would be ideal for the Town Board to grant the Supervisor the authority to sign the Amended Restrictive Covenant once it is prepared at the October meeting. If that is not possible, then I would request that the Town Board place the item on the November Agenda so that the work can be completed this year.

Thanks, and I would be happy to talk more with the Town Board about this tomorrow night.

Joe

PLANNING AND ENGINEERING DEPARTMENTS

Telephone
(914) 277-5366
Fax
(914) 277-4093

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
www.somersny.com

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com

Syrette Dym, AICP
Town Planner
sdym@somersny.com

EC -
TB
TC
9/22/16
KP

Date: September 22, 2016

To: Planning Board

From: Steven Woelfle SW
Engineering

RE: Calandrucci Request to Amend Resolution #2005-23
TM: 36.12-2-3, 5 Amawalk Point Road

- In summary, in 2005 the Planning Board approved the above property with the condition to install a pervious driveway (white Item IV). The Calandruccis would like to install an impervious driveway (asphalt payment). This condition, to install a pervious driveway, became part of a filed Restrictive Covenant as well. The Planning Board Approving Resolution and Restrictive Covenant is attached and highlighted for your use.

- Step 1 in this process would be Planning Board approval. If approved, step 2 would be revising and refiling the Restrictive Covenant which would need to be executed by the Town Board. The process was discussed with the Town Attorney and explained to the owner.

- The shortened driveway length (reduced by 120±) and adequate infiltration practices installed, this office concurs with the proposed change. An Item IV driveway is not conducive to a residential home. For example, difficult winter maintenance, tracking of dust into the house, etc.

- See the attached letter from the owner and their engineer supporting their request for a change to the driveway surface material.

- The Town Consulting Engineer has also visited the site and can provide additional comments if neccessary.

SW/wg
Enc.
cc: Town Board, Town Clerk, Town Attorney, Consulting Town Engineer, Thomas and Ann Calandrucci
ZARE\Environmental files\calandrucci\Memo to PB 9 2016.doc

Thomas and Ann Calandrucci
5 Amawalk Point Road
Amawalk, NY 10501

RECEIVED
SEP 15 2016
PLANNING-ENGINEERING
TOWN OF SOMERS

Somers Planning Board
335 Route 202
Somers, NY 10589

September 14, 2016

To The Members of the Board,

We are writing today to request a change to the resolution requiring us to install a pervious driveway for our newly constructed home on 5 Amawalk Point Road. We respectfully request approval to install an impervious asphalt driveway, which already have appropriate drywells for storm water, run off and roof drains. We propose this because if we leave it as gravel or Item 4, it will be difficult for snow removal and it will be costly to maintain. If we use pervious asphalt, installation will be far more expensive and we will incur an ongoing financial burden. We will need to purchase an expensive machine or hire someone to maintain it so it could remain a pervious surface.

We would like to add that when we applied to the Planning Board for site plan approval for our home we underwent a very lengthy approval process with a total of 24 revisions. The site plan included a 200 foot long driveway along with a very large garage apron. During the process, Cultex drywells were incorporated into the design as directed by the Town Engineer to receive the runoff from the impervious driveway and the roof drains. The Town Engineer at the end of the process then determined that the driveway should remain a pervious surface.

Before construction of our home, we decided it would be best to change the orientation of the house, while remaining in the original footprint, to increase curb appeal and reduce the size of the driveway and apron from 200+ feet to approximately 80 feet. During construction and with supervision from the Engineering Department, we installed the Cultex drains according to the original design.

We fully understand that we will have to have an attorney revise the current restrictive covenant on file with Westchester County if you were to approve our request and will take all proper measures to refile in the appropriate manner. We hope that you approve this request

and consider the use of impervious asphalt. Thank you for your time.

Sincerely,

Ann Calandrucci

Thomas Calandrucci

RALPH G. MASTROMONACO, P.E., P.C.
Consulting Engineers
13 Dove Court, Croton-on-Hudson, New York 10520
Tel: (914) 271-4762 Fax: (914) 271-2830

Civil / Site / Environmental
www.rgmpepc.com

PROJECT: Calandrucci Residence
5 Amawalk Point Road
Somers, NY

SCOPE: Assessment of Driveway Paving

DATE: September 9, 2016 - Revised

INTRODUCTION:

The Calandruccis recently constructed a new house near Amawalk Reservoir in the Town of Somers. The installed subsurface chambers system were designed to treat runoff from the proposed paved driveway. However, at a later point in the approval process, the Town staff recommended that the driveway be made of compacted Item 4 (granular base) and not paved. This became a requirement of the building permit and the Calandruccis complied.

Now, the Calandruccis wish to pave the driveway of about 0.09 acres (3900 square feet).

We reviewed our original stormwater hydrologic models and changed the Runoff Curve Number of the driveway from 85 to 98 to represent the new paving. We hoped to determine if there would be any noticeable effect on drainage or water quality. The NYC DEP does not regulate this project.

PEAK FLOW:

The watershed composite Runoff Curve Number increased from 55.79 to 55.84 as one would expect a minor increase. We then ran the original HEC-1 computer model with the new runoff curve number and evaluated the increase in peak flows.

Table: Comparison of Peak Flows at Design Point 1

Storm (yr)	1	2	5	10	25	50	100
Existing	4.24	8.42	17.27	24.78	33.93	46.19	52.62
Original	1	2.93	8.57	13.73	20.86	32.49	39.68
Paved	1.01	2.96	8.61	13.79	20.93	32.58	39.78

As can be seen the peak flows increase minimally (e.g. 39.68 to 39.78 cfs), and are always much less than the flows before the development was built.

Accordingly, the paving of 0.091 acres of driveway would have little or no effect on the rate of runoff.

Meeting Date: September 21, 2005

PLANNING BOARD
TOWN OF SOMERS, WESTCHESTER COUNTY, NEW YORK

*********THIS IS NOT A PERMIT*********
Resolution #2005-23
Granting Conditional Approval to Steep Slope and Tree Preservation Permit and Waiver of the Road Specifications
Ann and Thomas Calandrucci
Sheet 36.12, Block 2, Lot 3

WHEREAS, an application for a Steep Slope Permit under the provisions of Chapter 148 "Steep Slope Protection Ordinance" was made by Evelyn Picardi (Owner) and Ann and Thomas Calandrucci (applicant) on February 16, 2004, with the required fee paid on February 24, 2005, for the proposed improvements on lot number 3; and

WHEREAS, an application for a Tree Preservation Permit under the provisions of Chapter 158 " Tree Preservation Ordinance" was made by Evelyn Picardi (Owner) and Ann and Thomas Calandrucci (applicant) on February 16, 2004, with the required fee paid on February 24, 2005 for the proposed improvements on lot number 3; and

WHEREAS, an application for a Steep Slope Permit under the provisions of Chapter 148 "Steep Slope Protection Ordinance" was made by Evelyn Picardi (Owner) and Ann and Thomas Calandrucci (applicant) on February 16, 2004, with the required fee paid on February 24, 2005, for improving Amawalk Point Road; and

WHEREAS, an application for a Tree Preservation Permit under the provisions of Chapter 158 " Tree Preservation Ordinance" was made by Evelyn Picardi (Owner) and Ann and Thomas Calandrucci (applicant) on February 16, 2004, with the required fee paid on February 24, 2005 for improving Amawalk Point Road; and

WHEREAS, the lot is situated on the north side of NYS Route 35 in an R-80 residential zone and on the north side of the unimproved Amawalk Point Road and is designated on the Town Tax Maps as Sheet 36.12, Block 2, Lot 3; and

WHEREAS, it is proposed to construct a single family home on the existing residential lot within a moderately steep slope consisting of 14,445 square feet (sf) area ranging from 15% - 25%, and within a very steep slope consisting of 1,539 sf area ranging from 25%-35% and 117 sf area in the extremely steep slope area in the range of greater than 35%; and

WHEREAS, it is proposed to improve the existing Amawalk Point Road within the existing paper ROW within a moderately steep slope consisting 3,672 sf area ranging from 15%-25% and within very steep slopes consisting of 1,395 sf area ranging from 25%-35% and within a extremely steep slope consisting of 576 sf area ranging from greater than 35%; and

WHEREAS, the applicant also requested an adjustment of Town of Somers standard road construction details and the Planning Board upon the recommendation of the Town Engineer reduced the required pavement width to 20 feet from the required 24 feet; and

WHEREAS, Amawalk Point Road is to be maintained as a private road; and

WHEREAS, the submitted material consists of the following plans titled: "Existing Slope Map/Road Improvement Plan, Amawalk Point Road", dated June 9, 1999, last revised February 9, 2004; and Road Improvement Plan, Amawalk Point Road, dated June 9, 1999, last revised February 12, 2004; and Alternate Road Profile/Details, Amawalk Point Road, dated February 5, 2004, prepared by Ralph G. Mastromonaco, P.E., and a short form EAF dated January 21, 2004; and

WHEREAS, the application was referred to the Town Board, Planning Board, Conservation Board, and the Highway Superintendent February 25, 2004 and April 26, 2004, and

WHEREAS, the Town Board by resolution dated March 15, 2004 recommended denial of the application, and

WHEREAS, the Somers Open Space Committee by memorandum dated March 22, 2004 provided comments to the Board, and

WHEREAS, the Town Board at their meeting of May 13, 2004 made a recommendation of denial by memorandum dated May 20, 2004; and

WHEREAS, the Conservation Board issued a memorandum to the Westchester County Department of Health, the New York City DEP and New York State DEC, dated June 1, 2004; and

WHEREAS, the application drawings as revised through September 8, 2004 were referred to the Conservation Board and the Fire Prevention Bureau September 9, 2004; and

WHEREAS, Ms. Penny Kelly, New York City DEP, issued a letter to the applicant dated September 7, 2004 advising that no DEP approvals were required…; and

WHEREAS, the Town Planner issued a review memorandum dated September 14, 2004; and

WHEREAS, revised application material was referred to the Conservation Board, September 21, 2004;

WHEREAS, the revised application material was referred to the Conservation Board, Fire Prevention Bureau, and Planning Board October 26, 2004; and

WHEREAS, the Building Inspector issued a memorandum dated October 27, 2004 stating the lot meets the zoning frontage requirement; and

WHEREAS, the Town Planner issued a memoranda dated October 27, 2004 and November 12, 2004; and

WHEREAS, the Town Engineer issued a review of memoranda dated September 17, 2004, July 23,2004, November 3, 2004, November 12, 2004, January 7, 2005, February 3, 2005, April 7, 2005 and April 27,2005; and

WHEREAS, the Fire Prevention Bureau responded by memorandum dated November 15, 2004 included a sketch of the end treatment of Amawalk Point Road; and

WHEREAS, the revised application material was referred to the Conservation Board, Fire Prevention Bureau, and Planning Board November 18, 2004; and

WHEREAS, the revised application material was referred to the Conservation Board, Building Inspector, and the Open Space Committee on December 30, 2004; and

WHEREAS, the application material was referred to the Fire Prevention Bureau on October 26, 2004; and

WHEREAS, the Planning Board scheduled the Public Hearing to be opened January 12, 2005; and

WHEREAS, at the public hearing numerous written correspondence as well as verbal statements were made during the Public Hearing about the rights to improve the ROW, about alternatives for the road grade and the size of the proposed house, the visual impact from public lands, open space preservation; and

WHEREAS, the applicant was requested to provide road construction alternatives to address concerns raised by the Planning Board, its staff, the abutting property owners and the public; and

WHEREAS, the applicant by letter dated January 28, 2005 provided three alternatives to the proposed Amawalk Point Road improvements; and

WHEREAS, alternate 1 includes the design of a 10% town road grade from the Larsen driveway raising the elevation about 4.5 feet to an approximate elevation of 477.3 at the end of the hammerhead, above the applicant's preferred plan elevation of 472.8; and

WHEREAS, alternate 2 includes the design of a 12% private road grade raising the elevation of the road about 8.7 feet to an approximate elevation of 480.4 above the applicant's preferred plan elevation of 472.8; and

WHEREAS, alternate 3 includes the design of a 12% private road grade raising the elevation of the road about 8.7 feet to an approximate elevation of 474.3 above the applicant's preferred plan elevation of 472.8; and

WHEREAS, the Town Engineer by memorandum dated April 7, 2005, recommended the road grade be set at 12% from approximate station 5+80 to the hammerhead elevation of 479.6; and

WHEREAS, Maeve Griffin's attorney, Albert A. Capellini, submitted correspondence dated February 8, 2005; and

WHEREAS, the Somers Open Space Committee issued a memorandum dated February 9, 2005; and

WHEREAS, in response to comments raised during the public hearing about the size of the proposed house the applicant submitted a reduced house size alternative dated March 4, 2005 and it was referred to the Open Space Committee and Conservation Board on March 7, 2005; and

WHEREAS, Bonnie Franson, a professional planner from Tim Miller Associates, submitted several response memoranda dated March 7, 2005, March 24, 2005, and June 21, 2005 in response to comments raised during the public hearing; and

WHEREAS, revised application material was referred to the Conservation Board and the Open Space Committee April 22, 2005; and

WHEREAS, revised application material was referred to the Planning Board, Conservation Board and the Open Space Committee on June 27, 2005; and

WHEREAS, a petition was received September 8, 2005 to retain Amawalk Point as Open Space to be purchased by the Town of Somers and/or Westchester County…; and

WHEREAS, the Conservation Board submitted a memorandum dated March 31, 2004 with a recommendation of denial and continued to review the application material as it was revised with the following memoranda, June 1, 2004, October 5, 2004, revised October 10, 2004, November 2, 2004, January 28, 2005, March 28, 2005, January 28, 2005, revised April 13, 2005; and

WHEREAS, the Conservation Board on September 19, 2005 made a recommendation of approval to the Calandrucci/Piccardi steep slope alteration permits application with the following conditions:

1. The applicant must have a conservation easement in place that is written in their deed on the property bordering the reservoir.

2. The applicant must construct a pervious driveway.

3. The applicant must post a bond for the proposed 7-ft. high retaining wall.

4. The applicant must provide current-up-to-date Board of Health approval for the septic system.

5. The Planning Board should carefully review the proposed steep slope intrusions to ensure that the applicant will mitigate to the maximum extent practicable.

WHEREAS, the Open Space Committee submitted several memoranda on March 22, 2004, February 9, 2005, April 27, 2005, May 31, 2005, August 5, 2005; and

WHEREAS, in response to comments raised concerning visual impacts, the applicant retained Tim Miller Associates, Inc. to conduct a visual survey to analyze the potential visual impacts of the proposed residence from the western shoreline of the Aimawalk Reservoir. The Tim Miller study dated October 21, 2004 concluded that "it is not expected that the proposed Calandrucci residence would be visible from the western shoreline due to existing vegetation, topography, and the alignment of 116/202, which together would screen the views from the site"; and

WHEREAS, several correspondences were submitted by Celia Seligson on September 8, 2004, October 27, 2004, January 9, 2005, February 5, 2005, February 17, 2005, March 8, 2005, April 24, 2005, July 9, 2005, September 12, 2005, September 19, 2005; and

WHEREAS, several correspondences were submitted by Karen Griffin on April 9, 2005, April 26, 2005, July 12, 2005, September 7, 2005, September 13, 2005 and September 22, 2005; and

WHEREAS, the applicant's attorney submitted a copy of the Title Report #CW 04200935 from the Commonwealth Land Title Insurance Co., dated July 1, 2004; and

WHEREAS, the Planning Board reviewed the application at their April 14, 2004, July 28, 2004, September 22, 2004, November 3, 2004, January 12, 2005, February 9, 2005, February 23, 2005, March 9, 2005, April 13, 2005, September 7, 2005 and September 21, 2005 meetings; and

WHEREAS, the Planning Board conducted a site walk on May 15, 2004 and October 2, 2004; and

WHEREAS, on February 23, 2005, March 9, 2005 and April 27, 2005, Public Hearings were held at the Town House and all those wishing to be heard were given the opportunity to be heard; and

WHEREAS, the Planning Board at their meeting of April 27, 2005 closed the Public Hearing; and

WHEREAS, in response to the Planning Board and staff concerns, the applicant's engineer provided a drawing entitled "Reduced House Alternative" prepared by Ralph G. Mastromonaco, P. E., P.C. dated March 4, 2005 and a revised drawing entitled, "Road Improvement Plan", dated June 9, 1999, last revised June 27, 2005; and

WHEREAS, the revisions to the original plan include reducing the size of the house footprint from 4,230 sf to 3,505 sf, the driveway surface will be a pervious surface and will not add to impervious surfaces and the limit of disturbance around the house will become the boundary of a conservation easement, and the visual impacts will be treated by the planting of large trees along the retaining wall; and

WHEREAS, sixty four (64) trees will have to be removed for the construction of the single family home and forty-four (44) trees for the construction of Amawalk Point Road; and

WHEREAS, the Planning Board has considered all written and verbal comments made during the Public Hearing process; and considered the correspondence submitted in response to staff and public questions and comments, including but not limited to the view shed impacts from the public places, impacts relating to the removal of trees and the impacts from changes in contours necessary to construct Amawalk Point Road, the house and septic system and the potential impacts to the Amawalk Reservoir and its Critical Environmental Area (CEA); and

WHEREAS, the Planning Board received a memorandum from the Town Planner dated October 27, 2004 and concluded that the action is a Type II Action under SEQR; and

NOW, THEREFORE BE IT RESOLVED, pursuant to 6NYC RR Part 617 of the implementing regulations pertaining to Article 8 (SEQR) of the Environmental Conservation Law and Chapter 92 of the Town of Somers Code, the Planning Board hereby determines that the proposed activity is a **Type II Action**, and therefore, no further review in accordance with SEQR was necessary; and

RESOLVED, in accordance with Chapter 148 of the Steep Slopes Protection Ordinance, the Planning Board finds that the protection of the steep slopes has been adequately addressed and that the proposed work will not significantly alter, affect or endanger the steep slopes; and

RESOLVED, in accordance with Chapter 156 of the Tree Preservation Ordinance, the Planning Board finds that the protection of the Tree Preservation Ordinance has been adequately addressed and that the proposed work will not significantly alter, affect or endanger the health, safety and general welfare of the Town and the proposed tree removal is consistent with the purpose and findings of article 156-1 of the chapter; and

RESOLVED, that the Planning Board approves the issuance of two (2) Steep Slope and two (2) Tree Preservation Permits to Ann and Thomas Calandrucci for the activity shown on the drawing entitled, "Road Improvement Plan", dated June 9, 1999, revised June 27, 2005, and the Visual Analysis by Tim Miller Associates, dated May 26, 2005 after demonstration of compliance with the following conditions:

1. That the applicant submit a copy of the Stormwater Pollution Prevention Plan for the Construction of the Amawalk Point Road and for the construction of the house on lot #3, including a copy of the New York State DEC General Permit for review and approval.

2. That the applicant submit the engineer's Stormwater Quality and Detention Basin System Design Report for review and approval by the Town Engineer.

3. That the New York City DEP provide a review letter of the final plans to confirm their no jurisdiction as previously stated by letter dated September 7, 2005.

4. That the disturbance limit area calculation be certified and that the disturbance limit line be revised to include all proposed disturbed areas.

5. That the applicant submit a private road maintenance agreement with provisions for "all parties" having rights of egress and ingress to execute same, for review and approval by the Town Engineer. Upon receiving the approval of the document the owners of lots 1, 2, 3 and 6 shall execute the document and the document filed in the appropriate County Clerk's office. The owners of lots 4, 5 and 9 will be required to execute the document as a condition of obtaining the necessary Planning Board

approvals to extend the Amawalk Point Road at there own schedule and purpose; and

6. That the applicant submit a private stormwater quality and detention system maintenance agreement with provisions for all parties that are tributary to said system to partake in the maintenance of same, for review and approval by the Town Engineer. Upon receiving the approval of the document the owners of lots 1, 2, 3 and 6 shall execute the document and the document filed in the appropriate County Clerk's office. The owners of lots 4, 5 and 9 will be required to execute the document as a condition of obtaining the necessary Planning Board approvals to extend the Amawalk Point Road at there own schedule and purpose; and

7. That the applicant shall submit the engineer's estimate of the construction costs to build the Amawalk Point Road and all appurtenances. The second estimate shall be submitted for the site work cost to support the lot #3 house improvements.

8. Provide a copy of the Westchester County Department of Health approval for the well and septic system.

9. Provide a copy of the NYSDOT approval for the construction of Amawalk Point Road, including the approved drawings.

10. Provide a note on the drawing that all utilities shall be installed underground.

11. Provide a copy of all applicable easements such as grading and drainage systems.

12. That the applicant submit and record an approved conservation easement document encumbering the areas outside the limit of disturbance area shown on the approved plan and shall be noted and incorporated in the applicant's deed to be filed. The conservation easement documents must be submitted to the Town Engineer for review and approval.

13. That the proposed driveway be constructed of a pervious material and detailed on the plan.

14. Provide and record a deed restriction that the driveway shall not be improved with impervious material, with the exception of the first 20 feet off the road.

15. That the applicant submit an estimate to maintain the retaining walls around the residence for review and approval by the Town Engineer.

16. A performance bond /security shall be posted to guarantee the on-going maintenance to the retaining wall around the proposed residence on lot #3 is

conducted as necessary. Said security shall be in an amount recommended by the Town Engineer and shall be approved by the Town Board.

17. A performance bond/security shall be posted to cover the cost of soil erosion and sedimentation control measures on the site during the course of construction on lot #3. Said security shall be in an amount recommended by the Town Engineer and shall be approved by the Town Board.

18. A performance bond/security shall be posted to cover the cost of soil erosion and sedimentation control measures on the site during the course of construction of Amawalk Point Road. Said security shall be in an amount recommended by the Town Engineer and approved by the Town Board.

19. An engineering inspection fee shall be paid by check to the Town of Somers in accordance with the Fee Schedule adopted by the Town Board; the amount of such fee shall be set after submission by the Applicant of estimated costs for required site work improvements on lot #3, as identified by the Town Engineer, and upon recommendation of the Town Engineer.

20. An engineering inspection fee shall be paid by check to the Town of Somers in accordance with the Fee Schedule adopted by the Town Board; the amount of such fee shall be set after submission by the Applicant of estimated costs for required site work improvements to Amawalk Point Road, as identified by the Town Engineer, and upon recommendation of the Town Engineer.

21. That Amawalk Point Road improvement plans be revised to reflect a design generally as described in the Town Engineer's memorandum dated April 7, 2005.

22. Revise the road design so that all retaining walls within the ROW are eliminated.

23. Correct the road section detail. Provide a minimum four-foot shoulder and then the proposed swale may begin. Post all dimensions and provide all construction details.

24. The applicant shall post a satisfactory performance bond in the amount determined by the Town Engineer for the cost of site improvements to Amawalk Point Road which shall be subject to the approval of the Town Board.

25. the environmental permits noted herein shall be issued after satisfying these conditions and issued in the following order: The permits to prepare lot #3 for the proposed house improvements will not be issued until after the construction of Amawalk Point Road is completed and an As Built drawing of the road

improvements showing substantial conformance to the approved plan is submitted to this office.

26. The improvement plans for the house improvements shall be revised as follows:

    a. Provide a note that states the Item IV driveway surface shall remain as Item IV, the white mix, not brown.

    b. Provide a retaining wall detail with railing.

    c. Provide for the interception of surface water at the driveway low point and convey to a drywell or rain garden feature.

    d. Provide details of the drywell system with inverts and rim elevations for access. Roof water may be directed to rain gardens to allow for filtering prior to connections to the drywell system. Show entire systems.

    e. The first 20 feet of the driveway must be paved. Show the pavement limit line on the drawing.

    f. Relocate the proposed swale along the easterly property line to connect to existing contours at the drip line of the property line trees.

    g. The proposed landscaping screening must be replaced with deer tolerant species.

    h. Add the following note on the improvement plan: No building permit shall be issued for lot #3 until after the Amawalk Point Road improvements have been completed for assuring adequate legal rights necessary to perform any of the improvements contemplated by this resolution.

This conditional authorization for issuance of a Steep Slope Permit shall expire if compliance with the above conditions is not demonstrated prior to September 21, 2006, unless an extension of such time period is requested of and granted by the Planning Board prior to said date.

BE IT FURTHER RESOLVED, that upon compliance with the above, the Steep Slope and Tree Preservation Permits and waiver of the Road Specifications can be issued with the following conditions:

1. Erosion control measures, as approved by the Town Engineer, shall be installed prior to the start of work and maintained throughout the construction period.

File

Split Tom Calandrucci 7/20/16

Town of Somers
County of Westchester
State of New York

Section: 36.12
Block: 2
Lot(s): 3

CONSERVATION EASEMENT & RESTRICTIVE COVENANT

THIS CONSERVATION EASMENT AND RESTRICTIVE COVENANT (the "Agreement") made the 23 day of October, 2007, between ANN and THOMAS CALANDRUCCI, residing at 470 Westlake Drive, Valhalla, New York 10595, hereinafter called the Grantor, and the TOWN OF SOMERS, a municipal corporation of the State of New York with offices at 335 Route 202, Somers, New York 10589, hereinafter called the Grantee.

WHEREAS, Grantor has obtained conditional approval from the Town of Somers Planning Board, by Resolution #2005-23, dated October 20, 2005, for a Steep Slope Permit, Tree Preservation Permit, and Waiver of Road Specifications in connection with the construction of a single-family residence on certain real property situate, lying and being in the Town of Somers, County of Westchester, State of New York, located on and along Amawalk Point Road, known and designated on the Town Tax Map as Section 36.12, Block 2, Lot 3 (the "Subject Property") and related improvements to the adjoining Amawalk Point Road (the "Conditional Approval"); and

WHEREAS, the Conditional Approval provides for, among other things, the disturbance of steep slopes on the Subject Property and Amawalk Point Road, the removal of trees on the Subject Property and Amawalk Point Road, and the construction and improvement of Amawalk Point Road, as shown on a plan entitled Road & Lot Improvement Plan, prepared by Ralph G. Mastromonaco, P.E., P.C., last revised June 13, 2007 (Sheet 1 of 3), a plan entitled Road & Lot Profiles and Details, prepared by Ralph G. Mastromonaco, P.E., P.C., last revised April 13, 2007 (Sheet 2 of 3); and a plan entitled Maintenance & Protection of Traffic Plan, last revised June 13, 2007 (Sheet 3 of 3) (collectively, the "Road Improvement Plan," a copy of which is on file with the Town of Somers); and

WHEREAS, the Conditional Approval requires the Grantor to record against the Subject Property a Conservation Easement encumbering the areas outside the limit of disturbance as shown on the Road Improvement Plan; and

WHEREAS, the Grantor represents and warrants that, at the time of the grant of this Conservation Easement, the Grantor is the owner of real property described in Schedule "A", annexed hereto and made a part hereof; and

WHEREAS, the Conservation Easement Area described in Schedule "A" is shown on a Survey prepared by Donnelly Land Surveying, P.C., last revised July 19, 2006 (the "Survey"), a copy of which is annexed hereto as Schedule "B" and is also on file with the Town of Somers; and

WHEREAS, the Grantor is voluntarily granting this Conservation Easement to the Grantee for a purpose or purposes stated in Article 49, Title 3 of the New York State Environmental Conservation Law; and

WHEREAS, the Conditional Approval also requires the Grantor to record against the Subject Property a Restrictive Covenant such that the driveway on the Subject Property shall not be improved with impervious material, provided that the first 20 feet of the driveway off of Annawalk Point Road may be improved with impervious material.

NOW, THEREFORE, in consideration of the sum of One ($1.00) Dollar paid by the Grantee to the Grantor, receipt of which is hereby acknowledged, the Grantor does hereby grant to the Grantee a perpetual Conservation Easement, pursuant to Title 3 of Article 49 of the New York State Environmental Conservation law, in, on, over, under, across and through the real property of the Grantor, as more particularly described in Schedule "A", hereinafter called the "Conservation Easement Area".

1. **Prohibitions and Restrictions**. No house, building, fence, wall, hedge, roadway or structure shall be erected, maintained or begun within the Conservation Easement Area; nor shall any change or other disturbance of the natural conditions be permitted within the Conservation Easement Area, including, but not limited to, excavating, filling, dredging, removal of top soil, change in topography, removing existing trees (except for removal or cutting of trees for safety reasons only), or the destruction, dumping in, or alteration of any wetland or watercourse.

2. **Extinguishment of Development Rights**. Except as specifically reserved in this Conservation Easement, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Conservation Easement Area are terminated and extinguished.

3. **Ownership Rights Reserved**. Subject to the provisions and restrictions of this Conservation Easement, Grantor reserves on behalf of the Grantor, the Grantor's heirs, successors and assigns, ownership rights in the Conservation Easement Area, including, without limitation, the right of exclusive use possession and enjoyment of the Conservation Easement Area, the right to sell, transfer, lease, mortgage or otherwise encumber the Conservation Easement Area, and the right to exclude persons from the Conservation Easement Area. The owner of the property subject to this Conservation Easement shall be and remain responsible to pay all taxes and assessments assessed against such property or portion thereof owned by such owner.

4. **Maintenance**. The Grantee shall have no obligation or responsibility to enter upon or maintain the Conservation Easement Area. The Grantee shall, however, have the right to enforce any of the terms of this Conservation Easement and may, upon reasonable notice,

enter and inspect the Conservation Easement Area, to assure compliance with the terms of this Conservation Easement, and to assess against the Grantor, and Grantor's heirs, successors and assigns, all costs incurred by the Grantee for such purposes, to the extent such person or party caused the Grantee to incur such costs. Nothing contained herein shall be construed as a grant to the general public of any right to enter upon, enforce, or use any part of the Conservation Easement Area.

5. **Enforcement.** This Conservation Easement shall inure to the benefit of and shall be enforceable by Grantee, its successors and assigns. In its discretion, the Grantee may seek any and all available legal and equitable remedies to enforce the provisions of this Conservation Easement. In any action seeking injunctive relief, a violation or threatened violation of any provision of this Conservation Easement shall be deemed to result in irreparable injury to the Grantee. If the Grantee substantially prevails in a legal action or proceeding seeking the enforcement of this Conservation Easement, the Grantee shall be entitled to recover its expenses, including reasonable attorney fees, incurred in enforcing this Conservation Easement and in curing any violation thereof.

6. **Assignment or Transfer of Conservation Easement.** This Conservation Easement may be assigned by Grantee, provided, however, that an assignment may be made only to a private not-for-profit organization or public agency qualified to hold a Conservation Easement under Article 49, Title 3 of the New York Environmental Conservation Law. The Grantee shall give thirty (30) days prior written notice to the Grantor of any such intended assignment.

7. **Condemnation.** If the property comprising the Conservation Easement Area or any part thereof shall be taken by condemnation, this Conservation Easement shall terminate automatically as to the property taken only, but the Conservation Easement shall remain in full force and effect for that portion of the property not so taken.

8. **Driveway Improvement.** The driveway on the Subject Property shall not be improved with impervious material, provided that the first 20 feet of the driveway off of Amawalk Point Road may be improved with impervious material, as shown on the Road Improvement Plan. For clarification purposes, the driveway referred to in this provision is not located within the Conservation Easement Area.

9. **Agreement to Run with the Land.** This Agreement shall be a burden upon and shall run with the land in perpetuity and shall be binding upon the Grantor and the Grantor's heirs, legal representatives, successors, and assigns.

10. **No Waiver.** Failure to enforce any restriction or covenant of this Agreement shall not be deemed a waiver of the right to do so thereafter as to the same violation or breach or as to a violation or breach occurring prior or subsequent thereto.

11. **Amendment.** This Agreement may be amended or extinguished in a recorded instrument (a) upon the written consent of both Grantee and Grantor, their heirs, successors and

assigns, (b) as provided in paragraph 10 in case of condemnation, or (c) as provided in Title 3 of Article 49 of the New York State Environmental Conservation Law.

12. **Severability.** The invalidation of any provision of this Agreement by a judgment, order, or decree of a Court, or by any statute or otherwise, shall not affect any other provision of this Conservation Easement which shall remain in full force and effect.

13. **Governing Law.** The interpretation of this Agreement shall be governed by the Laws of the State of New York.

IN WITNESS WHEREOF, the Grantor and Grantee have executed this Agreement the day, month and year first above written.

Ann Calandrucci

Ann Calandrucci, Grantor

Thomas Calandrucci, Grantor

TOWN OF SOMERS (Grantee)

By: Mary Beth Murphy

Mary Beth Murphy, Town Supervisor

STATE OF NEW YORK, COUNTY OF WESTCHESTER ss:

On the 17th day of Oct., 2007, before me, the undersigned, a notary public in and for said state, personally appeared

ANN CALANDRUCCI

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Susan Musumeci
Notary Public

SUSAN MUSUMECI
Notary Public, State of New York
No. 01MU6072775
Qualified in Dutchess County
Commission Expires April 15, 2010

STATE OF NEW YORK, COUNTY OF WESTCHESTER ss:

On the 17th day of Oct., 2007, before me, the undersigned, a notary public in and for said state, personally appeared

THOMAS CALANDRUCCI

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Susan Musumeci
Notary Public

SUSAN MUSUMECI
Notary Public, State of New York
No. 01MU6072775
Qualified in Dutchess County
Commission Expires April 15, 2010

STATE OF NEW YORK, COUNTY OF WESTCHESTER ss:

On the day of Sept, 2007, before me, the undersigned, a notary public in and for said state, personally appeared

MARY BETH MURPHY

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

PATRICIA KALBA
NOTARY PUBLIC, STATE OF NEW YORK
No. 01KA6060159
QUALIFIED IN WESTCHESTER COUNTY
MY COMMISSION EXPIRES SEPT. 9, 20 11

RECORD AND RETURN MAIL TO:

ROLAND A. BARONI, JR., ESQ.
Stephens Baroni Reilly & Lewis LLP
175 Main Street
White Plains, New York 10601
(914) 761-0300

IMOA - Hidden Meadows

INTER-MUNICIPAL/DEVELOPER AGREEMENT

THIS AGREEMENT made this day of, 2015, by and among:

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 ("County"), and

THE TOWN OF SOMERS, a municipal corporation of the State of New York, having an office and place of business at Somers Town House, 335 Route 202 Somers, New York 10589, (the "Municipality" and/or the "Town"), and

KEARNEY REAL ESTATE DEVELOPMENT GROUP, INC., and/or its designee, organized and existing under the laws of the State of New York (the "Developer")

WHEREAS, the County executed a stipulation and order of settlement and dismissal in connection with United States of America *ex rel.* Anti-Discrimination Center of Metro New York, Inc., v. Westchester County, New York, No. 06 Civ. 2860 (DLC) (the "Settlement Agreement"; and

WHEREAS, pursuant to the Settlement Agreement the County is required to develop seven hundred fifty (750) affordable AFFH units in eligible municipalities; and

WHEREAS, pursuant to the Settlement Agreement the Town is an eligible municipality; and

WHEREAS, in an effort to encourage the development of fair and affordable housing in Westchester County, the County has established a Housing Implementation Fund ("HIF") to provide funds to assist in the construction of water facilities, sewer facilities, road improvements, and other infrastructure improvements necessary for the development of fair and affordable housing in Westchester County; and

WHEREAS, the County desires to enter into agreements with municipalities and developers pursuant to which the municipalities will construct public improvements in support of the development of affordable housing; and

WHEREAS, in furtherance of the foregoing, the County desires to enter into Intermunicipal and Intermunicipal-Developer Agreements with municipalities and developers in the County in support of affordable AFFH developments; and

WHEREAS, the Developer has agreed to construct certain affordable AFFH housing on the property more particularly described on Schedule "A," attached hereto and made a part hereof (the "Affordable Housing Property"); and

WHEREAS, the Developer is the owner of the Affordable Housing Property and has agreed to construct eight (8) affordable AFFH ownership units and eight (8) affordable AFFH rental units (the "Development") on the Affordable Housing Property; and

WHEREAS, WHEREAS, the Municipality and the Developer desire that the County shall fund the Infrastructure Improvements (defined below) which support the Development and, in consideration thereof, acknowledge that the Affordable Housing Property shall be subject to that certain declaration of restrictive covenants (the "Declaration of Restrictive Covenants") dated ___ ___ ___, which has been recorded by the Developer against the Affordable Housing Property in the Office of the Westchester County Clerk under control No. _____ and the Affordability Restrictions as defined in Schedule "B" thereto ("Schedule B") all of which is incorporated herein by reference; and

WHEREAS, following construction of the Affordable Units (as defined in Schedule "B"), the sale and re-sale and rental and re-rental of the Units will adhere to the provisions set forth in Schedule "B," including but not limited to the Affordability Requirements for the Period of Affordability set forth therein; and

The Municipality shall implement the construction of the Infrastructure Improvements on the Infrastructure Improvements Property in accordance with the provisions as set forth in this Agreement, including but not limited to, Schedule "D," attached hereto and made a part hereof. The Infrastructure Improvements shall be constructed in accordance with the Plans (as defined in Schedule "D"). Modification of the Plans or change orders, if any, shall require the prior written approval of the Commissioner of the County Department of Planning or his duly authorized designee (the "Commissioner").

The Developer shall adhere to all provisions set forth in Schedule "B", including but not limited to meeting the Affordability Requirements for the Affordable AFFH Units in the Development until the expiration of the Period of Affordability. The Municipality and the Developer shall comply with Chapter 298 of the Westchester County Administrative Code as applicable to the Affordable AFFH Units ("Chapter 298").

It is understood and agreed that the Municipality represents that the construction of the Infrastructure Improvements to be performed hereunder have been or will be (within one hundred twenty (120) days of the date hereof) awarded by means of public competitive bidding pursuant to section 103 of the General Municipal Law. In no event shall the retention of a contractor to perform work on the Infrastructure Improvements relieve or otherwise discharge the Municipality or Developer, from their respective obligations hereunder or create a third party beneficiary relationship between the County and any such contractors and the parties hereto expressly disclaim any intention to create such a relationship.

The County shall not advance any HIF Funds (as defined in Section "4" hereof) to the Municipality and work will not be required to commence on the Infrastructure Improvements until:

(i) evidence has been provided to the County that the Developer owns the Affordable Housing Property (shown on Schedule "A") free of liens, encumbrances, easements and agreements unless such liens, encumbrances, easements and agreements, if any, shall be subordinate to the Declaration of Restrictive Covenants in a manner acceptable to the County and;

2. The Town Engineer shall be informed (914-277-5365) at least 48 hours prior to the commencement of the work.

3. Work shall be undertaken consistent with Town of Somers regulations to the satisfaction of the Town Engineer.

4. Amawalk Point Road must be completed prior to the issuance of a building permit for the work on lot #3.

BE IT FURTHER RESOLVED, that the Steep Slope and Tree Preservation Permits shall be valid for a period of one year from the date of issuance of the permits.

This resolution shall have an effective date of September 21, 2005.

BY ORDER OF THE PLANNING BOARD
TOWN OF SOMERS

Fedora C. DeLucia, Chairman

Dated: October 20, 2005

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WHEREAS, the Infrastructure Improvements shall be constructed on the Town's right of way and on the Affordable Housing Property (the Infrastructure Improvements Property"); and

WHEREAS, it is anticipated that the State of New York Department of Transportation shall grant the parties a work permit to construct certain of the Infrastructure Improvements on Route 6; and

WHEREAS, the Infrastructure Improvements include but are not limited to, paving, installation of stormwater basins, a portion of the expansion of the public water and sewer connections, onsite stormwater management and other related work, all as more fully set forth in Schedule "D" annexed hereto and forming a part hereof; and

WHEREAS, the County proposes to fund the cost of the construction of the Infrastructure Improvements and will use the proceeds of tax exempt general obligation bonds issued by the County for such funding (as defined in Section 5 below); and

WHEREAS, the Municipality desires to implement the construction of the Infrastructure Improvements; and

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

1. **RECITALS:**

The above recitals are hereby incorporated by reference into the body of this Inter-Municipal Developer Agreement (the "Agreement" and or "IMDA").

2. **PERFORMANCE OF WORK:**

All of the provisions of this Section "2" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability as defined in Schedule "B".

3. LIENS:

Except as provided in the title policy, the Municipality and the Developer will not enter into any mortgage or other financing documents that place a lien on the Infrastructure Improvements, which will be owned by the County, or the Infrastructure Improvements Property, which conflict with or diminish the terms of the Restrictive Covenants recorded against the Affordable Housing Property. In the event any lien is placed on the Infrastructure Improvements or the Infrastructure Improvements Property by a contractor or subcontractor, the Municipality or the Developer that engaged such contractor or subcontractor shall take immediate action to discharge such liens.

(ii) the Municipality has awarded the bids and contracted for construction of the Infrastructure Improvements, provided, however, that in the event the lowest acceptable bid exceeds the amount of the County HIF Funds or the actual cost of completion of the Infrastructure Improvements, the Developer shall contribute said excess;

(iii) the Municipality has received either a; (a.) performance and payment bond, including without limitation materials and labor, covering one hundred percent (100%) of the work to be performed in connection with the Infrastructure Improvements, in form and content and issued by a surety reasonably satisfactory to the Municipality; or (b.); an instrument of credit or guarantee which is acceptable to the City and the County;

(iv) the Declaration of Restrictive Covenants placed on the Affordable Housing Property has been executed and has been submitted for recording, as more fully set forth below;

(v) the Developer has obtained a firm, unconditional commitment for construction financing for the Development;

(vi) indenture from the Developer to the Municipality and to the County granting an easement in the Affordable Housing Property for the construction of any infrastructure improvements to,constructed thereon has been executed in substantially the form attached hereto and forming a part hereof as more particularly described in Schedule "G" (the "Required Easement") and such Required Easement will be submitted for recording, as more fully set forth below; DE

(vii) the Municipality has verified that the Infrastructure Improvements not constructed on the Affordable Housing Property will be constructed in the public right-of-way or pursuant to a work permit to be issued the State of New York Department of Transportation to construct certain of the Infrastructure Improvements on Route 6;

(viii) the Developer has obtained any approvals necessary in connection herewith, including but not limited to receipt of the site plan and State Environmental Quality Review Act ("SEQRA") approvals by the Municipality's governing body; and

(ix) the Developer has obtained any and all approvals necessary in connection herewith, including without limitation, from its members.

The requirements contained in clauses (i), (iv), (v), (vi), (vii), (viii) and (ix) above must be satisfied prior to or concurrent with execution of this Agreement. The requirements contained in clauses (ii) and (iii) above must be satisfied within 120 days following execution of this Agreement.

Time is of the Essence

County for audit and inspection. The County shall not be restricted from withholding payment for cause found in the course of such audit or because of failure of the Municipality or the Developer to cooperate with such audit. The County shall, in addition, have the right to audit such books and records subsequent to payment during the period that such books and records are required to be maintained under any applicable law.

The Municipality will furnish the County, whenever requested to do so, satisfactory evidence showing that all monies already paid hereunder have been applied by the Municipality toward the costs of the Infrastructure Improvements. Until such evidence, which shall consist of an affidavit certified by the respective contractor(s) acknowledging receipt of payment from the Municipality, is produced, at the option of the County, no further payments need be made by the County hereunder.

Payments hereunder to the Municipality by the County will operate to release the County from any and all obligations or liabilities to the Municipality, the Developer, and their respective agent(s), contractor(s) or sub-contractor(s) in connection herewith. Notwithstanding the foregoing, the County expressly disclaims the existence of any third party beneficiary relationship between the County and any such parties.

Whenever requested to do so, the Municipality shall furnish the County satisfactory evidence showing that all monies theretofore advanced here have been paid for and applied toward the Infrastructure Improvements by the Municipality, the Developer and/or its contractors or third parties. Until such evidence, which shall consist of an affidavit certified by the respective contractor(s) acknowledging receipt of payment from the Municipality is produced, at the option of the County, no additional or further advances need be made by the County hereunder.

Notwithstanding anything herein contained to the contrary, should the Infrastructure Improvements and the Affordable AFFH Units in the Development fail to be fully constructed within three (3) years from execution of this Agreement then the County shall have the right, at its option, to require repayment from: (1) the Municipality of all County FAH Funds paid to the

How do we enforce this? Repayment from Developer?

4. PAYMENT:

The County's sole obligation under this IMDA is to pay the Municipality an amount not to exceed ONE MILLION SIX HUNDRED THOUSAND ($1,600,000) DOLLARS (the "County HIF Funds") to the Municipality to fund the construction of the Infrastructure Improvements necessary for the Development, pursuant to the terms hereof. The Developer expressly acknowledges and agrees that its only recourse will be against the Municipality. The County HIF Funds will be paid with the proceeds of the Bonds in accordance with the payment provisions of Schedule "D". The County will make such payment to the Municipality only after submission by the Municipality of all requested documentation concerning construction of the Infrastructure Improvements and after audit and approval by the County for expenses properly incurred in the performance of this Agreement. The County will not be liable for any costs or expenses in excess of the HIF Funds incurred in connection herewith. The Municipality will promptly pay for work performed. In the event the cost of constructing the Infrastructure Improvements exceeds the amount of the HIF Funds, the Developer will pay said excess.

Notwithstanding the foregoing it is acknowledged and agreed that the County-provided project management services as specified in Schedule "D" (the "Project Manager") will be paid from the HIF Funds. The Project Manager shall report directly to the Municipality's engineer and County staff on all services performed relating to the construction of the Infrastructure Improvements. Any costs incurred by the County in connection with such Project Manager shall be deducted from the County HIF Funds otherwise payable to the Municipality.

County HIF Funds shall be expended solely and exclusively for the purchase of materials and performance of labor used in the construction of the Infrastructure Improvements, including the retention of a Project Manager, in accordance with this Agreement.

Prior to the making of any payments hereunder, the County, may, at its option, audit such books and records of the Municipality and Developer as are reasonably pertinent to this Agreement to substantiate the basis for payment. The Municipality and Developer will, and will require any contractor(s) or sub-contractor(s) to make their books and records available to the

Municipality under this Agreement; and or (2) the Developer of all County HIF Funds, if any, received in accordance herewith.The County's right of repayment from the Municipality and or Developer of County HIF Funds paid hereunder shall terminate upon the completion of the construction of the Infrastructure Improvements and the issuance of a temporary certificate of occupancy for the Development (as more fully described in Schedule "D").

All of the terms of the Section "4" shall survive the expiration or other termination of this Agreement.

5. TAX RESTRICTIONS:

A. The Bonds. The Municipality and the Developer acknowledge and understand that the funds available for the Infrastructure Improvements hereunder are expected to be made available from tax exempt general obligation bonds issued by the County (the "Bonds"), which have been, or shall be, issued to fund construction of the Infrastructure Improvements in accordance with the provisions of this Agreement. The Municipality and Developer further acknowledge and understand that in connection with the issuance of the Bonds, the Commissioner of Finance of the County of Westchester has or will execute an "Arbitrage and Use of Proceeds Certificate," in compliance with the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"). The Municipality and the Developer agree that each will do all acts and things, or refrain from taking action, as necessary in order to assure that interest paid on the Bonds shall not be included in gross income of the owners of the Bonds for the purpose of Federal income taxation.

B. Commencement of Construction. The Municipality and Developer expect that the construction of the Infrastructure Improvements will commence as set forth in Schedule "D" and that the County HIF Funds made available hereunder will be expended for costs of the Infrastructure Improvements in accordance with the budget contained in Schedule "D" and the construction of the Infrastructure Improvements will proceed in accordance with said Schedule.

The Municipality and Developer agree to notify the County in the event of changes in the expected schedule for completion of the Infrastructure Improvements.

C. Failure to Complete. The Municipality and Developer agree that should the Infrastructure Improvements fail to be completed in accordance with Schedule "D," which completion date shall be extended for unavoidable delays, *force majeure* and other causes beyond the control of the Municipality or the Developer, the County, without limiting any other right or remedy to which it may be entitled, shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the Municipality and Developer and/or to deduct from any remaining payments due hereunder an amount equal to the penalties required by the Code for failure to expend the bond proceeds allocable to the Infrastructure Improvements in a timely manner.

D. Termination. Should the County terminate this Agreement pursuant to the terms hereof or should the remaining payments due the Municipality be insufficient to cover the amount of the aforementioned penalty, the Municipality and the Developer, to the extent any funds have been disbursed to Developer, shall be obligated to immediately pay the County the full amount of any such penalty though the Developer agrees to indemnify the Municipality for any such penalties that are not due to the fault of the Municipality.

E. Extensions. Notwithstanding anything to the contrary contained in this Agreement, the Municipality and Developer shall use best efforts and good faith to meet any and all time periods provided for in this Agreement and in any schedule annexed hereto in connection with any obligation hereunder. If, despite the use of best efforts and good faith, the Municipality and the Developer are unable to meet any stated time period, then the Municipality or Developer can request an extension of such time period and all subsequent time periods affected thereby, subject to the consent of the County which consent shall not be unreasonably withheld. Any such extension, if granted, shall not constitute waiver by the County of any terms or requirements herein.

F. No Loan. The parties hereto acknowledge and agree that the HIF Funds do not constitute a loan. The HIF Funds are to be paid to the Municipality in consideration for causing construction of the Infrastructure Improvements in support of the fair and affordable Development.

All of the provisions of this Section "5" shall survive the expiration or other termination of this Agreement.

6. OWNERSHIP OF INFRASTRUCTURE IMPROVEMENTS:

The Municipality and the Developer acknowledge and agree that the Infrastructure Improvements shall be owned by the County for so long as the Bonds are outstanding. The Municipality and the Developer agree to execute or cause to be executed any and all such documents as are necessary and appropriate to effectuate County ownership. Upon maturity or redemption of the Bonds, the County's ownership interest in the Infrastructure Improvements will automatically terminate. Upon request the County will provide notification of such maturity or redemption in recordable form.

Notwithstanding the foregoing the Municipality and the Developer have the right to utilize the Infrastructure Improvements in such manner as they may deem necessary or desirable in support of the Development, subject to the Declaration of Restrictive Covenants.

All of the provisions of this Section "5" shall survive the expiration or other termination of this Agreement until and for so long as the Bonds are outstanding provided that the County has paid the HIF Funds to the Municipality.

7. **MAINTENANCE AND REPAIRS:**

The Infrastructure Improvements located in the Town's right of way or constructed pursuant to a State of New York work permit shall be kept in good order and repair by the Municipality at the Municipality's sole cost and expense, and the Municipality shall make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen, structural or otherwise, which may be necessary or required so that at all times the Infrastructure Improvements shall be in thorough good order, condition and repair.

The Infrastructure Improvements located in the Affordable Housing Property shall be kept in good order and repair by the Developer at the Developer's sole cost and expense, and the Developer shall make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen, structural or otherwise, that may be necessary or required so that at all times the Infrastructure Improvements shall be in thorough good order, condition and repair.

All of the provisions of this Section "7" will survive the expiration or other termination of this Agreement for so long as the Bonds are outstanding provided that the County has paid the HIF Funds to the Municipality.

8. **REPORTS:**

To the extent that the parties have performed work hereunder, the Municipality and/or Developer shall furnish the County with progress reports as may be requested detailing the progress of the construction of the Infrastructure Improvements. The Municipality and/or Developer shall prepare a final report describing the work performed by the Municipality and Developer in implementing the construction of the Infrastructure Improvements together with such supporting information and documentation in such form and at such times as the County may reasonably require.

9. **MAINTENANCE OF RECORDS:**

The parties will, each at their sole cost and expense, keep, maintain, and preserve at their respective principal offices throughout the term of this Agreement, full and detailed books, accounts, and records pertaining to its performance pursuant to this Agreement. Such books, accounts and records will include, without limitation, all bills, invoices, payrolls and other data evidencing, or in any material way relating to, the direct and indirect costs and expenses incurred in connection herewith. The County will have the right to inspect and audit, at reasonable times and upon reasonable notice, any and all such books, accounts and records at the office or offices where they are then being kept, maintained and preserved.

All of the provisions of this Section "9" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability provided that the County has paid the HOP Funds to the Municipality.

10. COUNTY'S RIGHT TO WITHHOLD PAYMENTS:

If at any time the Municipality or the Developer neglect or fail to perform properly any of their respective obligations under this Agreement, including without limitation, failure to complete the Development or the Infrastructure Improvements in accordance herewith, as more fully set forth in Schedule "B" hereto, then the County, in addition to any other rights hereunder, including without limitation to terminate the Agreement, will have the right, in its sole discretion subject to the Cure Period (defined in Section 22), to withhold, in whole or in part, any payments otherwise due or to become due to the Municipality hereunder until such neglect or failure will have been remedied to the satisfaction of the County.

11. REPRESENTATIONS, WARRANTIES AND GUARANTEES:

A. The Municipality expressly represents, warrants and guarantees to the County that:

(a) it is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of New York; the execution and performance of this Agreement by the Municipality has been duly authorized by its governing body; this Agreement, and any other documents required in connection herewith, including without limitation, the Required Easement to the County on the Reversion date, when so delivered, will constitute legal, valid and binding obligations of the Municipality enforceable against the Municipality in accordance with their

respective terms; and the Municipality will deliver to the County at the time of execution of this Agreement a resolution adopted by its governing body authorizing the execution of this Agreement, and any other documents required to be delivered by the Municipality, including without limitation the Required Easement;

(b) the person signing this Agreement on behalf of the Municipality has full authority to bind the Municipality to all of the terms and conditions of this Agreement;

(c) it is financially and technically qualified to perform its obligations hereunder, including construction of the Infrastructure Improvements;

(d) it has received no information or documentation indicating that the Developer is not otherwise financially capable of completing the Development;

(e) it is familiar and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(f) the design, supervision and workmanship furnished with respect to the construction of the Infrastructure Improvements will be in accordance with sound and currently accepted scientific standards and best engineering practices;

(g) it will use its best efforts to assure and shall require in any contract documents with its Contractor(s) that all materials, equipment and workmanship furnished by Contractor(s) of the Municipality in performance of the work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and best engineering practices;

(h) to the best of the Municipality's current knowledge and information the budget proposal attached in Schedule "D" lists the anticipated true and correct costs for the Infrastructure Improvements;

(i) the consummation of the transactions contemplated by this Agreement and the performance of the Municipality's obligations hereunder will not result in any breach of or constitute a default under other instruments or documents to which the Municipality is a party or by which it may be bound or affected; and

(j) construction of the Infrastructure Improvements is necessary to support the Project.

The Municipality expressly acknowledges that the County is materially relying on the above representations.

B. The Developer expressly represents, warrants and guarantees to the County and the Municipality that:

(a) It is duly organized, validly existing and in good standing under the laws of the State of New York. The Developer is duly qualified to do business and is in good standing in each jurisdiction where the conduct of its business requires it to be so qualified. The Developer

has the corporate power, authority and legal right to execute and perform this transaction and to execute this Agreement; the execution and performance of this Agreement by the Developer have been duly authorized by its members; this Agreement constitutes, and any other documents required to be delivered by the Developer, when so delivered will constitute, the legal, valid and binding obligations of the Developer enforceable against the Developer in accordance with their respective terms; the Developer has all requisite power and authority to enter into this Agreement; and the Developer will deliver to the County at the time of execution of this Agreement a resolution adopted by its members authorizing the execution of this Agreement, and any other documents required to be delivered by the Developer; and

(b) the person signing this Agreement on behalf of the Developer has full authority to bind the Developer to all of the terms and conditions of this Agreement pursuant to the authority granted by the Developer's governing board, as noted above; and

(c) The Developer is not on the low income housing debarred list with either the U.S. Department of Housing and Urban Development ("HUD") or the State of New York, and it is not in default under any contract with the County; and

(d) It is financially and technically qualified to perform its obligations hereunder including construction of the Development; and

(e) It is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement; and

(f) Consummation of the transactions contemplated by this Agreement and the performance of the Developer's obligations hereunder will not result in any breach of or constitute a default under other instruments or documents to which the Developer is a party or by which it may be bound or affected; and

(g) Construction of the Infrastructure Improvements is necessary to support the Development.

The Developer expressly acknowledges that the County is materially relying on the above representations.

12. INSURANCE; INDEMNIFICATION:

A. In addition to, and not in limitation of the insurance requirements contained in Schedule "E" entitled "Standard Insurance Provisions, Municipality," attached hereto and made a part hereof, the Municipality agrees:

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(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Municipality shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Municipality, the Developer, contractors or third parties under the direction or control of the Municipality or the Developer; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

B. In addition, Developer shall provide defense for and defend, indemnify and hold harmless the Municipality, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly under this Agreement as a result of any cause whatsoever other than the acts or omissions hereunder by the Municipality or contractors or third parties under the direction or control of the Municipality. Notwithstanding anything to the contrary, nothing herein shall relieve the Municipality of its obligation to indemnify and hold harmless the County pursuant to Section 12A, above; and

C. In addition to, and not in limitation of the County's insurance requirements contained in Schedule "E(ii)" entitled "Standard Insurance Provisions, Developer," attached hereto and made a part hereof, the Developer agrees:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Developer shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Developer or the Municipality, contractors or third parties under the direction or control of the Developer or Municipality; and

(b) to the extent arising directly or indirectly out of the acts or omissions hereunder by the Developer, contractors or third parties under the direction or control of the Developer to provide defense for and defend,

at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

13. ENVIRONMENTAL INDEMNIFICATION:

A. The Municipality represents and warrants and guarantees to the County as follows:

(1) The Municipality has no knowledge of, and has not received any notice of any condition at, on, under or related to the Infrastructure Improvements Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Infrastructure Improvements Property which may have a material effect on the value of the Infrastructure Improvements Property or subject the owner thereof to potential liabilities in accordance with the Environmental Requirements (as defined below); and

(2) The Municipality has no knowledge of, has and has not received any notice of any condition at, on, under, or related to the Infrastructure Improvements Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Infrastructure Improvements Property presently or potentially posing a significant hazard to human health or the environment; such conditions being defined as "Hazardous Materials" below; and

(3) Definitions. For the purposes of this Agreement and this Section "13", the following definitions will apply:

(a.) "Hazardous Materials" or "Hazardous Waste" will mean any substance:

(i) the presence of which requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy or common law; or

(ii) which is or becomes defined as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state or local statute, regulation, rule, or ordinance or amendments thereto including, without limitation, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC §9601 (14) 42 USC §9602, and any "hazardous waste" as defined in or listed under the United States Solid Waste Disposal Act, as amended, 42 USC §6901(5), 42 USC §6921; or

(iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States, the State of New York or any political subdivision thereof; or

(iv) the presence of which, on the Infrastructure Improvements Property, causes or threatens to cause a nuisance on the Infrastructure Improvements Property or to nearby properties, or poses or threatens to pose a hazard to the health and safety of persons on, about or nearby the Infrastructure Improvements Property; or

(v) the presence of which on nearby properties would constitute a trespass by the owner of the Infrastructure Improvements Property; or

(vi) which contains, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; or

(vii) which contains, without limitation, polychlorinated biphenyls (PCBs), asbestos, or urea formaldehyde foam insulation.

(b.) "Environmental Requirements" will mean all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all

government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, the State of New York and the political subdivisions thereof; and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment.

(c) The Municipality hereby acknowledges and agrees that it will defend and indemnify the County for any Environmental Damages (as defined below), whether or not disclosed in the Environmental Reports, arising out of or in any way connected with the Infrastructure Improvements Property. Environmental Damages will mean all claims, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any, whether or not such claim is ultimately defeated, and any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred as the result of the existence of "Hazardous Materials" or "Hazardous Waste" at, on, under or related to the Infrastructure Improvements Property (or ground or surface water associated therewith) or migrating or threatening to migrate to or from the Infrastructure Improvements Property, or the existence of a violation of Environmental Requirements pertaining to the Infrastructure Improvements Property, regardless of when the existence of such Hazardous Materials or "Hazardous Waste" or the violation of Environmental Requirements arose, including without limitation:

(i) damages for personal injury, death or injury to property or natural resources occurring on or off the Infrastructure Improvements Property, foreseeable or unforeseeable, including without limitation, lost profits, consequential damages, the cost of demolition or rebuilding of any improvements of real property, interest and penalties;

(ii) fees incurred for the service of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such "Hazardous Materials" or "Hazardous Waste" or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make the full use of the Infrastructure Improvements Property or any other property or otherwise expended in connection with such conditions;

(iii) liability to any third person or governmental agency to indemnify such person or agency for the costs expended in connection with the items referenced in subsection (ii) herein; and

(iv) diminution in the value of the Infrastructure Improvements Property and damages for loss of business from restriction on the use of the Infrastructure Improvements Property or any part thereof.

B. The Developer represents and warrants and guarantees to the County and the Municipality as follows

(1) The Developer has no knowledge of, and has not received any notice of any condition at, on under or related to the Infrastructure Improvements Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Infrastructure Improvements Property which may have a material effect on the value of the Infrastructure Improvements Property or subject the owner thereof to potential liabilities in accordance with the Environmental Requirements as defined herein; and

(2) The Developer has no knowledge, and has not received any notice of any Hazardous Materials on under or related to the Infrastructure Improvements Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Infrastructure Improvements Property which may have a material effect on the value of the Infrastructure Improvements Property or subject the owner thereof to potential liabilities; and

(3) The Developer hereby acknowledges and agrees that it will defend and indemnify the County for any Environmental Damages, arising out of or in any way connected with the Infrastructure Improvements Property. Environmental Damages shall mean all claims, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any, whether or not such claim is ultimately defeated, and of any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees.

All of the provisions of this Section "13" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability.

14. **ASSIGNMENT OF RIGHTS:**

Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the County is void. The Municipality shall not subcontract any part of the work to be performed hereunder without the written consent of the County, provided, however, that the foregoing shall not be deemed to apply to contracts entered into by the Municipality to implement construction of the Infrastructure Improvements. All subcontracts shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. All work performed by a subcontractor shall be deemed work performed by the Municipality.

The County's consent to the assignment of the responsibility for or delegation of the duty hereunder shall not release the Municipality or Developer from their respective obligations under this Agreement. The Municipality and Developer shall remain liable to the County for the performance of all respective obligations under this Agreement.

15. **ENTIRE AGREEMENT; AMENDMENT:**

This Agreement including without limitation all Schedules and attachments constitute the entire Agreement between the parties with respect to the funding of the Infrastructure Improvements and shall supersede all previous negotiations, commitments and writings. This Agreement shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

16. INDEPENDENT CONTRACTOR:

The status of each of the Municipality and the Developer under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Municipality, the subcontractors, and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of the County nor make any claim, demand or application for any right or privilege applicable to the County, including without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

17. COMPLIANCE WITH LAW:

Each of the Municipality and the Developer shall perform the work hereunder in good workmanlike manner and shall obtain each, at its sole cost and expense, all permits, approvals and consents necessary for the proper conduct of its activities in connection with this Agreement. In addition to, and not in limitation of the foregoing, the Municipality and the Developer shall comply at their sole cost and expense with all applicable federal, state and local laws, rules and regulations, ordinances and requirements affecting the conduct of activities in connection with this Agreement.

All of the provisions of this Section "17" shall the expiration of other termination of this Agreement until the expiration of the Period of Affordability provided the County has paid the HIF Funds to the Municipality.

18. **NOTICES:**

All notices of any nature, requests, approvals and other communications which may be given by either party to the other under this Agreement shall be in writing and sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt:

To the County

Commissioner of Planning
148 Martine Avenue
White Plains, New York 10601

with a copy to:

County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To the Municipality:

Town Supervisor
Town of Somers
Somers Town House
335 Route 202
Somers, New York 10589

with a copy to:

Village Attorney

To the Developer:

Kearney Realty and Development Group, Inc
1777 Route 6
Carmel, New York 10512

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with a copy to:

Cannon Heyman & Weiss, LLP
36 State Street, 5th Floor
Albany, New York 12207

19. TERM OF AGREEMENT:

The term of this Agreement shall commence upon execution of this Agreement, and shall continue for fifteen (15) years, or until the County has retired the bonds funding the construction of the Infrastructure Improvements, whichever comes first, unless the Agreement is terminated sooner in accordance with the terms of this Agreement.

(a) The County, upon ten (10) days' notice to the Parties, may terminate this Agreement in whole or in part when the County deems it to be in its best interest. In such event, the Parties shall be compensated and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination specified in Schedule "D". Upon receipt of notice that the County is terminating this Agreement in its best interests, the Parties shall stop work immediately and incur no further costs in furtherance of this Agreement without the express approval of the Commissioner, and the Parties shall direct any approved subcontractors to do the same.

In the event of a dispute as to the value of the Work rendered by the Parties prior to the date of termination, it is understood and agreed that the Commissioner shall determine the value of such Work rendered by the Parties. The Parties shall accept such reasonable and good faith determination as final.

(b) In the event the County determines that there has been a material breach by either of the Parties of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Party of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the Work provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be

charged to and paid by the Parties. Without limiting the foregoing, upon written notice to the Parties, repeated breaches by either of the Parties of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

20. **NON-DISCRIMINATION:**

The Municipality and the Developer expressly agree that neither they nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Municipality and the Developer acknowledge and understand that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Under this IMDA it is recognized and understood that the County encourages the Municipality and the Developer to do similarly.

21. VALIDITY:

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement will in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision will be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the parties prior to determination of such invalidity or unenforceability.

22. LEGAL AND EQUITABLE RELIEF:

The injury to the County arising from noncompliance with any of the material terms of this Agreement and the Schedules hereto, including without limitation failure to complete the Development or the Infrastructure Improvements in accordance herewith or noncompliance with the Affordability Requirements until expiration of the Period of Affordability, as more fully set forth in Schedule "E" hereto, would be great and the amount of consequential damage would be difficult to ascertain and may not be compensable by money alone. Therefore, in the event of any such noncompliance, which remains uncured for thirty (30) days after service on the Municipality and Developer of written notice thereof (the "Cure Period"), the County, at its option, may terminate this Agreement and or apply to any state or federal court for: (A) specific performance of this Agreement and the Schedules hereto; (B) an injunctive relief against any noncompliance; and or (C) seek any and all appropriate legal and or equitable remedies, including, but not limited to, damages, reasonable attorney's fees, disbursements and court costs in such amounts as shall be allowed by the court.

The Commissioner, in his sole discretion, may agree to stay any such enforcement beyond the Cure Period, provided however that the County determines that the Municipality and the Developer is diligently and continuously acting to cure said noncompliance. Without limiting the foregoing, upon written notice to the Municipality and Developer, repeated non-compliance by the Municipality and or the Developer of any particular duty or obligation under this IMDA

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shall be deemed a material breach of this IMDA justifying termination for cause hereunder without requirement for further opportunity to cure. Notice shall be effective as set forth below.

All of the provisions of this Section "22" will survive the Closing or other cancellation or termination of this Agreement.

23. COUNTY APPROVALS:

The parties hereby acknowledge and agree that any request by the Municipality and/or the Developer for an extension or other modification of the terms hereof which requires consent of the County will be subject to the receipt of any and all necessary County approvals. It is further acknowledged that in no event, shall any delay or failure of the Westchester County Board of Legislators and/or Westchester County Board of Acquisition and Contract to appoint or approve any action be deemed to be unreasonable.

24. EXECUTION:

This Agreement may be executed simultaneously in several identical copies, each of which shall be an original and all of which shall constitute but one and the same Agreement.

25. GOVERNING LAW:

This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Agreement will be brought in the County of Westchester.

26. NO WAIVER:

Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect.

27. THIRD PARTIES:

Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

28. REQUIRED SCHEDULES:

Attached hereto and forming a part hereof as Schedule "H" is a questionnaire entitled "Required Disclosure of Relationships to County." The Municipality and the Developer agree to complete said questionnaire as part of this Agreement. In the event that any information provided in the completed questionnaire changes during the term of this Agreement, Municipality and the Developer agree to notify County in writing within ten (10) business days of such event.

Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Attached hereto and forming a part hereof as Schedule "J" is a questionnaire entitled "Business Enterprises Owned and Controlled by Persons of Color or Women" which the Developer agrees to complete.

29. FORCE MAJEURE:

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war or terrorism, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, in each case if due to a cause beyond the reasonable control of the party obligated to perform, and other causes beyond the reasonable control of the party obligated to perform (collectively, "Force Majeure") shall, notwithstanding anything to the contrary contained herein, excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure. For purposes of this Section, a cause shall not be deemed beyond a party's control if it is within the control of such party's agents, employees or contractors.

30. LIABILITY:

The parties hereby acknowledge and agree that the Municipality and the Developer shall be jointly and severally liable for all obligations hereunder and for any breach of the terms of this Agreement.

The provisions of this Section "30" will survive the Closing or other cancellation or termination of this Agreement.

31. CONFLICT OF INTEREST:

The Municipality and the Developer shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a conflict of interest. The aforementioned parties shall also use all reasonable means to avoid any appearance of impropriety.

32: ELECTRONIC FUNDS TRANSFER:

All payments made by the County to the Municipality will be made by electronic funds transfer ("EFT") pursuant to the County's Vendor Direct program. Contractors doing business with Westchester County, who are not already enrolled in the Vendor Direct Program, will be required to fill out and submit an EFT Authorization Form in order to receive payment. The EFT Authorization Form and related information are annexed hereto as Schedule "I". The completed Authorization Form must be returned by the Municipality to the Commissioner prior to execution of the contract. In rare cases, a hardship waiver may be granted. For a Hardship Waiver Request Form, please contact the Westchester County Finance Department.

33. ENFORCEMENT:

This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

IN WITNESS WHEREOF, the County of Westchester and the Municipality have caused this Agreement to be executed.

THE COUNTY OF WESTCHESTER

By: _____
Name: Edward Buroughs
Title: Commissioner of Planning

TOWN OF SOMERS

By: _____
Name: Rick Morrissey
Title: Supervisor

KEARNEY REALTY AND DEVELOPMENT GROUP, INC
By: _____
Name:

Title:

Approved by the Board of Legislators by Act No. ____ - 2015 on _____, 2015.

Approved by the Westchester County Board of Acquisition & Contract on _____, 2015.

Approved by Town of Somers on _____, 2015 .

Approved as to form and manner of execution:

_____
Assistant County Attorney
County of Westchester

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MUNICIPALITY'S ACKNOWLEDGMENT

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

On the _____ day of _____ in the year 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

_____
Signature and Office of individual
taking acknowledgment

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MUNICIPAL CERTIFICATE OF AUTHORITY

I, _____,
(Officer other than officer signing contract)

certify that I am the _____ of
(Title)

the _____ (the "Municipality")

a municipal corporation duly organized and in good standing under the _____
(Law under which organized, e.g., the New York Business Corporate Law)

named in the foregoing agreement;

that _____
(Person executing agreement)

who signed said agreement on behalf of the Municipality was, at the time of execution

_____
(Title of such person)

of the Municipality and that said agreement was duly signed for and on behalf of said Municipality by authority of its Board of _____, thereunto duly authorized and that such authority is in full force and effect at the date hereof.

_____
(Signature)

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

On this _____ day of _____, 20__, before me personally came _____, whose signature appears above, to me known, and known to me to be the _____ of
(Title)

_____, the Municipality described in and which executed the above certificate, who being by me duly sworn did depose and say that he/she, the said _____ of said Municipality resides at _____, and that he/she signed his/her name hereto by order of the Board of _____ of said Municipality.

Notary Public *County*

DEVELOPER ACKNOWLEDGMENT

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

On the _____ day of _____ in the year 20___ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

_____
Signature and Office of individual taking acknowledgment

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DEVELOPER CERTIFICATE OF AUTHORITY

I, _____,
(member or manager other than person executing the agreement)

certify that I am a _____ of _____
(member/manager) *(Name of Limited Liability Company)*

(the "LLC") duly organized under the Laws of the State of _____; that
(Name of State)

_____ who signed said Agreement on behalf of the LLC
(Person Executing Agreement)

was, at the time of execution, a manager of the LLC; that said Agreement was duly signed for and on behalf of said LLC and as the act of said LLC for the purposes therein mentioned.

_____
(Signature)

STATE OF NEW YORK)
ss.:
COUNTY OF _____)

On the _____ day of _____ in the year 200___ before me, the undersigned, a Notary Public in and for said State, _____ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the member/manager described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at _____, and he/she is a member/manager of said LLC; that he/she is duly authorized to execute said certificate on behalf of said LLC, and that he/she signed his/her name thereto pursuant to such authority.

Notary Public _____
Date: _____

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SCHEDULE "A"
Affordable Housing Property Description

SCHEDULE "C"
Intentionally Omitted

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SCHEDULE "D"

INFRASTRUCTURE IMPROVEMENTS PROJECT

A. SCOPE OF SERVICES

The infrastructure improvements include, but are not limited to, paving, installation of stormwater basins, a portion of the expansion of the public water and sewer connections and onsite stormwater management(the "Infrastructure Improvements"). The Infrastructure Improvements shall be constructed in accordance with the following plans: as prepared by , dated and last revised (the "Plans").

Project Manager

The County will retain and/or utilize in-house staff to perform the construction management associated with the HIF / FAH funded infrastructure improvements. The construction management will include:

- the review and approvals of shop drawings,
- review and approval request for payments,
- perform inspections and provide certifications associated with any County Health department requirements (if applicable),
- conduct site inspection to confirm compliance with the approved construction drawings.

The professional retained to perform the said inspection shall report directly to the municipal engineer and County staff on all services performed relating to the construction of the municipal infrastructure project.

B. PAYMENT

The County of Westchester will make progress payments to the Municipality for expenses incurred in constructing the Infrastructure Improvements associated with the construction of 16 units of affordable AFFH housing in the Town of Somers , in an amount not to exceed $1,600,000, as set forth pursuant to the below Budget. All quantities are approximate, and the total amount shall not be exceeded.

Any and all requests for payments to be made, including any partial payment made in proportion to the work completed, shall be submitted on properly executed payment vouchers of the County and paid within 30 days after approval by the Commissioner of Planning of the County of Westchester or his or her duly authorized designee (hereinafter the "Commissioner"), which approval shall not be unreasonably withheld and subject to the terms of the IMDA. The Municipality acknowledges and agrees that the New York State prevailing wage shall be paid. In the event prevailing wage is not paid the County's Department of Planning shall recalculate and reduce the below Budget. All payment vouchers must be accompanied by a numbered invoice and must contain the invoice number where indicated. All invoices submitted during each calendar year shall utilize sequential numbering and be non-repeating.

Payment shall substantially follow the following procedures, but the County reserves the right to require

additional documentation and approval:

1. Documentation for the payment of work completed shall include verification from the Architect or Engineer responsible for the work to a) verify that the work was done, and b) that it was done properly;

2. If approved, a signed AIA form approving the work, materials and workmanship and the amount to be invoiced by the contractor shall be included along with a County voucher and lien release from the Contractor.

3. the municipality submits the invoice, AIA form and a county voucher to the County for payment;

4. The County reviews the request, if approved submits it for payment & prepares a check to the municipality provided however that the County shall retain not more than five per centum of each payment which amount shall be held until final payment upon the issuance of a Certificate of Completion for the Infrastructure Improvements.

It is also understood that the County's Division of Housing may visit the site during construction and will inspect and approve the project for substantial completion and that the County shall be permitted such access.

C. BUDGET (County HIF Funds): To be inserted

All quantities are approximate and the total amount shall not be exceeded

The Developer is responsible for funding the costs of construction of the infrastructure Improvements not funded through the County HIF Funds.

D. CONSTRUCTION SCHEDULE FOR INFRASTRUCTURE IMPROVEMENTS

Commencement Date for Construction of Infrastructure Improvements: On or before

Completion Date for Infrastructure Improvements :

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SCHEDULE "E (I)"

STANDARD INSURANCE PROVISIONS (MUNICIPALITY)

1. Prior to commencing work, the Municipality shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester, as may be required and approved by the Director of Risk Management of the County. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester for approval and submit a certificate thereof. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated. Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification. All property losses shall be made payable to and adjusted with the County.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the County of Westchester.

2. The Municipality shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law.

NOTE: Other generally recognized forms certificates may be substituted for the above at the sole discretion of the Director of Risk Management.

State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be

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"All locations in Westchester County, New York."

(Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits' Policy, or both, a temporary permit may be issued if the employer completes form WC/DB-100 or, if applicable, form WC/DB-101. PLEASE NOTE THESE FORMS REPLACE FORM C-105.21. THE APPROPRIATE REPLACEMENT FORM MUST BE NOTARIZED PRIOR TO BEING SUBMITTED TO THE WORKERS' COMPENSATION BOARD, INFORMATION UNIT FOR INVESTIGATION AND REPORT).

If the employer is self-insured for Worker's Compensation, he should present a certificate from the New York State Worker's Compensation Board evidencing that fact.

(b) Employer's Liability with minimum limit of $100,000.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and $100,000 for property damage or a combined single limit of $1,000,000 (c.s.l.), naming the County of Westchester as an additional insured. This insurance shall include the following coverages:

(i) Premises - Operations.
(ii) Broad Form Contractual.
(iii) Independent Contractor and Sub-Contractor.
(iv) Products and Completed Operations.

All Contracts involving the use of explosives and demolition shall provide the above coverage with elimination of the XCU exclusion from the policy, or proof that XCU is covered.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of for bodily injury and a minimum limit of $100,000 per occurrence for property damage or a combined single limit of $1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages:

(i) Owned automobiles.
(ii) Hired automobiles.
(iii) Non-owned automobiles.

3. All policies of the Municipality shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Westchester (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County of Westchester is named as an insured, shall not apply to the County of Westchester.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County of Westchester (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Municipality.

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SCHEDULE "E(II)"

STANDARD INSURANCE PROVISIONS
(DEVELOPER)

1. Prior to commencing work, the Developer shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester, as may be required and approved by the Director of Risk Management of the County. After approval of such insurance by the Director of Risk Management of Westchester County, the Developer shall provide evidence of such insurance to the Town of Somers. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester and to the Town Supervisor by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Developer and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County or to the Village, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County or the Town, the Developer shall upon notice to that effect from the County or the Town, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester or the Town Supervisor, as the case may be, for approval and submit a certificate thereof. Upon failure of the Developer to furnish, deliver and maintain such insurance, the Agreement, at the election of the County or the Town, may be declared suspended, discontinued or terminated. Failure of the Developer to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Developer from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Developer concerning indemnification. All property losses shall be made payable to and adjusted with the County and/or the Town as their interests may appear.

In the event that claims, for which the County or the Town may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason,, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Developer until such time as the Developer shall furnish such additional security covering such claims in form satisfactory to the County of Westchester or the Town, as the case may be.

2. The Developer shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York

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State Workers' Compensation Law.

NOTE: Other generally recognized forms/certificates may be substituted for the above at the sole discretion of the Director of Risk Management.

(b) State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: http://www.wcb.ny.gov.

If the employer is self-insured for Worker's Compensation, he should present a certificate from the New York State Worker's Compensation Board evidencing that fact.

Employer's Liability with minimum limit of $100,000.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and $100,000 for property damage or a combined single limit of $1,000,000 (c.s.l), naming the County of Westchester and the Village of Briarcliff Manor as additional insureds. This insurance shall include the following coverages:

(i) Premises - Operations.
(ii) Broad Form Contractual.
(iii) Independent Contractor and Sub-Contractor.
(iv) Products and Completed Operations.

All Contracts involving the use of explosives and demolition shall provide the above coverage with elimination of the XCU exclusion from the policy, or proof that XCU is covered.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and a minimum limit of $100,000 per occurrence for property damage or a combined single limit of $1,000,000 unless otherwise indicated in the contract specifications, naming the County of Westchester and the Town of Somers as additional insureds. This insurance shall include for bodily injury and property damage the following coverages:

(i) Owned automobiles.
(ii) Hired automobiles.
(iii) Non-owned automobiles.

3. All policies of the Developer shall be endorsed to contain the following clauses:

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	(c) Property ... named as loss payees as its interest may appear.
	(g) Builder's Risk --Municipality at their own cost and expense shall provide and maintain a Builder's Risk Form, All Risk Insurance Contract. The coverage shall be written for 100% of the completed value, with the County of Westchester named as loss payee as its interest may appear.

Westchester County • Department of Finance • Treasury Division

Electronic Funds Transfer (EFT)
Vendor Direct Payment Authorization Form

GENERAL INSTRUCTIONS

Please complete both sections of the Vendor Direct Payment Authorization Form and forward the completed form (along with a voided check for the account to which you want your payments credited) to: Westchester County Department of Finance, 148 Martine Ave, Room 720 White Plains, NY 10601. Attention: Vendor Direct. Please see item 14 below regarding attachment of a voided check.

Section I - VENDOR INFORMATION

1. Provide the name of the vendor as it appears on the W-9 form.
2. Enter the vendor's Taxpayer ID number or Social Security Number as it appears on the W-9 form.
3. Enter the vendor's complete primary address (not a P.O. Box).
4. Provide the name and telephone number of the vendor's contact person.
5. Enter the business e-mail address for the remittance notification. THIS IS VERY IMPORTANT. This is the e-mail address that we will use to send your notification and remittance information two days prior to the payment being credited to your bank account. We suggest that you provide a group mailbox (if applicable) for your e-mail address. You may also designate multiple e-mail addresses.
6. Please have an authorized Payee/Company official sign and date the form and include his/her title.

Section II - FINANCIAL INSTITUTION INFORMATION

7. Provide bank's name.
8. Provide the complete address of your bank.
9. Enter your bank's 9 digit routing transit number.
10. Indicate the type of account (check one box only).
11. Enter the vendor's bank account number.
12. Enter the name of the vendor's account.
13. Provide the name and telephone number of your bank contact person.
14. If you are directing your payments to a Savings Account, do you can not attach a voided check for your checking account, then the name to be completed and signed by an authorized bank official. IF YOU DO NOT RUN A VOIDED CHECK FOR A CHECKING ACCOUNT, YOU MAY LEAVE THIS LINE BLANK.

[illegible]

48-50

SCHEDULE "J"

QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR

As part of the County's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A "business enterprise owned and controlled by women or persons of color" means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability corporation, or corporation, that either:

1.) meets the following requirements:
   a. is at least 51% owned by one or more persons of color or women;
   b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
   c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
   d. is an enterprise authorized to do business in this state which is independently owned and operated.

2.) is a business enterprise certified as a minority business enterprise ("MBE") or women business enterprise ("WBE") pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., OR

3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term "persons of color," as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

(a) Black persons having origins in any of the Black African racial groups;
(b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
(c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
(d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

49-50

1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

_____ No

_____ Yes

Please note: If you answered "yes" based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.

2. If you answered "Yes" above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

_____ Women

_____ Persons of Color (*please check off below all that apply*)

_____ Black persons having origins in any of the Black African racial groups

_____ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race

_____ Native American or Alaskan native persons having origins in any of the original peoples of North America

_____ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

Name of Business Enterprise: _____

Address: _____

_____

Name and Title of person completing questionnaire: _____

_____

Signature: _____

_____ _____

Notary Public Date

50-50

sc-FYI
TB TC TM
9/21/16 DP

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White Plains, New York 10604
www.woodardcurran.com

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T 914.448.2266
F 914.448.0147

RECEIVED
SEP 21 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

MEMORANDUM

TO: Town of Somers Planning Board
CC: Marilyn Murphy, Planning Board Secretary
FROM: Robert Wasp, P.E. on behalf of Joseph C. Barbagallo, P.E., BCEE
DATE: September 9, 2016
RE: Hidden Meadow at Somers
Subdivision Plat Application, Site Plan Application, Stormwater Management and Erosion & Sediment Control Permit, Steep Slopes Protection Permit, Tree Removal Permit and Wetland & Watercourse Protection Permit
16 Route 6 (Birdsall Road)
TM: 15.07-1-6, R-80 District

GENERAL

The purpose of this memorandum is to provide the Planning Board with a summary of our comments related to our review of the Final Subdivision Plat Approval and Site Plan Applications that have been submitted for the parcel located at 16 Route 6. The applications propose the creation of 46 individual lots for the construction of 53 housing units contained on 9 attached "townhouse-style" buildings. The 46 subdivided lots will be composed of 45 fee-simple lots and 1 home-owners association lot for common infrastructure. Proposed work includes the construction of sanitary sewer infrastructure, connection to municipal water supply system, stormwater infrastructure and electrical service utilities. The Application also proposes the construction of additional roadway and drainage infrastructure necessary to provide future connection to the adjacent Town owned parcel, located west of the project site. The following documents were received during the current review period.

DOCUMENTS RECEIVED

- Cover Letter, by Insite Engineering, Surveying & Landscape Architecture, P.C., dated August 24, 2016.
- Stormwater Pollution Prevention Plan (SWPPP), prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., dated August 24, 2016.
- Water Engineering Report, prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., dated July 6, 2016.
- Wastewater Engineering Report, prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., dated July 6, 2016.
- Westchester County Acts 182-2015 & 163-2015.
- Drawings: "Hidden Meadow at Somers", Sheets: 1-23, prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., dated September 10, 2013, last revised August 24, 2016.

PERMITS AND APPROVALS REQUIRED

- Town of Somers Town Board: Application of MFR-BP Zoning District
- Town of Somers Town Board: Water/Sewer District Extension.
- Town of Somers Planning Board: Subdivision Plat Approval
- Town of Somers Planning Board: Site Plan Approval
- Town of Somers Planning Board: Stormwater Management and Erosion and Sediment Control Permit
- Town of Somers Planning Board: Wetlands Activity Permit
- Town of Somers Planning Board: Tree Removal Permit
- Town of Somers Planning Board: Steep Slopes Protection Permit
- Town of Somers Fire Department: Approval of Proposed Hydrant Locations
- NYC DEP: Approval of Stormwater Pollution Prevention Plan
- NYC DEP: Approval of Sanitary Sewer Connections
- NYSDEC: State Environmental Quality Review
- NYSDEC: SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002)
- NYSDOT: Highway Work Permit
- Westchester County Department of Health (WCDOH): Approval of Water and Sanitary Sewer Systems
- Westchester County Board of Legislators: Sewer District Expansion
- Westchester County Planning Board: Approval of Funding
- New York State Affordable Housing Corporation: Approval of Funding
- U.S. Army Corps of Engineers: Application for Department of Army Permit (Wetlands)

DISCUSSION

The Applicant has submitted an updated stormwater pollution prevention plan report and drawings intended to address the majority of outstanding engineering comments related to stormwater management and erosion and sediment control. Other outstanding comments related to other site design elements, such as water distribution, sanitary sewers and retaining walls are indicated to be submitted under separate cover.

Based upon our review of the provided documents, the Applicant has addressed the majority of our engineering comments related to the Stormwater Pollution Prevention Plan (SWPPP). Our office has been in communication with the Applicant's Engineer regarding those comments that remain and expect that further revisions may be provided for our

review prior to the upcoming Planning Board meeting. In consideration of other outstanding comments, our office has no objection should the Planning Board consider adoption of Conditional Resolution of Final Subdivision Plat Approval and Site Plan Approval, providing that all outstanding engineering comments are addressed as conditions of such approvals.

The following is a summary of our comments at this time. All previously identified comments that are no longer outstanding have been eliminated from this memorandum. The status of all current unaddressed comments as well as new comments is shown in **Bold Type.**

1. The provided plans do not illustrate future water main improvements to the east on U.S. Route 6. The Applicant should ensure that the proposed shoulder improvements are coordinated as to not impede or restrict future construction of the water main. **Comment Satisfaction Pending. Documentation of NYSDOT Highway Work Permit Issuance must be provided prior to issuance of Town permits.**

2. The project requires approval of the Stormwater Pollution Prevention Plan (SWPPP) and proposed sanitary sewer extension from the NYC DEP. **Comment Satisfaction Pending. A revised project SWPPP is currently in review by NYC DEP. The Applicant shall provide documentation of all necessary NYC DEP approvals prior to signing of Final Subdivision Plat.**

3. **The Applicant has prepared a revised Stormwater Pollution Prevention Plan (SWPPP) in response to our previously identified engineering comments. Based upon our review of the revised SWPPP and related drawings, all significant engineering comments have been addressed. A short list of minor technical comments that still must be addressed is provided below. Our office has been in communication with the Applicant's Engineer regarding these minor comments. Based upon our discussion we expect to receive updated documents that correct the noted deficiencies prior to the upcoming meeting of the Planning Board.**

    a. **Update the construction detail for "Foundation Wall Adjacent to Permanent Paver Patio" to indicate the solid PVC for roof leaders will not be installed within patios proposed to contain permeable pavers.**

    b. **It is noted that NYSDEC stormwater practice checklist templates are found in SWPPP Appendix I, not Appendix G, as noted on SWPPP page 24.**

    c. **The Applicant shall revise descriptions of permanent site inspection and maintenance items to include and cross reference permanent site erosion and sediment control maintenance as noted on sheet "SP-4". All necessary maintenance activity must be referenced to the site Stormwater Maintenance Agreement.**

4. The Applicant has prepared a draft Stormwater Maintenance Agreement for review and acceptance by the Consulting Town Engineer and Town Attorney. Draft easement review comments will be communicated directly to the Applicant's Engineer. **Comment Satisfaction Pending. The final agreement must be accepted prior to signing of Final Subdivision Plat.**

d. The Applicant shall update the SWPPP to contain stormwater management practice inspection and maintenance worksheets within Appendix I has referenced on the SWPPP table of contents.

5. It is our understanding that the Applicant does not wish to dedicate constructed roadways to the Town of Somers. The Applicant shall prepare draft homeowners association agreement documents for review by the Consulting Town Engineer and Town Attorney. **Not Addressed. The Applicant shall provide Homeowners Association agreement documents for review prior to signing of the final subdivision plat.**

6. The Applicant has provided documents to describe the anticipated earthwork and grading for the proposed site development. The following comments are based upon our initial review of the preliminary earthwork documents that have been received.

   e. The Applicant shall develop a proposed earthwork plan that will be coordinated with the land disturbance phasing plan. The earthwork plan shall include a proposed earthwork map that indicates the depth and volume of cut and fill placement throughout the entire proposed area of disturbance. The plan shall also describe the limits and approximate height of all temporary stockpile areas and should detail the intended schedule of truck loading and hauling operations. **Not Addressed. The Applicant has indicated that the final earthwork plan is currently in preparation and will be submitted under separate cover for review. The final earthwork plan shall be reviewed and accepted by the Consulting Town Engineer prior to signing of the Final Subdivision Plat by the Planning Board chairman.**

7. The Applicant proposes to construct retaining walls greater than four feet in retained soil height. The following outstanding engineering comments shall be addressed as conditions of resolution of approval.

   a. Provide final signed and sealed design calculations and construction details for proposed retaining walls greater than four feet in retained soil height prior to issuance of Final Site Plan approval.

   b. Constructed retaining walls greater than four feet in height shall be inspected by a licensed professional engineer to certify through report to the Town Building Inspector and Consulting Town Engineer that the wall construction is consistent with the submitted wall structural design details and calculations prior to issuance of certificate of occupancy.

8. The Applicant proposes to construct new onsite water distribution, sanitary sewer and pump station infrastructure. New water and sanitary sewer is intended to be constructed and dedicated to the existing public systems owned by the Town of Somers in accordance with the requirements of the Westchester County Department of Health. Our office has been working closely with the Applicant's Engineer to resolve all engineering comments related to the design and operation of the proposed water and sanitary sewer utilities. **The following technical design comments remain outstanding at this time and must be**

addressed prior to Signing of the Final Subdivision Plat by the Planning Board Chairman:

Water Engineering Report

f. Section 3 - Please provide additional information on water distribution system demands in the Windsor Farms district to justify the availability of adequate flow and pressure, as well as additional information on the fire flow test, including the location of the hydrant that was opened and the time of day of the test. We note that there was a significant drop in residual system pressure during the fire flow test, which was run at a relatively low flow for a 10-inch diameter pipe. Please comment on whether the observed residual pressure drop is due to friction losses in the pipe or if the meter pit is restricting the available flow. The Applicant should evaluate whether the existing 6" meter is appropriately sized given the added demand. **Not Addressed. Response to comment expected with future Applicant submittal.**

g. Section 3 - It is noted that additional review of flow availability will be required when the project's fire flow requirements are known. **Not Addressed. Response to comment expected with future Applicant submittal.**

Wastewater Pump Station

a. Applicant shall include a drop connection on the gravity influent to the wet well to minimize the risk of air entrainment due to the long cascade from the gravity influent to the pump off level. It is suggested that a deflector panel should be considered as was incorporated for the Somers Realty subdivision pump station. **Partially Addressed. A gravity drop connection to the influent wet well has been added. As recommended in the Applicant's cover letter, we will coordinate with Applicant on minor changes to the proposed drop connection prior to signing of the Final Subdivision Plat**

Utility Plan and Details

a. Details on Detail sheet D-7 show ductile iron piping (DIP) in the pump station, valve pit, and forcemain connection manhole, with SDR-21 PVC between the valve pit and forcemain manhole. **Addressed. Piping shall remain PVC between the valve pit and the manhole. Applicant shall show a coupling (Romac 501 or similar) for connections between PVC and DIP.**

b. **The Applicant shall update the proposed sanitary sewer profile sheet to show the noted crossing of 8"Ø rain garden bypass piping with sewer segment SMH 9 – SMH 10.**

9. **It is our understanding that the Westchester County Department of Health will not permit water distribution and sanitary sewer mains located within a private development to remain under private ownership when connected public mains owned by the Town of Somers. The Applicant shall provide legal agreements for the operation, inspection and maintenance of the proposed water distribution and**

WOODARD &CURRAN

sanitary sewer infrastructure located on the Crossroads at Baldwin Place parcel intended to be dedicated to the Town of Somers.

10. **The Applicant shall provide a performance surety for proposed work related to water and sanitary sewer infrastructure improvements intended for dedication to the Town of Somers. The amount of such surety shall be based upon cost estimate prepared by the Applicant's Engineer for review and approval by the Consulting Town Engineer and Town Principal Engineering Technician.**

11. **A draft Intermunicipal-Developer Agreement (IMDA) has been prepared for the portion of the project intended to be financed by County Housing Improvement Funds. Our office has commenced review of the IMDA document. Significant detail to describe the project scope still needs to be written into the agreement. The Final agreement shall be reviewed and accepted by the Town Attorney and Consulting Town Engineer prior to signing of the Final Subdivision Plat.**

Please feel free to contact our office anytime with any questions or concerns.

Sincerely,

Robert Wasp, P.E., CDT
Assistant Consulting Town Engineer

On behalf of,

Joseph C. Barbagallo, P.E., BCEE
Consulting Town Engineer

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White Plains, New York 10604
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F 914.448.0147

Oct 13 Agenda - all

WOODARD &CURRAN

MEMORANDUM

TO: Town of Somers Town Board
FROM: Joseph C. Barbagallo, P.E., BCEE
DATE: October 6, 2016
RE: **Town Board Meeting – Presentation Agenda**
Hidden Meadow at Somers
16 U.S. Route 6 (Birdsall Road)

PRESENTATION AGENDA

1. Discussion of projects to be undertaken by Town of Somers as part of Hidden Meadow at Somers Development
    a. Hidden Meadow project components funded through Inter-Municipal Developer Agreement (IMDA) by Housing Implementation Fund appropriation.
        i. Review of Draft IMDA.
    b. Town preparation of Bid Documents for Route 6 Water Main Extension ("Adam's Loop") to be constructed concurrently
2. Discussion of related actions requiring action by the Somers Town Board.
    a. Town Supervisor signature of Hidden Meadow Development Roads and Drainage Acceptance Letter – Necessary for WCDOH Realty Subdivision Approval
    b. Town Supervisor signature of New York State Department of Health (NYSDOH) – Form 348 – Necessary for acceptance of Proposed Public Water Main Extension
    c. Town Supervisor signature of New York State Department of Environmental Conservation (NYSDEC) – Form BSP-5 – Necessary for construction of new sanitary sewer infrastructure.

APPROVAL ITEMS

Town Board Meeting of October 13, 2016

- Resolution for authorization of Town Supervisor to sign Hidden Meadow Roads & Drainage Acceptance Letter.
- Resolution for authorization of Town Supervisor to sign NYSDOH - Form 348 for Public Water Supply Main Extension.
- Resolution for authorization of Town Supervisor to sign NYS DEC Form BSP-5 for approval of Wastewater Sewage Disposal System

Town Board Meeting of November 10, 2016

- Acceptance of Inter-Municipal Developer Agreement (IMDA)

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White Plains, New York 10604
www.woodardcurran.com

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T 914.448.2266
F 914.448.0147

October 6, 2016

Mr. Fred Beck
Mr. Anthony Kunny
Land Development Program
Westchester County Department of Health
Bureau of Environmental Quality
25 Moore Avenue
Mt. Kisco, NY 10549

Re: Hidden Meadow at Somers - Subdivision Plat Approval

Dear Fred and Tony,

Woodard & Curran, as Consulting Engineer for the Town of Somers, has reviewed the proposed subdivision design documents prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. for conformance with Town Code standards for Subdivision Plat Approval and stormwater management.

Based on our review, we find that the construction of proposed "Road A", "Road B" and "Road C" and the associated drainage system improvements are substantially complete and acceptable to Town standards for use by Westchester County Department of Health in proceeding with issuance of Realty Subdivision Approval.

The following design documents were reviewed as part of this determination:

- Final Subdivision Plat: "Hidden Meadow at Somers", Sheets: 1-2, prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., dated July 27, 2016.
- Stormwater Pollution Prevention Plan (SWPPP), prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., dated August 24, 2016.
- Construction Drawings: "Hidden Meadow at Somers", Sheets: 1-23, prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., dated September 10, 2013, last revised August 24, 2016.

Please feel free to call me at 914-294-2090 with any questions regarding this matter.

Sincerely,

Joseph C. Barbagallo, P.E., BCEE
Consulting Town Engineer

Woodard & Curran has been retained as Town Consulting Engineer for the Town of Somers and is authorized to act on the Town's behalf at it relates to the Somers Realty Application.

_____
Rick Morrissey, Town Supervisor
Town of Somers

NEW YORK STATE DEPARTMENT HEALTH
Bureau of Water Supply Protection

Application for Approval of Plans for Public Water Supply Improvement

Applicant	Location of works (8)(1)	County	Water District (specific area served)
THE KEARNEY REALTY AND DEVELOPMENT GROUP, INC.	SOMERS	WESTCHESTER	WINDSOR FARMS WATER DISTRICT

Type of ownership
☒ Municipal ☐ Commercial ☐ Private – Other ☐ Authority ☐ Interstate
☐ Industrial ☐ Water Works Corp. ☐ Private – Institutional ☐ Federal ☐ International
☐ Board of Education ☐ State ☐ Native American Reservation

☒ Modifications to existing system. If checked, provide PWS ID # NY 5 9 3 0 0 9 1

☐ New System. If checked, provide capacity development (viability) analysis*

If this project involves a new system, new water district, or a district extension provide boundary description location details in digital format on CD or Floppy Disk. If digital boundary location details are not available provide a text description.
☐ Digital GIS Data Provided ☐ Digital CAD Data Provided ☐ Other Digital Data Provided ☐ Text Description Provided ☐ N/A

Funding Source ☒ Private ☐ DWSRF** ☐ Federal ☒ Other PROJECT PARTIALLY FUNDED BY WESTCHESTER COUNTY

If DWSRF is checked, provide DWSRF # _____

Estimated Project Cost
Source $_____ Treatment $_____ Storage $_____ Distribution $ 365,000
Pumping $_____ Engineering $ 37,000 Legal/Permitting $ 37,000 Total $ 439,000

Type of Project
☐ Source ☐ Corrosion Control ☐ U.V. Light Disinfection ☒ Distribution
☐ Transmission ☐ Pumping Unit ☐ Fluoridation ☐ Storage
☐ Chlorination ☐ Other Treatment ☐ Other

Project Description: PROPOSED PUBLIC WATER SUPPLY IMPROVEMENTS CONSIST OF THE EXTENSION OF EXISTING 10"Ø WATERMAIN ON NORTH SIDE OF WINDSOR ROAD TO PROJECT SITE IN SOMERS, NY.

Population
Total population of Service area APPROX. 140 PROPOSED / 120 (EXISTING)
% population actually served 46% OF PROPOSED TOTAL POPULATION CURRENTLY SERVED
% population served affected by project THE EXISTING SERVED POPULATION (APPROX. 120) WILL NOT BE AFFECTED BY PROJECT

Latest total consumption data (in MGD)
Avg. day 0.01 Year 2014
Max. day TBD Year TBD
Peak hr TBD Year TBD

14. NYS Professional Licensed Engineer Stamp & Signature ***

Name of design engineer JEFFREY J. CONTELMO, P.E. (INSITE ENGINEERING, SURVEYING & LANDSCAPE ARCHITECTURE, P.C.)
Address 3 GARRETT PLACE, CARMEL NY 10512 Telephone No. 845-225-9690
E-Mail JCONTELMO@INSITE-ENG.COM Fax No. 845-225-9717

Name and title of applicant or designated representative
THE KEARNEY REALTY AND DEVELOPMENT GROUP, INC. / TOWN OF SOMERS
Address 1777 ROUTE 6 CARMEL, NY 10512 / 335 ROUTE 202 SOMERS NY 10589

_____ Signature of applicant ___/___/___ Date

NOTE: All applications must be accompanied by 3 sets of plans, 3 sets of specifications and an engineer's report describing the project in detail. The project must first be discussed with the appropriate city, county, district or regional public health engineer. Signature by a designated representative *must* be accompanied by a letter of authorization.
* Additional information regarding capacity development may be found at: http://www.health.state.ny.us/nysdoh/water/main.htm
**Current DWSRF project listings may be found at http://www.health.state.ny.us/nysdoh/water/main.htm
***By affixing the stamp and signature the Design Engineer agrees that the plans and specifications have been prepared in accordance with the most recent version of the recommended standards for water works and in accordance with the NYS Sanitary Code.

DOH-342 (02/05)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
APPLICATION FOR APPROVAL OF PLANS FOR A WASTEWATER DISPOSAL SYSTEM

1. NAME OF APPLICANT	2. LOCATION OF WORKS (~~City, Village~~, Town)	3. COUNTY
THE KEARNEY REALTY AND DEVELOPMENT GROUP, INC	SOMERS	WESTCHESTER

4. ENTITY OR AREA SERVED: HIDDEN MEADOW AT SOMERS SUBDIVISION

5. TYPE OF OWNERSHIP:
☐ Municipal ☐ Industrial ☐ Commercial ☐ Sewage Works Corp ☐ Private - Home ☒ Private – Other ☐ Private – Institutional ☐ Board of Education ☐ Authority ☐ Federal ☐ State ☐ Interstate ☐ International ☐ Indian Reservation

6. TYPE AND NATURE OF CONSTRUCTION

Collection System	Treatment and/or Disposal
☒ New	☐ New
☐ Additions or Alterations	☐ Additions or Alterations

7. ESTIMATED COST OF CONSTRUCTION

Collection System	Treatment and/or Disposal
$ 405,000	$ ——

8. TYPE OF WASTE
☒ Sewage ☐ Industrial (Specify) ☐ Other (Specify)

9. NAME OF RECEIVING TREATMENT WORKS: PEEKSKILL WASTEWATER TREATMENT PLANT

10. POINT OF DISCHARGE
Surface Water: (Name of Watercourse) ANNSVILLE CREEK — Class SC
Ground Water: (Name of Watercourse to which ground water is tributary) N/A — Class N/A

11. IS STATE OR FEDERAL AID APPLIED FOR?	LOCATION (~~City, Village~~, Town)	TYPE OF PERMIT	PERMIT NO.	DATE ISSUED
☐ Yes ☒ No	SOMERS	☐ NYDES ☒ SPDES	NY0100803	12-19-2012

12. NAME OF DESIGN ENGINEER: JEFFREY J. CONTELMO, P.E. (INSITE ENGINEERING) — NEW YORK STATE LICENSE NO. 61931

ADDRESS: 3 GARRETT PLACE, CARMEL NY 10512 — TELEPHONE NO. 845-225-1670

13. WATER CONSUMPTION (GPD)

Present	Future	Design Year
10,000 (BASED ON 2014 DATA)	15,805	2014/2016

14. POPULATION SERVED

Present	Future	Design Year
120	260	2016.

15. AVERAGE DAILY FLOW FOR NEW OR EXISTING TREATMENT WORKS (GPD)

Present	Future	Design Year
6,700,000 GPD	6,705,805 GPD	2016

16. SOURCE OF WATER SUPPLY (if private well; give location, type, depth and character of soil)
WINDSOR FARMS WATER DISTRICT

17. DESIGN EQUIVALENT POPULATION (BOD Basis)
Design Flow N/A GPD — Design Plant Efficiency N/A %

18. GIVE NUMBER, CHARACTER AND DISTANCE OF ANY BUILDINGS WHICH MAY BE AFFECTED BY THE PROPOSED TREATMENT WORKS
N/A

19. DESCRIBE PROPOSED OR EXISTING STORM WATER DISPOSAL
RUNOFF FROM PROPOSED DEVELOPMENT TO CAPTURED AND TREATED IN PROPOSED ONSITE STORMWATER MANAGEMENT PRACTICES

ADDITIONAL INFORMATION MUST BE SUBMITTED FOR PRIVATE AND INSTITUTIONAL SYSTEMS.

20. INDICATE OF U.S.G.S. TOPOGRAPHIC MAP EXACT LOCATION OF SEWAGE TREATMENT WORKS AND ADJACENT BUILDINGS. SHOW LOCATION OF ALL WELLS OR OTHER SOURCES OF WATER SUPPLY WITHIN 200' OF THE PROPOSED WORKS. GIVE DESCRIPTION OF THESE SOURCES AND CHARACTER OF SOIL.
N/A - NO TREATMENT WORKS PROPOSED

21. STATE DEPTH BELOW EXISTING GROUND SURFACE AT WHICH GROUND WATER IS ENCOUNTERED

22. DESCRIBE SOIL AT SITE OF PROPOSED WORKS. GIVE DESIGN BASIS AND OBSERVED SOIL PERCOLATION RATE DATA (Use additional sheet, if necessary)
N/A - NO TREATMENT WORKS PROPOSED

DATE:

NOTE: All applications must be accompanied by plans, specifications and completed Form BSP-65 (appropriate portions). The submission must conform to a previously approved engineering report describing the system in detail. The plans must be stamped with the designing engineer's seal and must be of sufficient clarity and eligibility to permit satisfactory microfilming. Only white prints will be accepted because of the difficulty of microfilming blue prints. There must be a blank area, at least 4" X 7", in the lower right corner of each sheet so that the approval stamp may be placed on the face of the plans.

Any deviation from the Department's standards for wastewater collection and treatment facilities must be explained in detail.

Approved plans are to be returned to: ☐ Applicant ☒ Engineer

If the application is signed by a person other than the applicant shown in Item 1, the application must be accompanied by a letter of authorization. Failure to comply with this provision may be grounds for the rejection of any submission.

I hereby affirm under penalty of perjury that information provided on this form is true to the best of my knowledge and belief. False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Signatures and Official Titles: _____

_____

Mailing Address: _____

_____

Date of Application: _____

REMARKS:

KEANE & BEANE P.C.
ATTORNEYS AT LAW

Main Office
445 Hamilton Avenue
White Plains, NY 10601
Phone 914.946.4777
Fax 914.946.6868

Mid-Hudson Office
200 Westage Business Center
Fishkill, NY 12524
Phone 845.896.0120

RICHARD L. O'ROURKE
Principal Member

RECEIVED
OCT 12 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

October 11, 2016

VIA EMAIL supervisor@somersny.com
AND UPS

Hon. Rick Morrissey, Town Supervisor
Town of Somers
335 Route 202
Somers, New York 10589

Re: Petitions for Special Districts, Somers Crossing

Dear Supervisor Morrissey and Members of the Town Board:

Enclosed please find copies of Petitions for the formation of special districts to provide water and sewer service to the Somers Crossing project. As you know, this project has been extensively reviewed through both the required State Environmental Quality Review Act process, as well as public hearings held and conducted by both the Town Board and Planning Board.

We file these petitions after a thorough examination has been conducted as part of the SEQRA process. We respectfully request that these matters be placed on a Town Board agenda as soon as possible so that we may expeditiously continue the review and approval process required. Thank you for your consideration, and we look forward to working closely with the Town Board and its consultants in bringing these special districts to fruition.

Very truly yours,

Richard L. O'Rourke

RLO/sb
Encls.
cc: Town Clerk, (via email townclerk@somersny.com and first class mail)
Town Attorney (via email rbaroni@prodigy.net and first class mail)
Town Water and Sewer District Superintendent
(via mail asmith@somersny.com w/encl.)
Town Consulting Engineer
(via email rbarbagalo@woodardcurran.com w/encl.)
Town Planner (via email sdym@somersny.com w/encl.)
Timothy Allen, P.E. (via email tallen@bibboassociates.com w/encl.)
Bonnie Von Ohlsen, AICP (via email bvonohlsen@jmcpllc.com w/encl.)
Mr. Gus T. Boniello (via gtboniello@aol.com w/encl.)

9900/01/577240v1 10/11/16

STATE OF NEW YORK
TOWN OF SOMERS
----------x

In the Matter of the expansion of
"Heritage Hills Special Water District"

in the
Town of Somers, County of Westchester and
State of New York

PETITION OF

PROPERTY OWNER

----------x

TO THE TOWN BOARD OF THE TOWN OF SOMERS, COUNTY OF WESTCHESTER, STATE OF NEW YORK

1. The undersigned Petitioner, being the owner of all of the taxable real property situated in the proposed expansion area of the Heritage Hills Special Water District described herein, and owning in the aggregate all of the assessed valuation of all of the taxable real property situated in the proposed expansion area as shown on the latest completed assessment roll in the Town of Somers, County of Westchester, State of New York, does hereby petition the Town Board, pursuant to Town Law 190 and 190-a, for the expansion of the Heritage Hills Special Water District covering the property described in annexed Exhibit "A," and further petitions the Town Board, after appropriate review and further proceedings regarding the accompanying Map, Plan, and Report, to expand said Special Water District. There are no resident owners of any taxable real property in the proposed District. The said lands are situated wholly within the Town of Somers. A map showing the location of Petitioner's property is attached as Exhibit "B," and said map

6. Pursuant to the provisions of Town Law 202 (2), Petitioner requests that the expense of expansion and construction of the Heritage Hills Special Water District shall be borne by local assessment upon the lands which the town board shall determine and specify to be especially benefited by the improvement, so much upon and from each as shall be in just proportion to the amount of benefit which the improvement shall confer upon the same. Petitioner requests that the proposed benefit formula for all charges relating to the District be in conformance with a standard that is acceptable to all parties, including the Town and the Petitioner.

7. There will be no public monies expended in connection with the expansion and construction of the District. As is customary in District expansion, all costs in connection with the expansion of the District will be borne by the Petitioner, in a manner contemplated in the Map, Plan, and Report and agreed to by the parties, which may include yearly capital assessments, water rents, or other agreed-upon methods. Petitioner also requests that if, at any time in the future, service be extended to other properties through the water mains constructed as part of the expansion of the Heritage Hills Special Water District, that those subsequently benefitted properties lawfully pay for said benefit, and that the Water District on behalf of the properties within it, be reimbursed and/or credited for the portion of the costs of the improvements that the Town Board may determine appropriate according to the respective benefits to the various benefitted properties. The maximum amount proposed to be expended, the proposed yearly costs to a typical user, and the estimated hook-up fees, pursuant to Section 191 of the Town Law are presently unknown, but will be established between the parties and summarized in the Map, Plan, and

Report. It is also recognized that the Town will be working with Petitioner and HHWW relating to determining the appropriate methodology for construction phasing and additional agreements. The Petitioner reserves the right to file amended Petitions from time to time during the review process to address these issues and other matters affecting the proposed expansion of the Heritage Hills Special Water District.

8. Petitioner also proposes to establish an escrow account, in an amount duly agreed upon among Petitioner and the Town and its consulting engineers, to fund all of the costs together with reasonable expenses for engineering and environmental analysis relating to the proposed improvements for this Water District.

9. Petitioner additionally requests that the Town Board support all reasonable efforts to pursue any available grants that may reduce the ultimate costs of the improvements, and the Petitioner also confirms that they will make every effort to pursue available funding for the project.

10. The assessed valuation of all the taxable real property situate in the proposed expansion of the Heritage Hills Special Water District, as such valuations appear upon the latest completed assessment roll of the Town of Somers is $1,195,283.00 Dollars. The assessed valuation of all the taxable real property situate in the proposed expansion of the Heritage Hills Special Water District, owned by resident owners thereof, as such valuations appear upon the latest completed assessment roll of the Town of Somers, is ZERO Dollars. Petitioner is the owner of real property situate in the proposed expansion of the Heritage Hills Special Water District, which property according to the latest completed assessment

roll of the Town of Somers, shows the assessed valuations respectively set out next to the name of the Petitioner as follows:

Name and Address of Nonresident Petitioner Owning Property in Proposed Water District Extension	**Tax Map Parcel Numbers**	**Assessed Valuation of Property Owned**	**Full Market Value**
Somers Crossing, LLC 165 Waccabuc Road Goldens Bridge, NY	Tax Lot 17.15-1-15.1	$158,375.00	$1,195,283.00

11. This Petition is signed and acknowledged in the same manner as a deed to be recorded, as set forth on the pages attached hereto and submitted herewith.

WHEREFORE, your Petitioner respectfully submits this Petition for further consideration in accordance with applicable law, and requests the Town Board to make such determinations as it deems just and proper, and take all actions provided by law, to provide Water service to the Petitioner's property.

Dated: Somers, New York
October 11, 2016

SIGNATURE SHEET

The undersigned supports the Petition for the expansion of the Heritage Hills Special Water District and authorizes the signature sheet to be affixed and incorporated as a part thereof:

The undersigned supports the Petition for the the expansion of the Heritage Hills Special Water District and authorizes the signature sheet to be affixed and incorporated as a part thereof:

NAME: SOMERS CROSSING, LLC

By: _____

Tax Parcels in Proposed District

STATE OF NEW YORK, COUNTY OF Westchester ss.:

On the 11 day of October in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared Gus T. Bonelli, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

7/31/18

Exhibit A

PARCEL 1

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Somers, County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the southerly side of Route 202 (also known as Somers Road) at the intersection formed by the northeasterly corner of Lot "A" as shown on a filed map entitled, "Map showing Kipp-International Business Machines Corporation Lot line Change" filed in the Westchester County Clerk's Office, Division of Land Records as Map No. 22217 on Feb. 13, 1986,, and the northwesterly corner of the premises herein described;

RUNNING THENCE from said point of beginning along the southerly side of said Route 202, the following courses and distances:

(1) North 80 degrees 51 minutes 43 seconds East 28.15 feet;

(2) North 81 degrees 34 minutes 53 seconds East 223.48 feet;

(3) North 80 degrees 41 minutes 43 seconds East 69.16 feet;

(4) North 80 degrees 28 minutes 33 seconds East 134.21 feet to a point being the northwesterly corner of lands formerly of Billingsley, now or foremerly of Urstadt Biddle Properties, Inc.;

THENCE turning and running along the westerly and southerly line of said lands of Urstadt Biddle Properties, Inc., the following courses and distances:

(1) South 14 degrees 44 minutes 57 seconds East 1,000.00 feet;

(2) South 78 degrees 31 minutes 24 seconds East 99.92 feet to a point being the northwesterly corner of lands formerly of Gerald Dimasi, now or formerly of Pinnacle Retirement Services Corporation;

THENCE along the westerly and southerly line of said lands of Pinnacle Retirement Services Corporation the following courses and distances:

(1) South 10 degrees 17 minutes 53 seconds West 200.00 feet;

(2) South 78 degrees 31 minutes 24 seconds East 400.08 feet to a point on the

generally westerly side of Route 100 (also known as Somerstown Road and Croton Turnpike);

THENCE along said westerly line of Route 100, the following courses and distances:

(1) South 10 degrees 17 minutes 53 seconds West 96.75 feet;

(2) South 20 degrees 43 minutes 03 seconds West 30.37 feet;

(3) South 04 degrees 31 minutes 13 seconds West 72.58 feet;

(4) South 03 degrees 19 minutes 23 seconds West 12.79 feet;

(5) South 11 degrees 45 minutes 53 seconds West 269.42 feet;

(6) South 15 degrees 29 minutes 43 seconds West 41.76 feet;

(7) South 12 degrees 40 minutes 03 seconds West 78.45 feet to a point being an easterly corner of aforementioned Lot "A";

THENCE running along a generally northerly and easterly line of said Lot "A", the following courses and distances:

(1) South 82 degrees 25 minutes 52 seconds West 279.48 feet;

(2) South 81 degrees 31 minutes 13 seconds West 252.25 feet;

(3) South 82 degrees 12 minutes 33 seconds West 68.27 feet;

(4) North 13 degrees 27 minutes 27 seconds West 1917.92 feet to the point or place of BEGINNING.

TOGETHER WITH the benefits and subject to the burdens of the easement created in Liber 9386 cp. 62.

PARCEL 2

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Somers, County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the westerly side of Somerstown Turnpike (also known as Croton Turnpike, N.Y.S. Route 100 and S.H. 775) distant 670 feet southerly along the same from the southeeasterly corner of land now or formerly of St. Luke's Episcopal Church Somers and 802.12 feet northerly along the same from the easterly corner of a Lot "A" on a filed map entitled "Map Showing Kipp-International Business Machines Corporation Lot Line Change", which map was filed in the Westchester County Clerk's Office, Division of Land Records as Map No. 22217 on Feb. 13, 1986, said point also being the southeasterly corner of lands now or formerly of Urstadt Biddle Properties, Inc., and the northeasterly corner of the premises herein described;

RUNNING THENCE along Somerstown Turnpike, South 10 degrees 17 minutes 53 seconds West 200 feet to a point being the easterly corner of lands now or formerly of Pinnacle Retirement Service Corporation;

THENCE North 78 degrees 31 minutes 24 seconds West 400.08 feet;

THENCE North 10 degrees 17 minutes 53 seconds East 200 feet to a point on the southerly line of aforementioned lands now or formerly of Urstadt Biddle Properties, Inc.;

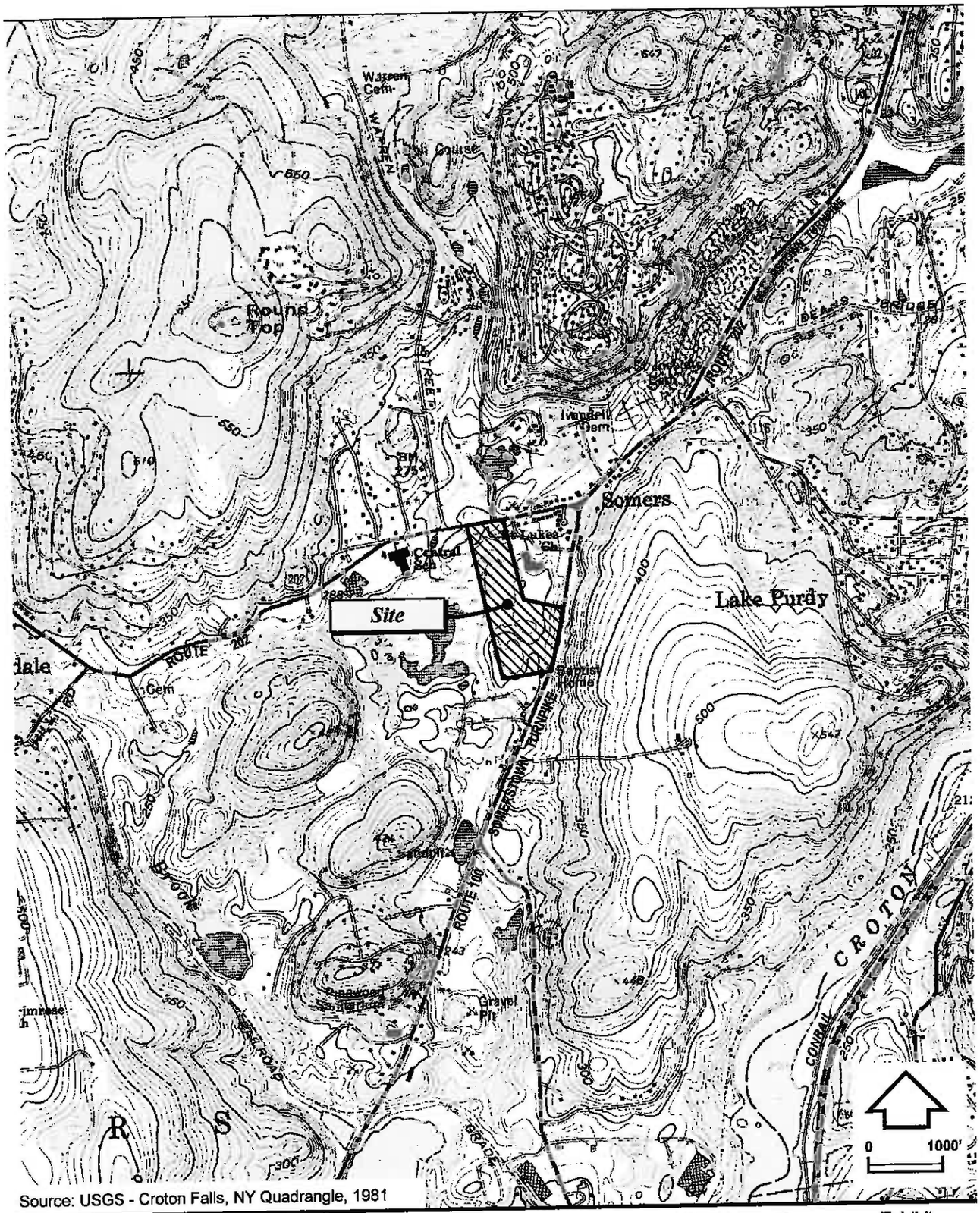
THENCE along the southerly line of lands of Urstadt Biddle Properties, Inc.South 78 degrees 31 minutes 24 seconds East 400.08 feet to the point or place of BEGINNING.

Said premises being known as Somers Road, Somers, New York.

The policy to be issued under this report will insure title to such buildings and improvements erected on the premises which by law constitute real property.

FOR CONVEYANCING ONLY: Together with all the right, title and interest of the party of the first part of, in and to land lying in the street in front of and adjoining said premises.

Exhibit B



Source: USGS - Croton Falls, NY Quadrangle, 1981

SOMERS CROSSING
Somers, New York

Site Location

Exhibit
II-1

VHB Engineering, Surveying and Landscape Architecture, P.C.

STATE OF NEW YORK
TOWN OF SOMERS
----------x

In the Matter of the establishment of
"Somers Town Sewer District #____"

in the
Town of Somers, County of Westchester and
State of New York

PETITION OF

PROPERTY OWNER

----------x

TO THE TOWN BOARD OF THE TOWN OF SOMERS, COUNTY OF WESTCHESTER, STATE OF NEW YORK

1. The undersigned Petitioner, being the owner of all of the taxable real property situated in the proposed Sewer District described herein, and owning in the aggregate all of the assessed valuation of all of the taxable real property situated in the proposed District as shown on the latest completed assessment roll in the Town of Somers, County of Westchester, State of New York, does hereby petition the Town Board, pursuant to Town Law 190 and 190-a, for the establishment of a Sewer District covering the property described in annexed Exhibit "A," and further petitions the Town Board, after appropriate review and further proceedings regarding the accompanying Map, Plan, and Report, to establish said Sewer District. There are no resident owners of any taxable real property in the proposed District. The said lands are situated wholly within the Town of Somers. A map showing the location of Petitioner's property is attached as Exhibit "B," and said map depicts the parcels denominated as "1,"and "2", which are the lands of the proposed Special District as described in Exhibit "A."

2. Said territory is located wholly in the Town of Somers, County of Westchester, and State of New York, and is outside of any city or incorporated village and outside of any sewer district or extension thereof.

3. It is proposed that said sanitary sewage flows from the proposed Sewer District would be conveyed through an onsite wastewater collection system and pump station, which will pump the wastewater to the Somers Elementary School pump station ("PS") which then pumps to the existing treatment plant ("the plant"). Sewage will thereafter be treated at the plant owned and operated by the Heritage Hills Sewage Works Corporation ("HHSW") and discharged at that Plant. Provision for such treatment shall be in accordance with the Connection and Capacity Reservation Agreement dated September ___, 2016.

4. As background, the property owned by Petitioner is a parcel located along New York State Route 202, extending to south with additional frontage on New York State Route 100. The property is zoned multi-family Residence Downtown Hamlet ("MFR-DH") and will receive a number of development approvals. A Statement of Findings issued by the Town Board ("SEQRA Findings Statement") pursuant to the State Environmental Quality Review Act was adopted June 9, 2016 by the Town Board. The possibility of sewer service to the site has been considered for a number of years, and is discussed in the environmental documents, including the SEQRA Findings Statement adopted by the Town Board on June 9, 2016.

5. The Town Board of the Town of Somers adopted the SEQRA Findings Statement endorsing the extension of the existing central sewer system to serve the lands that are the subject of this Petition.

6. Pursuant to the provisions of Town Law 202 (2), Petitioner requests that the expense of establishment and construction of the Sewer District shall be borne by local assessment upon the lands which the town board shall determine and specify to be especially benefited by the improvement, so much upon and from each as shall be in just proportion to the amount of benefit which the improvement shall confer upon the same. Petitioner requests that the proposed benefit formula for all charges relating to the District be in conformance with a standard that is acceptable to all parties, including the Town, the HHSW and the Petitioner.

7. There will be no public monies expended in connection with the formation and construction of the proposed District. As is customary in District establishment, all costs in connection with the establishment of the District will be borne by the Petitioner, in a manner contemplated in the Map, Plan, and Report and agreed to by the parties, which may include yearly capital assessments, sewer rents, or other agreed-upon methods. Petitioner also requests that if, at any time in the future, service be extended to other properties through the sewer mains constructed as part of this proposed Sewer District, or if other properties benefit by virtue of the Sewer Treatment Plant improvements which are part of the improvements for the Sewer District that those subsequently benefitted properties lawfully pay for said benefit, and that the Sewer District on behalf of the

properties within it, be reimbursed and/or credited for the portion of the costs of the improvements that the Town Board may determine appropriate according to the respective benefits to the various benefitted properties. The maximum amount proposed to be expended, the proposed yearly costs to a typical user, and the estimated hook-up fees, pursuant to Section 191 of the Town Law are presently unknown, but will be established between the parties and summarized in the Map, Plan, and Report. It is also recognized that the Town will be working with Petitioner and HHSW relating to determining the appropriate methodology for construction phasing and additional agreements. The Petitioner reserves the right to file amended Petitions from time to time during the review process to address these issues and other matters affecting the proposed Town Sewer District.

8. Petitioner also proposes to establish an escrow account, in an amount duly agreed upon among Petitioner and the Town and its consulting engineers, to fund all of the costs together with reasonable expenses for engineering and environmental analysis relating to the proposed improvements for this Town Sewer District.

9. Petitioner additionally requests that the Town Board support all reasonable efforts to pursue any available grants that may reduce the ultimate costs of the improvements, and the Petitioner also confirms that they will make every effort to pursue available funding for the project.

10. The assessed valuation of all the taxable real property situate in the proposed Sewer District, as such valuations appear upon the latest completed assessment roll of the

Town of Somers is $1,195,283.00 Dollars. The assessed valuation of all the taxable real property situate in the proposed Sewer District, owned by resident owners thereof, as such valuations appear upon the latest completed assessment roll of the Town of Somers, is ZERO Dollars. Petitioner is the owner of real property situate in the proposed Sewer District, which property according to the latest completed assessment roll of the Town of Somers, shows the assessed valuations respectively set out next to the name of the Petitioner as follows:

Name and Address of Nonresident Petitioner Owning Property in Proposed Sewer District Extension	**Tax Map Parcel Numbers**	**Assessed Valuation of Property Owned**	**Full Market Value**
Somers Crossing, LLC 165 Waccabuc Road Goldens Bridge, NY	Tax Lot 17.15-1-15.1	$158,375.00	$1,195,283.00

11. This Petition is signed and acknowledged in the same manner as a deed to be recorded, as set forth on the pages attached hereto and submitted herewith.

WHEREFORE, your Petitioner respectfully submits this Petition for further consideration in accordance with applicable law, and requests the Town Board to make such determinations as it deems just and proper, and take all actions provided by law, to provide Sewer service to the Petitioner's property.

Dated: Somers, New York
October 11, 2016

SIGNATURE SHEET

The undersigned supports the Petition for the establishment of the Somers Town Sewer District and authorizes the signature sheet to be affixed and incorporated as a part thereof:

The undersigned supports the Petition for the establishment of the Town Sewer District and authorizes the signature sheet to be affixed and incorporated as a part thereof:

NAME: SOMERS CROSSING, LLC

By: _____

Tax Parcels in Proposed District

STATE OF NEW YORK, COUNTY OF Westchester ss.:

On the 11 day of October in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared Gus T. Bouzakis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

[illegible]
7/31/18

Exhibit A

PARCEL 1

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Somers, County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the southerly side of Route 202 (also known as Somers Road) at the intersection formed by the northeasterly corner of Lot "A" as shown on a filed map entitled, "Map showing Kipp-International Business Machines Corporation Lot line Change" filed in the Westchester County Clerk's Office, Division of Land Records as Map No. 22217 on Feb. 13, 1986,, and the northwesterly corner of the premises herein described;

RUNNING THENCE from said point of beginning along the southerly side of said Route 202, the following courses and distances:

(1) North 80 degrees 51 minutes 43 seconds East 28.15 feet;

(2) North 81 degrees 34 minutes 53 seconds East 223.48 feet;

(3) North 80 degrees 41 minutes 43 seconds East 69.16 feet;

(4) North 80 degrees 28 minutes 33 seconds East 134.21 feet to a point being the northwesterly corner of lands formerly of Billingsley, now or formerly of Urstadt Biddle Properties, Inc.;

THENCE turning and running along the westerly and southerly line of said lands of Urstadt Biddle Properties, Inc., the following courses and distances:

(1) South 14 degrees 44 minutes 57 seconds East 1,000.00 feet;

(2) South 78 degrees 31 minutes 24 seconds East 99.92 feet to a point being the northwesterly corner of lands formerly of Gerald Dimasi, now or formerly of Pinnacle Retirement Services Corporation;

THENCE along the westerly and southerly line of said lands of Pinnacle Retirement Services Corporation the following courses and distances:

(1) South 10 degrees 17 minutes 53 seconds West 200.00 feet;

(2) South 78 degrees 31 minutes 24 seconds East 400.08 feet to a point on the

generally westerly side of Route 100 (also known as Somerstown Road and Croton Turnpike);

THENCE along said westerly line of Route 100, the following courses and distances:

(1) South 10 degrees 17 minutes 53 seconds West 96.75 feet;

(2) South 20 degrees 43 minutes 03 seconds West 30.37 feet;

(3) South 04 degrees 31 minutes 13 seconds West 72.58 feet;

(4) South 03 degrees 19 minutes 23 seconds West 12.79 feet;

(5) South 11 degrees 45 minutes 53 seconds West 269.42 feet;

(6) South 15 degrees 29 minutes 43 seconds West 41.76 feet;

(7) South 12 degrees 40 minutes 03 seconds West 78.45 feet to a point being an easterly corner of aforementioned Lot "A";

THENCE running along a generally northerly and easterly line of said Lot "A", the following courses and distances:

(1) South 82 degrees 25 minutes 52 seconds West 279.48 feet;

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(3) South 82 degrees 12 minutes 33 seconds West 68.27 feet;

(4) North 13 degrees 27 minutes 27 seconds West 1917.92 feet to the point or place of BEGINNING.

TOGETHER WITH the benefits and subject to the burdens of the easement created in Liber 9386 cp. 62.

PARCEL 2

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Somers, County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the westerly side of Somerstown Turnpike (also known as Croton Turnpike, N.Y.S. Route 100 and S.H. 775) distant 670 feet southerly along the same from the southeeasterly corner of land now or formerly of St. Luke's Episcopal Church Somers and 802.12 feet northerly along the same from the easterly corner of a Lot "A" on a filed map entitled "Map Showing Kipp-International Business Machines Corporation Lot Line Change", which map was filed in the Westchester County Clerk's Office, Division of Land Records as Map No. 22217 on Feb. 13, 1986, said point also being the southeasterly corner of lands now or formerly of Urstadt Biddle Properties, Inc., and the northeasterly corner of the premises herein described;

RUNNING THENCE along Somerstown Turnpike, South 10 degrees 17 minutes 53 seconds West 200 feet to a point being the easterly corner of lands now or formerly of Pinnacle Retirement Service Corporation;

THENCE North 78 degrees 31 minutes 24 seconds West 400.08 feet;

THENCE North 10 degrees 17 minutes 53 seconds East 200 feet to a point on the southerly line of aforementioned lands now or formerly of Urstadt Biddle Properties, Inc.;

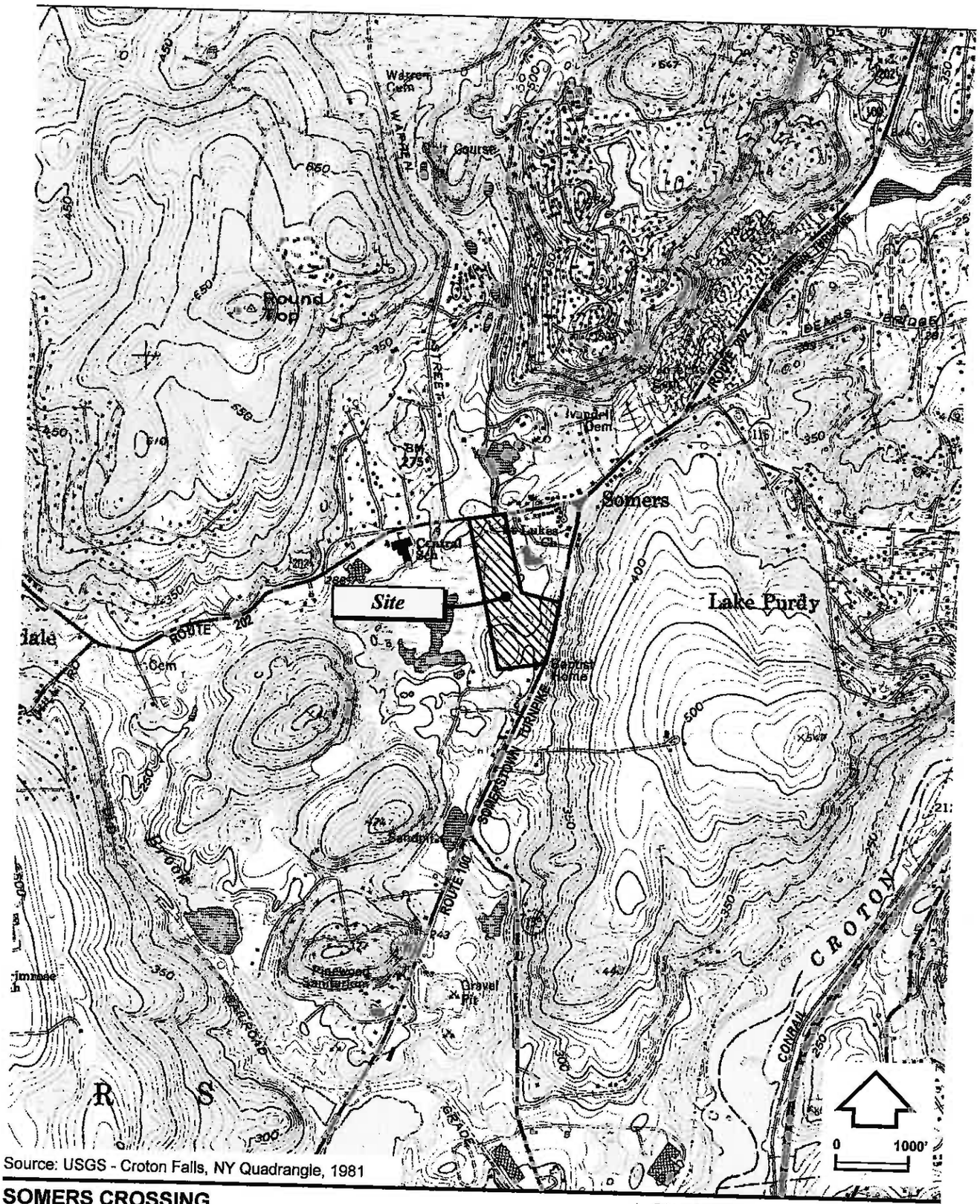
THENCE along the southerly line of lands of Urstadt Biddle Properties, Inc.South 78 degrees 31 minutes 24 seconds East 400.08 feet to the point or place of BEGINNING.

Said premises being known as Somers Road, Somers, New York.

The policy to be issued under this report will insure title to such buildings and improvements erected on the premises which by law constitute real property.

FOR CONVEYANCING ONLY: Together with all the right, title and interest of the party of the first part of, in and to land lying in the street in front of and adjoining said premises.

Exhibit B



Source: USGS - Croton Falls, NY Quadrangle, 1981

SOMERS CROSSING

Somers, New York

Site Location

Exhibit

II-1

VHB Engineering, Surveying and Landscape Architecture, P.C.

PLANNING AND ENGINEERING DEPARTMENTS

Telephone
(914) 277-5366
Fax
(914) 277-4093

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
www.somersny.com

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com

Syrette Dym, AICP
Town Planner
sdym@somersny.com

Date: October 12, 2016

To: Town Board

From: Steven Woelfle SW
Engineering

Re: Part Time Intermediate Clerk Position
Planning and Engineering Department

The Planning and Engineering Office interviewed a number of qualified applicants for the vacant Part Time Intermediate Clerk position. At this time we would like to recommend the Town Board hire Jennifer Kisslinger for this position. Please see her resume attached.

SW/wg
Att.
cc: Town Clerk
Director of Planning
Director of Finance

Z:\PE\General files\Personnel\Memo to TB PT Intermiediate Clerk Position 10.12.2016.doc

PLANNING AND ENGINEERING DEPARTMENTS

Telephone
(914) 277-5366
Fax
(914) 277-4093

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
www.somersny.com

Syrette Dym, AICP
Town Planner
sdym@somersny.com

RECEIVED
OCT 12 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

Date: October 12, 2016

To: Town Board
Town Clerk
Open Space Committee
Fire Prevention Bureau
Director of Planning
Consulting Town Engineer
File

From: Planning Department

Plans available in Supervisor's office.

Re: The following is submitted for your Review and Comment:

Project Name:	**Somers Public Safety Center Preliminary Subdivision**
Plan:	**See Cover Letter**
Dated:	**October 11, 2016**
Prepared by:	**The Helmes Group, LLP**

Referral is made under the provisions of the following regulations:

1. Informal Discussion: _____
2. Final Subdivision Approval: _____
3. Preliminary Subdivision: X
4. Site Plan: _____
5. Wetland Activity Permit: _____
   Administrative _____
   Planning Board _____
6. Steep Slope Permit: _____
   Administrative _____
   Planning Board _____
7. Other _____

THE HELMES GROUP, LLP
ARCHITECTURE • ENGINEERING
PROJECT MANAGEMENT

RECEIVED
OCT 11 2016
PLANNING-ENGINEERING
TOWN OF SOMERS

Hand-Delivered

October 11, 2016

John Currie, Chairman
Town of Somers Planning Board
335 Route 202
Somers, NY 10589

Project: Somers Public Safety Center, 295 Route 100, Somers, NY
Tax Sheet 17.18, Block 1, Lot 1
Owner: KIPP – International Business Machines Corporation

Subject: Application for Preliminary Approval of Subdivision

Dear Chairman Currie & Members of the Planning Board:

On behalf of Somers Fire District, Contract Vendee with IBM to purchase a 12-acre parcel of land in the Town of Somers for a new Public Safety Center, attached please find a completed Application for Preliminary Approval of Subdivision.

Our office has been authorized by the Somers Fire District to act on their behalf in all matters pertaining to making applications and presentations to the Town of Somers Planning Board in an effort to obtain both Preliminary and Final Approval of Subdivision. A copy of the signed Authorization Letter from the Somers Fire District is attached.

Brief History

IBM currently owns a large parcel of land on the west side of NYS Route 100, which contains approximately 166-acres of land. A small portion of this property is currently leased to the New York State Police for their State Trooper Barracks, which has been in that location for many years.

184 KATONAH AVENUE, KATONAH, NEW YORK 10536
Tel. (914) 232-4633 Fax (914) 232-0768

For the past several years, Somers Fire District has been looking to construct a new Fire Headquarters in order to safely accommodate today's larger apparatus and to have a facility that meets all current building code and ADA requirements as would be expected for an essential facility that can remain operational in the event of extreme weather conditions, power outages, etc.

In addition, the New York State Police have been located in the Town of Somers for many years, yet in the recent past has solicited proposals for a new facility to be constructed to replace their current facility, which is very old and obsolete in many ways, with a new code compliant facility. Some of the Proposals submitted would result in relocating the State Police Barracks out of Somers to another nearby Town.

Over the past few years, the Somers Fire District has been negotiating with IBM to purchase a 12-acre parcel of land, which contains the New York State Police Barracks located at 295 NYS Route 100, in the Town of Somers, NY. Just recently, and as good neighbors, IBM has agreed to sell the proposed 12-acre parcel to the Somers Fire District for the specific purpose of constructing a new Public Safety Center, which will include new facilities for the Somers Fire District as well as the New York State Police and the Town of Somers Emergency Services.

Description of the Proposed Subdivision

The proposed subdivision will involve creating a separate 12-acre parcel of land from the overall 166-acre parcel. Reference is made to the attached Drawings for exact location and configuration of the proposed subdivided land.

At this point in time, the Somers Fire District is looking to move forward as quickly as possible to formally subdivide the parcel so it can be conveyed to the Somers Fire District and properly recorded in the Westchester County Clerk's Office - Division of Land Records.

Prior to determining how much land would be necessary to accommodate a new Public Safety Center, meetings were held with both the Fire District and the New York State Police, to develop Preliminary Floor Plans that would accommodate their program needs. Preliminary design studies were then completed to develop and finalize Preliminary Floor Plans and a Preliminary Site Plan that would accommodate the program requirements of both parties; maintain the existing State Police Barracks in operation during construction; and be respectful of environmental concerns including existing wetlands, steep slopes, access to and from NYS Route 100, etc.

Environmental Phase 1 Review & SEQRA – An extensive Phase I Environmental Study was completed by Environmental Resources Management (ERM) as a third party independent consultant on behalf of IBM. The Somers Fire District retained HydroEnvironmental Solutions, Inc. as their independent third party environmental consultant to review the comprehensive Phase I Study as it pertains specifically to the proposed 12-acre parcel to be subdivided. A copy of the Phase I ESA Opinion Letter is attached. In addition, for the sole purpose of subdividing the 12-acre parcel, a short EAF has been completed – copy attached.

Topography & Wetland Information - Since the property is currently heavily vegetated and overgrown, the topography and updated wetland flagging cannot be completed until the leaves are off the trees and underbrush is more manageable. Therefore, we are submitting this Preliminary Application utilizing Topography, Steep Slopes & Wetland information, which was completed in or around the year 2000 for a proposed YMCA facility which never went forward. We are expecting the updated Topography and Wetland Flagging to be completed this November.

Work to be completed after Final Subdivision Approval has been granted - After the property has been formally subdivided and conveyed to the Somers Fire District, the Fire District intends to develop Site Engineering Drawings as needed and make the necessary Application to the Planning Board and other Town Boards as required for Site Plan Approval.

We understand that these submissions will most likely include, but may not be limited to, a submission to the Zoning Board of Appeals or Town Board for a Special Exception Use to permit a Public Safety Center to be constructed in an R-80 Zoning District or obtain whatever would be necessary for permission to construct a Public Safety Center. In addition, a variance from the ground water protection requirements currently in place may be needed since what is currently in place pertains to residential dwellings. It is understood that approval from the Architectural Review Board will also be needed and that the SEQRA process will need to take place which may require an Aquifer Assessment Impact Study. All other Site Plan requirements would be reviewed at that time.

The Somers Fire District has also been in negotiations with the Developer of the adjacent property to the north, known as Somers Crossing, LLC, in order to have permission to connect to the new water and sanitary sewer being developed on that property.

Application for Preliminary Approval of Subdivision – Since the proposed Public Safety Center is being developed by the Somers Fire District, the Board of Fire Commissioners respectfully requests that the Town consider waiving Application Fees for this project. However, if this is not possible, the Fire District will pay any required fees.

Based on the above, attached herewith please find one (1) original and thirteen (13) copies of the following information:

- Authorization Letter from the Owner, signed and dated 10/10/16
- Application for Preliminary Approval of Subdivision dated 10/11/16
- Identification of Adjoining Property Owners with postage stamped envelopes
- Short Environmental Assessment Form
  as prepared by HydroEnvironmental Solutions, Inc. dated 8/16/16
- Phase I ESA Opinion Letter
  as prepared by HydroEnvironmental Solutions, Inc. dated 8/12/16
- Affidavit of Ownership & Title Policy (applicable portions of Title Report including proof of ownership and confirmation that taxes have been paid)

Fourteen (14) bound sets of the following drawings are also included, all last dated 10/11/16 and as prepared by The Helmes Group, unless otherwise indicated:

Dwg. 1	Satellite Image showing Proposed Subdivision
Dwg. 2	Tax Map showing Adjoining Neighbors
Dwg. 3	Proposed Subdivided Parcel with Preliminary Site Plan
Dwg. 4	Reference Drawing of 12/4/00 NYSDEC Freshwater Wetland Boundary
Dwg. 5	Reference Drawing of 2001 Existing Site Plan
Dwg. 6	Map of Property showing Proposed 12-Acre Parcel for Somers Fire District as prepared by Don Coleman, Land Surveyor
Dwg. 7	Reference Drawing of Proposed Adjacent Residential Development (for connection of water & sanitary sewer)

In addition to the hard copy / paper submission, a CD with digital copies in pdf format of this entire submission, including cover letter, all attachments and the above-referenced drawings, has been provided to the Town of Somers - Planning Board Secretary.

We look forward to making a presentation to the Planning Board on Wednesday, October 26, 2016. It is my understanding that meeting begins at 7:30 p.m. and that we will receive an agenda sometime prior to the meeting.

On behalf of the Somers Fire District, we look forward to working with the Planning Board and the Town Consultants in order to obtain both Preliminary and Final Subdivision approval.

If you have any questions or require any additional information, please do not hesitate to contact me.

Respectfully submitted,

THE HELMES GROUP, LLP

Peter J. Helmes, AIA
Architect

PJH:KF

FL

cc: John Markiewicz, Chairman – Board of Fire Commissioners
Kenneth E. Hoffarth, District Manager
Frank Simone, Esq.

Enclosures

FIRE HEADQUARTERS
ROUTE 139
LINCOLNDALE, NEW YORK

TEL (914) 248-7411
FAX (914) 248-6989

BOARD OF FIRE COMMISSIONERS
TOWN OF SOMERS
SOMERS FIRE DISTRICT

JOHN J. MARKIEWICZ, CHAIRMAN
JOHN FITZGERALD
MICHAEL AMATO
JOHN CHRYSOGELOS, JR.
STEPHANIE PORTEUS

P.O. BOX 300
SOMERS, NEW YORK 10589

KENNETH E. HOFFARTH
FIRE DISTRICT MANAGER

CLAIRE KELMER
SECRETARY

ANNETTE SQUITIERI
TREASURER

October 10, 2016

RECEIVED
OCT 11 2016
PLANNING-ENGINEERING
TOWN OF SOMERS

John Currie, Chairman
Town of Somers Planning Board
335 Route 202
Somers, NY 10589

Project: Somers Public Safety Center, 295 Route 100, Somers, NY 10589
Tax Sheet 17.18; Block 1; Lot 1

Subject: Letter of Authorization
(Proposed 12-acre parcel being conveyed from KIPP-IBM to Somers Fire District)

Dear Chairman Currie & Members of the Board:

On behalf of the Somers Fire District, please accept this letter as our Authorization to permit The Helmes Group, LLP to act as our Agent on our behalf in all matters pertaining to the Proposed Subdivision of a 12-acre parcel to be conveyed to the Somers Fire District from an existing 166-acre parcel currently owned by KIPP - International Business Machines Corporation.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,
Somers Fire District
Board of Fire Commissioners

Kenneth E. Hoffarth, District Manager

7/02

SOMERS PLANNING BOARD
APPLICATION FOR PRELIMINARY APPROVAL OF SUBDIVISION

Application Processing Affidavit must also be signed. Please click here for form

I. IDENTIFICATION OF APPLICANT:

A. OWNER: Somers Fire District
ADDRESS: 119 Primrose Street (Rte.139)
Somers, NY 10589
TELE #: 914-248-7411

SUBDIVIDER: Kipp - International Business Machines Corporation
ADDRESS: Route 100
Somers, NY 10589
TELE #:

B. SURVEYOR: Donald D. Coleman, L.S.
TELE #: 203-431-8113
ENGINEER: The Helmes Group, LLP
TELE #: 914-232-4633

II. IDENTIFICATION OF PROPERTY: 295 Route 100 (Somerstown Road & Croton Turnpike)

A. Subdivision identifying Title: Somers Public Safety Center
B. Street abutting property: Route 100
C. Tax Map Designation: Sheet: 17.18 Block: 1 Lot: 1
D. Zoning District: R-80
E. Project (does)(does not)connect directly into (State)(County) highway.
F. Proposed drainage (does) (does not) connect directly into channel lines established by the County Commission of Public Works.
G. Project site (is) (is not) within 500 feet of Town boundary.
H. Affected Wetland Area: 0 SF Wetland Buffer Area: 13,854
I. Affected Steep Slope Areas: 15% - 25%: 400 SF Over 25%: 675 SF
J. Total area of property in acres: 12 Acres

III. APPLICABLE FEES PAID: By certified check payable to Town of Somers
Abbreviated Procedure fee of $250: N/A Date Paid:
Preliminary Subdivision Plat is $400 per lot Date Paid:
Number of lots: Two (2)
Wetland Permit Fee: $200 min. fee + $100 per 5,000 s.f. of regulated area or proposed portions to be disturbed.
Steep Slope Permit Fee: $150 min. fee + $75 per 10,000 s.f. of regulated area or proposed portions to be disturbed.
Total Fee: Date Paid:

IV. DOCUMENTS TO BE SUBMITTED WITH THIS APPLICATION
14 copies of all submitted correspondence during review process .

A. 14 copies of Preliminary Plat
B. 14 copies of Preliminary Construction Plans
C. 14 copies of Topographic Map
D. 2 copies of Affidavit of Ownership & Title Policy
E. 14 copies of Environmental Assessment Form
F. Proof that taxes have been paid

V. ADJOINING PROPERTY OWNERS

A. Identify all adjoining property owners & owners directly across any and all adjoining streets including those in adjoining communities. Submit stamped envelopes addressed as listed.

SHEET	BLOCK	LOT	NAME OF OWNER & MAILING ADDRESS
See attached "List"			See attached "List"

If necessary, continue listing on additional sheet.

By submission of this application, the property owner agrees to permit Town officials and their designated representatives to conduct on-site inspections in connection with the review of the proposal.

Property shall be identified on site as being proposed for subdivision. Center line of proposed roadway(s) shall be staked prior to scheduling of a walk-through by the Planning Board.

It is the responsibility of the applicant to be knowledgeable of the law. The following are available at the Town Clerk's Office: Master Plan, Zoning Ordinance, Subdivision Regulation, State Environmental Quality Review Act, Wetland and Steep Slope Ordinances, Road Specifications.

All revised plans shall be accompanied by a letter indicating what has been changed. All costs incurred by the Town for Professional Services and SEQR review will be paid by the applicant.

The undersigned applicant hereby requests approval by the Planning Board of the Preliminary Plat ~~and Construction Plans~~.

Applicant: Somers Fire District, Contract Vendee — Date: 10/11/16

Joseph E. Hoffarth, District Manager — Date: 10/11/16

Property Owner: Kipp - International Business Machines Corporation

C:\My Documents\SOMERSWebsite\SomersNY.com Files\Somers_P&E_PrelimSubdivision 2002-07.DOC

RECEIVED
OCT 11 2016
PLANNING-ENGINEERING
TOWN OF SOMERS

Somers Public Safety Center
295 Route 100, Somers, NY

Identification of Adjoining Property Owners

Sheet-Block-Lot
Name of Owner
Mailing Address

17.17-3-3.1
Town of Somers
335 Route 202
Somers, NY 10589

17.18-1-1
IBM Corporation
Attn: W. Spinei
1 North Castle Drive
Armonk, NY 10504

17.17-2-37
Somers Chase Homeowners Association, Inc.
c/o Sequoia Properties Management Corp.
666 Lexington Avenue
Mt. Kisco, NY 10549

17.8-1-2
Route 100 Realty, Inc.
P.O. Box 143
Somers, NY 10589

17.18-1-2
Gigliotti Enterprises, Inc.
1515 Croton Lake Road
Yorktown Heights, NY 10598

17.18-1-4
Mill Pond Offices, Inc.
293 Route 100 - Suite 106
Somers, NY 10589

17.18-1-14
Somers Chase Homeowners Association, Inc.
c/o Sequoia Properties Management Corp.
666 Lexington Avenue
Mt. Kisco, NY 10549

17.18-1-15.1
Somers Chase Homeowners Association, Inc.
c/o Sequoia Properties Management Corp.
666 Lexington Avenue
Mt. Kisco, NY 10549

17.18-1-15.2
Somers Chase Homeowners Association, Inc.
c/o Sequoia Properties Management Corp.
666 Lexington Avenue
Mt. Kisco, NY 10549

17.18-1-16
Somers Chase Homeowners Association, Inc.
c/o Sequoia Properties Management Corp.
666 Lexington Avenue
Mt. Kisco, NY 10549

17.19-1-1
New Somers II, LLC
c/o IBM Corporation
Attn: W. Spinei
1 North Castle Drive
Armonk, NY 10504

17.17-2-3.1
Somers Chase Homeowners Association, Inc.
c/o Sequoia Properties Management Corp.
666 Lexington Avenue
Mt. Kisco, NY 10549

28.07-1-1
Charles & Xenia Stephens
11 Birchwood Drive
Greenwich, CT 06831

17.17-2-3.4
Somers Chase Homeowners Association, Inc.
c/o Sequoia Properties Management Corp.
666 Lexington Avenue
Mt. Kisco, NY 10549

17.17-2-3.5
Somers Chase Homeowners Association, Inc.
c/o Sequoia Properties Management Corp.
666 Lexington Avenue
Mt. Kisco, NY 10549

17.17-2-3.7
Somers Chase Homeowners Association, Inc.
c/o Sequoia Properties Management Corp.
666 Lexington Avenue
Mt. Kisco, NY 10549

17.17-1-3.3
Somers Chase Homeowners Association, Inc.
c/o Sequoia Properties Management Corp.
666 Lexington Avenue
Mt. Kisco, NY 10549

17.15-1-15.1
Somers Crossing, LLC
c/o Gus Boniello
165 Waccabuc Avenue
Goldens Bridge, NY 10526

17.14-2-11
Louis R. Gigante
Luigino Gigante
8 Todd Lane
Somers, NY 10589

17.14-2-10
Michael & Saundra Blum
7 Todd Lane
Somers, NY 10589

Short Environmental Assessment Form
Part 1 - Project Information

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information

Name of Action or Project:
Somers Public Safety Center

Project Location (describe, and attach a location map):
281 Route 100, Somers, Westchester County, NY. See attached Location Map

Brief Description of Proposed Action:
Project will include construction of a new Somers Public Safety Center, which will act as the headquarters for the police and fire department. The project which will include the building of new structures, parking lots, and stormwater retention ponds. Aesthetic landscaping will be installed throughout the site. A helicopter landing pad will be installed for emergency use. Site access will be off of Route 100, to the east of the site. Existing State Police Headquarters will be removed upon completion of this project.

Name of Applicant or Sponsor:	Telephone: 914-276-2580
HydroEnvironmental Solutions, Inc.	E-Mail: wcanavan@hesny.com

Address:
One Deans Bridge Road

City/PO:	State:	Zip Code:
Somers	NY	10589

	NO	YES
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	☑	☐
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: NYSDEC wetlands permit and WCDOH water supply permit. Also, all other required Town approvals as may be applicable (including zoning, planning, wetlands, etc.)	☐	☑

3.a. Total acreage of the site of the proposed action? 12 acres
b. Total acreage to be physically disturbed? 6 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 12 acres

4. Check all land uses that occur on, adjoining and near the proposed action.
☐ Urban ☑ Rural (non-agriculture) ☐ Industrial ☑ Commercial ☑ Residential (suburban)
☑ Forest ☐ Agriculture ☐ Aquatic ☑ Other (specify): Middle School
☐ Parkland

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations? Zoning approvals will be required b. Consistent with the adopted comprehensive plan?	☑ ☐	☐ ☑	☐ ☐
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO ☐	YES ☑	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO ☑	YES ☐	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO ☑	YES ☐	
b. Are public transportation service(s) available at or near the site of the proposed action?	☑	☐	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	☑	☐	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies:	NO ☐	YES ☑	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	NO ☐	YES ☑	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	NO ☐	YES ☑	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO ☑	YES ☐	
b. Is the proposed action located in an archeological sensitive area?	☑	☐	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO ☐	YES ☑	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	☑	☐	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: ☐ Shoreline ☑ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☑ Wetland ☐ Urban ☑ Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO ☐	YES ☑	
16. Is the project site located in the 100 year flood plain?	NO ☐	YES ☑	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? ☐ NO ☑ YES	NO ☐	YES ☑	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? ☐ NO ☑ YES If Yes, briefly describe: The proposed impervious areas will collect stormwater and convey it to two proposed stormwater retention ponds.			

	NO	YES
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: Two retention ponds are proposed on the western side of the site. The ponds encompass an area of approximately 1 acre.	☐	☑
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	☑	☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	☑	☐

I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: William A. Canavan, PG, LSRP Date: 08/16/16

Signature:

PRINT FORM

HydroEnvironmental
SOLUTIONS, INC.

August 12, 2016

Mr. Kenneth Hoffarth, District Manager
Somers Fire District
P.O. Box 300
Somers, NY 10589

RE: Phase I ESA Opinion Letter
Proposed Somers Public Safety Center
Somers, New York

Dear Mr. Hoffarth:

As requested, HES has completed a review of the Phase I ESA conducted at the property located at 281 Route 100 in Somers, New York. The ESA was completed by Environmental Resource Management (ERM) in June 2016, and the field work related to the ESA was completed in April 2016. Based on our review we offer the following:

The ESA is comprehensive and well written and was completed in accordance with ASTM International Standard E1527-13 for ESAs.

The 12-acre parcel is mostly wooded and vacant; however, the existing New York State Police barracks has had some recognized environmental concerns/conditions (RECs) in the past. The ERM ESA clearly defines and discusses the past environmental issues which include two former USTs (gasoline and fuel oil), soil remediation and a GW investigation. As outlined in the ESA report, all past RECs have been addressed to the satisfaction of ERM and the NYSDEC. After our review of the ESA, HES concurs with ERM's conclusions related to past RECs that they are no longer a concern.

HES recommends inquiring with the site owner and ERM to confirm if the requested FOIL documents, related to a subsurface investigation conducted by Shaw Environmental, were ever received. If they were, they should be provided for our review.

One Deans Bridge Road • Somers, New York 10589
914.276.2560 • FAX 914.276.2664

The ERM report clearly states that field personnel did not walk the entire 194-acre parcel. Given the size of the parcel this is understandable. However, HES recommends seeking permission for our technical staff to walk the entire 12-acre parcel that will house the proposed Somers Public Safety Building. The site walk will ensure that no illegal dumping has occurred since June 2016.

It is our professional opinion that the ERM Phase I ESA can be relied upon by the purchaser as part of their due diligence process and the ASTM *bona fide* prospective purchaser liability protection. It should be noted that a Phase I ESA has an industry accepted standard shelf life of 6 months. The buyer should be aware of this standard.

Please contact me at 914-276-2560 if you have any questions or should you require any additional information.

Very truly yours,
HydroEnvironmental Solutions, Inc.

William A. Canavan, PG, LSRP
President

Enclosures

cc: File

HydroEnvironmental SOLUTIONS, INC.
One Deans Bridge Road (914) 276 - 2560
Somers, New York 10589 Fax: (914) 276 - 2564

stewart title insurance company

ORDER CONFIRMATION

Title Number: ST16-27858
Date of Application: August 4, 2016
Sales Representative: Michael Trainor

Applicant
William S. Badura, Esq.
Kornfeld Rew Newman & Simeone
46 Washington Avenue, P.O. Box 177
Suffern, NY 10901
Phone No.: (845) 357-2660
Fax No.: (845) 357-6977
Email: wsb@krne.com

Lender/Bank Attorney

Copies To:

Seller Attorney

Property Address: Route 100
Somers, NY

Condo/Co-op:
County: Westchester
Town/Municipality: Somers
District:
Section: 17.18
Block: 1
Lot: Part of 1

Transaction: Fee
Fee Liability:
Mortgage Liability

Mortgagee: N/A
Buyer/Borrower(s): Somers Fire Department
Seller(s): International Business Machines

S/b Somers Fire District

Survey instructions: To be advised

Departmental Searches Ordered:

Certificate of Occupancy
Fire
Housing Building
Street
Notes:

Tax

Certificate and Report of Title Issued By

STEWART TITLE

INSURANCE COMPANY

This Company certifies to the proposed insured named in the Schedule A-Certification herein that an examination of title to the premises in the Schedule A-Description has been made in accordance with its usual procedure and agrees to issue its standard form of fee, leasehold and or mortgage title insurance policy in favor of the proposed insured, covering the premises in the Schedule A-Description, in the amounts hereinafter set forth, insuring such interests and the marketability thereof, after the closing of the transaction in conformance with procedures approved by the Company excepting (a) all loss or damage by reason of the estates, interests, defects, objections, liens, encumbrances and other matters set forth herein that are not disposed of to the satisfaction of the Company prior to such closing or issuance of the policy.

This Certificate and Report of Title is subject to any question or objection arising as a result of a continuation of title to the date of closing or which may be brought to the attention of the Company prior to the closing, or if there be no closing, before the issuance of a policy.

This Certificate and Report of Title shall be null and void (1) if the fees therefore are not paid (2) if the prospective insured, his attorney or agent makes any untrue statement with respect to any material fact or suppresses or fails to disclose any material fact or if any untrue answers are given to material inquiries by or on behalf of the Company (3) upon delivery of the policy. Any claim arising by reason of the issuance hereof shall be restricted to the terms and conditions of the standard form of insurance policy. If title, interest or lien to be insured was acquired by the prospective insured prior to delivery hereof, the Company assumes no liability except under its policy when issued.

THIS REPORT IS NOT A TITLE INSURANCE POLICY. PLEASE REVIEW THIS REPORT WITH A REAL ESTATE PROFESSIONAL REPRESENTING YOUR INTEREST IN THIS TRANSACTION. PLEASE READ IT CAREFULLY. THE REPORT MAY SET FOR THE EXCLUSIONS UNDER THE TITLE INSURANCE POLICY AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE PROPERTY. YOU SHOULD CONSIDER THIS INFORMATION CAREFULLY.

STEWART TITLE INSURANCE COMPANY INCORPORATED 1987 NEW YORK

Countersigned by:

Craig Goldenberg
Division President

Julie Curlen
President

Denise Carraux
VP-Corporate Secretary

stewart title

Title Number: ST16-27858

SCHEDULE A – CERTIFICATION

Effective Date: 7/15/2016

Proposed Insured:

Purchaser/Borrower: Somers Fire Department

Mortgagee: N/A

Amount of Insurance:

Fee:

Mortgage:

THIS COMPANY CERTIFIES that a good and marketable title to the premises described in Schedule A - Description, subject to the liens, encumbrances and other matters, if any, set forth in this certificate may be conveyed and/or mortgaged by:

International Business Machines Corporation, a New York Corporation

Source of Title: Deed from Lyman E. Kipp, Douglas W. Kipp and Royle J. Kipp to International Business Machines Corporation, a New York Corporation, dated 2/14/1986, recorded 2/19/1986 in Liber 8352 Page 116. Covers premises and more.

Premises described herein are known as: Route 100
Somers, NY

County: Westchester
Village:
Municipality: Somers
District:
Section: 17.18
Block: 1
Lot: Part of 1

For Legal Contact:
Henry Ruhlandt
(914) 993-4457
Henry.Ruhlandt@stewart.com

SCHEDULE A – DESCRIPTION

ALL that certain lot, piece or parcel of land, situate, lying and being in the Town of Somers, County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the westerly boundary line of N. Y. S. Route 100 also known as Somerstown Road and Croton Turnpike where the same is intersected by the division line between Lot A as shown on a certain map entitled "Map Showing Kipp – International Business Machines Corporation Lot Line Change", etc., said map being filed in the Westchester County Clerk's Office, Division of Land Records February 13, 1986 as Map Number 22217 and lands now or formerly belonging to Somers Crossing LLC;

RUNNING THENCE in a southerly direction along the westerly boundary line of N. Y. S. Route 100 also known as Somerstown Road and Croton Turnpike South 15 degrees 27 minutes 32 seconds West 289.57 feet, South 19 degrees 11 minutes 17 seconds West 110.64 feet, South 30 degrees 43 minutes 12 seconds West 47.44 feet, South 25 degrees 53 minutes 22 seconds West 241.73 feet and South 22 degrees 27 minutes 52 seconds West 128.07 feet to a point;

THENCE in a westerly, northerly and easterly direction through Lot A, North 70 degrees 40 minutes 13 seconds West 707.80 feet, North 52 degrees 58 minutes 22 seconds West 57.36 feet, North 4 degrees 37 minutes 56 seconds East 162.58 feet, North 11 degrees 43 minutes 09 seconds West 52.95 feet, North 42 degrees 02 minutes 58 seconds West 51.68 feet, North 15 degrees 52 minutes 38 seconds West 60.30 feet, North 52 degrees 32 minutes 56 seconds West 64.90 feet, North 8 degrees 10 minutes 54 seconds West 38.75 feet and North 87 degrees 47 minutes 10 seconds East 517.94 feet to a point;

THENCE continuing in an easterly direction along the southerly boundary line of property now or formerly belonging to Somers Crossing LLC, North 82 degrees 12 minutes 31 seconds East 68.27 feet, North 81 degrees 31 minutes 12 seconds East 252.25 feet and North 82 degrees 25 minutes 52 seconds East 279.48 feet to the point or place of beginning.

FOR CONVEYANCING ONLY: TOGETHER with all right, title and interest of the party of the first part, of, in and to any streets and roads abutting the above described premises to the center lines thereof.

ID-8798674-049

ABSTRACTERS' INFORMATION SERVICE

3000 MARCUS AVE, SUITE 2W02 LAKE SUCCESS NY 11042
PHONE:(516) 918-4600 FAX:(516) 918-4540

TAX SEARCH

Prepared For: Stewart Title Insurance Company

County : WESTCHESTER

DATE: 8/4/2016

TITLE NO. 0513-1627858
PREMISES: 281 ROUTE 100, SOMERS

TOWN OF SOMERS

ACREAGE: 162.5 LOT SIZE: NA

ASSESSED OWNER: I B M CORPORATION

TAX CLASSIFICATION: 662

ASSESSED VALUE: TOWN 260100/312100
SD: SOMERS SECTION: 17.18 BLOCK: 1 LOT: 1 SWIS CODE: 555200

RETURNS

SEC: 17.18 BLOCK: 1 LOT: 1

2016 TOWN/COUNTY TAX PERIOD 01/01/16 - 12/31/16
FULL TAX DUE 04/01/16 - $14,292.14 PAID

2015/2016 SCHOOL TAX PERIOD 07/01/15 - 06/30/16
1 1/2 TAX DUE 09/01/15 - $24,506.45 PAID
2 1/2 TAX DUE 01/01/16 - $24,506.45 PAID

WATER - PRIVATE

SUBJECT TO CONTINUATION PRIOR TO CLOSING.

Note: A separate $5.00 check is required for all tax payments to the Town of Somers Receiver of Taxes if being paid without original bill.

FOR TAX PAYMENT INFORMATION GO TO: http://orpts.tax.ny.gov/cfapps/MuniPro/swis/

RECOMMEND THAT CUSTOMER CONFIRM AT CLOSING THAT OWNER HAS NOT RECEIVED NOTICE OF SPECIAL ASSESSMENTS (I.E., SIDEWALK REPAIRS, LOT CLEARANCE, OR EMERGENCY REPAIRS). SEARCH MAY NOT INCLUDE EXISTENCE OF SUCH NOTICES. EXEMPT PROPERTY RESTORED FACTORS (IF ANY) SHOWN ABOVE REPRESENT THE DIFFERENCE BETWEEN THE ACTUAL TAX SHOWN AND WHAT THE TAX WOULD HAVE BEEN HAD THERE BEEN NO EXEMPTION. RESTORED TAX IS FIGURED ON A PRO-RATA BASIS FROM DATE OF DEED TO END OF FISCAL YEAR OF EACH TAX SO AFFECTED. METHOD OF COLLECTION OF RESTORED TAX IS NOT UNIFORM FOR ALL MUNICIPALITIES. SEARCH DOES NOT INCLUDE LEVIES OF RESTORED TAXES NOT YET POSTED BY MUNICIPALITY. SOME ITEMS RETURNED MAY HAVE BEEN PAID BUT NOT OFFICIALLY POSTED BY MUNICIPALITY. RECOMMEND THAT CUSTOMER OBTAIN RECEIPTS FOR SUCH ITEMS AT CLOSING. TAX DUE DATES MAY VARY ANNUALLY. RECOMMEND THAT CUSTOMER CONFIRM DUE DATES WITH THE APPROPRIATE MUNICIPALITY. SEARCH MAY NOT INCLUDE ITEMS NOT A LIEN UP TO THE DATE SHOWN. SEARCH DOES NOT INCLUDE ARREARS FILED AGAINST ANY NAME OTHER THAN THE ASSESSED OWNER AS SHOWN ABOVE. THE RETURNS ARE SPECIFIC TO SECTION, BLOCK AND LOT.

IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE

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Somers Department of Parks & Recreation
PO Box 46 Somers, New York 10589

OFF: (914)-232-2441
FAX: (914)-232-8548

Steven Ralston
Superintendent

September 27, 2016

To: Town Board

From: Steven Ralston
Superintendent of Parks and Recreation

Re: Request for Approval

a. Request permission to increase the Reis Park Playground Budget $3,223.91 to a total of $76,973.91

b. Request permission to increase the Somers Tennis Court Project Budget $3,111.00 to a total of $121,111.00

C: Town Clerk
Director of Finance
Park Board

Add to Agenda
RBTC TA
9/26/16 bjs

Constellation
An Exelon Company

September 23, 2016

Town of Somers, NY
335 Route 202
Somers, NY 10589
Attn: Supervisor Morrissey

RE: Request to assign the Electric Service Agreement between Sustainable Westchester, Town of Somers ("Municipality") and Constellation Energy Power Choice, Inc. ("CEPC") dated March 10, 2016 ("Agreement") from CEPC to its affiliate Constellation NewEnergy, Inc.

Dear Supervisor Morrissey:

The Municipality and CEPC entered into the Agreement to provide electricity for the Municipality's electric aggregation program. Pursuant to Section 18.1 of its terms, CEPC may not assign the Agreement without the express written authorization of the Municipality.

CEPC hereby requests written authorization from the Municipality to assign its obligations under the Agreement to its affiliate, Constellation NewEnergy, Inc., effective November 12, 2016. Please kindly acknowledge your express written consent to such an assignment by signing this letter and returning it to the following email address: Brian.bowe@constellation.com.

If you have questions regarding this request, please feel free to contact Brian Bowe via the above email address or by phone at (920) 617-6248. Thank you.

Regards,

Brian Bowe

The Town of Somers expressly consents to the assignment of the Agreement from CEPC to its affiliate, Constellation NewEnergy, Inc.

Signature _____
By: _____
Date: _____

Dot Agenda
EC-TBTC TA 9/23/16 DP

Constellation
An Exelon Company

September 23, 2016

Town of Somers, NY
335 Route 202
Somers, NY 10589
Attn: Supervisor Morrissey

RE: Request to assign the Electric Service Agreement between Sustainable Westchester, Town of Somers ("Municipality") and Constellation Energy Power Choice, Inc. ("CEPC") dated March 10, 2016 ("Agreement") from CEPC to its affiliate Constellation NewEnergy, Inc.

Dear Supervisor Morrissey:

The Municipality and CEPC entered into the Agreement to provide electricity for the Municipality's electric aggregation program. Pursuant to Section 18.1 of its terms, CEPC may not assign the Agreement without the express written authorization of the Municipality.

CEPC hereby requests written authorization from the Municipality to assign its obligations under the Agreement to its affiliate, Constellation NewEnergy, Inc., effective November 12, 2016. Please kindly acknowledge your express written consent to such an assignment by signing this letter and returning it to the following email address: Brian.bowe@constellation.com.

If you have questions regarding this request, please feel free to contact Brian Bowe via the above email address or by phone at [redacted]. Thank you.

Regards,

Brian Bowe

The Town of Somers expressly consents to the assignment of the Agreement from CEPC to its affiliate, Constellation NewEnergy, Inc.

Signature _____
By: _____
Date: _____

Belinda DiTieri

From: Barbara Sherry
Sent: Monday, September 26, 2016 10:25 AM
To: Patricia Kalba; Roland Baroni; Belinda DiTieri; Anthony Cirieco; Bill Faulkner; Richard Clinchy; Rick Morrissey; Tom Garrity
Subject: October Agenda - Assignment letter
Attachments: Somers Consent Letter final.docx

Barbara J. Sherry
Intermediate Clerk to the Supervisor
Rick Morrissey, Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
phone: (914) 277-3637
fax: (914) 276-0082
bsherry@somersny.com

From: Rick Morrissey
Sent: Monday, September 26, 2016 9:47 AM
To: Barbara Sherry <bsherry@somersny.com>; Tammi Savva <tsavva@somersny.com>
Subject: FW: Assignment letter

Please place this on the October 6th TB agenda for discussion.

Rick Morrissey, MBA
Town Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
PH: 914-277-3637
Fax: 914-276-0082
supervisor@somersny.com
www.somersny.com

From: Bowe, Brian J:(Constellation) [mailto:Brian.Bowe@constellation.com]
Sent: Friday, September 23, 2016 10:47 AM
To: Rick Morrissey
Cc: Mike Gordon; Young, Kori:(Constellation)
Subject: Assignment letter

Supervisor Morrissey:

Attached is the assignment letter. Please review the letter and then sign and return it to me.

Let me know if you have any questions.

>
> Supervisor Morrissey would like to know if you are aware of the attached request and your recommendation on this matter.
> Thank you.
> Barbara J. Sherry
> Intermediate Clerk to the Supervisor
> Rick Morrissey, Supervisor
> Town of Somers
> 335 Route 202
> Somers, NY 10589
> phone: (914) 277-3637
> fax: (914) 276-0082
> bsherry@somersny.com
>
> <winmail.dat>

TB, PC

Belinda DiTieri

From: Roland Baroni
Sent: Tuesday, October 04, 2016 11:44 AM
To: Rick Morrissey
Cc: Belinda DiTieri
Subject: Re: Assignment letters - Sustainable Westchester CONFIDENTIAL

I think the TB can still adopt the resolution - with the additional language as follows -" provided the parties [illegible] requirements of Para 18.1 of the ESA". Roland

NOTE: This message and any attachments from the law firm of Stephens, Baroni, Reilly & Lewis, LLP may contain confidential and legally protected information. If you are not the addressee and an intended recipient, please do not read, copy, use, or disclose this communication to others; also, please notify the sender by replying to this message, and then delete it from your system. Thank you.

From: supervisor@somersny.com
Sent: October 4, 2016 10:35 AM
To: rbaroni[illegible]
Cc: bditieri@somersny.com
Subject: FW: Assignment letters - Sustainable Westchester CONFIDENTIAL

Roland:

FYI

Keeping you in the loop.

Rick

Rick Morrissey, MPA
Town Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
Ph: 914-277-3637
Fax: 914-276-0082
supervisor@somersny.com
www.somersny.com

From: Bedford Town Supervisor [mailto:supervisor@bedfordny.gov]
Sent: Tuesday, October 04, 2016 10:07 AM
To: Rick Morrissey; Peter Parsons; 'Warren Lucas'
Subject: FW: Assignment letters - Sustainable Westchester CONFIDENTIAL

Since the letter is dated September 23, 2016, it does not appear the Town received the 90 days required notice. More importantly, prior to the Town approving the assignment, the Town needs confirmation in writing that the assignee will be bound by the terms and conditions of the ESA, which I do not see in the letter. In addition, the assignee must "reasonably demonstrate to Municipality that assignee has the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA". This means that Constellation NewEnergy, Inc. (the assignee) would need to have TRC (the company that conducted the initial financial review of CPEC) or another auditor provide a letter stating that the assignee has the financial ability to fulfill its obligations under the ESA and also needs to provide further information about its experience and relationship to the assignor. Since this is an assignment to a Constellation affiliate, I assume that this will not be an issue. However, the Town does need something in writing with respect to these issues before it can approve the assignment.

Please do not hesitate to contact me if you have any questions.

Eric Gordon

Eric L. Gordon
Principal Member

KEANE & BEANE P.C.
ATTORNEYS AT LAW

445 Hamilton Avenue, Suite 1500
White Plains, NY 10601

(914) 946-4777 Ext: 335
(914) 946-6868 (Fax)
egordon@kblaw.com
www.kblaw.com

Follow us on Twitter

PERSONAL & CONFIDENTIAL

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original transmission and its attachments without saving, distributing or copying in any manner.

Please consider the environment before printing this e-mail or attachment.

From: Roper, Neal A:(BSC) [mailto:Neal.Roper@constellation.com]
Sent: Monday, October 3, 2016 4:35 PM
To: Gordon, Eric L.
Subject: FW: Assignment letters - Sustainable Westchester

Hi Eric –
My name is Neal Roper, I'm counsel for Constellation. Chris Burdick from the Town of Bedford and my internal business person here at Constellation suggested that I reach out to you regarding a potential assignment of the Town of Bedford's municipal aggregation agreement. I'm assuming it has to do with the mechanics. Let me know if you have time tomorrow to discuss. Or you can try to give me a call at the below number (though I have been having issues with my phone, so if you can't get through let me know and I'll call you).

Thanks,

Neal Roper
Assistant General Counsel
(617)772-7563

Constellation®

From: Bowe, Brian J:(Constellation)
Sent: Monday, October 03, 2016 2:46 PM
To: Roper, Neal A:(BSC)
Subject: FW: Assignment letters - Sustainable Westchester

From: Bedford Town Supervisor [mailto:supervisor@bedfordny.gov]
Sent: Monday, October 03, 2016 1:40 PM
To: Bowe, Brian J:(Constellation)
Cc: Young, Kori:(Constellation); Mike Gordon; Peter Parsons; 'supervisor@somersny.com'; Warren Lucas;

Gordon, Eric L.
Subject: RE: Assignment letters

Good afternoon Brian,

Thanks for your e-mail. I discussed with the Town's attorney, Eric Gordon (copied here), the proper course and he confirmed my understanding of the agreement and that it does require Town Board action. I would suggest that it would be inappropriate, and a violation of the agreement, to move accounts prior to the authorization to do so. I also should mention that the agreement requires not less than 90 days prior request for approval of the assignment. I would ask that you kindly contact (or arrange for your attorney) to contact Mr. Gordon.

We certainly value a good working relationship with Constellation and ask that you help as well in maintaining it. Thanks very much for your cooperation.

Chris Burdick
Supervisor
Town of Bedford
321 Bedford Road
Bedford Hills, New York 10507
914-666-6530
supervisor@bedfordny.gov
www.bedfordny.gov

From: Bowe, Brian J:(Constellation) [redacted]
Sent: Monday, October 03, 2016 2:35 PM
To: Bedford Town Supervisor <supervisor@bedfordny.gov>; Peter Parsons <[redacted]@lewisborogov.com>; 'supervisor@somersny.com' <supervisor@somersny.com>; Warren Lucas <Wlucas@northsalemny.org>
Cc: Young, Kori:(Constellation) <[redacted]>; Mike Gordon <[redacted]>
Subject: Assignment letters

Good afternoon Gentlemen:

Please let me know if you have any questions on the assignment letters I sent to you.

Chris let me know that he needs Board approval to move forward with the assignment and that he won't receive that until early November.

Constellation is still planning on moving the accounts within our systems on the weekend of November 12 and 13.

Please send the signed assignment letters as soon as possible.

Thanks,

Brian

Brian Bowe
Aggregation Team Leader

Constellation

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TB, TA OCT 13 AM

TRAVELERS

Denny Enoch
Claim Professional
PO Box 13426
Reading, PA 19612
(610) 736-2408
(877) 231-2506 fax
denoch@travelers.com

RECEIVED
OCT 13 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

September 21, 2016

RECEIVED
SEP 26 2016
TOWN CLERK'S OFFICE
SOMERS, NEW YORK

Patricia Kalba
Town of Somers
335 Route 202
Somers, NY 10589

Re:
Insured: Town of Somers
Our Claim No.: E4P6825
Plaintiff: Anthony and Catherine Porco
Claims Made Date: September 14, 2016
Policy Number: ZLP-31M61852

Dear Ms. Kalba:

The Travelers Indemnity Company ("Travelers") received notice on September 16, 2016 of the Summons and Complaint entitled *Anthony and Catherine Porco, Plaintiffs v Thomas P. Kuck, Whispering Pine Landscaping Supply Corp. and the Town of Somers, Defendants.* This was submitted to Travelers seeking coverage under the Town of Somer's (hereinafter, the "Town") policy number ZLP-31M61852 in effect from July 1, 2016 to July 1, 2017. A full review of the Town's policy is discussed below.

While the Town is a valued customer, we have completed our review of this matter, and must inform you that no coverage is available for the pending action under the terms and conditions of Travelers' policy. Therefore, Travelers will not provide a defense to the Town or any of its officers or employees, nor will it provide any indemnification in the event of a settlement or adverse result.

Our coverage evaluation is based on the allegations raised in the Complaint filed by Plaintiffs. We realize you will dispute those allegations. Please note that in referring to these allegations, Travelers does not mean to imply that any of them are true. Travelers, however, must refer to these allegations in determining whether it has any coverage obligation under the policy discussed below.

Plaintiffs are husband and wife who moved onto property next door to property owned by Defendants Kuck and Whispering Pine (WP). The latter is a landscaping business. In the past, the property used to be owned by a single person and it was subdivided and each of the two parcels was sold. While this property is zoned for residential use only, Kuck and WP had an approved use variance arising out of a settlement agreement dated March 7, 2014 to allow WP to

operate its landscaping company within certain distinct parameters, specifically days and hours of operation. Plaintiffs Anthony and Catherine Porco now allege WP is conducting activities on the land that exceed the scope of what is provided under the variance in question,specifically that they are operating outside the prescribed hours in the agreement. The Porcos allege they've suffered a loss of enjoyment of their property as a result of the actions of the Town, Kuck and WP.

The Complaint includes the following Causes of Action:

First Cause of Action – Declaratory Judgement under Town Law § 261. Seeking a declaration that the decision to rezone the parcel was arbitrary and capricious contrary to Town Law § 261.

Second Cause of Action – Declaratory Judgment under Town Law § 263. Seeking a declaration that the decision to rezone the parcel was inconsistent with the Town's Comprehensive Master Plan and, therefore, contrary to Town Law § 263.

Third Cause of Action – Declaratory Judgment under Town Law §§ 264-265. Seekng a declaration that rezoning the parcels without a public hearing violated Town Law §§ 264-265.

Fourth Cause of Action – Impermissible Spot Zoning. That the rezoning of the parcels constitutes spot zoning at the expense of other property owners within the zoning district is impermissible spot zoning inconsistent with the Town's Comprehensive Master Plan and the order allowing the zoning variance should be declared void.

Fifth Cause of Action – Town Actions *Ultra Vires* and Void. Seeking a declaration that the order allowing the variance is null and void as it is *ultra vires* and beyond the powers granted to the Town by the State.

Sixth Cause of Action – Declaratory Judgment – Enlargement of Nonconforming Use. Seeking a judgment declaring the rights and other legal relations between the parties, including the actions that Kuck and WP are authorized to engage in at the property.

Seventh Cause of Action – Private Nuisance. This action is brought against defendant Kuck only. Plaintiffs allege that the actions of Kuck and WP at the neighboring property constitute a private nuisance that has diminished the value of their neighboring property. They seek damages from defendant Kuck for the nuisance.

Plaintiffs seek the following relief:

(a) Annulling and vacating the enlargement of the variance
(b) Permanently enjoining and restraining Kuck and WP from engaging in rock crushing, jackhammering and mulch grinding until the Town has acted in accordance with Town Law

(c) Declaring Kuck's and WP's changes of use of their parcel to be impermissible spot zoning
(d) Declaring the actions of the Town to be beyond the legislative grant of zoning powers of the Town
(e) Declaring the enlargement of the zoning variance to be an unlawful expansion and a non-conforming use
(f) For costs, disbursements and attorneys' fees
(g) Such other relief the Court deems just and proper.

No damages are sought from the Town.

The Town of Somers is insured under policy number ZLP-31M61852 in effect from July 1, 2016 to July 1, 2017. This policy provides Commercial General Liability Coverage, Employee Benefit Liability Coverage, Public Entity Employment-Related Practices Liability Coverage, Law Enforcement Liability Coverage, and Public Entity Management Liability Coverage. Each of these forms of coverage will be discussed in detail below. The most relevant policy is the Public Entity Management Liability Policy, which will be discussed first.

The Town's Claims-Made Public Entity Management Liability Coverage ("PEML") carries a $1,000,000 wrongful act limit and $2,000,000 aggregate limit. The retroactive date is July 1, 1980. There is a $10,000 deductible. The key terms and conditions of the Public Entity Management Liability Coverage are set forth on Form PR T1 06 02 09, which reads, in part:

> **SECTION I - PUBLIC ENTITY MANAGEMENT LIABILITY COVERAGE**
>
> **1. Insuring Agreement**
>
> **a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of loss to which this insurance applies. We will have the right and duty to defend the insured against any claim or "suit" seeking those damages. However, we will have no duty to defend the insured against any claim or "suit" seeking damages because of loss to which this insurance does not apply. We may, at our discretion, investigate any "wrongful act" or claim and settle any claim or "suit". But:
>
> **(1)** The amount we will pay for damages is limited as described in Section **III** - Limits Of Insurance; and
>
> **(2)** Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

We will have no other obligation or liability to pay sums or perform acts or services unless explicitly provided for under Supplementary Payments.

b. This insurance applies to loss only if:

(1) The loss is caused by a "wrongful act" committed while conducting duties by or on behalf of you or "your boards";

(2) The "wrongful act" is committed in the "coverage territory";

(3) The "wrongful act" was not committed before the Retroactive Date shown in the Declarations of this Coverage Part or after the end of the policy period; and

(4) A claim or "suit" by a person or organization that seeks damages because of the loss is first made or brought against any insured, in accordance with Paragraph **c.** below, during the policy period or any Extended Reporting Period we provide under Section **VI** - Extended Reporting Periods.

***

The insuring agreement is modified by the NY Mandatory Endorsement, PR F1 93 01 15 as follows:

10. The following replaces Paragraph **1.a., Insuring Agreement,** of **SECTION I - PUBLIC ENTITY MANAGEMENT LIABILITY COVERAGE:**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of loss to which this insurance applies. We will have the right and duty to defend the insured against any claim or "suit" seeking those damages, even if the allegations of the claim or "suit" are groundless, false or fraudulent. However, we will have no duty to defend the insured against any claim or "suit" seeking damages because of loss to which this insurance does not apply. We may, at our discretion, investigate any "wrongful act" or claim and settle any claim or "suit". But:

(1) The amount we will pay for damages is limited as described in Section **III** - Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

> We will have no other obligation or liability to pay sums or perform acts or services unless explicitly provided for under Supplementary Payments.

The policy defines "wrongful act" as:

> **SECTION VII - DEFINITIONS**
>
> **34.** "Wrongful act" means any act, error or omission.

As discussed above the only damages sought by the Plaintiffs are for the private nuisance alleged in the Seventh Cause of Action brought against defendant Kuck. To the extent that the Complaint alleges a "wrongful act" on the part of the Town, it does not seek damages. Since the Complaint does not seek any damages there is no coverage for this matter under the Town's PEML policy with Travelers.

Even if a different conclusion could be reached, the following exclusions would operate to further preclude coverage:

> **2. Exclusions**
>
> This insurance does not apply to:
>
> **j. Injunctive Relief**
>
> Any loss cost or expense arising out of complying with any injunctive or other non-monetary relief or any agreement to provide such relief.

As detailed above all of the relief sought by Plaintiff is non-monetary, and therefore the foregoing exclusion operates to bar coverage for this claim.

The NY Mandatory Endorsement, PR F1 93 01 15, contains the following exclusion that also could apply to limit or preclude coverage:

> **11.** The following replaces Exclusion **f., Criminal, Dishonest, Fraudulent, Or Malicious Wrongful Acts Or Knowing Violations Of Rights Or Laws,** in Paragraph **2.** of **SECTION I - PUBLIC ENTITY MANAGEMENT LIABILITY COVERAGE:**

f. Criminal, Dishonest, Fraudulent Or Malicious Wrongful Acts Or Knowing Violations of Rights Or Laws

Loss arising out of any criminal, dishonest, fraudulent or malicious "wrongful act", or any knowing violation of rights or laws, committed:

(1) By the insured; or

(2) With the consent or knowledge of the insured.

In their Complaint Plaintiffs allege the Town of Somers violated various sections of the New York State Town Law. To the extent it is determined the Town did violate the law, the foregoing exclusion would operate to preclude coverage.

The PEML coverage also includes a Supplementary Payments provision which provides:

SUPPLEMENTARY PAYMENTS

We will pay, with respect to any claim we are investigating, any claim or "suit" we settle or any claim of "suit" against an insured we are defending:

4. All costs taxed against the insured in the "suit", but only for that part of any judgment we pay.

The Complaint specifically seeks attorneys' fees and costs. The Supplementary Payments provision only responds to costs taxed "for that part of the judgment we pay." As discussed above, there is no coverage for this claim. Thus, to the extent such attorneys' fees and costs imposed against the Town are for uncovered claims, those costs are disclaimed under the Supplementary Payments provision.

In summary, pursuant to the above exclusions, there is no coverage under the Town's PEML policy with Travelers.

The key terms and conditions of the Town's Commercial General Liability Coverage are set forth on Form CG 00 01 10 01, which reads, in part:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph **1.** of Section **II** – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

***

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

The policy defines "occurrence" as follows:

SECTION V – DEFINITIONS

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

The policy defines "property damage" in Endorsement CG D4 19 07 08 as follows:

The following replaces the definition of "property damage" in the **DEFINITIONS** section:

"Property damage" means:

a. Physical damage to tangible property of others, including all resulting loss of use of that property. All such loss of use will be

deemed to occur at the time of the physical damage that caused it; or

b. Loss of use of tangible property of others that is not physically damaged. All such loss of use will be deemed to occur at the time of the "occurrence" that caused it.
For the purposes of this insurance, data, including information, facts or programs in any electronic or other format, is not tangible property.

The policy defines "bodily injury" in Endorsement CG D4 09 04 08 as follows:

The following replaces the definition of "bodily injury" in the **DEFINITIONS** section:

"Bodily injury" means:

a. Physical harm, including sickness or disease, sustained by a person; or

b. Mental anguish, injury or illness, or emotional distress, resulting at any time from such physical harm, sickness or disease.

The policy defines "personal and advertising injury" in Endorsement CG D4 71 01 15 as follows:

PROVISIONS

A. AMENDMENT OF DEFINITION OF PERSONAL AND ADVERTISING INJURY

The following replaces the definition of "personal and advertising injury" in the **DEFINITIONS** Section:

"Personal and advertising injury" means "personal injury" or "advertising injury".

***

F. ADDITIONAL DEFINITIONS

The following is added to the **DEFINITIONS** Section:
"Advertising injury":

a. Means injury, other than "personal injury", caused by one or more of the following offenses:

(1) Oral or written publication, including publication by electronic means, of material in your "advertisement" that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;

(2) Oral or written publication, including publication by electronic means, of material in your "advertisement" that:

(a) Appropriates a person's name, voice, photograph or likeness;

(b) Unreasonably places a person in a false light; or

(3) Infringement of copyright, "title" or "slogan" in your "advertisement", provided that the claim is made or the "suit" is brought by a person or organization that claims ownership of such copyright, "title" or "slogan".

b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph **a.** above.

***

"Personal injury":

a. Means injury, other than "advertising injury", caused by one or more of the following offenses:

(1) False arrest, detention or imprisonment;

(2) Malicious prosecution;

(3) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;

(4) Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged; or

(5) Oral or written publication, including publication by electronic means, of material that:

(a) Appropriates a person's name, voice, photograph or likeness;
(b) Unreasonably places a person in a false light; or

b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph **a.** above.

Paragraph 1.a. of Section I of Coverage A and Coverage B are modified by endorsement CG F2 63 12 08:

A. Paragraph **1.a.** of **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and
(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B.**

B. Paragraph **1.a.** of **Section I – Coverage B – Personal And Advertising Injury Liability** is replaced by the following:

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal injury" or "advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal injury" or "advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** and **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B.**

In their Complaint the Plaintiffs do not seek damages for "bodily injury" or "property damage" caused by an "occurrence." Nor does the Complaint allege "personal injury" or "advertising injury" as defined by the policy. Therefore, no coverage is afforded for this matter under the Town's Commercial General Liability Policy.

The key terms and conditions of the Town's Employee Benefits Liability Coverage are set forth on Form CG T1 01 07 86, which reads, in part:

SECTION I - EMPLOYEE BENEFITS LIABILITY COVERAGE

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any negligent act, error, or

omission of the insured, or of any other person for whose acts the insured is legally liable. The negligent act, error, or omission must be committed in the "administration" of your "employee benefit program." No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS. This insurance does not apply to any negligent act, error, or omission which occurred before the Retroactive Date, if any, shown in the Declarations or which occurs after the policy expires. The negligent act, error or omission must take place in the "coverage territory." We will have the right and duty to defend any "suit" seeking those damages. But:

(1) The amount we will pay for damages is limited as described in SECTION III - LIMITS OF INSURANCE:

(2) We may at our discretion, investigate any report of a negligent act, error or omission and settle any claim or "suit" that may result: and

(3) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

b. This insurance applies to any negligent act, error or omission of the insured, but only if a claim for damages because of the negligent act, error or omission is first made against any insured during the policy period.

(1) A claim by a person or organization seeking damages will be deemed to have been made when notice of such claim is received and recorded by any insured or by us, whichever comes first.

(2) All claims for damages sustained by any one employee, including the employee's dependents and beneficiaries, will be deemed to have been made at the time the first of those claims is made against any insured.

The policy defines "administration as follows:

SECTION VII - DEFINITIONS

1. "Administration" means:

a. Counseling employees, including their dependents and beneficiaries, with respect to the "employee benefit program";

b. Handling records in connection with the "employee benefit program"; or

> **c.** Effecting or terminating any employee's participation in a plan included in the "employee benefit program."

The policy defines "Employee benefit program" as follows:

> **5.** "Employee benefit program" means the following plans:
>
> **a.** Group life insurance, group accident or health insurance, "profit sharing plans," pension plans and "stock subscription plans," provided that no one other than an employee may subscribe to such insurance or plans;
> **b.** Unemployment insurance, social security benefits, workers' compensation and disability benefits;
> **c.** Any other similar plan designated in the Declaration or added thereto by endorsement.

Plaintiff is not seeking to recover any damages caused by a negligent act, error or omission of the Town committed in the "administration" of its "employee benefit program." Therefore, no coverage is available under the Employee Benefit Liability policy.

The key terms and conditions of the Employment-Related Practices Liability Coverage are set forth on Form PR T1 08 02 09, which reads, in part:

> **SECTION I - PUBLIC ENTITY EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE**
>
> **1. Insuring Agreement**
>
> **a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of "employment loss" to which this insurance applies. We will have the right and duty to defend the insured against any claim or "suit" seeking those damages. However, we will have no duty to defend the insured against any claim or "suit" seeking damages because of "employment loss" to which this insurance does not apply.
>
> We will also have the right and duty to defend the insured against any "suit" that is a "governmental administrative proceeding" seeking injunctive relief for "employment loss" to which this insurance applies. However, we will have no duty to defend the insured against any "suit" that is a "governmental administrative proceeding" seeking injunctive relief for "employment loss" to which this insurance does not apply. For the purposes of our right

and duty to defend the insured under this paragraph, a "suit" that is a "governmental administrative proceeding" seeking injunctive relief for "employment loss" will be deemed to be a "suit" by a person or organization that seeks damages because of such "employment loss".

b. This insurance applies to "employment loss" only if:

(1) The "employment loss" is caused by a "wrongful employment practice offense" committed in the "coverage territory";

(2) The "wrongful employment practice offense" was not committed before the Retroactive Date shown in the Declarations of this Coverage Part or after the end of the policy period; and

(3) A claim or "suit" by a person or organization that seeks damages because of the "employment loss" is first made or brought against any insured, in accordance with Paragraph **c.** below, during the policy period or any Extended Reporting Period we provide under Section VI - Extended Reporting Periods.

The policy defines "Employment loss" as follows:

SECTION VII - DEFINITIONS

7. "Employment loss" means:

a. Employment-related harm to any of your current, former or prospective "employees";

b. Harm to any of your current, former or prospective "volunteer workers" in connection with their "volunteer worker" status; or

c. Harm to any of your current or former "independent contractors" in connection with their "independent contractor" status.

The policy defines "Wrongful employment practice offense" as follows:

22. "Wrongful employment practice offense" means any of the following offenses committed by or on behalf of an insured in the conduct of your business:

a. "Discrimination" against any of your current, former or prospective "employees" or "volunteer workers";

b. Wrongful termination of any of your current, former or prospective "employees" or "volunteer workers";

c. "Harassment" of any of your current, former or prospective "employees" or "volunteer workers", or current or former "independent contractors";

d. "Retaliatory action" against any or your current, former or prospective "employees" or "volunteer workers";

e. Wrongful, excessive, or unfair discipline of any of your current, former or prospective "employees" or "volunteer workers";

f. Wrongful hiring, supervision, or demotion of, or failure to promote, any of your current, former or prospective "employees" or "volunteer workers"; or

g. Misrepresentation to, or defamation, libel, slander, disparagement or invasion of privacy of, any of your current, former or prospective "employees" or "volunteer workers".

Plaintiffs are not seeking damages arising out of an "employment loss" caused by a "wrongful employment practices offense." Therefore, no coverage is afforded for this matter under the Town's Employment-Related Practices Liability Coverage.

The key terms and conditions of the Town's Law Enforcement Liability Coverage are set forth in form PR T1 04 02 09 which states, in part:

SECTION I - LAW ENFORCEMENT LIABILITY COVERAGE

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal injury" to which this insurance applies. We will have the right and duty to defend the insured against any claim or "suit" seeking those damages. However, we will have no duty to defend the insured against any claim or "suit" seeking damages

because of "bodily injury", "property damage" or "personal injury" to which this insurance does not apply. We may, at our discretion, investigate any "wrongful act" or claim and settle any claim or "suit". But:

(1) The amount we will pay for damages is limited as described in Section **III** - Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

We will have no other obligation or liability to pay sums or perform acts or services unless explicitly provided for under Supplementary Payments.

b. This insurance applies to "bodily injury", "property damage" and "personal injury" only if:

(1) The "bodily injury", "property damage" or "personal injury" is caused by a "wrongful act" committed by you or on your behalf while conducting "law enforcement activities or operations";

(2) The "wrongful act" is committed in the "coverage territory"; and

(3) The "bodily injury", "property damage" or "personal injury" occurs during the policy period.

c. All "bodily injury", "property damage" or "personal injury" caused by the same "wrongful act" or "related wrongful acts" will be deemed to occur when the first part of such "bodily injury", "property damage" or "personal injury" occurs.

d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Damages include the attorneys' fees of the person or organization making a claim or bringing a "suit" if such fees are awarded, or paid in a settlement, for "bodily injury", "property damage" or "personal injury" to which this insurance applies.

The policy defines "bodily injury" as:

SECTION VI - DEFINITIONS

2. "Bodily injury" means any harm, including sickness or disease, to the health of other persons, including mental anguish, injury or illness, or emotional distress.

The policy defines "law enforcement activities or operations" as:

12. "Law enforcement activities or operations":

a. Means any of the official activities or operations of your police department, sheriff agency or other public safety organization, other than a fire district or department, that enforces the law and protects persons or property; and

b. Includes:
(1) Ownership, maintenance or use of a premises that you own, rent or borrow in order to conduct such activities or operations;
(2) Ownership or operation of any of your jails, penal institutions or similar facilities;
(3) Providing first aid at the time of an accident, crime or medical emergency;
(4) Providing school security; and
(5) "Moonlighting".

The policy defines "personal injury" as follows:

19. "Personal injury" means injury, other than "bodily injury", caused by one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;

d. Oral or written publication, including publication by electronic means, of material that slanders or libels

a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;

e. Oral or written publication, including publication by electronic means, of material that:
(1) Appropriates a person's name, voice, photograph or likeness;
(2) Unreasonably places a person in a false light; or
(3) Discloses information about a person's private life;

f. False or improper service of process; or

g. Violation of civil rights protected under any federal, state or local law.

The definition of "personal injury" is supplemented in the New York Mandatory Endorsement, Form PR F1 92 10 11, which states, in part:

12. The following is added to the definition of "personal injury" in the **DEFINITIONS** Section:

"Personal injury" also means a violation of civil rights protected under any federal, state or local law only to the extent that it:

a. Has an unintentionally discriminatory effect on a member of a protected class and is based on a policy of yours which on the surface is neutral; or

b. Was not committed or in any way encouraged by you, but as the employer of the person who committed the violation you may be held legally responsible for its effect.

The policy defines "property damage" as:

23. "Property damage" means:

a. Physical damage to tangible property of others, including all resulting loss of use of that property. All such loss of use will be deemed to occur at the time of the physical damage that caused it; or

b. Loss of use of tangible property of others that is not physically damaged. All such loss of use will be deemed to occur at the time of the "wrongful act" that caused it.

For the purposes of this insurance, data, including information, facts or programs in any electronic or other format, is not tangible property.

The policy defines "wrongful act" as:

28. "Wrongful act" means any act, error or omission.

Plaintiffs are not seeking damages for "bodily injury," "personal injury," or "property damage" from a "wrongful act" arising out of the Town's "law enforcement activities or operations." Therefore, no coverage is afforded for this matter under the Town's Law Enforcement Liability Coverage.

In sum, no coverage is available for this claim under the terms and conditions of the Travelers policy. Therefore, as discussed, Travelers will not provide a defense, nor will it provide any indemnification in the event of a settlement or adverse result.

Nothing in this letter should be construed as a waiver of Travelers' rights under any of the provisions of the Travelers policy or any other defense that the Company may have. Travelers expressly reserves all of its rights to limit or deny coverage for this claim on the basis of these or any additional grounds.

The analysis of coverage outlined herein is not meant to be exhaustive. The policy of insurance includes additional provisions that may have a bearing on the question of coverage. By limiting policy references to those cited herein, Travelers does not waive any other policy provisions. The insurance policy is incorporated herein by reference in its entirety, as if set forth in full.

We invite you to submit any documents or information that you feel may have a bearing on the coverage issues or our decision concerning this claim. If you now or in the future receive any information that you believe will affect our coverage position, please send that information to us immediately for consideration. Finally, if any further pleadings or amendments are served in this matter, please forward it to us immediately for our consideration as such amendments can affect our obligations to you under the Policy. We will carefully consider any information that you provide.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Denny Enoch

Denny Enoch
The Travelers Indemnity Company

cc: Roland Barone, Esq. by email
Marscenza Schielke, Fairfield City Bank by email

Tammi Savva

Roland Baroni <rbaroni...
Wednesday, September 14, 2016 3:04 PM
Patricia Kalba; Rick Morrissey; Richard Clinchy; Tom Garrity; Anthony Cirieco; Bill Faulkner; 'marscenza.schielke...
Barbara Sherry; Tammi Savva
Re: Summons

I will pickup the original Friday am. The TB should receive it at the October meeting and refer it to the Town attorneys for handling. Roland

NOTE: This message and any attachments from the law firm of Stephens, Baroni, Reilly & Lewis, LLP may contain confidential and legally protected information. If you are not the addressee and an intended recipient, please do not read, copy, use, or disclose this communication to others; also, please notify the sender by replying to this message, and then delete it from your system. Thank you.

From: pkalba@somersny.com
Sent: September 14, 2016 2:27 PM
To: supervisor@somersny.com; rclinchy@somersny.com; tgarrity@somersny.com; acirieco@somersny.com; wfaulkner@somersny.com; rbaroni@...net; marscenza.schielke...
Cc: bsherry@somersny.com; tsavva@somersny.com
Subject: Summons

Good afternoon all,

Attached please find a Summons that was served in my office today.

Regards,

Patty

Patricia Kalba, RMC
Town Clerk

Town of Somers
335 Route 202
Somers, New York 10589

914-277-3323
914-277-3960 (fax)
pkalba@somersny.com

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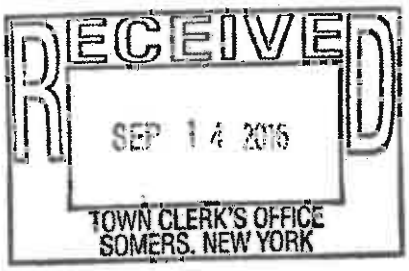
EC: Supervisor Town Board, Town Attorney/Insurance

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER



ANTHONY PORCO and CATHERINE PORCO,

Plaintiffs,

-against-

THOMAS P. KUCK, WHISPERING PINE LANDSCAPE SUPPLY CORP., and the TOWN OF SOMERS,

Defendants.

Index No.

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorney an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is the situs of the real property at issue.

Dated: August 26, 2016
Carmel, New York

WILLIAM A. SHILLING, JR., P.C.

By: _____
Michael V. Caruso
122 Old Route 6
Carmel, New York 10512
(845) 225-7500

Attorneys for plaintiffs

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

ANTHONY PORCO and CATHERINE PORCO,

Plaintiffs,

-against-

THOMAS P. KUCK, WHISPERING PINE LANDSCAPE SUPPLY CORP., and the TOWN OF SOMERS,

Defendants.

Index No.

VERIFIED COMPLAINT

Plaintiffs Anthony Porco and Catherine Porco ("Plaintiffs") by their attorneys William A. Shilling, Jr., P.C., as and for their complaint against defendants Thomas P. Kuck, Whispering Pine Landscape Supply Corp., and Town of Somers (the "Defendants"), allege as follows:

NATURE OF THIS ACTION

1. This is a plenary action seeking legal and declaratory relief pursuant to New York Civ. Prac. L. & R. ("CPLR") § 3001.

2. Pursuant to CPLR § 213 this action is timely.

3. No prior application for the relief sought herein has been sought from this Court or any other court of competent jurisdiction.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over Defendants in this action.

5. This Court has personal jurisdiction over Defendants pursuant to CPLR § 301.

6. Venue in this Court is proper pursuant to CPLR §§ 503 and 507. The actions complained of and material events took place in the County of Westchester, which is situated in the Ninth Judicial District.

7. No prior application for this or any similar relief has been made to this Court or any other Court of competent jurisdiction.

THE PARTIES

8. Anthony Porco and Catherine Porco are individuals who reside at 19 Brianna Lane, Yorktown Heights, New York 10598.

9. Upon information and belief, defendant Thomas P. Kuck is an individual who resides in the Town of Somers, County of Westchester, State of New York ("Kuck").

10. Upon information and belief, defendant Whispering Pine Landscape Supply Corp ("Whispering Pine") is a domestic corporation with its principal office located at 1 Windsor Road, Yorktown Heights, New York 10598.

11. Upon information and belief, Whispering Pine is in the business of providing landscape supplies and the sale and service of related equipment.

12. Upon information and belief, defendant Town of Somers (the "Town") was and is a municipal corporation organized and existing under the laws of the State of New York having its principal office located at 355 Route 202, Somers, New York 10589.

13. Upon information and belief, there are no parties known or unknown who have an interest in this proceeding other than as named in this action and none of the Defendants is an infant, mentally retarded, mentally ill, or an alcohol abuser.

14. Upon information and belief, the entry of judgment on Plaintiffs' causes of action will not affect any person or persons not in being or ascertained at the commencement of this action who by any contingency contained in a device, grant, or otherwise, could afterward become entitled to a beneficial estate or interest in the property involved; and every person involved who could, would, or might have been entitled to such estate or interest if such event had happened immediately before the commencement of this action is named as a party hereto.

REAL PROPERTY AT ISSUE

15. Upon information and belief, Kuck owns an 11.48 acre tract identified on the tax map of the Town of Somers as Section 04.18, Block 1, Lot 1.2 ("Parcel A") owned by Whispering Pine.

16. Parcel A lies within a residential zoning district.

17. At all relevant times herein, Whispering Pine operates a landscape supply business on Parcel A.

18. Parcel A was once part of a larger, undivided twenty-two (22) acre tract of land out of which another 11.48 acre lot was subdivided, and this lot is identified on the tax map of the Town of Somers as Section 04.18, Block 1, Lot 1.1 ("Parcel "B").

19. Parcel B lies within a residential zoning district.

20. Upon information and belief, dating back to the 1960s, Parcel A and Parcel B were held in common ownership and used by defendants' predecessors-in-title to operate a nursery and florist business.

21. In 1962, the owners of Parcel A and Parcel B sought and, in fact, received use variances from the Town of Somers Zoning Board of Appeals (the "Zoning Board") to operate a nursery and florist.

22. In 1970, the owners of Parcel A and Parcel B were granted a second variance from the Zoning Board to enlarge the existing nonconforming use of the nursery and florist.

23. In 2000, the owners of Parcel A and Parcel B sought interpretive relief from the Zoning Board that construction of a building on Parcel A to house a landscape supply business and to stockpile materials was not an unlawful expansion of a nonconforming use.

24. The Zoning Board clarified its 1970 grant of a variance for Parcel A and Parcel B to include conducting a landscape supply business, the sale and rental of outdoor power equipment not to exceed forty (40) horsepower or seven thousand (7000) pounds, and to include sales of mulch and related supplies.

25. By resolution, dated December 22, 2000 (BZ 91/00), the Zoning Board granted the sought-after interpretive relief subject to conditions: (i) that the owners of Parcel A and Parcel B obtain subdivision and site plan approval from the Town of Somers Planning Board; and (ii) such new building [on Parcel A] would be no larger than ten-thousand square feet.

26. In 2005, the owners of Parcel A and Parcel B made applications to the Town of Somers Planning Board for site plan and subdivision approval.

27. By resolution, dated January 29, 2007 (Resolution No. 2007-03), the Town of Somers Planning Board granted conditional subdivision site plan approval for Parcel A requiring "[t]hat a note be added to the plat that says 'the permitted use on the property known as Whispering Pine Parcel A is limited to tractor sales, service and bulk material sales."

28. By resolution, dated January 29, 2007 (Resolution No. 2007-04), the Town of Somers Planning Board granted conditional subdivision site plan approval for Parcel B requiring:

> 7. That a note be added to the plat that says "the permitted use of the property known as Tax Map 4.18, Block 1, Lot 1.1 Whispering Pine Parcel B is limited to the current use as specified in this resolution excluding tractor sales, service and bulk material storage and sales."

29. Upon information and belief, no new buildings have been constructed on Parcel A since applying for conditional relief from the Town of Somers Planning Board in 2000.

30. The Town of Somers Planning Board neither approved nor executed signed a Resolution of Final Subdivision approval for Parcel A and Parcel B.

31. Upon information and belief, Parcel A and Parcel B were not lawfully subdivided.

32. In May, 2012, Plaintiffs purchased real property known as 19 Brianna Lane, Yorktown Heights, New York 10598 (the "Porco Property").

33. The Porco Property is adjacent to and shares its westerly boundary with Parcel A.

34. Plaintiffs occupy the Porco Property as their primary residence.

35. The Porco Property lies within a residential zoning district.

FACTUAL BACKGROUND

36. Upon information and belief, the Town has received numerous complaints concerning the rock crushing, tub of grinding mulch, and jack hammering on Parcel A.

37. Upon information and belief, the Town of Somers Building Department issued a violation letter, dated March 20, 2013, to "Whispering Pine Nursery" alleging violations of site plan approval and the Town Code.

38. Upon information and belief, on or about October 28, 2013, the Town filed accusatory instruments alleging, *inter alia*, Kuck and Whispering Pine violated Town Code Sections 17-114A and 170-93; specifically, that Kuck and Whispering Pine (i) screened topsoil; (ii) crushed rock; and (iii) ground mulch in March and September, 2013 without site plan approval in violation of prior use variances.

39. Kuck and Whispering Pine moved to dismiss the Town's accusatory instruments.

40. By a settlement agreement, dated March 7, 2014, which was so ordered by the Town of Somers Justice Court (Timone, J.) (the "Order"), the Town, Kuck, and Whispering Pine purportedly settled the alleged violations identified in the Town's accusatory instruments.

41. The Order provided, *inter alia*, that a site plan and map were to be generated depicting certain areas and physical bounds for the storage of materials and site functions including, but not limited to "screening, crushing and tub grinding", in addition to setting forth time and date restrictions for said functions.

42. Upon information and belief, neither Kuck nor Whispering Pine sought relief from the Town of Somers Planning Board or the Zoning Board to perform such activities.

43. The Order further provides "the provisions of this Agreement will run with the land."

44. Upon information and belief, the charges brought against Kuck, and Whispering Pine were withdrawn after execution of the Order.

45. Notwithstanding the terms set forth in the Order, Kuck, and Whispering Pine continue to violate its terms and restrictions; specifically, the days and hours of operation of certain activities.

46. If the use of Parcel A as permitted by the Order is allowed to continue, Plaintiffs and the Porco Property will be adversely affected through deterioration and diminution of their property value, along with increased noise, air pollution, and negative aesthetic intrusions on an otherwise pastoral setting and other negative environmental impacts.

RELEVANT CODE AUTHORITY

47. Parcel A and Parcel B lie within the Residence R-80 Zoning District.

48. Screening topsoil, tub grinding mulch, rock crushing, and jack hammering are not permitted uses within an R-80 Zoning District.

49. Code Section 170-97(A) entitled "Change to another nonconforming use" provides:

> "[s]ubject to the approval of the Board of Appeals [Zoning Board], an existing nonconforming use may be changed to another nonconforming use, provided that the Board shall find that
>
> (1) The proposed new use is substantially more in conformity with the uses permitted in the district in which such building or land is situated.
> (2) It will generate no more traffic than the preceding nonconforming use.
> (3) It will tend to facilitate subsequent transition to conformity.
> (4) The density of occupancy will be no more than that of the former nonconforming use.
> (5) The proposed use will not cover more land than the former use.

50. Since requesting conditional relief from the Zoning Board in 2000, neither Kuck nor Whispering Pine have sought further relief from the Zoning Board for changing uses on Parcel A including, but not limited to screening topsoil, tub grinding mulch, rock crushing, and jack hammering.

51. Code Section 170-97(B) provides the Zoning Board may extend such nonconforming uses provided:

> "the Board of Appeals *shall impose such conditions as it may deem necessary in the public interest, but no such permit shall be granted for a period of more than five years*, with the proviso that upon application and public hearing at the end of such period, a single extension of not more than five years may then be granted subject to such further conditions as the Board of Appeals may then deem necessary." (emphasis supplied).

52. Upon information and belief, since granting conditional relief to Kuck and Whispering Pine in 2000, the Zoning Board did not hold a public hearing or extend the changing nonconforming uses on Parcel A or Parcel B.

53. The procedures of Article 8 of the New York State Environmental Conservation Law ("SEQR") were not complied with by the drafting of an environmental impact statement, conducting public hearings, or through compliance with the other mandated procedures.

54. The manner in which Defendants effectuated a rezoning of Parcel A and Parcel B was arbitrary, capricious, without foundation in law, in violation of both SEQR and the Town Zoning Ordinance, was *ultra vires* of the Town Law of the State of New York, was not pursuant to a Comprehensive Master Plan, lacks rational foundation in fact or in law, and fails to promote the health, safety, morals or the general welfare of the community.

55. By this action, Plaintiffs seek to enjoin a nuisance, vacate and set aside the Order, and seek a declaration of their rights so that the various laws hereinbefore stated are complied with, and so that Plaintiffs' rights to a clean and healthful environment, and to maintaining the residential character of their neighborhood, along with not having their property values diminished, shall continue.

AS AND FOR THEIR FIRST
CAUSE OF ACTION AGAINST DEFENDANTS
(Declaratory Judgment Under Town Law § 261)

56. Plaintiffs incorporate by reference all prior paragraphs as though set forth herein.

57. By executing the Order, the Town rezoned Parcel A, which did not promote the health, safety, morals or the general welfare of the community, and such decision was arbitrary, capricious, without foundation in law or in fact, contrary to Town Law § 261, and *ultra vires*.

AS AND FOR THEIR SECOND
CAUSE OF ACTION AGAINST DEFENDANTS
(Declaratory Judgment Under Town Law § 263)

58. Plaintiffs incorporate by reference all prior paragraphs as though set forth herein.

59. The Town's rezoning of Parcel A to allow an enlargement of nonconforming commercial uses in a residential (R-80) zoning district was inconsistent and contrary to the Town's Comprehensive Master Plan, and as such, was *ultra vires* of the Town Law of the State of New York and particularly contrary to Town Law § 263.

AS AND FOR THEIR THIRD
CAUSE OF ACTION AGAINST DEFENDANTS
(Declaratory Judgment Under Town Law §§ 264-265)

60. Plaintiffs incorporate by reference all prior paragraphs as though set forth herein.

61. The private manner in which the Order was negotiated and executed thereby rezoning Parcel A and Parcel B was done in an attempt to avoid the rigors of Town Law §§ 264-265 requiring, *inter alia*, a public hearing before amending zoning regulations, restrictions, and boundaries, and requiring a simple majority vote of the Town Board to otherwise effectuate such changes, and these actions were contrary to the notice, comment, and protest provisions of Town Law §§ 264-265.

62. The Town never held a public hearing on the rezoning of Parcel A in violation of Town Law § 264.

63. Plaintiffs, as interested members of the public and immediate neighbors of Parcel A, were unlawfully denied an opportunity to be heard on the changes of use and rezoning effectuated by the Order.

64. The Order and its terms were never properly presented to the interested public such that they could be the subject(s) of a written protest in violation of Town Law § 265.

65. Executing the Order was inconsistent and contrary to and thus *ultra vires* of the Town Law of the State of New York and particularly contrary to Town Law §§ 264-265.

AS AND FOR THEIR FOURTH
CAUSE OF ACTION AGAINST DEFENDANTS
(Impermissible Spot Zoning)

66. Plaintiffs incorporate by reference all prior paragraphs as though set forth herein.

67. Section 170-42 within Article X of the Town Code (entitled "General Requirements for Residence and Business Districts") provides, in part, that "[n]o building or land shall hereafter be used or occupied . . . unless in conformity with the regulations herein specified for the district in which it is located or is to be moved."

68. The Residence R-80 zoning district in which Parcel A is located does not permit uses such as screening topsoil, tub grinding mulch, rock crushing, and jack hammering.

69. Yet, the Order carves out an exception to the prescribed uses in an R-80 zoning district without an explanation for this exception solely benefiting Kuck and Whispering Pine.

70. The Order is clearly beneficial to Kuck and Whispering Pine at the expense of other property owners within an R-80 zoning district in the Town.

71. Parcel A is completely surrounded by residentially-zoned parcels with the exception of Parcel B, its adjacent counterpart.

72. Executing the Order constituted an unlawful spot zoning in that such rezoning was not for the general welfare of the community, but instead was for the benefit of a single

individual owner of said land, and was moreover inconsistent with the Comprehensive Master Plan of the Town of Somers.

73. Creating different zoning requirements for individual lots (i.e. Parcel A) that are otherwise part of a class or that are similarly situated to other lots constitutes unlawful spot zoning.

74. Applying the Order to Parcel A constitutes spot zoning because it is solely for the benefit of Kuck and Whispering Pine to the detriment of surrounding single-family property owners (i.e., Plaintiffs), and inasmuch as it runs contrary to the Town's Comprehensive Master Plan.

75. The changes to Parcel A and the immediate surrounding neighborhood by execution of the Order is other than a well-considered and comprehensive plan calculated to serve the general welfare of the community, specifically, the Town of Somers.

76. Accordingly, the rezoning of Parcel A by executing the Order was contrary to the laws of the State of New York and the Town Code, and thus improper and illegal.

77. The Order should be declared void and illegal as constituting unlawful spot zoning.

AS AND FOR THEIR FIFTH
CAUSE OF ACTION AGAINST DEFENDANTS
(Town Actions *Ultra Vires* and Void)

78. Plaintiffs incorporate by reference all prior paragraphs as though set forth herein

79. The Town had no inherent power to enact zoning regulations absent exercising its legislative grant of authority through its Town Board and as defined and set forth in Town Law, Article 16.

80. The Town, through its Town Board, is only empowered to enact zoning regulations pursuant to its Comprehensive Master Plan and in furtherance of promoting the health, safety, morals, and general welfare of the community.

81. The Order, which permits the enlargement and expansion of an unlawful nonconforming use of Parcel A within a Residence R-80 zoning district is not in accordance with the Town's most recently adopted Comprehensive Master Plan, and thus is *ultra vires*.

82. The Town's Comprehensive Master Plan establishes certain areas for residential uses outside of those areas designated for more intensive commercial uses.

83. The Order sanctions an intensive commercial use of Parcel A in a residential zoning district surrounded by single-family residential dwellings in close proximity to noisy, disruptive, and noxious activities including, but not limited to screening topsoil, tub grinding mulch, rock crushing, and jack hammering.

84. Forbidding such noisy, disruptive, and noxious activities in an R-80 zoning district while allowing such uses on Parcel A is neither rationally related to nor is it in furtherance of promoting the health, safety, morals, or general welfare of the community, and is thereby *ultra vires*.

85. The Town executed the Order in response to the pressure of litigation, ongoing complaints by nearby property owners, and in the midst of beleaguered Code enforcement prosecutions to enjoin such activities on Parcel A.

86. The Order was ostensibly a stopgap measure to allay the concerns of nearby homeowners lodging complaints with the Town and mitigate the ever-expanding, unlawful commercial operations on Parcel A.

87. The Order is *ultra vires* and should be declared null and void as beyond the purview and grant of the Town's police powers from New York State.

AS AND FOR THEIR SIXTH CAUSE OF ACTION
AGAINST DEFENDANTS
(Declaratory Judgment – Enlargement of Nonconforming Use)

88. Plaintiffs incorporate by reference all prior paragraphs as though set forth herein.

89. Screening topsoil, tub grinding mulch, rock crushing, and jack hammering or not lawful uses in a Residence R-80 zoning district.

90. Kuck and Whispering Pine did not seek all appropriate relief before the Planning Board and Zoning Board to authorize activities including, but not limited to screening topsoil, tub grinding mulch, rock crushing, and jack hammering on Parcel A.

91. Such activities do not constitute a mere increase in business or reflect the modernization of equipment and practices by Kuck and Whispering Pine on Parcel A.

92. At this point in the controversy with Defendants, the controversy relates solely to whether Defendants, by executing the Order, unlawfully enlarged and expanded a nonconforming use on Parcel A.

93. Plaintiffs pray for a judgment declaring the rights and other legal relations as between themselves and all Defendants that the Order unlawfully enlarges and expands nonconforming uses on Parcel A.

94. Plaintiffs pray for a judgment further declaring the rights and other legal relations as between the parties that executing the order and the actions of Kuck and Whispering Pine on Parcel A including, but not limited to screening topsoil, tub grinding mulch, rock crushing, and

jack hammering constitute unlawful expansions and enlargements of nonconforming uses already in existence on Parcel A, and such actions must immediately cease.

95. Plaintiffs have no adequate remedy at law.

AS AND FOR THEIR SEVENTH CAUSE OF ACTION
AGAINST DEFENDANTS KUCK
(Private Nuisance)

96. Plaintiffs incorporate by reference all prior paragraphs as though set forth herein.

97. Kuck and Whispering Pine are conducting offensive, noxious, and disruptive activities on Parcel A on a regular basis including, but not limited to screening topsoil, tub grinding mulch, rock crushing, and jack hammering.

98. The actions of Kuck and Whispering Pine on Parcel A are in close proximity to the Premises and surrounding residential lots.

99. The actions of Kuck and Whispering Pine on Parcel A have caused Plaintiffs to sustain and are constantly sustaining damages as a result thereof.

100. The Premises has decreased and diminished in value as a result of the actions of Kuck and Whispering Pine on Parcel A.

101. The continued offensive, noxious, and disruptive activities by Kuck and Whispering Pine on Parcel A have caused irreparable injury to Plaintiffs.

102. At all relevant times herein, Defendants have had knowledge and notice of the nuisance on and/or affecting the Premises.

103. The actions of Kuck and Whispering Pine on Parcel A are substantial in nature and unreasonable in character.

104. The actions of Kuck and Whispering Pine on Parcel A affect Plaintiffs' rights in and to the Premises and their use and enjoyment thereof.

105. The offensive, noxious, and disruptive actions of Kuck and Whispering Pine on Parcel A and threat of irreparable injury to Plaintiffs substantially interferes with Plaintiffs' use and enjoyment of the Premises.

106. Plaintiffs have duly demanded of the Defendants that Kuck and Whispering Pine refrain or be refrained from causing and/or permitting such conditions complained of herein but such demands have been ignored and refused.

107. The maintenance of the above-referenced nuisance on and/or affecting the Premises by virtue of the Footbridge is intentional because Defendants have either acted for the purpose of causing the dangerous and life-threatening condition thereon or should have known that this condition is resulting or is substantially certain to result from their conduct.

108. The actions of Kuck and Whispering Pine on Parcel A as aforesaid constitute an unreasonable use of Parcel and a private nuisance injurious to the Plaintiffs and their interests in the Premises.

109. Plaintiffs demand judgment against Kuck and Whispering Pine for an amount to be determined at trial and further directing said defendants completely and permanently abate the nuisance caused by the aforesaid actions by taking such actions as the Court shall find to be necessary and sufficient.

110. Plaintiffs have no adequate remedy at law.

WHEREFORE plaintiffs Anthony Porco and Catherine Porco demand judgment against the defendants for the following:

(a) annulling and vacating the Order;

(b) permanently enjoining and restraining Kuck and Whispering Pine from conducting activities on Parcel A including, but not limited to screening topsoil, tub grinding mulch, rock crushing, and jack hammering until such time as the Town has fully complied with all applicable laws, rules, and regulations of the State of New York and its own Zoning Ordinance;

(c) declaring the Order and changes of use effectuated on Parcel A sanctioned thereby as constituting impermissible spot zoning;

(d) declaring the Order and rezoning of Parcel A were not enacted pursuant to the legislative grant of zoning powers to the Town;

(e) declaring the Order and its terms as applied to Parcel A as constituting an unlawful expansion and enlargement of nonconforming uses thereon;

(f) For costs, disbursements, and reasonable attorney's fees of this action; and

(g) For such other and further relief as this Court deems just, proper, and equitable.

Dated: August 26, 2016
Carmel, New York

WILLIAM A. SHILLING, JR., P.C.

By: _____
Michael V. Caruso
122 Old Route 6
Carmel, New York 10512
(845) 225-7500

Attorneys for plaintiffs

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

ANTHONY PORCO, being duly sworn deposes and says:

I am a plaintiff in the above-entitled action. I have read the annexed complaint, know the contents thereof, and the same are true to my knowledge, except those matters that are stated to be alleged upon information and belief, and as to those matters, I believe them to be true upon my own investigation and knowledge

ANTHONY PORCO

Sworn to before me on this
26th day of August, 2016

Notary Public

WILLIAM A. SHILLING JR
Notary Public, State of New York
No. 02SH4763428
Qualified in Putnam County
Commission Expires July 31, 2017

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

CATHERINE PORCO, being duly sworn deposes and says:

I am a plaintiff in the above-entitled action. I have read the annexed complaint, know the contents thereof, and the same are true to my knowledge, except those matters that are stated to be alleged upon information and belief, and as to those matters, I believe them to be true upon my own investigation and knowledge

CATHERINE PORCO

Sworn to before me on this
26th day of August, 2016

Notary Public

WILLIAM A. SHILLING JR
Notary Public, State of New York
No. 02SH4756423
Qualified in Putnam County
Commission Expires July 31, 2017

C-TB 9/7/16

RECEIVED
SEP - 7 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

August 15, 2016

From: Lt Brian Linkletter
To : Supervisor Rick Morrissey
Subject: Town Holiday proposed Changes

Members of this Department are assigned to work all days throughout the calendar year. The Town's Holiday schedule provides 13 holidays. Most of the holidays occur during Monday through Friday work schedule. Some of them rotate during the year falling on weekends which results in the Towns holidays not occurring on the actual holiday.
Members of this department are requesting the following holiday changes for this Department:

1) Veterans Day should always be November 11
2) Christmas Day should always be December 25
3) New Year's Day should always be January 1
4) Exchange the Day after Thanksgiving Holiday to Easter Sunday (starting in 2017)
5) Exchange the Day after Christmas Holiday to Christmas Eve 12/24 (starting in 2016)

These changes will not cause the Town to occur any further expenses but will fairly compensate the officers that are assigned to work on the holiday.

For your consideration.

Lt Brian Linkletter

Brian Linkletter
Lieutenant
Somers Town Police

cc: Somers Town Board Members
Anthony J Cirieco
Richard G. Clinchy
William Faulkner
Thomas A. Garrity Jr.

Barbara Sherry

From: Michael Driscoll <somerspd@optonline.net>
Sent: Tuesday, September 27, 2016 11:16 AM
To: Barbara Sherry
Subject: Re: Proposed Holiday Changes

I am aware and have no objection Bob in finance is also aware Thanks Mike Driscoll

Sent from my iPhone

> On Sep 27, 2016, at 11:09 AM, Barbara Sherry <bsherry@somersny.com> wrote:
>
>
> Chief Driscoll,
>
> Supervisor Morrissey would like to know if you are aware of the attached request and your recommendation on this matter.
> Thank you.
> Barbara J. Sherry
> Intermediate Clerk to the Supervisor
> Rick Morrissey, Supervisor
> Town of Somers
> 335 Route 202
> Somers, NY 10589
> phone: (914) 277-3637
> fax: (914) 276-0082
> bsherry@somersny.com
>
> <winmail.dat>

Belinda DiTieri

From: Rick Morrissey
Sent: Tuesday, September 27, 2016 11:28 AM
To: Bob Kehoe
Cc: Belinda DiTieri; Barbara Sherry
Subject: FW: Proposed Holiday Changes

Bob:

What is the financial impact of this proposal?

Rick

Rick Morrissey, MPA
Town Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
Ph: 914-277-3637
Fax: 914-276-0082
supervisor@somersny.com
www.somersny.com

-----Original Message-----
From: Barbara Sherry
Sent: Tuesday, September 27, 2016 11:20 AM
To: Rick Morrissey
Cc: Belinda DiTieri
Subject: FW: Proposed Holiday Changes

Barbara J. Sherry
Intermediate Clerk to the Supervisor
Rick Morrissey, Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
phone: (914) 277-3637
fax: (914) 276-0082
bsherry@somersny.com

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From: Michael Driscoll [mailto:somerspd@optonline.net]
Sent: Tuesday, September 27, 2016 11:16 AM
To: Barbara Sherry <bsherry@somersny.com>
Subject: Re: Proposed Holiday Changes

I am aware and have no objection Bob in finance is also aware Thanks Mike Driscoll

Belinda DiTieri

From: Bob Kehoe
Sent: Tuesday, September 27, 2016 11:55 AM
To: Rick Morrissey
Cc: Belinda DiTieri; Barbara Sherry
Subject: RE: Proposed Holiday Changes

Rick,

I think it would be minimal since they would only be swapping one day for another that OT would be paid.

Bob

Robert Kehoe
Director of Finance
Town of Somers
335 Route 202
Somers, New York 10589
914-277-4394
914-277-3788 Fax

-----Original Message-----
From: Rick Morrissey
Sent: Tuesday, September 27, 2016 11:28 AM
To: Bob Kehoe
Cc: Belinda DiTieri; Barbara Sherry
Subject: FW: Proposed Holiday Changes

Bob:

What is the financial impact of this proposal?

Rick

Rick Morrissey, MPA
Town Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
Ph: 914-277-3637
Fax: 914-276-0082
supervisor@somersny.com
www.somersny.com

-----Original Message-----
From: Barbara Sherry
Sent: Tuesday, September 27, 2016 11:20 AM
To: Rick Morrissey

BTC TA oct agenda 10/3

Belinda DiTieri

From: syrette dyn
Sent: Monday, September 26, 2016 3:21 PM
To: Rick Morrissey
Cc: bkehoe@somersny.com; Bob Kehoe; Belinda DiTieri
Subject: Solar Grant

Rick – I am preparing papers for the next Town Board meeting relative to the next steps for the highway garage annex building solar grant through DASNY. One of the things that is required by the grant is a commitment by the Town to provide any excess funds needed as contingency to complete the grant program. According to the information that I received from the helpful solar provider, the following are the items that might bring the project cost above their otherwise projected $96,650:

Rafter repair -$1,000 - $2,000
Larger system - $4,000
Electrical upgrade - $3,000 - $4,000
Inverter extended Warranty - $500- $600

Based on the above, total costs could be in the range conservatively of $107,250 based on estimates of this one firm. What I would like to ask the Town Board to do (already discussed this with Bob Kehoe), is to pass a resolution that would "commit the Town to an amount not to exceed $15,000" over the $100,000 grant award. With this cusion,we will be presumably covered when we go out for bids for the actual project.

Please let me know that you are ok with this so can include it as an item for the Town Board agenda. Thanks.

Syrette

Belinda DiTieri

syrette dym
Thursday, Septem[illegible] 29, 2016 3.0[illegible] PM
Barbara Sherry; Belinda DiTieri; Tammi Savva
Rick Morrissey
Highway Garage Solar Grant
Memorandum to Town Board 09-29-16.docx; Project Information Sheet (SAM)2.pdf; Project Description2.docx; 2SAM Project Info Sheet 9.29.2016.pdf; LEAD AGENCY2.docx; SEQR DISTRIBUTION LIST.docx; EAFpart 1 executed09-29-16.docx; EAF part 2 &3 Executed 09-29-16.docx; Deed to Highway Garage property.pdf; Tax Map - Highway Garage property (003).pdf

Barbara Belinda, Tammi- Attached are all the documents that need to be reviewed by the Town Board relative to authorizing Rick to go forward with the State and Municipal Facilities Program (SAM) Grant with DASNY for the Highway Garage Annex Building solar Panels. These are the items that need to be reviewed on the Town Board agenda to do the items I outlined in my earlier e-mail leas contact me with any questioAny of the items that you can put into a pdf format I would recommend doing so all members of the Town Board can open them. At the moment, cannot seem to do this on my home computer. Thanks. Syrette

B: / TC, TA oct agenda 9/13

Belinda DiTieri

Fro syrette dym
Sei Wednesday, September 28, 2016 5:22 PM
To Belinda DiTieri; Barbara Sherry; Tammi Savva
Cc: Rick Morrissey
Su Items for Town Board Agenda

Barbara and Belinda – The following are two items in **addition to the approval of the additional escrow funds for Fred Wells for Somers Crossing that** need to be on the Town Board agenda for October:

1. **Best Plumbing** – Public Hearing is already scheduled for October 13. After taking testimony and closing public hearing (unless hearing is to remain open), Town Board needs to identify that more than 30 days has passed since it declared intent to be lead agency and accept role as lead agency. Depending on position of Town Board (which I will pre-discuss with Rick), I will prepare a resolution for modification of the special exception use permit that that Board will take action or (or not – depending on Rick). I will follow this e-mail up with a memorandum to the Town Board.
2. **DASNY Solar Panel Grant for Highway Garage Annex Building** – The second step in securing the $100,000 grant from Senator Murphy's office for solar panels at the highway garage annex building has been explained in correspondence from DASNY. In order to take these next steps the Town Board must do the following at its October meeting(s):
   a. Establish itself as lead agency under SEQRA, circulate to interested agencies and then make an environmental determination
   b. Provide Evidence of Committed funding sources. This would be to provide funds that may be required over and above the $100,000 grant to complete the project. Based on input from the cooperating solar provider, this amount could conservatively range about $15,000. Therefore, as corroborated with Bob Kehoe, the Town Board must pass a resolution that" commits an amount not to exceed $15,000 to fund costs to be incurred to provide solar panels on the highway garage annex building over and above the $100,000 grant funds to be received". This will all be explained in a memorandum to the Town board.
   c. Authorize the Supervisor Execute the documents required to secure the SAM Grant including the following:
      i. Project information Sheet
      ii. Copy of Deed
      iii. Resolution identifying evidence of committed funding sources
      iv. SEQRA documentation

Put with DASNY solar panel

PLANNING AND ENGINEERING DEPARTMENTS

Telephone
(914)
277-5366
Fax

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
www.somersny.com

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com

Syrette Dym, AICP
Director of Planning
sdym@somersny.com

MEMORANDUM

TO: Town Board

FROM: Syrette Dym, Director of Planning

DATE: September 29, 2016

RE: Highway Department Annex Building Solar Panels – DASNY Grant

The Town of Somers initially applied for a a $100,000 grant to place solar panels on the Highway Department Annex Building roof through a Stare and Municipal Facilities Program (SAM) Preliminary Application through State Senator Murphy's. By letter of August 24, 2016, the Town was informed by DASNY that the Town was awarded the $100,000 grant and that DASNY will be administering the grant.

In order to secure the grant, the Town must undertake a series of actions required by DASNY that include the following:

1. Complete project Information Sheet – to be prepared by Syrette Dym
2. Provide a deed or lease identifying ownership of property in question. – a deed has been provided by Teresa Stegner
3. Evidence of committed funding source – to be described below
4. SEQRA documentation. – to be described below.

3. Evidence of committed funding sources

Although the $100,000 grant will pay for the majority of the solar panel installation, input from a solar provider has indicated that there is the possibility of several items that may require funding somewhat greater than the $100,00 grant amount. Structural upgrades to the building to support the rafters could be in the range of $1,000 to $2,0000. A possibly larger system that could be installed could be an additional $4,000. If an

electrical upgrade is needed to support the system it could cost $3,000 to $4,000, and extended warranties to the maintenance system could range from $500 to $600. These additional costs conservatively could add $10,6000 to the cost of the project which was estimated by a solar provider at $96,650. Therefore, it is possible that the Town might have to contribute in the range of $7,250. To be conservative and to cover contingencies that might occur once the project is sent to bid, the Town should pass a resolution at its meeting of October 13 indicating that it commits to providing a funding source not to exceed $15,000, and that such resolution be included as evidence of committed additional funding sources.

4. **SEQRA Documentation**

Attached is a lead agency resolution and distribution list and a short form EAF Parts 1 &2. The Town Board is the only Board that can act as lead agency, but it should still publicly establish itself as such at its meeting of October 13 and authorize the circulation of such to all interested agencies to inform them of the pending action.

a. The Town should review the EAF Part 1 & 2 and identify the action as an unlisted action that has no significant effect on the environment and declare a negative declaration to be circulated as part of the establishment of lead agency.

Cc: Tom Chiaverini
Energy and Environment Committee

STATE AND MUNICIPAL FACILITIES CAPITAL PROGRAM (SAM) PROJECT INFORMATION SHEET

SECTION 1: GENERAL INFORMATION

A. Project Name: Town of Somers Highway Department Annex Building Solar Panels

Project Location: Town of Somers Highway Garage - 250 Route 100 (Tax Map #28.18-2-1&2)

B. Organization / Grantee:

Legally Incorporated Name: Town of Somers

Street (not P.O. Box): 335 Route 202

City: Zip: County: Somers, 10589, Westchester

Phone: (914) 277-5366 Ext: NA Fax: (914) 277-8093 E-mail: sdyno@somersny.com

Contact Name & Title: Sylvia Dyno, ACIP, Director of Planning

Federal Taxpayer I.D./Charity Reg.# (Non-profits Only):

1. Type of Organization:

- ☐ Business Corporation
- ☐ State
- ☑ Municipal Corporation
- ☐ Water District
- ☐ University / Educational Organization (SUNY, Community College, Private)
- ☐ Sewer District
- ☐ Metropolitan Transportation Authority
- ☐ Public School District
- ☐ Public Housing Authority
- ☐ Public Library or Library System
- ☐ Fire District / Commission / Department / Volunteer Rescue & Ambulance Squad
- ☐ Public Park Conservancy or Not-for-Profit Investment in Parks
- ☐ Other

2. a) Is the organization currently seeking or receiving any other New York State assistance for this project? ☑ No ☐ Yes

b) Is the SAM Grant a match to receiving the Other New York State Assistance? ☑ No ☐ Yes

If either a or b is Yes, please provide a detailed explanation on an attached separate sheet.

SECTION 2: PROJECT DESCRIPTION

Project Description and Amount

1. Please attach a separate sheet with a detailed description of the specific capital project that will be undertaken and funded pursuant to this Grant.

2. Project Start Date: See Attached Anticipated Date of Project Completion: See Attached

3. Please list the anticipated amount of funding to be received from the SAM Program for this project.

$100,000

4. Will any entity other than the Grantee set forth in Section 1. above, be paying any project related costs? ☑ No ☐ Yes

   If Yes, please attach a separate sheet setting forth the costs to be paid by another entity, as well as a description of the relationship between the Grantee and the other entity.

5. Does the Applicant own the site where the project will be located? ☐ No ☑ Yes
   If No, please attach a separate sheet describing the control the Applicant has over the Project site.

   If Yes, please provide a copy of the deed.

6. Does the applicant plan to occupy 100% of the project facility? ☐ No ☑ Yes

   If No, attach a schedule explaining the planned occupancy.

7. If an organization other than the Grantee will have an interest in the equipment or real property purchased with Grant funds, please attach a separate sheet describing the legal relationship between the Grantee and the organization.

8. Does the project require environmental or other regulatory permits? If Yes, please specify type: ☑ No ☐ Yes

   Have they been secured? ☐ No ☐ Yes ☐ NA

   If No, please specify why:

9. Has any State or local government agency reviewed the project under the State Environmental Quality Review Act (SEQRA)? ☐ No ☑ Yes ☐ NA

   If Yes, please set forth the lead agency for the review and provide a copy of the negative declaration, findings statement, or Type II memo issued by the lead agency.

SECTION 3: ELIGIBILITY FOR TAX-EXEMPT FINANCING

1. Has the applicant previously received financing from the sale of tax-exempt bonds? ☐ No ☑ Yes

   If Yes, attach a schedule describing the details of such financing.

2. Does the applicant anticipate applying for financing for this project from the sale of other bonds? ☑ No ☐ Yes

3. Have any funds been expended or obligations incurred to date on that portion of the project for which this application is made? ☑ No ☐ Yes

   If Yes, attach a schedule showing details of such disbursements (date, purpose, payee, etc.).

4. Will the Grantee be utilizing internal labor for any portion of the project? ☑ No ☐ Yes

   If Yes, attach a narrative summarizing the usage and dollar value of internal labor on the project. Internal labor costs will not be reimbursed from SAM Grant proceeds.

SECTION 4: PROJECT BUDGET

Complete the following Project Budget detailing the proposed sources and uses of funds (attach additional sheets if necessary) that will be utilized to complete the Project. State the source of the funding, and any contingencies that need to be satisfied prior to accessing the funds.

Please include evidence of committed funding sources to be used to complete the project as described. This may include a copy of letter(s) of credit, award letters, a resolution from the governing board of the Grantee committing to provide the balance of the funds, or a combination of the above.

USE OF FUNDS	***SOURCES***						***TOTAL***
	State		**In-Kind /Equity /Sponsor**		**Other sources (Please specify each source and include commitment letter or other evidence that funds have been secured)**		
Tasks	Entity Name	Amount	Source Name	Amount	Entity Name	Amount	
See Attached							
Total:							

I hereby certify that the information in this Project Information Sheet is true and correct in all material respects, and I understand that the Dormitory Authority of State of New York and other entities that may be involved in the grant process are relying on this information in the course of the reviews that are required under Federal and State law.

Signature of Authorized Officer

Date

Print Name

Title

Print Form

Short Environmental Assessment Form
Part 1 - Project Information

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information

Name of Action or Project:
Highway Department Annex Building Solar Panels

Project Location (describe, and attach a location map):
250 Route 100 (TM# 28.10-2-1 and 2 Highway Garage) Somers, NY 10589

Brief Description of Proposed Action:

The project is the installation of solar panels on the highway garage annex building, as funded through a grant from the DASNY. The solar project is anticipated to consist of approximately 85 photo voltaic modules of 315 watts which maximize the roof potential of the building. The estimated annual projection of this system would be 29,542 kWh of electricity which is an offset credited to NYSEG against use by the Town. Any required adjustment to the existing structural integrity of the building and adequacy of electrical service would be made by the selected provider's engineer and all required improvements would be made by their installers.

Name of Applicant or Sponsor:	Telephone: **914-277-3637**
Town of Somers Town Board	E-Mail: **rmorrissey@somersny.com**

Address: **335 Route 202**

City/PO: **Somers**	State: **NY**	Zip Code: **10589**

	NO	YES
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	X	
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: Building Permit, Somers Building Department		X

3.a. Total acreage of the site of the proposed action? **4.59** acres
b. Total acreage to be physically disturbed? **0** acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? **4.59** acres

4. Check all land uses that occur on, adjoining and near the proposed action.
Urban Rural (non-agriculture) Industrial **X** Commercial **X** Residential (suburban)
Forest Agriculture Aquatic Other (specify): _____
Parkland

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations?		X	
b. Consistent with the adopted comprehensive plan?		X	

	NO	YES
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?		X

	NO	YES
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	X	

	NO	YES
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	X	
b. Are public transportation service(s) available at or near the site of the proposed action?	X	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	X	

	NO	YES
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: ___Solar panels to reduce use of fossil fuels_____		X

	NO	YES
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____NA_____	X	

	NO	YES
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____NA_____	X	

	NO	YES
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	X	
b. Is the proposed action located in an archeological sensitive area?	X	

	NO	YES
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?		X
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	X	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:
Shoreline Forest Agricultural/grasslands Early mid-successional Wetland **X** Urban **X** Suburban

	NO	YES
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	X	

	NO	YES
16. Is the project site located in the 100 year flood plain?	X	

	NO	YES
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	X	

a. Will storm water discharges flow to adjacent properties? ⓝ NO ⓨ YES	X	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? ⓝ NO ⓨ YES If Yes, briefly describe:		

	NO	YES
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size:	X	
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	X	
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	X	

I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: Rick Morrissey, Town Supervisor Date: _____

Signature: _____

Note 3 - Detailed Notes on All Funds (Continued)

	Balance as Reported January 1, 2015	Cumulative Effect of Change in Accounting Principle	Balance as Restated January 1, 2015	New Issues/ Additions	Maturities and/or Payments	Balance December 31, 2015	Due Within One Year
Bonds Payable							
Capital Construction	$ 10,028,528	$ -	$ 10,028,528	$ 3,300,000	$ 4,076,776	$ 9,257,752	$ 1,015,835
Other	650,712	-	650,712	-	83,048	567,664	85,968
	10,679,240	-	10,679,240	3,300,000	4,153,824	9,825,416	1,101,803
Plus							
Unamortized premium on bonds	-	-	-	39,192	936	38,256	-
	10,679,240	-	10,679,240	3,339,192	4,154,760	9,863,672	1,101,803
Other Non-current Liabilities							
Compensated Absences	106,509	-	106,509	26,690	11,000	122,199	12,000
Net Pension Liability	-	578,916	578,916	-	146,721	432,195	-
Other Post Employment Benefit Obligations Payable	10,581,561	-	10,581,561	1,858,439	670,000	11,770,000	-
Total Other Non-current Liabilities	10,688,070	578,916	11,266,986	1,885,129	827,721	12,324,394	12,000
Long-Term Liabilities	$ 21,367,310	$ 578,916	$ 21,946,226	$ 5,224,321	$ 4,982,481	$ 22,188,066	$ 1,113,803

Each governmental fund's liability for compensated absences and other post employment benefit obligations is liquidated by the General, Highway and Special District funds. The Town's indebtedness for bonds is satisfied by the Debt Service Fund, which is funded primarily by the General, Highway and Special Districts funds.

Bonds Payable

Bonds payable at December 31, 2015 are comprised of the following individual issues:

Purpose	Year of Issue	Original Issue Amount	Final Maturity	Interest Rates	Amount Outstanding at December 31, 2015
Public Improvement Bonds	2006	$ 4,100,000	05/2036	5.250 %	$ 105,000
Public Improvement Bonds	2009	2,000,000	05/2019	5.000	875,000
Environmental Facilities Corporation Refunding Bonds 2011 A	2011	3,648,590	05/2022	2.621 - 3.989	2,157,923
Environmental Facilities Corporation Refunding Bonds 2011 C	2011	502,701	11/2021	1.715 - 3.566	332,493
Public Improvement Bonds	2011	2,000,000	05/2021	2.000 - 4.000	1,255,000
Public Improvement Bonds	2014	2,000,000	05/2024	2.000 - 2.500	1,820,000
Refunding Bonds	2015	3,300,000	05/2036	2.000 - 3.250	3,280,000
					$ 9,825,416

Interest expenditures of $298,344, were recorded in the fund financial statements in the Debt Service Fund. Interest expense of $281,059 was recorded in the government-wide financial statements for governmental activities.

NOTICE OF SEQR ACTIONS – Highway Department Annex Building Solar Panels
Intent to Act as Lead Agency

Issued by Town of Somers Town Board
Westchester County, New York

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act (SEQRA)) of the New York State *Environmental Conservation Law* and Chapter 92 (Environmental Quality Review) of the *Code of the Town of Somers, New York*.

The Town Board of the Town of Somers, Westchester County, declares its intent to act as lead agency for Installation of Solar Panels on the Highway Department Annex Building

The Somers Town Board at its meeting of October 13, 2016 established itself as Lead Agency with regard to this Proposed Action under the procedures and requirements of SEQRA and Chapter 92 of the Somers Town Code as part of an uncoordinated review.

The Proposed Action is an Unlisted Action under SEQRA as per Chapter 92 of the *Code of the Town of Somers* in conjunction with Article 24 of the NYS *Environmental Conservation Law*.

PROPOSED LEAD AGENCY: Town Board, Town of Somers
Somers Town House
335 Route 202
Somers, New York 10589

TITLE OF ACTION: Installation of Solar Panels on Highway Department Annex Building

DESCRIPTION OF ACTION: The project is the installation of solar panels on the highway garage annex building, as funded through a grant from the DASNY. The solar project is anticipated to consist of approximately 85 photo voltaic modules of 315 watts which maximize the roof potential of the building. The estimate annual projection of this system would be 29,542 kWh of electricity which is an offset credited to NYSEG against use by the Town. Any required adjustment to the existing structural integrity of the building and adequacy of electrical service would be made by the selected provider's engineer and all required improvements would be made by their installers.

LOCATION: The Highway Garage is located at 250 Route 100, Town of Somers, NY 10589 (Tax Lot 28.10-2-1)

SUPPLEMENTAL INFORMATION: A Short Form (EAF) has been prepared for the Proposed Action. This form is being distributed to all Involved and Interested Agencies (see list below), and this information is also available for review in the Planning and Engineering office at the Town House and on the Town's web site.

Contact: Syrette Dym, AICP, Director of Planning
335 Route 202
Somers, New York 10589

Telephone: 914-277-5366

Date of this Notice: October 13, 2016

SEQR DISTRIBUTION LIST – Highway Department Annex Building Solar Panels

See Attached List

Short Environmental Assessment Form
Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.
Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	X	
2. Will the proposed action result in a change in the use or intensity of use of land?	X	
3. Will the proposed action impair the character or quality of the existing community?	X	
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	X	
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	X	
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	X	
7. Will the proposed action impact existing: a. public / private water supplies?	X	
b. public / private wastewater treatment utilities?	X	
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	X	
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	X	
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	X	
11. Will the proposed action create a hazard to environmental resources or human health?	X	

Agency Use Only [If applicable]

Project: Highway Annex Solar Panels

Date:

Part 3 Determination of Significance

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for shortterm, long-term and cumulative impacts.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

X Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

_____Town Board Town of Somers _____
Name of Lead Agency — Date

_____Rick Morrissey Town Supervisor_____ _____
Print or Type Name of Responsible Officer in Lead Agency — Title of Responsible Officer

_____ _____
Signature of Responsible Officer in Lead Agency — Signature of Preparer (if different from Responsible Officer)

BJ 15-21

Town of Somers –State and Municipal Facilities Capital Program (SAM) Project Information Sheet - Highway Department Annex Building Solar Panels

SECTION 2: PROJECT DESCRIPTION

A.1. Detailed Project Description

The Town of Somers was one of several communities that comprised the second round of the Solarize Westchester Campaign. Designed to dramatically increase the amount of solar installed in Westchester County, Solarize Westchester supports local cities, towns and villages in the adoption of solar-friendly processes and helps residents and businesses install solar more easily and at a lower cost. As part of the Solarize Somers-New Castle campaign, 76 homes in Somers, New Castle, and neighboring towns will produce clean, renewable energy, significantly reducing the homeowners' electric bills and reducing demand from the electric grid.

In keeping with this residential momentum, the Town of Somers wants to equip its own buildings with solar installations to reduce its own electrical costs and to provide greater efficiency in its energy use. To that end, the Town identified several potential locations for the installation of solar facilities. These locations included the roofs of the Library and Recreation Department Building in Reis Park, and the Highway Department Annex Building and a new Solar Carport that would attach to the main administration and garage building at the Highway Department headquarters on Route 100. With input from area solar providers who were contacted to review the various alternatives through written description as well as through on-site inspection, the Town has determined that the best application of solar panels will be on the Highway Department Annex Building.

The Annex Building houses highway department trucks and equipment. It is a south facing building with limited shading. The solar project is anticipated to consist of 85 315 watt photo voltaic modules which maximize the roof potential of the building. The system size is 26.775 kW which is derived by multiplying 315 watts by 85 panels to get 26,775 DC watts which are then converted by the inverter to 26,775 AC electricity kilowatts, which can be utilized by the Town. The estimated annual production of this system would be 29,542 kWh of electricity which is an offset credited to NYSEG against use by the Town. Of all the potential systems analyzed, this location and system produce the highest yield of 1,103 dWH/kW, at a cost of $4.01 per watt of electricity. The yield indicates how good this application is compared with other applications in the area.

The estimated cost of such a system without improvements to the structural integrity of the building and roof or without any required electrical service upgrade is estimated at $96,550 by one of the interested providers. It is not known at this time whether improvements to either the building or electrical service will be needed. No rafters in the building are exposed so no current assessment can be made. Therefore, the structural ability of the existing build to accept the solar system would be determined by provider engineers once a provider is selected. Should improvements to the building structure be needed, these would likely take the form of reinforcements to the rafters. As indicated by one of the solar providers, improvements to the rafters are typical and not a significant repair, costing in the range of no more than $1,000 to $2,000. There is the potential that the roof can hold more wattage. In this case, there could be an

additional $4,000 to cover the installation and materials of a larger system. Current electrical service is a 200 amp two phase system. A provider indicated that a standard practice of a line-side tap where the system is connected on the utility side rather than via the circuit breaker – might be a way to avoid a system upgrade. . However, if it is determined that an electrical upgrade is needed, it could be in the $3,000 to $4,000 range. Any upgrade required would be determined by the selected provider engineers. The assessment of structural integrity and adequacy of electrical service would be made by the selected provider's engineer and all required improvements would be made by their own installers.

A.3 Project Start Date:

Once grant funds are received by the Town, there will be an approximately four month period prior to project start date for write-up of bid documents; authorization for distribution of bid documents by Town Board, receipt of bids, review by Town Board and selection of provider by Town Board.

A.3 Anticipated Date of Completion:

Four months from selection of solar provider

SECTION 3: PROJECT BUDGET, DISBURSEMENT SCHEDULE, & OPERATING COSTS

E. Description of Ongoing Operating Costs Required to Maintain the Proposed Project and Sources of Funds

Long term maintenance costs to the Town mainly relate to panel replacement due to damage or end of their useful life. The solar panels come with a 10 year manufacturer's warranty as well as a 25 year performance guarantee. The inverters have a 10 year warranty. Extensions to the inverter warranty are available up to year 9½ for up to the 25 year practical life of the panel for a cost of approximately $500-600. Extensions are recommended rather than providing out-of-pocket replacement costs. Ongoing labor for panel maintenance is covered for the first 5 years and extensions can be purchased. Since there are no moving parts and panels are cleaned by rain and snow, panels in this part of the country require little or no maintenance.

BARGAIN AND SALE DEED—FORM NO. 227
Statutory form—C.W.(W.B.) Covenant against Grantor's acts

7560 — 161

This Indenture,

Made the 2nd day of September nineteen hundred and fifty-five,

BETWEEN MARY FUSCO, residing at 3226 Golden Avenue, Bronx 69, New York City, New York

party of the first part, and

TOWN OF SOMERS, a Municipal Corporation, organized and existing under the Laws of the State of New York, having its office at the Town House, Route 100 (no street address), Somers, Westchester County, New York

party of the second part

WITNESSETH, that the party of the first part, in consideration of - - - - - - - - One Hundred ($100) - - - - - - - - - - - - Dollars, lawful money of the United States, and other good and valuable considerations paid by the party of the second part, do es hereby grant and release unto the party of the second part, its successors and assigns forever.

All that plot or parcel of land situate in the Town of Somers, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the Southeasterly side of an abandoned portion of Old State Highway No. 1324 known as White Hall Corners - Wright Corners State Highway 1324 where the same is intersected by the Northeasterly boundary line of land now or formerly of the City of New York Department of Water Supply Gas and Electricity, said point of beginning being at the Southwest corner of premises hereinafter described,

running thence along the last mentioned land of the City of New York North 86° 37' 00" East 198.14 feet along the north face of a wall to a corner and continuing thence along the West face of a wall on a course

North 43° 31' 00" East 817.0 feet to the Southwesterly boundary line now or formerly of Lawton Adams as acquired by a deed dated January 18, 1952 and recorded on January 21, 1952 in County Clerk's Office, Division of Land Records, formerly Register's Office, Westchester County, New York, in Liber 5062 of deeds page 199

running thence along the last mentioned boundary line of Lawton and continuing thence along the Southwesterly boundary line of land now or formerly of Ernest Provencial and Emile Zaniboni as acquired by a deed from Lillian Dearie, dated November 29, 1948 and recorded in the County Clerk's Office, Division of Land Records, formerly Register's Office, Westchester County, New York, on November 29, 1948 in Liber 4696 of Deeds page 232 always along the mean center line of a stone wall the three following courses and distances:

North 89° 08' 18" West 93.31 feet
South 85° 44' 40" West 137.98 feet, and
North 82° 26' 00" West 199.70 feet to the Northwesterly corner of the premises herein being described and the southeasterly side of state highway No. 1324 as presently existing;

running thence along the East face of the remains of an irregular stone wall which borders the southeasterly side of state highway No. 1324 as presently existing and an abandoned portion of Old State Highway 1324 aforesaid on a course South 28° 03' 47" West 704.44 feet to the point or place of beginning.

USIR STAMPS ATTACHED $ 7.15 - SEP - 6 1955

LIBER 5560 PAGE 462

BEING the same premises conveyed by deed dated November 8, 1934, from Umberland Realty Co., Inc., to the party of the first part, which said deed was recorded in the office of the Register of the County of Westchester, now Westchester County Clerk's Office, Division of Land Records, on November 9, 1934, in Liber 3408 of deeds, at page 305.

Together with the appurtenances and all the estate and rights of the party of the first part in and to the said premises.

To have and to hold the premises herein granted unto the party of the second part, its successors and assigns forever.

And the said party of the first part covenants that she has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

And The grantor in compliance with Section 15 of the Lien Law, covenant as follows: That she will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and that she will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

In Witness Whereof, the party of the first part has hereunto set her hand and seal the day and year first above written.

In the Presence of

Mary Fusco

(Mary Fusco)

Edward R. Webster

State of New York, County of Westchester ss.

On the 2nd day of September, nineteen hundred and fifty-five before me personally came Mary Fusco to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that she executed the same.

Ronald Goldsand

[illegible]

The foregoing instrument was endorsed for record as follows: The property affected by this instrument is situate in the TOWN OF SOMERS County of Westchester N. Y. A true copy of the original DEED RECORDED SEPT. 6, 1955 at 1:32 PM at request of T. G. & T. CO.

FEE $ 4.10 No. 42652 EDWARD L. WARREN, County Clerk

2
25
TOWN OF SOMERS

Highway Department

Town of Somers

WESTCHESTER COUNTY, N.Y.

TELEPHONE
(914) 232-4848
FAX
(914) 232-0150

THOMAS E. CHIAVERINI
Superintendent of Highways

LOUIS N. NOTO, JR.
Deputy Supt. of Highways

250 RT. 100
P.O. BOX 281

Oct. Agenda
EC - TB TC TA
DH 7th
9/22/16 bp

MEMO TO: SUPERVISOR
TOWN BOARD

FROM: THOMAS E. CHIAVERINI
SUPT. OF HIGHWAYS

DATE: AUGUST 31, 2016

RE: UNCLAIMED BOND DEPOSITS

Please be advised that this office is requesting to have the following unclaimed driveway bond deposits be transferred to the General Fund Account. C & C Land Section 5.13 Block 16 Lot 1 dated 7/19/10 in the amount of $1,000.00 Contact notification and records has revealed a negative result.

If you should have any questions, please do not hesitate to contact my office.

Yours truly,

Thomas E. Chiaverini
Supt. of Highways

Cc: Town Clerk
Finance Dept.

TOWN OF SOMERS
HIGHWAY DEPARTMENT
TOWN HIGHWAY WORK PERMIT # D 11-10

Date: 7-15-10

Thomas E. Chiaverini
Superintendent of Highways

Louis Noto
Deputy Superintendent of Highways

Job Address 19 Lounsbury Baldwin Place N.Y. 10505

Section 5.13 Block 1 Lot 16

Owner's Name Francis Giano Contractor Name C+C Land Comp.

Address 19 Lounsbury Address

City/Town Village Baldwin Pl. City/Town/Village

State & Zip NY 10505 State & Zip

Phone 914-906-6723 Phone

Emergency Number Emergency Number

Issued By [signature] Date 7/19/10

Bond Release Process

Final Inspection By [signature] Date 3/15/16

Record Release By Date

Bond Released On (Date)

Oct Agenda
EC - TB TC TA
10/28/16 BD

Highway Department

Town of Somers

WESTCHESTER COUNTY, N.Y.

TELEPHONE
(914) 232-4848
FAX
(914) 232-0190

THOMAS E. CHIAVERINI
Superintendent of Highways

LOUIS N. NOTO, JR.
Deputy Supt. of Highways

250 RT. 100
P.O. BOX 261

MEMO TO: SUPERVISOR
TOWN BOARD

FROM: THOMAS E. CHIAVERINI
SUPT. OF HIGHWAYS

DATE: SEPTEMBER 28, 2016

RE: AUTHORIZE TO PURCHASE

Authorize to Purchase (1) new 9Ft Low Pro Z509 HSL Salt Spreader to be purchased off the Oneida County Contract #1685 for the sum of $12,500.00 from Zwack Inc. RTE 22 Stephentown, New York 12168

If you should have any questions please feel free to contact me.

Thomas E. Chiaverini
Supt. of Highways

cc TB, TC, TA Oct Agenda BD

Highway Department

TELEPHONE
(914) 232-4848
FAX
(914) 232-0150

THOMAS E. CHIAVERINI
Superintendent of Highways

LOUIS N. NOTO, JR.
Deputy Supt. of Highways

Town of Somers

WESTCHESTER COUNTY, N.Y.

250 RT. 100
P.O. BOX 281

MEMO TO: SUPERVISOR
TOWN BOARD

FROM: THOMAS E. CHIAVERINI TEC
SUPT. OF HIGHWAYS

DATE: SEPTEMBER 28, 2016

RE: SALE OF SURPLUS EQUIPMENT AND OLD JUNK EQUIPMENT

Authorize Superintendent of Highways to sell Surplus Equipment and Junk through Auctions International online Auctions to the highest bidder.

If you should have any questions please feel free to contact me.

Yours truly,

Thomas E. Chiaverini
Supt of Highways

Cc: Town Clerk

Barbara Sherry

To: Town Board; Patricia Kalba; Roland Baroni
Subject: October Agenda - Resignation - Partners in Prevention

Barbara J. Sherry
Secretary to the Supervisor
Rick Morrissey, Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
phone: (914) 277-3637
fax: (914) 276-0082
bsherry@somersny.com

From: Denise Schirmer
Sent: Thursday, September 22, 2016 8:31 AM
To: Barbara Sherry <bsherry@somersny.com>
Subject: Resignation - Partners in Prevention

Hi Barbara,

Please place on the October agenda.

Thanks.

Denise

From: Keeva Young-Wright [mailto:keevajoy@me.com]
Sent: Wednesday, September 21, 2016 9:34 PM
To: Denise Schirmer
Cc: Kathy Cucchiarella
Subject: Re: September Partners in Prevention Meeting Reminder and Agenda

Hi Denise,

I will be officially resigning from the Board as my schedule does not allow me to participate as I would like.

All the best,
Keeva

Barbara Sherry

Oct. Agenda
EC - TBTC TA
9/22/16 bjs

From: Bob Kehoe
Sent: Thursday, September 15, 2016 1:49 PM
To: Barbara Sherry
Subject: FW: Refund calculation for Olin refund
Attachments: Maryellen Olin Myers Refund.xlsx

For October's board meeting. The Town's portion was approved earlier in the year.

The Town is responsible for the County Portion ($581.20) as well so that will need to be approved.

The Town can receip it on next year's levy,

Bob

From: Teresa Stegner
Sent: Wednesday, September 14, 2016 9:41 AM
To: Bob Kehoe
Subject: FW: Refund calculation for Olin refund

Bob,

Maryellen Olin Myers called me yesterday. She said she never received the County portion of her veteran's exemption refund – the $581.20. Did we every pay her that portion? If you recall from our phone conversation with the Westchester County Finance Office, the town is responsible for the county portion of the refund and then it is the town's responsibility to add that amount onto the following year's county tax levy. If we have not paid it out as yet, it will need to be added to the Town Board agenda for approval at the October meeting.

Teresa Stegner, IAO
Assessor
Town of Somers
(914) 277-3504

From: Teresa Stegner
Sent: Wednesday, February 24, 2016 11:29 AM
To: Bob Kehoe <rkehoe@somersny.com>
Subject: FW: Refund calculation for Olin refund

Bob,

Did this ever get refunded? She just called and said she hasn't received anything from anyone.

Teresa Stegner, IAO
Assessor
Town of Somers
(914) 277-3504

From: Teresa Stegner
Sent: Thursday, September 10, 2015 11:23 AM

To: Bob Kehoe <[redacted]>
Cc: Rick Morrissey <[redacted]>; Joan Ribaudo <[redacted]>; 'Kenneth Crowley (KCrowley@somersschools.org)' <[redacted]>; 'Rrich@somersschools.org' <[redacted]>
Subject: Refund calculation for Olin refund

Bob,

Due to a veteran's exemption being mistakenly removed from the 2012 assessment roll on the Olin residence, 8 Seminary Lane, a refund is required for assessment years 2012, 2013, & 2014 for the Town and County taxes, and year 2014 for the Somers CSD school taxes.

I have calculated the refund for each taxing entity for the affected years – see attached.

Teresa Stegner, IAO
Assessor
Town of Somers
(914) 277-3504

TOWN OF SOMERS - TAX REFUNDS FOR MARYELLEN OLIN (aka MYERS)

Location: 8 Seminary Lane
Parcel ID #: 26.12-2-27

Reason: Alternative Veteran's exemption accidentally deleted with Enhanced STAR exemption when owner was dropped to Basic STAR on 2012 assessment roll.

Refunds:

Owner/Mailing Address	AV Year	AV	Eq Rate	Exempt Amt	Town Rate	Town Refund	Ttl- Town	County Rate	Cnty Refund	Ttl- Cnty	School Rate	School Refund*	Total School	Total Refund
Maryellen Olin	2012	73,600	13.00%	7,020	$ 13.732403	$ 96.40		$ 27.571945	$ 193.56					$ 289.96
8 Seminary Lane	2013	73,600	13.80%	7,452	$ 13.717295	$ 102.22		$ 26.568027	$ 197.98					$ 300.21
Granite Springs, NY 10527	2014	73,600	13.08%	7,063	$ 13.998739	$ 98.88	$ 297.50	$ 26.851757	$ 189.66	$ 581.20	$ 157.042288	$ 246.49	$ 246.49	$ 535.03
Refund Totals							**$ 297.50**			**$ 581.20**			**$ 246.49**	**$ 1,125.19**

* Please note the school exmept amount for the refund is based on the school's adopted maximum equalized 12,000 limit (not shown).

JUSTICE COURT

Town of Somers

WESTCHESTER COUNTY, N.Y.

TOWN JUSTICES

Hon. Denis J. Timone
Hon. Michael J. McDermott

TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

(914) 277-8225
FAX
(914) 277-3771

Oct. Agenda
EC - TB TC TA
Fin. 9/22/16
DJP

RECEIVED
SEP 22 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

September 22, 2016

MEMO TO: Rick Morrissey
Supervisor

FROM: Barbara Lloyd
Court Clerk

RE: JCAP Grant

I have attached the Justice Court Assistance Program Grant Request that has already been submitted to the NYS Office of Court Administration electronically. The final step is the certification by the Town Supervisor and the Town Board Resolution authorizing the court's JCAP application. The application will be deemed fully submitted upon the filing of the items requested herein. Accordingly, please calendar before the Town Board for the necessary approvals.

COURT NAME: Somers Town Court, Westchester County ID: 3875

D. SIGNATURE PAGE & SUPPORTING DOCUMENTATION

To complete the process mail, fax or scan/email this page with the following required documents:

ANNUAL BUDGET: Court's itemized budget for the most recent municipal fiscal year.

AUTHORIZATION: Certified copy of the Local Resolution(s) of the Town or Village Board(s) authorizing this application. The Resolution may simply authorize the applicant to "request up to the maximum amount available."

SUPPORTING DOCUMENTS: Estimates, Photographs, Floor Plans, etc.

JUSTICE SIGNATURE: Original signature(s) required from at least one justice (not an Acting Justice).

Name: Hon. Denis J. Timone Signature: _____ Date: _____

Name: Hon. Michael J. McDermott Signature: _____ Date: _____

CERTIFICATION: Original signature required by Town Supervisor or Village Mayor.

The following signature provides certification that: (1) any funds (and any goods or services) awarded pursuant to this application shall be used only in accordance with the provisions of Chapter 280 of the Laws of 1999 and with all rules and regulations governing the Justice Court Assistance Program; (2) any goods and/or services purchased with any Justice Court Assistance Program funds shall be obtained in accordance with acceptable procurement practices established by the governing municipality including, but not limited to, competitive bidding and procurement policies and procedures; (3) no funds awarded pursuant to this application shall be used to compensate justices or non-judicial staff or to reduce or otherwise supplant funding provided by a town or village to its justice court.

Signature: _____ Name: _____
☐ Town Supervisor ☐ Village Mayor (please print)

Date: _____

REMEMBER: YOUR JCAP APPLICATION IS SUBMITTED ONLINE ONLY.
YOU MUST MAIL, FAX OR SCAN/EMAIL SIGNATURE PAGE & DOCUMENTS REQUIRED ABOVE.

TB, TC, TB Oct Agenda replacement 10/3 pp

RECEIVED
OCT - 3 20
SUPERVISOR
TOWN OF SOMERS

2016-17 Justice Court Assistance Program Grant Application

Somers Town Court, Westchester County

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Contin

GRANT ITEMS

Priority	Item Category	Item Name	Quantity	Price	Item Total

Total of all Items requested: $16,700.00

2	Furniture	Desks	2	$500.00 _kf_ApplicationID 3187	$1,000.00
Comments	The Court Clerks would like to purchase the Vari Desk which is an add-on to the existing desk and allows the Clerk to stand. It is for maintain better health standards.				
2	Furniture	Chairs	8	$400.00 _kf_ApplicationID 3187	$3,200.00
Comments	Chairs for the dais behind the bench in the Court Room				
1	Computer Support	Records Management, 1		$12,500.00 _kf_ApplicationID 3187	$12,500.00
Comments	would like to hire a company to scan files. to a computer format. This project was undetaken by the Court Clerk but it cannot be done in the regular work hours efficently. It would still require the manpower to go over each file to determine the necessary action, which the clerk would do. Quote attached				

Justice Court Assistance Program Grant Application

Somers Town Court, Westchester County

Completing the process

Please mail, fax, or scan/email your Signature Page, along with required documentation to:

Office of Justice Court Support
JCAP
187 Wolf Road, Suite 103
Albany, NY 12005
Fax: 518-438-3518
Email: jcap@nycourts.gov

Remember: Applications are not reviewed or considered until the required documentation and signature page are received.

Signature Acknowledgment
I understand that this application will not be reviewed until the signed signature page is received by the Office of Court Administration, along with any required documents.*

◉ Yes

QUESTIONS If you have any questions about JCAP or if you need assistance completing the application, call the Office of Justice Court Support at 1-800-232-0630 or email to jcap@nycourts.gov.

Oct Agenda
EC - TBTCTA
9/21/16 bjs

Msgr. Raymond M. Collins, Council 6205
P. O. Box 44
Somers, NY 10589

RECEIVED
SEP 21 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

September 15, 2016

Mr. Rick Morrissey
Town Supervisor
335 Route 202
Somers, NY 10589

Dear Mr. Morrissey:

As we have done since 2013, the members of the Msgr. Raymond M. Collins Council of the Knights of Columbus respectively request permission to erect a temporary illuminated Nativity Scene during the Christmas holiday season from December 4, 2016 through January 9, 2017. Attached is the completed *Application to Reserve Temporary Use of the Somers Town Green House for a Permitted Holiday Display.*

The proposed Nativity Scene is the same as the one used last year and is approximately 2.6m wide x 2.3m tall x 0.6m deep (see attached). The Council will pay the costs of purchasing and erecting the Nativity Scene. A single floodlight will light the proposed display. We will pay for all electrical costs associated with the display. Additionally, the Council will be responsible for putting up and taking down the display. No assistance from government employees will be required.

Please advise if any insurance will be required, the reason for said insurance, and the amount. The Council is willing to pay all *reasonable* costs associated with its temporary display. We are also willing to post a sign at the display, which will state clearly that it is the Council's private display and not the display of the Town of Somers, or any other government entity. The Council is willing to coordinate and cooperate with the Town of Somers on the content, size and location of the sign.

Your favorable consideration of our request will be greatly appreciated.

Sincerely yours,

Dennis J. Crilly
Grand Knight

Attachment

OFFICE OF THE SUPERVISOR

Town of Somers

WESTCHESTER COUNTY, N.Y.

Telephone
(914) 277-3637
Fax
(914) 276-0082

RICK MORRISSEY
SUPERVISOR

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

Application to Reserve Temporary Use of the Somers Town House Green for a Permitted Holiday Display

Name of Organization: Knights Of Columbus
Msgr. Raymond M Collins Council #6205

P. O. Box 44

Somers, NY 10589

Telephone Number: 914-277-4095 E-mail:

Telephone Number: 914-277-4095 E-mail:

General Description of Display: A temporary illuminated Nativity Scene

approximately 2.6m wide x 2.3m tall x 0.6m deep

Duration of Display (beginning and ending): 12/4/16 - 1/9/17

Requested Area for Use: Somers Town House Green

Signature of Applicant

Dennis J Crilly
Print Name

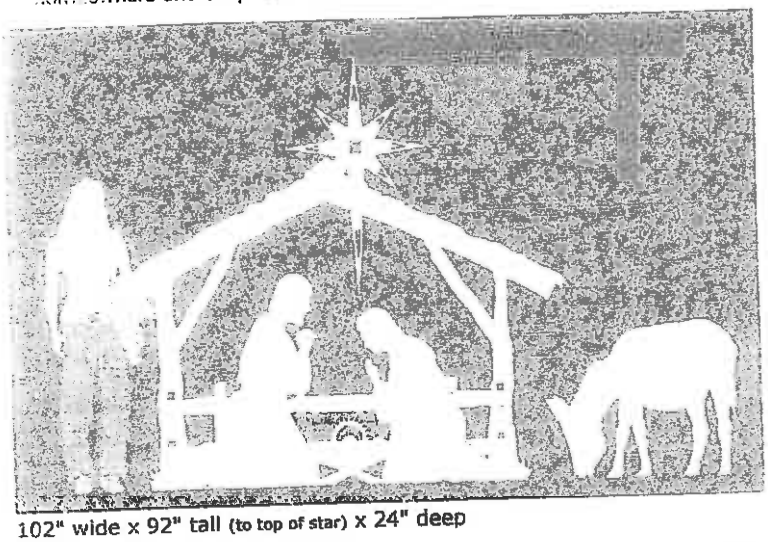
September 15, 2016
Date

Town Board Action

Date

Z:\Supervisor\hsherry\Barbara\My Documents\Town House Green Permit Applic..doc

The life size nativity set was new in 2009. It is hard work to get these made and boxed up, but it is just amazing to see the nativity completed in this size. It is totally worth the effort. If you've got the budget and the space (not only display space, but also think about storage space because the box is huge) this is a wonderful display. Most of the Life Size nativity sets I've sold have gone to churches, hospitals, schools & nursing homes (one went to a military base in Texas, which I thought was cool). But several have gone to homeowners and they have been very happy.



The life size nativity comes with a donkey.

To order, please

102" wide x 92" tall (to top of star) x 24" deep

- Box is 48"x 90" x 6" and it weighs about 120 lbs (or more if you order any Additional Characters). It comes strapped to a 4'x8' wooden pallet.
- Made from 13mm, 16mm & 19mm with critical areas reinforced with an extra 16mm. This should last long enough to become an heirloom.
- Can be assembled in just a few minutes
- No fasteners or screws of any kind are required. Joints slide together and are secured in place by 4 tie-down points and stakes hammered into your soil. Ropes & stakes are provided (but if your soil is particularly sandy or wet, you may need to get larger stakes).
- I do recommend that the nativity set be tethered for extra protection. I provide instructions and the supplies needed to do that.
- Cost 987 + Shipping
  I calculate shipping costs separately for each Life Size nativity order. Please email me your shipping address and the list of what items you are interested in ordering. I will get you a shipping quote and then we can arrange payment. (Please note that including "Additional Characters" with your order will only minimally affect your shipping costs, but shipping them separately later will cost as much as shipping the nativity alone. So if you think you may eventually want Additional Characters, I would recommend getting them with your nativity, so we can just add them to your box and save you the money.)

Beautifully detailed life size outdoor nativity silhouette, made from the highest quality marine grade solid PVC available. Designed and manufactured in the USA. 102" wide x 92" tall (to top of star) x 24" deep.

October agenda
cc/-TB TC TA
9/27/16 BD

Telephone
(914) 277-3637
Fax
(914) 276-0082

RICK MORRISSEY
SUPERVISOR

OFFICE OF THE SUPERVISOR

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

RECEIVED
SEP 27 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

Application to Reserve Temporary Use of the Somers Town House Green for a Permitted Holiday Display

Name of Organization: The Jews of Somers

Address: c/o Mitch Kaufman
9 Catherine Place; Katonah, NY 10536

Telephone Number: (917) 685-8230 E-mail: NYC1Mitch@aol.com

Alternate Name:

Address

Telephone Number: E-mail:

General Description of Display: Menorah

Duration of Display (beginning and ending): Saturday Dec 17th thru Sunday, January 8th

Requested Area for Use: Lawn in front of Elephant Hotel

[signature]
Signature of Applicant

Town Board Action

Mitchell F. Kaufman
Print Name

Sept 25, 2016
Date

Date

Z:\Supervisor\bsherry\Barbara\My Documents\Town House Green Permit Applic..doc

1075 Route 82, Suite 4
Hopewell Junction, NY 12533
Phone: 845-227-8678
bferguson@capmark.org

FINANCIAL ADVISORY SERVICES AGREEMENT

This Agreement has been entered into for the period October 1, 2016 through December 2017 year by and between the Town of Somers ("Client") and Capital Markets Advisors, LLC ("Advisor"), a limited liability company created under the laws of the State of New York and having its principal place of business at 1075 Route 82, Suite 4, Hopewell Junction, NY 12533.

Section 1 Financial Advisory Services

Advisor will provide the following services in connection with new issue bonds, bond anticipation notes, revenue anticipation notes, tax anticipation notes, deficit notes and budget notes (the "Issue"), undertaken by Client during the term of this Agreement.

1.01 Prepare a plan of financing which will include Advisor's analysis and recommendations to Client regarding funding requirements, structuring alternatives, marketing, method of sale (competitive, negotiated or private placement), security features, call provisions, credit ratings, credit enhancement, term, federal tax implications and such other matters which Client and Advisor agree should be included in the plan of financing.

1.02 Make presentations to the Board and members of the public concerning the debt issuance process, the credit rating process, interest rates and the budget impact resulting from the debt issue.

1.03 Prepare or assist in the preparation of financing documents, as required by Client, including but not limited to: term sheet, official statement, notice of sale and bid sheet, request for a credit rating, request for municipal bond insurance, DTC Letter of Representations, debt statement and pre-sale or post-sale analysis, if requested.

1.04 Upon the request of Client, Advisor will assist Client in the selection of other service providers necessary to conduct each Issue including but not limited to bond counsel, rating agencies, bond insurers, underwriters, trustee, verification agent and financial printer, if appropriate.

1.05 Prepare and maintain a financing schedule, cost of issue budget, list of participants, and take such other actions requested by Client to efficiently manage each Issue in order to meet Client's objectives.

1.06 Participate in the sale of the debt, confirm net interest cost calculation and verify underwriter's compensation.

1.07 Assist Client with the delivery of proceeds of each Issue, payment of issuance costs and other matters related to closing each Issue.

1.08 Assist with the closing of the Issue and verify receipt of Issue proceeds.

***Section* 2 Compensation**

2.01 For Advisor's performance of services on behalf of Client as described in sections 1.01 through 1.08 hereof, Advisor's fee will be as follows:

For a competitively-sold bond issue: a base fee of $10,000 for issues up to $5 million, plus $.50 per $1,000 of bonds issued over $5 million

For note issues: a base fee of $5,100, for issues up to $5 million, plus $.50 per $1,000 of notes issued over $5 million

For Term Sheet note issues (No OS): $3,000

For capital lease issues: a base fee of $6,500 plus $.50 per $1,000 of lease issued

For Full continuing disclosure: $2,500 annually, inclusive of any required Material Event Notices

For services unrelated to a bond issuance an hourly fee of $175 per hour.

2.02 For refunding bond issues, the fee will be negotiated with Client and is dependent on par amount, number of series of bonds being refunded and number of series of refunding bonds to be issued.

2.03 Client will pay normal issuance costs such as printing, distribution, postage, photocopying, overnight delivery, bond counsel, rating agency and other associated expenses.

2.04 Payment of Advisor's compensation is due within 30 days of receipt of Advisor's invoice following the closing of the financing.

***Section* 3 Term of Agreement**

The term of this Agreement shall be through the fiscal year ending December 31, 2017.

***Section* 4 Disclosure**

Advisor does not assume the responsibilities of Client, nor the responsibilities of the other professionals and vendors representing Client, in the provision of services and the preparation of financing documents for financings under this agreement. Advisor accepts the relationship of trust and confidence established between it and the Client. Advisor agrees to furnish its best skill and judgment in the performance of its services in the most expeditious and economical manner consistent with the interests of the Client. Information obtained by the Advisor, either through its own efforts or provided by the Client, included in the financing documents, or otherwise provided to the Client, is by reason of experience and professional judgment, believed to be accurate; however, such information is not guaranteed by the Advisor. However, nothing in this paragraph shall relieve Advisor from liability due to negligence or want of due diligence in the performance of its services.

***Section* 5 Binding Effect**

All agreements and covenants contained herein are severable and in the event any of them shall be held to be invalid by any competent court, this agreement shall be interpreted as if such invalid agreements or covenants were not contained herein, and the remaining provisions of this agreement shall remain in full force and effect. Each party hereto represents and warrants that this agreement has been duly authorized and executed by it and constitutes its valid and binding agreement and any governmental approvals necessary for the performance of this agreement have been obtained.

***Section* 6 Modification**

This Agreement contains the entire agreement of the parties. It may be amended in whole or in part from time to time in writing by mutual consent of the parties.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year set forth below.

CAPITAL MARKETS ADVISORS, LLC

Beth A. Ferguson

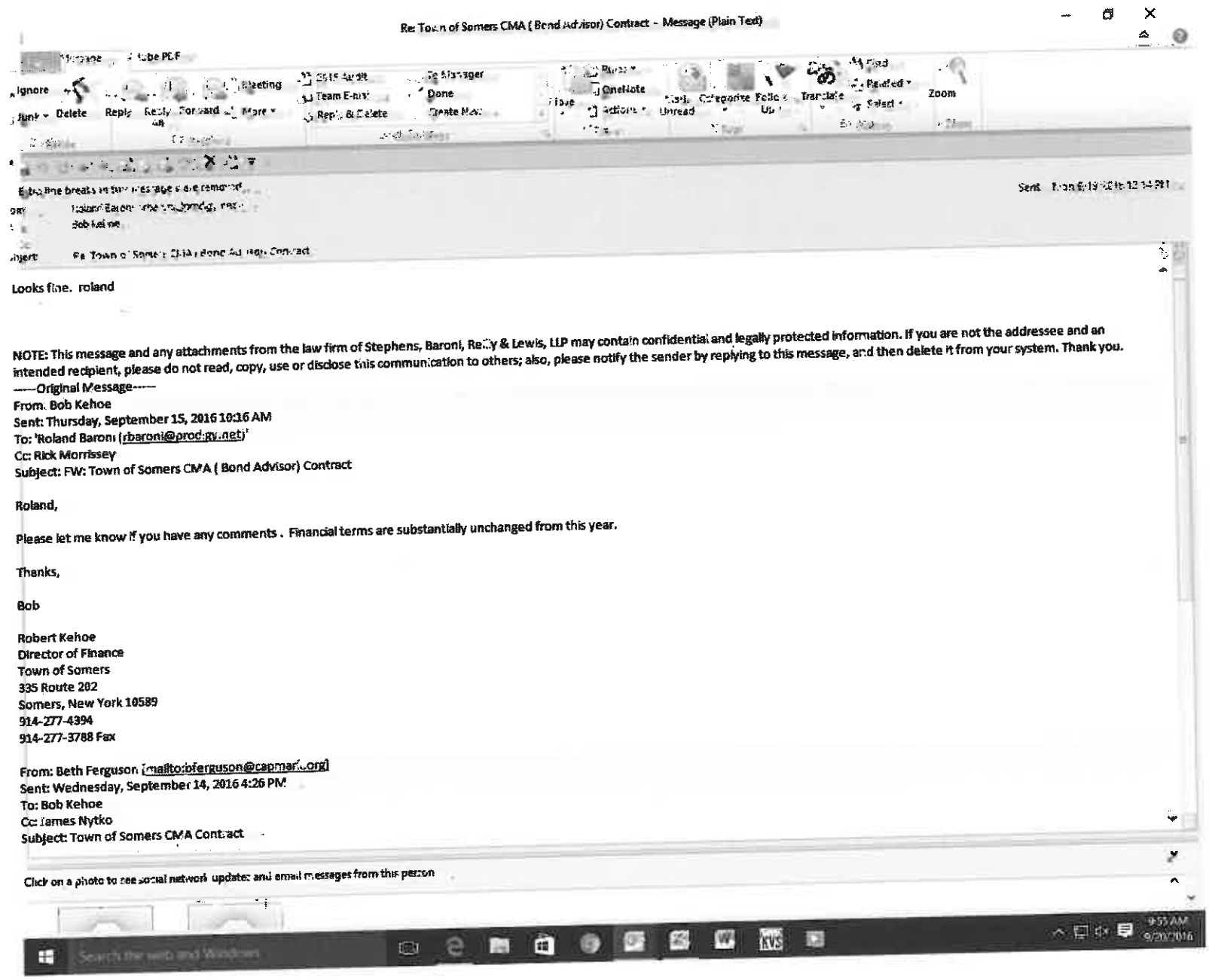
Date: September 14, 2016

Beth A. Ferguson
Vice President

TOWN OF SOMERS, NY

By: _____ Date: _____

Title: _____


Re: Town of Somers CMA (Bond Advisor) Contract - Message (Plain Text)
Ignore
Delete
Reply
Forward
Meeting
Team E-mail
Reply & Delete
Done
OneNote
Unread
Translate
Zoom
Looks fine. roland
NOTE: This message and any attachments from the law firm of Stephens, Baroni, Reilly & Lewis, LLP may contain confidential and legally protected information. If you are not the addressee and an intended recipient, please do not read, copy, use or disclose this communication to others; also, please notify the sender by replying to this message, and then delete it from your system. Thank you.
-----Original Message-----
From: Bob Kehoe
Sent: Thursday, September 15, 2016 10:16 AM
To: 'Roland Baroni (rbaroni@prodigy.net)'
Cc: Rick Morrissey
Subject: FW: Town of Somers CMA (Bond Advisor) Contract
Roland,
Please let me know if you have any comments . Financial terms are substantially unchanged from this year.
Thanks,
Bob
Robert Kehoe
Director of Finance
Town of Somers
335 Route 202
Somers, New York 10589
914-277-4394
914-277-3788 Fax
From: Beth Ferguson [mailto:bferguson@capmark.org]
Sent: Wednesday, September 14, 2016 4:26 PM
To: Bob Kehoe
Cc: James Nytko
Subject: Town of Somers CMA Contract
Click on a photo to see social network updates and email messages from this person
Search the web and Windows

October Agenda

-TBTC
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RECEIVED
SEP 21 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

TIM MILLER ASSOCIATES, INC.

10 North Street, Cold Spring, NY 10516 *(845) 265-4400* *www.timmillerassociates.com*

September 16, 2016

Ms. Syrette Dym, Town Planner
Somers Town Hall
335 Route 202
Somers, NY 10589

RE: Landscape Architecture & Aesthetics Consulting Services
Boniello Land and Realty, LTD - Somers Crossing Site Plan Review

Dear Ms. Dym:

As requested, we have undertaken landscape/aesthetics reviews of the applicant's Site Plan submissions and attended meetings for Somers Crossing over the past three months. We have also expended effort to assist your office in preparing draft resolutions and other coordination for the project Site Plan review, which was outside the scope of our agreement. At the present time we have used the budget approved by the Town in June.

To continue our review and coordination, we estimate the additional effort will require up to 80 manhours over the next three-month period. We respectfully request that additional escrow be established in the amount of $12,000.00 (including minor direct costs) for us to continue the scope of work requested of us, which entails:

- landscape/aesthetics reviews of the applicant's Site Plan submissions
- attend meetings as requested
- assist in preparing resolutions and other planning coordination with Town staff, Town's consultants and applicant's team as needed

Authorization below will serve as acceptance of this request. We are grateful to be asked to participate in this review for the Town.

Sincerely yours,

Frederick Wells
Senior Vice President
TIM MILLER ASSOCIATES, INC.

Accepted Date

Oct Agenda
C - TB TC TA
9/21/16 bp

PLANNING AND ENGINEERING DEPARTMENTS

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
www.somersny.com

Telephone
(914) 277-5366
Fax
(914) 277-4093

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com

Wayne D'Im, AICP
Town Planner
sdym@somersny.com

RECEIVED
SEP 21 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

Date: September 7, 2016

To: Town Board

From: Steven Woelfle SW
Principal Engineering Technician

RE: **Rao Stormwater Management and Erosion and Sediment Control**
Permit #ASMESC2013-04
TM: 17.14-2-13
Release of Erosion Control Bond
Check Received March 1, 2013

This office has no objection to the return of the Erosion Control Bond in the amount of $200.

Please return to:

Narendra Rao
4 Todd Lane
Somers, New York 10589

SW:wg
cc: Town Clerk
Director of Finance
Narendra Rao

PLANNING AND ENGINEERING DEPARTMENTS

Town of Somers

WESTCHESTER COUNTY, N.Y.

Telephone
(914) 277-3366
Fax
(914) 277-4093

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
www.somersny.com

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com

Syrette Dym, AICP
Town Planner
sdym@somersny.com

RECEIVED
OCT - 5 2016
OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

Date: October 4, 2016

To: Town Board

From: Steven Woelfle SW
Principal Engineering Technician

RE: **Palumbo Wetland and Watercourse Proection and Stormwater Management and Erosion and Sediment Control Permit**
#AWSMESC2015-44
TM: 38.13-2-12
Release of Erosion Control Bond
Check Received August 20, 2015

This office has no objection to the return of the Erosion Control Bond in the amount of **$500.**

Please return to:

Daniel P. Palumbo
3 Parent Road
Katonah, NY 10536

SW/wg
cc: Town Clerk
Director of Finance
Daniel P. Palumbo

t Agenda
- TB TC TA
10/5/16 BD

PLANNING AND ENGINEERING DEPARTMENTS

Telephone
(914) 277-5366
Fax
(914) 277-4093

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
www.somersny.com

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com

Syrette Dynn, AICP
Town Planner
sdynn@somersny.com

Date: October 5, 2016

To: Director of Finance T10(914)

From: Wendy Getting WG
Senior Office Assistant

RE: **Erosion Control Bond**
North County Homes Inc./Andrew Papazian Steep Slope, Stormwater Management and Erosion and Sediment Control and Tree Preservation Permit
TM: 17.13-2-3

Attached is a check in the amount of $500.00 posted by North County Homes Inc., 156 Tomahawk Street, Yorktown Heights, NY 10598 in payment of an Erosion Control Bond for Papazian.

Att.
cc: Town Board
Town Clerk

Oct Agenda
2C - TBTC TH 9/22/16
DB for BO

CERTIFICATE OF NO REFERENDUM

I, PATRICIA KALBA, Town Clerk of the Town of Somers in the County of Westchester, State of New York, HEREBY CERTIFY as follows:

That a resolution of the Town Board of the Town of Somers was duly adopted at a regular meeting held on July 14, 2016, an abstract of which is that, subject to a permissive referendum, certain unimproved property at 3 Geranium Drive and known as Sheet 5.15, Block 3, Lot 40 and 6 Hemlock Drive known as Sheet 5.15, Block 3, Lot 37, both on the Tax Assessment Map of the Town of Somers be conveyed at a total price of Four Thousand Eight Hundred Twenty ($4,820.00) Dollars; and

That a Notice of Resolution Initiating Permissive Referendum was duly posted and published as required by law. That no petition signed and acknowledged by the electors of the Town protesting against said resolution and requesting that said resolution be submitted to the electors of the Town for their approval or disapproval has been filed with the Town Clerk within 30 days after the date of the adoption thereof, or at any other time since said adoption.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town this 22nd day of September, 2016.

Patricia Kalba

PATRICIA KALBA
(SEAL) Town Clerk
Town of Somers
Westchester County, New York

PLANNING AND ENGINEERING DEPARTMENTS

Telephone
(914) 277-5366
Fax
(914) 277-4093

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
www.somersny.com

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com

Syrette Dyra, AICP
Town Planner
sdyra@somersny.com

Date: October 6, 2016

To: Director of Finance T10(914)

From: Wendy Getting WG
Senior Office Assistant

RE: Erosion Control Bond
North County Homes Inc./Andrew Papazian Steep Slope, Stormwater Management and Erosion and Sediment Control and Tree Preservation Permit
TM: 17.13-2-3

Attached is a check in the amount of $600.00 posted by North County Homes Inc., 156 Tomahawk Street, Yorktown Heights, NY 10598 in payment of an Erosion Control Bond for Papazian.

Att.
cc: Town Board
Town Clerk

SEAN PATRICK MALONEY
18TH DISTRICT, NEW YORK

COMMITTEE ON AGRICULTURE
COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE

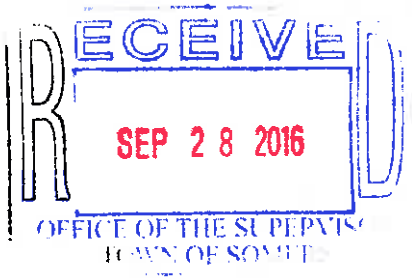
1529 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5441

123 GRAND ST., 2ND FLOOR
NEWBURGH, NY 12550
(845) 561-1259

Congress of the United States
House of Representatives
Washington, DC 20515–3218

C - TB
TC
TA TB 9/28/16

September 19, 2016



Supervisor Rick Morrissey
Town of Somers
355 Route 202
Somers, NY 10589-3206

Dear Supervisor Morrissey,

I write regarding the Advanced Notice of Proposed Rulemaking (ANPR) offered by the U.S. Coast Guard (USCG) to potentially locate anchorage sites throughout the Hudson River.

As you are aware, the USCG recently announced its recommendation for additional barge anchorages at ten (10) proposed sites on the Hudson River. The process of any ANPR is to initially inform the public of potential changes to current laws or regulations. While this was the first of many steps involved with changing anchorage sites, the initial public comment period allotted was not widely disseminated nonetheless. Our local communities have a fundamental right to make their voices heard and provide input on large-scale projects such as this. To this end, I called on the USCG to permit a 90-day extension to the public comment period, which was granted earlier in the month.

In order to capitalize on this extension, I am asking for your cooperation in offering public comment on this matter. As you prepare your comments, I encourage you to examine the economic, environmental and security impacts that the proposed sites would have throughout the Hudson Valley. Please forward your comments to my Newburgh District Office to ensure they are fully received and acknowledged by the USCG.

In closing, please do not hesitate to contact my office with any questions or concerns you may have about this or any other matter. Thank you for your time and service to our communities.

Sincerely,

Sean Patrick Maloney
Member of Congress

PRINTED ON RECYCLED PAPER

SC-TBTCTA 10/11/16 BD Oct 13 Agenda

Whereas a vital and robust Hudson River waterfront is critical to the municipalities of the Hudson River Alliance, and all
of Westchester County, and

Whereas the iconic Hudson River is vitally important to the Hudson Valley and all of New York, because of its unique
ecosystem, its notable history and its scenic beauty that brings in thousands of tourists, who recreate and shop at local
businesses, farms, and wineries, and

Whereas the River holds the unique distinction of being one of the few American Heritage Rivers established by
Congress in 1998.

Whereas the Hudson River Towns, Villages and cities in Westchester County have spent over $1 billion dollars over the
last 10 years rebuilding their dilapidated waterfronts to attract development, people by creating zoning to support open
spaces and plazas with river access, restaurants, residential properties and residential amenities, and

Whereas some municipalities worked with the NYS Department of State on a specific planning document called a Local
Waterfront Revitalization Plans (LWRP's) which listed the specific things they were doing to improve their waterfronts
and that other plans must be consistent with accepted LWRP's in terms of common vision for the Hudson River, its
waterfront, water quality, overall estuary health, and development, and

Whereas in June 2016, the U.S. Coast Guard announced that it was soliciting comments and concerns from the public in
an Advanced Notice of Public Rulemaking (ANPRM), Docket #USCG-2016-0132, on a proposal to establish a large
number of anchorage grounds for commercial vessels in the Hudson River – 43 berths in 10 locations from Yonkers to
Kingston – at the request of shipping industry, the anchorages being proposed for Kingston Flats South, Port Ewen, Big
Rock Point, Milton, Roseton, Marlboro, Newburgh, Tompkins Cove, Montrose Point, and Yonkers, and

Whereas the notice to the local municipalities who will be directly impacted was improper and inadequate with none
hearing about the original Coat Guard meeting on the plan before the July 8th meeting date, and,
Whereas there is a need to better understand the risks posed by the barges and tugboats to the ecology of the river and
the impact on the surrounding communities, and

Whereas we have been requested by the Hudson River Waterfront Alliance municipalities lead by Mayor Mike Spano of
Yonkers who are trying to understand the Coast Guards reasons for extending barges that far up the Hudson and to lend

our support on their behalf,

Now therefore be it resolved that the Town Board of the Town of Somers, in support of the Hudson River
Waterfront Alliance municipalities, requests that the United States Coast Guard reconsider the Proposed Rule to
establish anchorages between Yonkers and Kingston, and we further request our Federal Legislators to support our
Hudson River Waterfront Alliance communities and ALL of the municipalities in Westchester, Orange, Putnam, Rockland,
Dutchess Counties and halt the Coast Guard's Advanced Notice of Public Rulemaking.

Rick Morrissey, MPA

Town Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
Ph: 914-277-3637
Fax: 914-276-0082
supervisor@somersny.com
www.somersny.com

OFFICE OF THE SUPERVISOR

Town of Somers

WESTCHESTER COUNTY, N.Y.

Telephone
(914) 277-3637
Fax
(914) 276-0082

RICK MORRISSEY
SUPERVISOR

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

Oct Agenda
EC - TBTC
TA
10/12/16 RMP

October 11, 2016

AGENDA

TO: Town Board

FROM: Rick Morrissey
Supervisor

RE: Budget Transfers

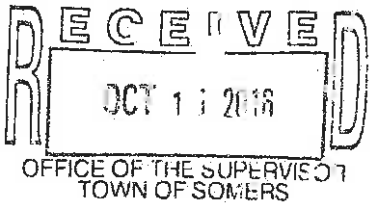
Authorize the following Request for Budget Transfer of Funds.

FROM	TO	AMOUNT	REASON
6773.404 Paper Trays & Utensils 6772.401 Food Contractor 6773.406 Misc.	6772.404 Table Goods 6773.401 Food Contractor 6774 Recreation	$1,000.00 $4,000.00 $ 400.00	Increase costs over last year.
5110.4 General Repairs Contractual 5112.2 Improvements - CHIPS Equipment 5130.4 Machine Contractual 5140.4 Misc. Brush & Weeds Contractual	5110.1 General Repairs PS 5112.1 Improvements – CHIPS PS 5130.1 Machinery PS 5140.1 Misc. Brush & Weeds PS	$7,000.00 $2,000.00 $3,300.00 $2,200.00	Year End Budget Transfer

\Z:\Supervisor\bditieri\BUDGET MODIFICATION.docx

Belinda DiTieri

From: Barbara Sherry
Sent: Tuesday, October 11, 2016 9:09 AM
To: Belinda DiTieri
Subject: FW: Nutrition budget transfers
Attachments: CCF_000037.pdf



Barbara J. Sherry
Intermediate Clerk to the Supervisor
Rick Morrissey, Supervisor
Town of Somers
335 Route 202
Somers, NY 10589
phone: (914) 277-3637
fax: (914) 276-0082
bsherry@somersny.com

-----Original Message-----
From: Bob Kehoe
Sent: Wednesday, October 05, 2016 2:43 PM
To: Belinda DiTieri <bditieri@somersny.com>
Cc: Barbara Sherry <bsherry@somersny.com>
Subject: Nutrition budget transfers

For next week's board meeting.

-----Original Message-----
From: Barbara Taberer
Sent: Wednesday, October 05, 2016 2:41 PM
To: Bob Kehoe
Subject: Emailing: CCF_000037

Hi Bob,

Attached is a "request transfer of funds" ...all within my departments. These transfers should get us through the end of the year.

Thanks for your help.

Barbara

REQUEST FOR TRANSFER OF FUNDS

FROM:

FUND	ACCOUNT CODE	ACCOUNT NAME	AMOUNT
	6773.404	Paper Trays/ Wheels Packing	$1,000
	6772.401	Food/Contractor	$4,000
	6773.406	Misc	$400

TO:

FUND	ACCOUNT CODE	ACCOUNT NAME	AMOUNT
	6772.401	Tablecloths	$1,000
	6773.401	Food/Contractor	$4,000
	6774.	Recreation	$400

EXPLANATION:

401 - SAME ORDER FROM CONTRACTOR FOR FOOD, H.D.M UP 7% OVER LAST YEAR
2.404 $? + OCEANWARE
6774 - EXERCISE CLASSES TO S.C.Y

Authorized Signature: [signature] Date: [illegible]

Belinda DiTieri

RECEIVED
OCT 11 2016
OFFICE OF THE SUPERVISON
TOWN OF SOMERS

From: Cathy Disisto
Sent: Thursday, October 06, 2016 3:10 PM
To: Bob Kehoe
Cc: Belinda DiTieri
Subject: Highway Dept. Transfer of Funds
Attachments: Transfer of Funds 5110.4-5112.2-5130.4-5140.4.pdf

Follow Up Flag: RM, Made paper copy. BD
Flag Status: Flagged

Bob

See attached requested transfer of funds for Highway

Cathy

REQUEST FOR TRANSFER OF FUNDS
2016

FROM:

FUND	ACCOUNT CODE	ACCOUNT NAME	AMOUNT
Highway	5110.4	General Repairs Contractual	7,000.00

TO:

FUND	ACCOUNT CODE	ACCOUNT NAME	AMOUNT
Highway	5110.1	General Repairs PS	7,000.00

Explanation:

Year End Budget Transfer

Authorized Signature: _____ Date: 10/6/16

cc: Supervisor

REQUEST FOR TRANSFER OF FUNDS
2016

FROM:

FUND	ACCOUNT CODE	ACCOUNT NAME	AMOUNT
Highway	5140.4	Misc. Brush & Weeds Contractual	2,200.00

TO:

FUND	ACCOUNT CODE	ACCOUNT NAME	AMOUNT
Highway	5140.1	Misc. Brush & Weed PS	2,200.00

Explanation:

Year End Budget Transfer

Authorized Signature: _____ **Date:** 10/6/16

cc: Supervisor

Barbara Sherry

From: Kathie Pacella
Sent: Tuesday, September 29, 2015 12:29 PM
To: Barbara Sherry
Subject: American Archives Month

Barbara,

I just got a notice that October is American Archives Month. We usually do a Resolution to this effect. Could you please put on the Agenda for next week's Regular Meeting. Thanks. Kathie

Kathleen R. Pacella

Town Clerk
335 Route 202
Somers, NY 10589
P. 914-277-3323
F. 914-277-3960
kpacella@somersny.com

TEL:914-277-3323
FAX:914-277-3960

TOWN CLERK'S OFFICE

Town of Somers

WESTCHESTER COUNTY, N.Y.

Town House
335 Route 202
Somers, N.Y. 10589

KATHLEEN R. PACELLA
TOWN CLERK

f - Town Clerk
Last year

RESOLUTION

RESOLVED, that the Town Board does hereby authorize resolution of support declaring October 2015 as " American Archives Month" in the Town of Somers

WHEREAS, the historical records of the Town of Somers are crucial to the way we understand our past and plan for our future; and,

WHEREAS, these records have been professionally administered and made accessible by dedicated, yet often unheralded, archivists; and,

WHEREAS, the work of these archivists and the importance of these records programs seldom receive the recognition they deserve;

NOW THEREFORE, the Town Board declares the period of October 1, 2015 through October 31, 2015 to be "American Archives Month" throughout the Town of Somers and urges the fellow citizens of the Town to participate in the special activities and learn more about the importance of archives and historical records in our community.

I hereby certify that the foregoing copy of resolution was adopted unanimously by the Town Board of the Town of Somers at a Regular Meeting held on October 8, 2015.

Dated: October 9, 2015

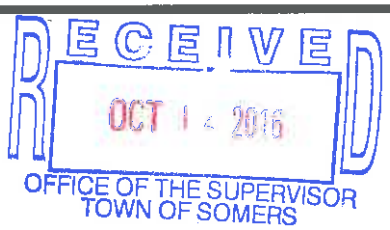
Kathleen R. Pacella
Town Clerk

Cc: Supervisor
Director of Finance

Rick Morrissey

Oct Agenda
EC - TBTC TA
10/12/16 BD

From: Patricia Kalba
Sent: Wednesday, October 05, 2016 10:14 AM
To: Rick Morrissey
Subject: Grant



Good morning Rick,

I would like to request permission to hire Mr. Xavier Lloyd as a Clerk to work on the Records Management Grant.

Mr. Lloyd would be charged with preparation of the Planning and Engineering boxes, in storage in Vault 2, which will be sent out for imaging. Once the product is returned to the Town, Mr. Lloyd will return to conduct a quality control. He will be working under the guidance of Wendy Getting and myself. The Grant affords the Town to hire someone temporarily at the hourly rate of $12.00 for a total of 222 hour.

Mr. Lloyd is a local College Student with daytime flexibility and I believe will be the perfect fit for the project. I also ask that he be able to start within the next week.

Thank you for your consideration.

Best regards,

Patty

Patricia Kalba, RMC
Town Clerk

Town of Somers
335 Route 202
Somers, New York 10589

914-277-3323
914-277-3960 (fax)
pkalba@somersny.com

***Note**: This e-mail message is intended only for the use of the individual or entity to whom it is addressed, and may contain information that is privileged or confidential. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message to the identified addressee, you are hereby notified that any unauthorized use, disclosure, reproduction, dissemination or disruption of this communication is strictly prohibited. Please note that it is your responsibility to scan this e-mail for viruses. If you receive this e-mail message in error, please delete all copies of this message and notify the sender immediately by telephone at (914) 277-3323. Thank you.*