MARCH 3, 2011 – WORK SESSION

Minutes of a work session of the Town Board of the Town of Somers held on Thursday evening March 3, 2011 at 7:10 PM at the Town House, 335 Route 202, Somers New York.

ROLL CALL:

PRESENT:	Supervisor	Mary Beth Murphy
	Councilman	Harold R. Bolton
	Councilman	Richard G. Clinchy
ABSENT:	Councilman	Frederick J. Morrissey
	Councilman	Thomas A. Garrity, Jr.

Also present were Kathleen R. Pacella, Town Clerk, Patricia Kalba, Deputy Town Clerk and Roland A. Baroni, Jr., Town Attorney.

The Supervisor said that it was in order for the Board to enter into an executive session with regard to personnel matters,

Thereupon motion of Supervisor Murphy, seconded by Councilman Clinchy, the meeting was adjourned to executive session with regard to personnel at 7:10 PM to return that evening.

7:40 PM – meeting reconvened

PUBLIC COMMENT:

Mr. Joseph Luciano, 10 Walker Drive, said that he felt as if they were being cut out of the Shenorock Park

There being no one else to be heard public comment was declared closed.

The first discussion item on the agenda was Mr. Michael Barnhart, Mr. Bob Mac Gregor and Ms. Lauretta Jones updated the Board on the activities of the Open Space Committee, the Somers Land Trust and the Angle Fly Preserve.

The next item on the agenda was a discussion was had between the Town Board, the Town Engineering Consultant and residents of Shenorock with regard to the procedure for the petition to from a Park District.

9:35 PM – 5 minute break
9:40 PM – meeting reconvened

The next item was a discussion with the Consultant with regard to the completeness review of the DEIS for Alexan Somers Woods. Ms. Joanne Meder, F. P. Clark, the Town's Planning Consultant, Mr. Joseph Barbagallo, Woodard and Curran, the Town's Engineering Consultant, Ms. Fedora DeLucia, Planning Board Chairman, Mr. John Keane, Ms. Nancy Gerbino and Ms. Vicki Gannon, Planning Board members, Ms. Linda Whitehead of McCullough, Goldberger & Staudt, LLP and Ms. Bonnie von Ohlsen of Saccardi & Schiff, Inc. on behalf of Alexan Somers Woods joined the Town Board. The Supervisor said that they received the DEIS from the applicant in November and there were a number of discussions about how it was going to be reviewed for completeness. She said that process began in mid to late January and this was their first opportunity to discuss the Consultants' reports with regard to the completeness of the DEIS. Ms. Whitehead said that she had received F.P. Clark's memo yesterday and Woodard and Curran's memo that day. She said that she had gone through F.P. Clark's memo but had not gone all through Woodard and Curran's, she distributed to all the various people and they had been working their way through them. She said that there were some things where they had questions and clarifications; they wanted to know exactly what they were looking for so that they made sure that they did it right and they may need the Board as Lead Agency to make decisions. Ms. Whitehead asked that some time before the next meeting they have a meeting with the Consultant and representatives from the Boards as

they had done on other projects in the past. She said that this would allow for them to go through and get their questions answered and it would help to narrow down the list of things that need to be discussed. The Supervisor said that she had no objection to that process although she did not think it was envisioned in the original proposals that were submitted by their Consultants. She said that she would be concerned that they would go over the amount proposed. Ms. Whitehead said that she thought that extra meetings were included. Ms. Meder said that extra meetings were anticipated with the Town Board but not necessarily the Applicant. She said that if this was something that the Town Board authorized their Firms to do they were agreeable to the meeting. She said that they were not clear as to what they were allowed to do or what they were not allowed to do at the moment. Ms. Whitehead said that in the discussions that she remembered a meeting like that was absolutely anticipated. She said that her client was not able to attend the meeting tonight although she did not think that they would authorize any increase in the proposal. She said that there was a lot of dissertation in the documents, that they were not going to make an issue out of and there were a lot of areas where the same comments were made. Ms. Whitehead said that they were clearly paying two Consultants to do the same thing in some areas and they had always expressed that as a concern. She said that they were talking about one meeting for a couple of hours and she would like to hope that the request would be accommodated within the proposals that were accepted. The Supervisor said that she did not have the proposal with her at that time and Ms. Whitehead was very adamant about the proposal. Ms. Whitehead said that she anticipated a meeting such as that and thought that it was included. The Supervisor said if additional meetings were in the proposal then clearly Ms. Whitehead anticipated the meeting. She asked if Ms. Whitehead wanted to have a discussion that evening with those present and wrestle with the issue of a meeting later.

Ms. DeLucia said that the drawings in the document were not signed and the revision date was not sealed. Ms. Whitehead said that it was a draft DEIS, they were not being submitted for Site Plan Review. She said that they were draft plans to go with a draft DEIS. Ms. DeLucia said that anytime drawings were submitted they should be stamped and signed. The Supervisor said that was one of the comments in Mr. Barbagallo's report. Ms. DeLucia said because of the size of plans the details were so small that they were hardly legible. Ms. Whitehead said that there were full size plans submitted. She said that if Ms. DeLucia wanted a full size set that she would get one for her. Ms. DeLucia said that she wanted a full size set; she could not see anything on the plans. The Supervisor said that comment was fairly pervasive through both of the Consultants' memos. She said that both of them had pointed out items that could not be read, seen, or clear. Ms. Whitehead said that the comments that she had read with that regard were not in relation to the plans they were regarding the photographs. She said that F. P. Clark had full size sets and it was impossible when you try to make a set to fit into the book it was never going to be perfect. She said that was why full size sets were also provided. Ms. Whitehead said that they were asked to provide a certain number of full size sets and a certain number of reduced packets of the full size plans. Ms. Delucia said that the DEIS was not well organized, the text sometimes was not clearly written, tabs should be attached for easier reference. The Supervisor asked who would like to have a full size set of the DEIS. Ms. DeLucia and Mr. Keane indicated that they would like full size sets of the DEIS. Ms. Whitehead asked if they wanted them of the draft that they were discussing or for the next draft. Ms. DeLucia said she would like them from hereafter.

Ms. Gannon asked why Scott Drive was not included in the traffic report. She said with regard to geographically and turn count it should have been. Ms. Meder explained that there were no requirements for that area. Ms. Gannon said that she did not understand what function was done with the traffic video. Ms. Whitehead said that they were asked to provide the video just as something to look at; it was not utilized for quantifying. Ms. Gannon suggested that somewhere in the report it expressly said that the video stood alone to be looked at. Ms. Whitehead said that was a good idea to clarify what the purpose of the video was.

The Supervisor said that she did not get a chance to read the Woodard and Curran report although she did read the F. P. Clark report and one of the things that really stood out to her was repeatedly there were instances where statements of opinion were offered. She said that there was little or no substantiation for that opinion. She said that she had two

concerns about it and she did discuss it with Ms. Meder and there were two schools of thought with regard to the use of opinion in the DEIS. The Supervisor said that they could ask to have every instance that an opinion was used to be identified or the opinion could just be excluded from the DEIS. She said that she would like the Board to think about what the better approach was.

Mr. Keane said that this had been an issue in the past with the Planning Board when reviewing other DEIS. He said that as far as he was concerned only the facts should be presented with no opinions at all. He said that they were trying to get a substance review and there was too much to read as it was. The Supervisor said that was her first thought although on the other hand maybe it was good to find out what someone was thinking. Councilman Clinchy asked Ms. Meder if there was one way that was more acceptable or professional. Ms. Meder said that they did not want the DEIS to be an opinion although there were some instances where the applicant tries to convey their impression of something. She said that there were instances where this was acceptable because the impressions could be qualified based on the applicant's analysis or in their paperwork. Councilman Clinchy asked if there was a way to delineate the opinion so that they were only placed where they were helpful. Ms. Meder said that the Board could say that they did not want any statements that resembled an opinion and then they would have to go back to the document and carve out anything that was overlooked. Councilman Bolton said that there was a guideline laid out, they should be told not to use opinions. Ms. Whitehead said that some things asked for an opinion. Councilman Bolton said that some did and some did not. Mr. Keane said that in the end when they look at the final document they did not want to have 60 to 70 pages on one issue. He said that they would have to try to figure out what was said there, what was opinion, what judgment was made and what were the facts to support that judgment. Councilman Bolton asked who wrote the scope of work. Ms. Meder said that it was done collaboratively between the Consultant, the Planning Board and the Town Board. She said that the Town Board is the party that authored the document. Councilman Bolton asked if there was something in the document with regard to the use of opinion. Ms. Meder said that there was and read the applicants' inclusion of that of opinion should be identified of those of the applicant. She said that if there were statements like that in the document she would not qualify them for their own review. She said that they pick up on opinions that were expressed without such statements. Ms. Meder said that they tried to identify in their memo and the Supervisor was taking that one step further and saying that they needed to look at the document for opinions. The Supervisor said that in some instances there was not a lot of fact backup and that had been highlighted and then there were statements that were really subjective. She said that her ultimate concern was the FEIS, usually when they get the DEIS they make the DEIS part of the FEIS, then they were incorporating all of the subjective statements into the document. Ms. Whitehead said that they had no problem identifying the applicant's opinion, as far as taking out all of the opinion was not always that black and white. She said that there were places where there were conclusions. Ms. Meder said that there had to be a basis for the opinion and that it had to be cross referenced. Mr. Keane said that the whole point of the document was to illicit the facts not to illicit the opinions of the application. Ms. Meder said that they knew that the applicant had views of what the impacts were but the Town Board had views as well. Ms. Whitehead said that they were asked to identify potential impacts and that was what they thought the potential impacts were. She said that if they did not say that then they had not provided what the Board asked them to provide. Councilman Bolton said that they needed to be identified. Ms. Whitehead said that she had no problem identifying them. The Supervisor asked if this should be based on evaluation and analysis. Ms. Whitehead said that there were some places where the analysis needed to be beefed up. Ms. Meder said that it needed to be included in the executive summary. Mr. Keane said that in the end they did not want to be going through 2,000 pages. Ms. Whitehead said that they did not want their executive summary to be like that. She said that was her concern about the comment that Ms. Meder made asking them to put stuff in the executive summary that was going to make it a lot more than an executive summary. Mr. Keane said that they were looking for a reasonable elaboration that was ground in facts which were discovered. He said that was what they wanted; they did not want any other extraneous information in the document. Ms. Whitehead said that there were areas that needed some more backing up of the facts. She said that they could look at the ones that Ms. Meder had identified and take them out or add to them to make them clearer. The

Supervisor said that there was a comment made by F. P. Clark with regard to the Cultural Resources section and read the comment with regard to the visual impact. She said that she did not think that their opinion on that was something that was sufficient. Ms. Whitehead said that she did not think there was going to be visual impact on the Historic District. She said that the residential development from the Historic District could not be seen. The Supervisor disagreed with Ms. Whitehead. Ms. Meder said that from Route 100 you could see the Elephant Hotel and the development would be able to be seen. Ms. Whitehead said that the Shopping Center could already been seen. She asked how they were going to have a greater impact than the Shopping Center that could already be seen. The Supervisor said that was her point; that Ms. Whitehead was putting her opinions into the document. Mr. Keane said that there was technical literature that they should be using in order to make that determination. He said that was what should be referred to when they made those types of comments. He said that is so the Board would know that they were on the right track and that applicants' comments were legitimate. Mr. Keane said that they also had to write it in a way that the general public could understand it.

Ms. Gannon said that the parking for the residential area was unclear if it was going to be required to park in the garages or if parking was going to be allowed in the driveways. Ms. Whitehead said that needed some clarification.

Ms. DeLucia said that there was a reduction in the square footage of the grocery store and asked if it was going to be a two story store. Ms. Whitehead said that the mezzanine was only a portion of the store and it was very typically in a grocery store. She explained that it was used for their bookkeeping and management. The Supervisor said that the change was large, not only was it shrunk by 75% but it was moved from one side of the site to the other. She asked why they made those changes. Ms. Whitehead said that they hear a lot about the concerns about the size of the store and also it helped out with the variance that would be needed. She said that this was much closer to compliance. She said that they heard a lot of concerns that a regional grocery store would generate more traffic. She said that as they went through the process they identified impacts and noticed things that could be made better. Ms. Whitehead said that there were concerns about the visual impact of the bigger grocery store at the other location. The Supervisor asked if she thought the grocery store was going to be better on Route 202 with no buffer on either side of it. Ms. Whitehead said that on that strip of 202 there were a number of buildings that were right on the road, it was much smaller. The Supervisor asked why they were proposing 14,000 square feet, why they just did not make it 10,000 square feet. Ms. Whitehead said that there were only a couple of chains that would do that size and they would not do the 10,000 square feet. The Supervisor suggested that they do some market research with regard to this and that should be included. Ms. Whitehead said that this was their proposed action and they did not have to have a reason for what they were proposing. She continued that they had to analyze the impact of what they were proposing. She said that they did not have to justify why they were asking for what they were asking for. Ms. Meder said that was not entirely true, part of the SEQRA process was need and part of the need was to explain what need they were satisfying. Ms. Whitehead said that they had done that. The Supervisor said that they would not want to build a building that was going to be empty and sit vacant. Ms. Whitehead said that they knew that they could not disclose a potential candidate at this time. The Supervisor said that she was not asking her to. Ms. Whitehead said that was where the discussion was headed. Ms. Meder said that they could talk about market studies and demand without naming a candidate. Ms. Whitehead said that they did a market study and demand and they had been out looking for someone who might consider doing a smaller store because they heard a lot of issues with a bigger store. She said that they found someone that would do a smaller store. Councilman Clinchy asked if they had a perspective vendor and would the size be adequate. Ms. Whitehead said that they had found someone and that was the size they wanted. Councilman Clinchy asked what that was based on, was that one particular vendor. Ms. Whitehead said that is was.

The Supervisor said that they were changing the site design from what they came in with originally. She said that they did the whole DEIS with the changed design. Ms. Whitehead said that they actually started without it and then as they were going through the process it all evolved. The Supervisor said that all happened before it came back to the Town and they were not aware of the change. She said that there seemed to be a lot

more variances that were discussed in the document that they did not discuss or anticipate at the time they were originally scoping this out. Ms. Whitehead said that the variances were the same. She said that they had a waiver for the buffer along the IBM property. She said that the store variance would have been greater. She said that they had not looked at the setback issues for the store parcel, they were not sure if they would need a variance but they had not reached a full list of variances. Ms. Whitehead said that they were not at the point of the Board making a substantive opinion about the plan. She said that they were at the information gathering phase. Ms. Meder said that was why the Supervisor asked the question, had the Board known about the new plans at an earlier stage in the process they may have looked at it differently. She said that they may had taken a step back and wanted additional information on the analysis done that they had no way of doing now. Ms. Whitehead said that they had this discussion before and frankly they were looking at the potential environmental impact of the project. She said that was what the scope was based on. The Supervisor said that the scope was based on the potential buildings. Ms. Whitehead said that it was not like they came in before with a high rise building with 200 units and now they were coming in with 100 garden apartments. She said that it was basically the same concept, the same project. She said the projects evolve and change as they go through the process. She asked if there were potential impacts of this new plan that the Board thought were not addressed. Ms. Whitehead said that was a discussion that they had had a least three times before in the last few months. Ms. Meder said that looking at the list of what seemed to be additional variances that were not included before; she thinks that the applicant should not start out of the box including expected approvals. She said that was one of her question, what was the alterative that did not require an increase in building. Ms. Whitehead said that they got information of nonconformity. Ms. Meder said that they were adding to it, they were increasing the non-conformity. Ms. Whitehead said that the other building was as well, it was probably increased more because it was a bigger building. Ms. Meder said that was very possible. Ms. Whitehead said that they should have included that original plan as an alternative. She said that way they could compare the impacts of the plan they saw two years ago with the impacts of this plan. She said that it was there, the comparison was there. Ms. Whitehead said that she felt a bigger deal was being made out of this issue. She said that she had asked numerous times if they thought the changes resulted in any potential significant environmental impact that were not included in the scope and not already addressed. The Supervisor said that they moved the whole road. Ms. Whitehead said that they eliminated the road behind the shopping center, which had significant impacts. The Supervisor said that they did move the road, the access road for the residential housing was skirting around the back of the existing shopping center. She said that they were suggesting that all of those people would traverse through what was already a congested area. She said that this was not a smart idea to run 100 plus people and all of their cars and everything else through an already logjam. Ms. Whitehead said that the reason for the new road before was to access the store when it was at the other end of the site. She said if they looked at the traffic distribution, people going to and from the residential units had a main entrance; they did not need to go through the shopping center. She said that when the store was in the south end of the site there was a much greater amount of traffic going through to the south end of the site from Route 202 and that was why the store needed to bypass the development. Ms. Whitehead said that there was a much greater amount of traffic and that was another reason for moving the store. The Supervisor said that when people who lived there decided that they were going to go anywhere accessed on Route 202 they will drive through that shopping center. She said that was going to cause ridiculous congestion and the people coming to visit them coming off Route 202 were going to do the same exact same thing. Mr. Keane said that they were going to come off Route 202 past CVS and down the back of the loading zone and on the other end they will be going down behind the bank.

Mr. Keane said that he agreed with the Supervisor and pointed out a good example on how they missed the mark. He read from page 3F8, under Stormwater. He said that was not a potential impact it was an opinion and it has no supportable facts in the paragraph. Mr. Keane said that it was an opinion that should have been in their proposed mitigation not in their potential impacts. He said that this kind of thing occurred in the entire document. He said that had to stop, they had to take it out of there. Mr. Keane said that he could run them through every single paragraph and pick out a number of things that had nothing to do with potential impact. Ms. Whitehead said that there were a number of

things that they did not believe that there were any potential impacts. Mr. Keane said that if they wanted to say that then they should state that it was simply their opinion. He said that the mitigation section was not treated like it was mitigation and they also discussed potential impacts in the mitigation section. He said that this had happened numerous times in the past, the same people writing the same thing over and over again. Ms. Whitehead said that it is not the same people; he could not make that classification. He said that there were other DEIS that he could go back and find the same things, stop this.

Ms. Whitehead said that she would like to go back to the other topic for a moment, what they were saying was a substantive comment. She said that they had analyzed where the traffic was going. She said that there may be some additional analysis to be done and it was raised before to do additional analysis of how the traffic would flow through the shopping center. She said for the Board to say that they did not like the impact was a substantive comment. The Supervisor said that what she was troubled by was that they changed the entire project to something else and that it was something. She said Ms. Whitehead stated that she thought that they made the project better and everything in it was better than it was before. She said that she was disagreeing with Ms. Whitehead; she did not think the road going through the middle of the shopping center was better than it was before. The Supervisor said that she thought that they did that to service other purposes of their own somewhere along the way. She said that she did not specifically know what they were; she was responding to Ms. Whitehead's statement that every change that was made in the new plan was better. Ms. Whitehead said that was why they left the original plan as an alternative and they could compare it and come back and say that they looked at the alterative and they prefer the road behind the shopping center. She said that was what this process was about. Mr. Keane said that the first thing that they had to do was define the action. He said that a defined action was what they were talking about initially and what the alternatives that resulted thereafter were. He said that if you change or switch something they made the defined action not an alternative but an alterative reaction. Mr. Keane said that as the Supervisor pointed out if they changed the action and the Board did not know about it speculates if there should be a revised scope to go with it because they had in fact changed it. Ms. Whitehead said that went back to the question she asked, she heard what they were saying about the impact to the shopping center, what were the potential impacts of the revised plan that were not already in the scope or not being addressed. Mr. Keane said who knew at this point. The Supervisor said that they had not had an opportunity to look at it. Ms. Whitehead said that the consultants only had the document since January but the Board has had the document since November. Ms. DeLucia said that they had other work to do for their Boards; she did not read the document until now so that the information would be fresh for the discussion. Councilman Clinchy said that the traffic was an issue and she heard what was said about the supermarket and that was a result in a change that was made in the driveway. Ms. Whitehead said that they will add a section doing an analysis of the additional traffic going through the shopping center. Councilman Bolton said that this was a lack of communication.

Mr. Keane said that in SEQRA they had to describe the action and it seemed to him when the action changed it changed how they may approach the information that they wanted to gather to make a draft Environmental Impact Statement. He said that it might not change it totally and the elements of all the various parts they needed addressed may still all be there but they may be addressed differently. He said that was what was trying to be said. Mr. Keane said that moving the store, eliminating the road and changing the traffic pattern were very substantial changes. He asked if their scope was still appropriate for this action and that was the issue. The Town Attorney said that was the question that needed to be answered at this point. He said that now that the question had been asked they have to ask the Consultants to do supplementary reports to see if in fact there was a need for a supplement scope. He said that now was the time to do this before the applicant rewrote the document. Ms. Whitehead said that they were discussing one thing that they had agreed to address.

Ms. Meder asked if they could discuss what prompted that change from ownership units to rental units. Ms. Whitehead said that it was never ownership units. She said that she saw that comment in the memo and she did not understand it. She said that units were always planned to be rental units. Ms. Meder said that she did not remember reading

anything about rental properties. Ms. Whitehead said that they had discussed them. Ms. Gerbino agreed that they had only ever discussed rental units.

Ms. DeLucia asked if they looked at the traffic congestion on Route 202 especially in the morning and evening when commuter traffic was heavy. She explained during those hours currently people have a hard time making a left exiting Warren Street. She said that before there was a traffic light at Route 100 and Route 202 it was impossible to make a right on to Route 100 because of all the commuter traffic. She said that people would also use the shopping center as a cut through to avoid the traffic. The Supervisor agreed that the shopping center was going to be used as a cut through for many different reasons. She said that this was putting a large volume of traffic on the road. Ms. Gerbino asked which road the Supervisor was speaking about, Route 100 or Route 202. The Supervisor said that the road through the shopping center. She said that maybe the way to address this was to have no access to the shopping center and the development. Ms. Whitehead said that they will look at that. Mr. Keane said that they were supposed to show the minimal amount of impact not what was best from an economic prospective per say, because that was their subjective take on it. He said that they needed to give them something that was compliant with zoning and did not have significant environmental impact.

The Supervisor asked Ms. Whitehead if they were saying that there were going to be no other actions by the Town Board than the ones that were listed in the document. She said to complete thoroughly there were potential variances that would require Town Board action. She said that everything that they anticipate would require a new action by the Town Board.

Mr. Keane asked if he misread that the project was anticipated to have a low impact on the Schools. Ms. Whitehead said that was because the rental market was largely young professionals and empty nesters. She said that they were two bedroom units it was not for families. She said that this was all standard; it came from the technical literature that Mr. Keane had discussed. The Supervisor said that she could use some evidence from what was going on in Heritage Hills at this time. She said that there were families moving in there. She said that they could look into how Heritage Hills has changed over the last 5 to 10 years. Ms. Whitehead said that there was no way to know what size units that the children were coming out of. She said that they could get the total number of children but they will not know how many of them were in comparable units. She said that they would not be fully comparable because they were not all rental units; it was not a rental complex. Ms. Whitehead said that they did get some numbers from some of their client's other projects that were similar. Mr. Keane said that they know how many units in Heritage Hills were one bedroom and the units that Ms. Whitehead was speaking of were two bedrooms. He said that would leave the units in Heritage Hills that were two and three bedrooms. Ms. Whitehead said that it was ownership opposed to rental. Mr. Keane said that in the market of today people were going to be more likely to rent than actually buy. Ms. Whitehead said that was not true with big families. Ms. Whitehead said that they used real data from other complexes that they owned and operated. Mr. Keane asked if they were in this area. Councilman Clinchy asked if the document had been sent to the schools. Ms. Whitehead said that when it was accepted by the Town Board it will be distributed to all interested parties and the school can certainly comment at that time. She said that this was a substantive comment that the Board was making. Mr. Barbagallo said that it was not a substantive comment it was an analysis that the Board would need. Ms. Whitehead said that they did the analysis that they were told to do and they used standard literature. Mr. Keane said that they needed to separate the DEIS from the FEIS. He said if he understood correctly they did not necessarily have to address the comments made in the DEIS. Ms. Whitehead said that they needed to support the document and when the Board did the FEIS they could do a completely different thing. She said that they could support a different conclusion. Mr. Keane said that was correct and if Ms. Whitehead made mistakes in the document it was not on them to tell her where and how to correct them. Mr. Barbagallo said that his comment with regard to school children was that things were changing and if they used a reference from 1976, there could be some updated information they could use. Ms. Meder said that they stated that they used the most recent data that was available. Ms. DeLucia said that this project changes the Town and the appearance of the Hamlet. Ms. Whitehead said that

was addressed in the DEIS. Mr. Keane said that the DEIS says that it may change the Town. Ms. Whitehead said that PepsiCo and IBM changed the character of the Town; Heritage Hills changed the character of the Town.

Ms. Gerbino said that she had a question with regard to the Sewer and Water Section. She said that the Sewer District was fine, although there was no quantification with regard to the water. Ms. Whitehead said that the Heritage Hills water supply had wells and there were permits for the amount of water that could be drawn from those wells. Mr. Barbagallo said that the discussion in the DEIS says that they would have to have a permit to remove 600,000 gallons a day and the number of gallons were for Heritage Hills and other uses. He said that what was not stated was the maximum day and if tank would be needed to cover a maximum day. Ms. Whitehead said that there was a tank and it was said that there was not enough information with regard to it. Mr. Barbagallo said that they needed to give information with regard to the size of the tank, the model used and the fire flow. He said that those were the things that he found incomplete about the Water Analysis that was submitted. Ms. DeLucia asked Mr. Barbagallo about the groundwater and the comments that he made about the aquifer. Mr. Barbagallo said that they made a very nice discussion on Hydrogeology but that discussion on Hydrogeology could probably apply to this situation in general as to what flowed downhill. He said that it was not specific to these wells, wetland environment, and conditions on this site and how that model would be defined. He said that those were the kinds of comments that were through his memo. Mr. Barbagallo said that they will see a comment passed around to give more specifics. He explained that was not what might be writing in the transmittal document, it was what should be written in the DEIS with regard to this site. Ms. Gerbino said that the discovery was incomplete with regard to the aquifer. Ms. Whitehead said that was something the DEC looked at. Ms. Gerbino said that the aquifer was something that the Heritage water was based on and the Water Company knew all about that. She said as a matter of fact F. P. Clark knew all about that, in 1973 they designated in the Master Plan that it should be reserved for the entire Town of Somers. She said somehow that did not happen; she did not know if that knowledge was sufficient. Mr. Barbagallo said that they knew LBG quite well and they understood their level of expertise. He said that they were also looking at this from the prospective of if anyone picked this up they would need to be able to understand that document. Ms. Whitehead said that that water could be taken tomorrow under DEC comment no matter who it was. She said that when the DEC gave a permit for withdrawing X amount of gallons per day of water, they looked at it. She said that analysis had to be provided to the DEC before they will approve the withdrawal of the water from the aquifer. Ms. Whitehead said that the permit had already been approved. Ms. Meder said that Ms. Whitehead was talking about the fire permit. Ms. Whitehead said she was talking about the well drinking permit. Mr. Barbagallo said that permit was not provided in the document. The Supervisor asked when the permit was issued. Ms. Whitehead said that it was modified. The Supervisor asked if the permit was for 600 gallons. Ms. Whitehead said that she did not know the history of the permit, although there was a permit for that figure that exists and it was a valid permit. Ms. DeLucia said that the 1994 Master Plan called for preservation of the aquifer. She said that she hoped at this time that was not an issue.

Ms. DeLucia said that she had noticed that a pool and a Community Center were located close to Route 100. Ms. Whitehead said that they were within the greenbelt. Ms. DeLucia said that if could probably be seen from Route 100. Ms. Whitehead said that it was low in elevation from Route 100. Ms. DeLucia said that the greenbelt was not discussed in the document. Ms. Whitehead said that they absolutely talked about buffer; there was a minimum of 75 feet from certain areas. Mr. Keane said that if they stood on Route 100 halfway between the shopping center and the Police Barracks and looked west, straight down, the land slopes down and there were 40 foot trees with leaves that created a barrier. He said that point was that the leaves were only on the trees for 6 months of the year. He said that once they strip all of the land back there, start putting the buildings in, maybe they will not strip away all of it but a lot of the trees that creates that current view. Mr. Keane said that had a visual impact and his point was they were not going to have enough land for a greenbelt along Route 100. He said that they were going to have to create enough of a barrier by either widening the greenbelt or put in carnivorous trees. Ms. Whitehead said that a visual analysis was done. Mr. Keane said that he thought he

saw a rather slim greenbelt. Ms. Whitehead said she that they all were at least a 75 foot buffer which was the minimum and a lot of areas were more than 75 feet. She said that they had to remember that the bulk of the trees that remain were actually at the higher elevation. Mr. Keane said that was not good. Ms. Whitehead said that they also talked about doing some in fill planting. Mr. Keane said that that was part of the problem; that was what he was trying to say. He said that when they strip away all of the trees and then put in all of the impervious surfaces it was going to be very difficult for them to in fill with deciduous trees in order to create somewhat of the same effect that currently existed there now. Ms. Whitehead said that she respected his comment and the visual analysis was in the document. Ms. DeLucia said that the 1994 Master Plan requires a greenbelt on Route 100 with a 100 foot buffer all along it. She said that this was so that Route 100 would not become a Route 117. Ms. Whitehead said that they had 100 feet and they had satisfied it. She said that they had an undisturbed 100 feet. Ms. DeLucia said that what they had was a pool, community center and parking in the buffer located along Route 100. She said that was insensible along Route 100. Ms. Whitehead said that the area on Route 100 was set back. The Town Attorney said that the comments had nothing to do with the completeness issue.

Ms. DeLucia said that both Ms. Meder and Mr. Barbargallo's memo stated that the document was not complete. The Supervisor said that she had not had an opportunity to review Mr. Barbagallo's memo fully and she would like to do so. She said that the Town Attorney made a good suggestion that they ask Ms. Meder and Mr. Barbagallo to make an assessment as to whether or not the scope that they had with the change in the plan needed revisions as a result of the changes.

The Supervisor said with regard to the additional meeting requested she had no objection to that meeting as long as it was anticipated in the proposals. She said that they should take an opportunity to look at what had been done. Ms. Whitehead said that they had not paid any bills so they did not know where they were. The Supervisor said that they just started working on this. The Town Attorney asked if the motive for the meeting was to try and narrow the question. Ms. Whitehead said that it was so that when they made revisions they changed what the consultant wanted them to do. The Town Attorney said that this was a business decision for her client they could pay for an additional meeting and they will be able to be more effective in the next rewrite of the DEIS. The Supervisor said that they will look at the proposal and they will make that assessment then. Mr. Barbagallo said that he did not think that there was a meeting specially identified as this. Ms. Meder said that she did not recall any mention of a meeting with the applicant.

Ms. Gerbino asked about the 45 day review. Ms. Whitehead said that the time period was extended until next Friday March 11, 2011. She said that they knew that they were going to say that it was not complete and they totally expected that. She said that were just trying to clarify areas. The Supervisor said that may not be true. Ms. Whitehead said that they expected that every time they submitted a DEIS, there was always something that needed to be fixed. She said that was why they asked for the meeting, it would help them make the revisions in the way that the Board wanted. She said that they knew that one of the revisions was to analyze the additional traffic plan and the potential impacts of it. The Supervisor said that the traffic analysis with regard to the shopping center should be done in May, June, September and October.

Mr. Barbagallo said that he found a lot of cross references in the document and he found that got confusing and if there was an analysis that was done somewhere else it should be referenced in the summary. Ms. DeLucia said that the document was very confusing; she had to place her own tabs in and wrote notes to keep track of where other things were referenced.

The Supervisor asked Ms. Whitehead to contact her tomorrow with regard to the additional meeting.

Ms. DeLucia said that the Supervisor said that she was not aware that the applicant was allowed to use the Oak's studies in the DEIS. Ms. Whitehead said that they only used what they were allowed. She said that they had a very specific discussion with regard to

that and only used things that they were told that they could use. Ms. DeLucia said from here and the future that they were not to use the Oak's project at any time. Ms. Whitehead said that it will not be used further.

This being a work session no actions were taken.

Thereupon motion of Supervisor Murphy, seconded by Councilman Morrissey, the meeting was adjourned at 11:35 PM.

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Town Clerk