

MAY 5, 2011 - WORKSESSION

Minutes of a work session of the Town Board of the Town of Somers held on Thursday evening May 5, 2011 at 6:35 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
	Councilman	Frederick J. Morrissey
	Councilman	Thomas A. Garrity, Jr.

ABSENT:

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 real estate and personnel matters.

Thereupon motion of Supervisor Murphy, seconded by Councilman Clinchy, the meeting was adjourned to an executive session with regard to real estate and personnel matters at 6:35 PM, to return that evening.

7:35 PM – meeting reconvened

Verbatim discussion with regard to the Alexan Somers Wood completeness review:

On the agenda 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, Mr. Eugene Goldenberg 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 after the March meeting there were some changes made to the plan. She said that there was a meeting with the applicant, the Consultants and herself about a week or two ago and what came out of that meeting was a letter to the Town Board with a brief explanation of another proposed plan. She asked Ms. Whitehead to introduce that to the Board. Ms. Whitehead said that it was pretty much explained in the letter and as the Supervisor said, they came and met last week with the Supervisor and the Consultants to review the document and discuss some procedural issues and some other things. She said that what had happened through the passage of time, the economy and other things was Urstadt Biddle had come back to them and said that they did not have a user for the grocery store and they did not anticipate having one in the foreseeable future. She said that they were no longer interested in going forward therefore; they had taken that off the plan. Ms. Whitehead said that Urstadt Biddle would still like to purchase the parcel from them because they hoped in the future that they would have a use for it. She said that obviously whenever they were going to use it they would have to come back to the Town for approvals for whatever they were going to do. She said that one of the things that they had discussed last week was whether they should still do the lot line change or subdivide that piece so that so that they could come back in the future. Ms. Whitehead said that they had a discussion as to if they did that they could also rezone it to NS to make it part of theirs. She said that there were some concerns by doing that they were sort of starting the process for them to do something in the future. She said that it could remain as an R-40 lot but they would still like to create the lot so that they could have it for their future use. Ms. Whitehead said however, if this was going to raise any problems or issues they would not proceed with that at this time.

Ms. Whitehead said that the other change that had been made, as they would remember that they had a rather lengthy discussion back in March about the issue of cut through traffic in the shopping center and the concerns about circulation and traffic patterns. She

said that frankly short of tearing down buildings and relocating them there was no way to improve the circulation and traffic patterns. She said that as a matter of fact it was designed to be a village type center. Ms. Whitehead said therefore, they were going to eliminate the full road connection between the residential and the shopping center and to maintain only a pedestrian connection and an emergency access connection. She said that they gave them a description of the original plan with the DEIS and the preliminary revised plan, that was not fully engineered with the elimination of the loop road and the grocery store. She said that they felt that these were significant enough changes that they wanted to come back and speak to the Board about procedure, they believe that these changes changed the scope of what needs to be in the DEIS and she thought that they all agreed on that the other day. Ms. Whitehead said that they also believed that Urstadt Biddle and the shopping center no longer needed to be part of the application because they were no longer making any changes to the shopping center. She said that this really became now just a residential development. She said that was where they were in this process, they had spoken a little bit about the procedure at last weeks meeting, they talked about if they needed to come up with any process for modifying the scope. Ms. Whitehead said that they talked a little bit about taking the existing scope and thumb through it with both them and the Town's Consultants, marking it up as to what they thought should be in and what should not. She said that was where they were at this point and that was why they were there to talk about with them that evening. She said that they needed to make some decisions procedurally on how to move forward.

Councilman Clinchy asked if the land that Somers Woods would be built upon and the land that was owned by Urstadt Biddle were two entirely separate pieces of property with nothing binding them legally. Ms. Whitehead said that was correct, that there would be an emergency access connection and a pedestrian connect so that people could walk to the shopping center. Mr. Goldenberg said that Urstadt Biddle did not own any property there other than the shopping center. Ms. Whitehead said that was correct. Councilman Morrissey said that the only connection was going to be easements. Ms. Whitehead said that was correct; there will be an easement for the emergency access and a utility easement. She explained that the purpose for the utilities easement and running them across the shopping center, they could push them off of the shopping center property but then there would be greater wetlands impact. She said that the plan had always been to bring the utilities in under the existing road rather than creating a new wetlands disturbance and that was why they were proposing to keep the easement.

Mr. Goldenberg asked where the homes were going to be built, on Route 202 or on Route 100. Ms. Whitehead said that they will be built on Route 100. Mr. Goldenberg asked if the entrance and exit would be on Route 100. Ms. Whitehead said that was correct. Mr. Goldenberg said that there was going to be nothing on Route 202 leading to an opening of any kind where there was now presently a light. Ms. Whitehead said that was correct. Mr. Goldenberg asked if they were considering at this point according to traffic studies and all the building that was proposed on Route 100 and the area by the Mobil Station and the traffic that might bring in. Ms. Whitehead said that was included in their traffic study, it was looked at as part of the traffic study. Mr. Goldenberg asked if they looked at the traffic study with regard to the new church on Route 138. Ms. Whitehead said that she did not recall, the scope included a list of proposed projects that they included in the traffic study. The Supervisor said that one of the things that was concerning was that the original petition stated right up front. She read from the original petition that Somers Woods proposed to develop the property with a rational Hamlet Development with multifamily housing integrated with the adjacent shopping center; the site was uniquely suited to this as it was located off two major roadways. She continued that somewhere in the body it talked about they had also worked extensively with the owners of the adjacent Town Centre in Somers to integrate the two sites and improve and access information in stormwater management. The Supervisor said that this was the premises to their whole presentation to the Town. She said it was to be this integrated hamlet development and they appear to have completely abandoned that. Ms. Whitehead said that they had not abandoned that at all, the idea of having a residential immediately adjacent to a shopping center still exists. The Supervisor said that they were hardly integrated. Ms. Whitehead said that they still have the pedestrian connection, they were still right next to each other, they both still feed off of each other. She said that this was the Board that said to them that the circulation did not work with the additional

connection. She said that either they get it or they do not, they cannot have both. Ms. Whitehead said that they still believe that this met the criteria and the goal of an integrated hamlet, which the idea was to have the uses near each other. She said that this was still residential adjacent shopping; the only thing that has disappeared was driving a car through the two. The Supervisor said that the Board asked them to be creative and find a solution, not eliminate it. She said that was not what the Board was suggesting. Ms. Whitehead said again, because of the way the Town, the prior Planning Board laid out the shopping center they could not improve the circulation, it was what it was. She said short of knocking buildings down they could not make a good circulation pattern. She said that first of all they did not think that there was going to be that much additional traffic, they did not think it was a problem. Ms. Whitehead said it was the members of this Board who in March indicated that they thought it was a problem. She said that they lived here, they listened to them. Councilman Garrity said that there were over 100 units and when they first looked at it they figured when someone was going over to Primrose or to the Schools they could go out on Route 202 and if someone was going to 684 they could go the other way. He said that now what they had done was if they want to go anywhere they would have to go out to Route 100. He said that he knew that they looked at the traffic. Ms. Whitehead said that was why they would have to do an amended traffic study. Councilman Garrity said that he was concerned up front. He said that he was there today, in the middle of the day and it took him forever to pull out. He said that he was concerned that there was going to be cars lined up at 7:00AM and it was going to be a nightmare. Councilman Garrity said that the old way at one point was right across from Heritage Hills so that they could use the light and that could weed some of the traffic out. He said that now they are saying in order to get out there was one way, on to Route 100, one of the busiest roads in Town and one of the roads people drive the fastest on, as much as they try to stop that. He said that he did not know how over 100 units with at least one car per unit, he would look at the traffic study, although he was more than a little concerned with them going out on to Route 100 where now it was already a problem. Councilman Garrity said that as Mr. Goldenberg said there were other projects going on and this was a concern of his. Ms. Whitehead said that was why they will do a traffic study. She said that she did not think they should prejudge it before the traffic study was done. Councilman Garrity said that he was not prejudging it; he thought that everyone has had that concern. He said that he would agree with the Supervisor that when they said they wanted to see a different circulation they did not expect them to come back and say that they moved this and they were only going out on to Route 100. Ms. Whitehead said that it was looked at and that was why it took them this long to come back. She said to really look at that shopping center, the design, the location of the buildings in the shopping center, there was no way to get traffic through that shopping center in a better, more efficient manner. She said that the entire design of that shopping center was done for just the opposite purpose. Ms. Whitehead said that it was to keep the traffic slow and village like and not be a thru road. She said that frankly short of tearing down buildings, which Urstadt Biddle was not going to do, they could not improve the circulation. She said that the roads were narrow; the buildings were located at angles with walk ways. Ms. Whitehead said that they had looked at it. Councilman Clinchy said that there was a problem with the traffic going out on to Route 202 where they could not make a left turn. He said that was where they wanted them to be more creative. Ms. Whitehead said that she heard that the issue was within the shopping center, they did not want the additional traffic in the shopping center. Councilman Clinchy said that may be part of it. Ms. Whitehead that the plan had the road coming to the light, when they were there in March the plan still had it coming out at the light. She said that the discussion was not about the access it was about being in the shopping center. Mr. Goldenberg said that they had a system there going through an Urstadt Biddle's shopping center where there was no light in any direction. He said that sometimes cars get stuck because there was no light. He said that they originally wanted to put the road where there was a light, that light was being paid for by the people of Heritage Hills. Mr. Goldenberg said that there was no chance from what he could see that they could come in and say that they were going to put a light up on Route 100 to stop traffic or maybe another light on Route 202. He said that it was going to stay the way it was and present a large problem. He said that if you tried to exit the Mobil Station during the morning hours or the shopping center, it cannot be done. Mr. Goldenberg said that it was a very dangerous situation for anyone living in that area. Councilman Clinchy said that the traffic was an issue.

MAY 5, 2011 - WORKSESSION

Ms. Gannon asked to be shown the emergency access; it was not clear on the plan. Ms. Whitehead said that the plan was not fully engineered and pointed it out for her. She said that this was dramatic and preliminary, not fully engineered.

Ms. Whitehead said that obviously the traffic impact was something that they needed to look at. She said that she did not think that the Board should be prejudging the project before the studies were done. Councilman Garrity said that they were not prejudging they were voicing concerns. Ms. Whitehead said that she heard their concerns and that was why the studies were being done.

Mr. Goldenberg said that they had a situation where they have a Planning Board and a Town Board that were trying to plan for the future of the Town. He said from what he saw they were going piece meal. He said that as an example several months to a year ago he had asked a question about a cell tower being in Urstadt Biddle's property. Mr. Goldenberg said that he said that there was a possibility that there was going to be homes right next to that cell tower and the answer that he got was there was no plan or anything in the works at that time. He said that now all of a sudden 119 homes were going to go somewhere near that cell tower. He said that he is saying to himself that they were mixing apples and oranges in this Town instead of having a plan that was on a drawing board so that they could at least have a community that jelled. Ms. Whitehead said that as was discussed during the scoping process the cell tower was shown on their plans and the closest units were well over 100 feet from the cell tower. She said that was something that was discussed at length during the scoping process; they had included it and shown it. She said that it was discussed in the DEIS as well.

Councilman Clinchy said that the last time that they were at the meeting they talked briefly about the number school children that would be coming out of the project. He said that they also had a meeting with a community group last week and the same issue had come up. He said that somewhere along the line they had to make sure that they had an accurate number. He said that 18 that was listed in the DEIS out of over 100 units seemed pretty small. Councilman Clinchy said that he did check with the school and no one reached out to them with regard to this project. He said that somewhere along the line they would have to respect the school and give them an accurate number. Ms. Whitehead said that the basis of it was that they were relatively small units; there were a number of reasons that the number was low. She said that they had discussed at the last meeting that they used common methodology, accepted methodology for the purpose. She said that they did get some information from the School District, they did reach out to them and they would be happy to try again. Ms. Whitehead said that they were going to have to redo the DEIS and they will try again then.

Mr. Keane said that it seemed as if right now environmentally they were trying to make a determination and there seemed to be additional alternatives that were added. He said that he thought what they were attempting to do was trying to make a determination as to what criteria was set forth in the scope. He said that it seemed to him that their job was to present to the Board both a plan and alternatives that they believe meet both the criteria and the Board could approve. Mr. Keane said that if they did not they lose. He said that their job was to really create all the information that they thought was necessary. He said it seemed as if that was where they were at this junction. Mr. Keane said that they had taken away some of the aspects of the original plan. He said by looking at it his sense would be with regard to the proposed separation or creation of a subdivided lot if they were going to do that it should be done first as part of the consideration of the whole plan. He said that it should not be done by itself, to him that was segmentation or would qualify as segmentation under SEQRA. Mr. Keane said that it came down to if the Board wanted to accept the alternatives. Ms. Meder said that it was her understanding that the applicant did not wish to proceed with the prior proposed action in the DEIS that was submitted. She said that they had two different versions of the proposal, both of which were proposed actions in the DEIS. She said that it was their understanding from what they had heard based upon personal changes that they talked about that evening the applicant no longer wished to keep it on the table. Mrs. Meder said rather than moving further with that it was the applicant's intention to substitute what they heard that evening as proposed actions. She said all of which still required revisiting of the scoping document, however it was done. The Supervisor asked if that was really up to the

applicant at this point. She said that they already had given them one thing, the Board scoped it, they changed it to something else and brought that to the Board. She said that they talked about how to address that and now they had changed it to something else. The Supervisor said that she felt as if it was a moving target that they were trying to analyze. Ms. Meder said that was a fair question. She said that some modification was expected during the SEQRA process but it was up to the Board to put a limit or stop the changes. She said that at some point the Board has to stop the changes and start talking about tweaks and adjustments not major changes in the concept.

Councilman Bolton said that if they make the change the way they had it there they were driving people on to Route 100. He said that there was a Restaurant, a Gas Station, an Office Complex and Police and they wanted to add more cars that all have to come out onto that road. He said that was what everyone was concerned about.

Mr. Keane asked if they were withdrawing their original proposal. Ms. Whitehead said that they were modifying it. She said that they were saying that there was no user for a grocery store and the Board could not make them keep an element in that was no longer feasible. Mr. Keane said that he was asking, are they withdrawing their application. Ms. Whitehead said that they were not withdrawing it they were modifying it. Mr. Keane said that was a withdrawal, it was not what they originally proposed. Ms. Whitehead said that's what they had said, this was all procedural and they have acknowledged that they needed to take a step back procedurally at this point. She said that they acknowledged that and that was why they came to them last week and said that the scope needed to be modified. She said that there were things that needed to be eliminated and that there were going to be things that would need to be added. Ms. Whitehead said for instance, from what she was hearing that night, their proposal would not include a connection they would put the connection in as the alternative. She said that what they talked about last week was to take the existing scope and mark it up and redo the scoping process from that point. Mr. Keane asked if that was based on the new plan. Ms. Whitehead said that it would be based on the new proposed action. The Supervisor asked if they should be getting a new petition. Mr. Goldenberg said that what he saw was they were now trying to make this a housing development. Ms. Whitehead said that it was always a housing development. Mr. Goldenberg said with an addition of a supermarket and now it was strictly a housing development. He said that now if it was strictly a housing development, why can't they just go back and give them what they were planning to build on that housing development. (Inaudible response, too many people speaking at once.)

The Supervisor said that she thought that she would reiterate what the Board said in March, which was; figure out some way creatively to integrate with the shopping center. She said that was what they asked her to do. Ms. Whitehead said it was because of the design of the shopping center, which this Town wanted, it was not possible. Ms. Meder said that it had not changed. Ms. Whitehead said that they did not think that this was an issue until they heard it there. Ms. Meder said that maybe Ms. Whitehead misinterpreted what the Board was saying when they said that they did not want a through road; they wanted inter connections. Ms. Whitehead said that she was telling them that there was no way to do that with that shopping center with the buildings located where they were, with the steep slopes on the edge and the wetlands on the other edge. Ms. Meder said that no one was talking about creating disturbances; they were talking about creating lineage. Mr. Keane said that it was going to work in their original plan when they had the grocery store. He said that it worked in their plan and in their mind, when they came to the table that was a plan that they felt was workable. He said that they were going to create a road that was going to run along the back side of the shopping center. Mr. Keane said they thought that was fully viable. Ms. Whitehead said that the concern that they heard repeatedly about that road was that it had many other impacts and they thought it was a good thing to eliminate. She said that they could put that road back, it was the only place that they saw they could get better circulation was through the shopping center. She said that it was a trade off; it had wetland impacts at that location. Mr. Keane said that there were also impacts of the shopping center with regard to delivery vehicles that had to deliver to the back side. He said that the option of this road was not viable in the first place. Ms. Whitehead said that was not the problem, the problem was that they would have to shift the road over, widen it and that was in the wetlands. Mr. Goldenberg asked

if in this plan there was something for emergency vehicles. Ms. Whitehead said that there was an emergency access, there was emergency connection. Mr. Goldenberg asked where that was located. Ms. Whitehead said that it was located in the shopping center. She said that was not the main entrance that an emergency vehicle would use. She said that they would only use that connect if they were unable to enter through the main entrance. Ms. Whitehead said that they did think that the road was viable but they heard a lot of comments with regard to the impact that it would have. Ms. Meder asked if DEC commented with regard to the impacts. Mr. Keane said the DEC to his knowledge wanted a 100 foot buffer. Ms. Whitehead said that this would not be in the buffer; it would be in the wetland. She stated that the existing road was in the buffer. The Supervisor asked Mr. Keane if he was asking if the DEC would not allow that drive. Mr. Keane said that what he was saying was as long as if you stay outside the buffer they would not quibble about it. The Supervisor said that what Ms. Whitehead was saying was the existing road was already in the buffer. The Supervisor said that they would require some kind of permit for that. Ms. Whitehead said that they would require both Town and DEC wetland permits. She said again, it was an alternative in the current DEIS and they would keep it as an alternative. She said that when it was being analyzed they could say that they like it better and they wanted that. The Supervisor asked about mitigation. Ms. Whitehead said that obviously if they had wetland impact they would have to have mitigation. Mr. Keane said that if there was something that was desirable it should be looked at especially if there was going to be an impact. Ms. Whitehead said that was why she thought it was appropriate to look at it as an alternative. The Supervisor said that every single time that this parcel of property had ever been looked at by any Planning Board or Town Board or anyone else, always the issue of that access on Route 202 being linked over to the light had always been an important part of the discussion. She said that when this was first presented to the Town they made a point of pointing out how the Town was going to get this correction of a bad egress from the shopping center as a result of this plan. She said that was what puzzled her as to why suddenly there was this whole sale change to this housing development. The Supervisor said that it was extremely different from what was originally proposed. Ms. Whitehead said taking it off of the plan in this iteration was because they were no longer adding traffic in that direction. She said that frankly it was an economic issue. The Supervisor said that to her knowledge the Town had never considered a proposal for this property without the Route 202 access. Councilman Bolton said that adding access roads for emergency vehicles was not alleviating a traffic problem. Ms. Whitehead said that they were not creating a traffic problem with an emergency access. Councilman Bolton said that was the direction that the Fire Department was going to come from.

Councilman Bolton asked if the plan was showing one parking space per living unit. Ms. Whitehead said that there was more than per unit. Councilman Bolton asked how many. Ms. Whitehead said that it was part of the analysis of the DEIS, she said that there were some garages; private parking in the back, there was more than one per unit. Ms. Meder said that they were short by about six parking spaces.

Mr. Keane said that they would like to see an alternative where the traffic cycled through and had access to Route 202. The Supervisor said that she wondered if they were trying to jam too much into a space that did not sustain it and that was why they were having so many problems.

Mr. Keane said that another issue that was raised was along Route 100. He said that he took his magnifying glass and he was trying to figure out what the distance was from the property line to the development. Ms. Whitehead said that it was 175 feet of undisturbed land and then 120 feet to the building. Mr. Keane said that there was a very high canopy there now. He said that he believed that what they were proposing to put in a lot of carnivorous trees and if carnivorous trees grew there they would be there already. He said that the problem was that they had echelons of vegetation that fit into that site. Mr. Keane said that the next point was with regard to the buffer. He said that the road noise for the people who would potentially live close to Route 100 was not acceptable. He said that there would have to be a lot more done in order to absorb that sound. Mr. Keane said that they would have to do a lot more than just put in carnivorous trees; they would have to put in higher deciduous trees. He said that will fix the problem and would look good. He said that this will be the only place that he recalled in Somers, he could be wrong,

where they were going to have a whole row of homes that were so close to a major road and that to him was a real problem. Ms. Whitehead said that the affordable housing at the Mews was located close to Route 6. Mr. Keane said that even the commercial buildings in Somers were not located on the road. He said that there may be a few but not a lot. He asked if they recalled that the YMCA wanted to use that property for their purposes. Ms. Whitehead said that it was not that property it was the adjacent property, it was the IBM property, behind the State Police Barracks.

Mr. Keane said that one of the problems that they were going to have with stormwater management practices was the separation of the top of the water table and the bottom and the stormwater practice. He said that they were substantially driven in ideas where it actually should be stormwater practices. He said that the buildings themselves should not take precedence over stormwater practices. The Supervisor said in conjunction with what she knew that there was an issue with regard to a wetlands area and there were comments made with regard to that. She said that it seemed to her that some of these foundational issues, stormwater practices and the amount of space they had to take in the wetlands should be, needed to be, resolved. Ms. Whitehead said that first of all they thought that the wetland issues were resolved 2 years ago, 4 ½ years ago, when the Town Engineer, someone from F.P. Clark and everyone else walked the site. She said they thought it was done. Ms. Meder said that the issue was with the study. Ms. Whitehead said that they thought the initial testing was done at that time and it was resolved. She said that they now had been asked to do more testing and that was ongoing, it was being done, they were asked to start it in March and they did start it; it was on going now. She said that this was what the procedural process was for, the DEIS was a study, there was an analysis, they raised that very issue, it was in the scope and it was discussed in the DEIS, about the stormwater practices and the water table. Ms. Whitehead said that they were getting more information on the water table because they were asked to. She said that this was what the process was for and she thinks that they were getting outside of the process. Mr. Keane said that they were not and he will tell her why. He said that he read the stuff and he looked specifically for that because he knew it was a task and with one of the stormwater practices they did not meet the criteria. He said that the criteria was clear in the Stormwater Manual. Ms. Whitehead said that they did not have a substantive comment to put in the process. Mr. Keane said that they should not have put the stormwater practice where they put it because they know it did not belong there. Ms. Whitehead said that their Engineer was not there that evening. Mr. Barbagallo said that he agreed that it did, when they were moving through the last review, even though they did note the where the deficiencies were but at that point they were making completeness comments on the document. Ms. Whitehead said that would be considered a completeness comment but they were not even at completeness anymore right now. She said that they knew the document was incomplete and going backwards. She said that she felt that they were sitting there talking about the substances issues and this was what happens around scoping sessions. She said that they identify concerns, they identify issues, they get put into the scope and they were analyzed in the DEIS. She said that she did not think that they could analyze them sitting there that night. Mr. Keane said that they were not trying to. He said that he was trying to tell her if they do not put practices in the places where they were viable based on the stormwater management then it had an impact on where they place buildings and roads. He said therefore, they may not be able to place buildings and roads where they think they could place them because they found that it was a stormwater practice being put there and it was going to have to be moved somewhere else. Mr. Keane said that the point was that it had to be shown and make sure that all of that was there. Ms. Whitehead said that they will have to go back to their Engineer with that; they thought it was in compliance.

Ms. Meder said that she would like to mention something that happened recently. She said that on April 1st her staff received an e-mail from a staff member of LGB, the applicant's consultant, and attached to the e-mail was a plan showing the proposed location of additional monitoring wells. She said that that e-mail arrived on the day that the applicant intended to start that work. Ms. Meder said that her staff member was out of the office on that day and there was no opportunity for them to even react to it. She said that she was pointing out that if someone had wanted their input on monitoring protocol it would have been more appropriate to get the information several days in advance before the work was going to be started. She said that when they finally did look

at the plan they saw that no additional monitoring wells were proposed in the area that was still under question as to whether or not it was a defined wetland or not. Ms. Meder said that they had supplied the data that was in the DEIS. She said that it appeared to meet the Town's definition of a wetland, the applicant had taken issue with that and did not believe that it was any longer. She said that the only finding that they could make at this point in time was that data was needed. Ms. Meder said that until they got the rest of the data and until the data was provided for the six month interval the Town would not be in the position to say it was not a wetland. She said that the application had to prove that it was not a wetland and provide that data that helped them make that case. She suggested that even though five to six other wells had already been dug for testing and monitoring and while it was a shame that they were not in the location in question, it was not too late to get that other well in the area as quickly as possible. Ms. Whitehead asked if she could comment on that. She said that the request for the additional wells and additional monitoring came from Woodard and Curran memo not an F.P. Clark memo. She said that they were working with Woodard and Curran on that plan, they had it well before April 1st because they were trying to get it started in March. She said that this went back to her earlier comment with regard to overlapping between Woodard and Curran and F. P. Clark. Ms. Whitehead said that this was a clear case of the comments that were in the Woodard and Curran memo and therefore, they were dealing with the people from Woodard and Curran, not on April 1st, several weeks before that. She said that it was only until they said that F.P. Clark should look at this as well and frankly she had a problem with that. She said that was a clear overlap of control and she did not want it to be left that they waited until April 1st. Ms. Whitehead said that they did not according to the memos they were in touch and it was talked about internally and they were dealing with Woodard and Curran. She said that they were dealing with them on it; they were trying to get it started. She said that it was a little slow getting to the process but they were on it pretty quickly. Ms. Whitehead said that they went to Woodard and Curran because the comment requesting additional monitoring wells was in their memo. Ms. Meder said that she agreed with Ms. Whitehead that they had conversations prior to April 1st; she had heard from Mr. Barbagallo that they had stayed in touch with them about that. She said that when the e-mail came to them it included a request that they comment on it but obviously it was impossible to do so that day. She said that Ms. Whitehead was also correct that they did not ask for additional monitoring wells but what they did do inspired the comment to point out where the data in the DEIS was either inconclusive or inconsistent. Ms. Meder said that they could draw their own conclusion that if the data was missing to support their conclusion it seemed that if they needed to provide additional data. She said that how they produced that data was up to them, one of the obvious ways was to install the monitoring wells and produce the data that was missing. She said that they did not connect the dots and understand that the comment and the request for that was coming out of the April 1st e-mail. Ms. Whitehead said that the e-mail went to before April 1st to Woodard and Curran. She said again she had a big concern with regard to overlapping control. Ms. Meder said that there was no overlap it was clearly stated that F.P. Clark's responsibilities were with ecological review and Woodard and Curran's was responsible for the engineering review. She said that they were both working off the same data and what they do with that data and how they interpret that data it had to do with their particular responsibilities. Mr. Barbagallo said that their comments were focused on the hydro geological aspect; they were looking at where the groundwater might be involved or in close proximity to the existing grade. He said that was one of their comments. He said that one of the reasons that they asked was for the purpose of understanding groundwater relation and the other was to get more robust information relative to where the stormwater practices were proposed. Mr. Barbagallo said that would demonstrate separation not from a single test and not a single time but over time. He said that when he was contacted the first time by Tom Cusack of LBG on March 14th. He said that they did have some conversations internally in his office about what they were responsible for which was the engineering and the hydro geology which was where their comments were issued. Mr. Barbagallo said that when they issued those comments and the approval of the location they conveyed with that approval a notation that they thought it was important that they contact F.P. Clark with regard to their items. He said that was why they did not comment on the F.P. Clark wetland items was specifically because they were trying to avoid the overlap, it was not their responsibility. Ms. Whitehead said that some of the discussions in his memo does refer to it. She said that their Wetland Consultant was more than prepared to defend their

position. She said that maybe they needed to have a meeting with everyone present because they were very certain that this did not meet the Town's definition of a wetlands. The Supervisor said that the Town might need to have a Soil Scientist look at this. Ms. Whitehead said then why had they spent many thousands of dollars on a Wetlands Consultant already, maybe they should not have paid for that. She said that she was sorry, the Town had a Consultant that had spent a lot of hours reviewing this from a wetlands standpoint and now they were saying that they had to start all over. Ms. Meder said that they were not even at that point, to be honest, as she said in her February 25th memo they needed to provide the information that was missing. She said until that information was provided they should not even be having a conversation because it was pointless until they had the data in hand. She said when that data was produced then they could sit down and decide.

The Town Attorney said that brings them to his point that they had to decide if a supplemental scope was needed. He said that if they were going to require a supplemental scope they needed to set a date and get that done. He said that these other issues were extraneous to have this discussion. Ms. Meder said that they were except that she thought that the applicant needed to hear that more data was needed. She said that the only reason that she brought that up was because of the agenda. The Supervisor said that the review was supposed to be done in March or April.

Ms. Whitehead said again, their Consultant was comfortable that there was more than adequate data and they were getting additional data. (Inaudible response, too many people speaking at once) Ms. Whitehead said that 2 ½ years ago when everyone was out there in the field, it was to do this additional testing, what was accepted at that time was done. The Supervisor said that they had a scoped document that had the information in the DEIS. She asked why she was talking about some conversation when she had procedure. Ms. Whitehead said it did not come out of a conversation, it came out of a meeting with the Town. The Supervisor asked where was the documentation that said the Town said we could just do this and that would be enough. Ms. Whitehead said that she had the memos from Guy Gagne, the former Town Engineer, they had several memos that were done at the time and it was for exactly this reason. She said that this Board and the Planning Board said that they needed to get the wetland delineation up front, they expected a layout. She said that they went out in the field more than once and they were asked to put the monitors in, they were asked to put them in specific places, they were asked to gather specific data, which was done. She said that was why they thought this issue was resolved. The Supervisor said that she was being told that they were asked to do a six month analysis and it was not done. Ms. Whitehead said that was not what they were asked to do then. The Supervisor said that the scoping document told them to do one thing. She said that if they did what they were supposed to do in the scoping document then why did she contact Mr. Barbagallo based on comments and go out and do more studies if they thought they had already done everything that they needed to do. Ms. Whitehead said because they were trying to address the comments and keep moving forward. She said that they contacted them with a map that showed proposed locations and what they were proposing to do. The Supervisor said that if she thought that they did everything they were supposed to do in that scoping document, it was her experience with Ms. Whitehead; they would not have just voluntarily done more. She said that she was sorry, she respected her very much; if Ms. Whitehead thought that they had done what they were supposed to do in that scoping document there would have been some chatter. Ms. Whitehead said as Mr. Barbagallo said some of the information that was requested was needed for other things such as stormwater. She said now it was being used to say that they had not decided yet what was not a wetland. She asked if they thought that would have got this far ahead with this plan if they did not think that the issue was resolved 2 ½ years ago. Ms. DeLucia asked if the site walk was done in July of 2009. Ms. Whitehead said that there was more than one and she did not remember. Ms. DeLucia asked if the site visit was with the DEP. Ms. Whitehead said that there was more than one site visit because there were separate ones with the DEP and DEC. She said that there was a site visit with F. P. Clark, Guy and Beth and a representative of her client and she did not know who else.

Councilman Clinchy said that it needed to be resolved. He said and how she was going to resolve this was she was going to have to get the data that was being requested. He

MAY 5, 2011 - WORKSESSION

said that the two sides would have to agree that it was or was not a wetland and proceed from there. Ms. Whitehead said she thought that was done. Councilman Clinchy said that may be true but at this point it was relevant. He said that they needed to move on to the next thing, what else needed to be done. Ms. Whitehead said as the Town Attorney said they needed to start the process to modify the scope at this point. She said that they discussed last week that they could initially start by taking the existing scope, marking it up and presenting it the Board and their Consultants for further review and comment and additions to it. She said that they had certainly heard some things that evening and there were some alternatives that they were going to make sure were added or remain in there. She said that was where they were in to process at this time.

Ms. DeLucia said during the discussion of the Oaks project some of the wetlands were degraded and when they were degraded the Oaks wanted to put in more buildings. She said that she kept looking at this for the degraded wetlands. Ms. Whitehead explained that there was a small remnant wetland that was towards the middle; actually it was pretty close to where they were showing a stormwater area. She said that was what they had been talking about here, whether or not that was still a wetland. Ms. DeLucia said that was why she brought it up, she had discussed this with Guy and the way a wetland was returned was if it was degraded. Ms. Whitehead said that there was not water source to it anymore that was why it was a remnant from when stormwater was changed at IBM and everything else. She said that it was in the DEIS and she would prefer to have Beth explain it. Mr. Keane said that he wanted Ms. Whitehead to understand that IBM had stormwater management practices installed and there was a water source that goes under Route 100 and he was sure that it ended up somewhere on the other side. Ms. Whitehead said that that they have the analysis in the DEIS. Mr. Keane said that he was sure that it was manifesting somewhere on their property. He said that being said even if it was not relevant they still had a problem that they needed to resolve. He said that they had a two prong problem, it would have to be determined if it was a wetland and they needed to indentify where they were going to put the stormwater management practice. Mr. Keane said if they cannot they will have a problem.

Ms. Gannon said that the new proposed action with the alternative would include any possible changes with the lot or without the lot. She said from there the scope would develop and a DEIS would be done from the new document. Ms. Whitehead said that the DEIS would be based on the revised scope. She said that what was already done would be incorporated into that DEIS. She said that the comments that they had would also be addressed in the new DEIS. The Town Attorney said that they needed to make that determination whether the issue about the road and the connection was a proposed action. Ms. Whitehead said that she thought it would be and they probably would make the other connection part of it. The Town Attorney asked if that was as an alternative. Ms. Whitehead said yes as an alterative. Ms. Meder said that they were going to have to start the process over because it was a different complex. The Supervisor asked if they needed new proposals from the applicant.

Mr. Keane said that his issues were if there were situations that cause a design layout change it needed to be addressed. The Supervisor said that this goes back to the ground work, they were going to put things in there that were impossible to actually do then everything was going to change so much it was not the same proposal. Ms. Whitehead said their position was not to leave things out. The Supervisor said that they already acknowledged that the stormwater basin was notincluded. Ms. Whitehead said that they did not acknowledge that. Mr. Barbagallo said that they did not acknowledge it; their data did. Ms. Whitehead said that was what Mr. Keane said that they had to go back and look at again. Mr. Keane said that they should put a chart in there showing separation distances; in fact they were in the manual. The Supervisor asked if it was the big pond area. Mr. Keane said any of them. The Supervisor asked if all of the wetland areas had the same problem. She asked if it appeared that none of them needed it from the data. Mr. Keane said no, one or a few. Mr. Barbagallo said that there was data on all of them. Mr. Keane said that they should create a table that showed separately, use the data from the Stormwater Manual, show the separation distance for the particular practice and demonstrate if it was not needed. Mr. Barbagallo said that when they go back to revise the proposed action they should rely on the data that they had collected to guide them in the manner in which they would be managing stromwater. Ms. Whitehead said that goes

to what she had said that they were going to take the comments that they had already gotten on the DEIS and address them in the revision. Mr. Keane said that they did not want something that was taken out and then say this was what they wanted to put there. He said that they needed to keep to demonstrative action.

Councilman Clinchy said that they have water issues, traffic issues which they might not think so but they do. He said that he wanted to ask that when they proposed a pedestrian connection, within the development itself would the pedestrian walk be along the road or would there be walkways. Ms. Whitehead said that there would be sidewalks and walkways. Councilman Clinchy asked if their walkways or sidewalk would connect with the walkway into the shopping center. Ms. Whitehead said that they would.

Councilman Clinchy asked out of curiosity why did the food store get taken out. Ms. Whitehead said because there was no user for it. Councilman Clinchy said that the last time they were there they thought they had someone for the location. Ms. Whitehead said that they did think that they had someone. She said that Urstadt Biddle had lost the company that they thought they had and did not see someone else in the foreseeable future coming in for that space. Councilman Clinchy asked if it was because of the size of the space available. Ms. Whitehead said the size and the economy. Mr. Goldenberg said it was raising an issue. He said that there was an article from 2006 when they wanted to take the supermarket away and put in CVS. He said that Mr. Biddle got up in public and issued a press release that there was no need for a supermarket, it could not function, could not be held and there would never be a supermarket there. Mr. Goldenberg said that all of a sudden now he came back to the same thing after the CVS was put in, they want to put something in along side it. He said that it was on the record and she could read the article. Ms. Whitehead said that he was saying the same thing today. Mr. Goldenberg said that he did not say the same thing two years ago when he wanted to put up a store. Ms. Whitehead said because he thought he had someone and the Town wanted it. Mr. Goldenberg said that was because the A&P went bankrupt and he thought that store would move here. Ms. Whitehead said that they were proposing an 18,000 square foot store; it would never be an A&P. Mr. Keane said that they needed to plan for it. The Supervisor said that they clearly cannot, some of the things that they were talking about when they first met with them last week was that they wanted to lop off the portion of the property, rezone it, keep their stormwater area so that the unit count did not change. She said that was all problematic. She said that the lot had to be looked at comprehensively, not just take this off and they will let them know what they do at a later point. Ms. Whitehead said that they were not going to do it now and when they did decide to put the store in they would have to come back to the Board and be looked at. Ms. Meder said that her only comment was to choose not to preliminarily look at it conceptually. She said that at some point down the road revisit it. Ms. Whitehead said that they could not make their project non-conforming. She said that they did not convey them a parcel. The Supervisor said that it was more than conveying it; all of a sudden there were easements so that they could put their stormwater on our property. She said that it was double dipping, using the property for two different things. Ms. Whitehead said she was saying that none of that was on the table. Ms. Meder said that as part of the Town's planning it would be helpful to have some of that information out, even conceptually. Ms. Whitehead said that it was too speculative, they had no idea. Ms. Meder said that it was not speculative; they were willing to sell the property. Ms. Whitehead said that was because they wanted the property. She said that Urstadt Biddle said to them that they still would like to buy the property from them so that they would have it in the future. She said from her clients prospective they would go along with it because they did not have to come back. Ms. Whitehead said no one knew what they were going to do with it or when.

The Supervisor asked if they should reject the DEIS that had been submitted at this point as incomplete. Ms. Meder said that based on the plan that made up the DEIS and the sufficient comments from Woodard and Curran and F.P. Clark as well as the other professionals, it was safe to say that the document could not be accepted as complete. She said beyond that, the applicant's proposal modified the proposed action and they acknowledged that the scoping document needed to be modified. The Town Attorney said that a resolution needed to be prepared. Ms. Meder said that it would be beneficial for the applicant to supply a proposed modified site plan before they got into a lengthy

MAY 5, 2011 - WORKSESSION

discussion about the scoping revision. The Supervisor said that also they should have a new proposal for review.

Mr. Keane said that when the cell tower was put up it was put up with the idea in mind that it was going to have a certain background of trees. He said that if they looked at the cell tower the trees were the backdrop to that cell tower. He said that those trees were part of the overall design. Mr. Keane said that the stormwater practice happened to be right in the line of sight for that backdrop. He said that needed to be addressed. Ms. Whitehead said that she did not realize that those trees were part of the discussion. She said that she had the resolution. Mr. Keane said that he knows that he had mentioned to her that was going to be part of approval and acknowledgement. He said that if all of those trees were taken away it was going to look horrendous. Ms. Whitehead said that they will add another visual analysis. Mr. Keane said it was important; it was his recollection that in the original plan there were a lot of buildings to hide and they were taken away. Councilman Clinchy asked where the trees would be. Mr. Keane showed it to him on the plan.

Ms. Gannon asked if new forms were needed. Ms. Whitehead said that they only forms were the Environmental Assessment Forms and explained them.

Ms. Whitehead said that they will look at some of the site plan issues that had been raised and some of the comments and present a site plan and a marked up copy of the scope. She asked if that was the direction the Board wanted to go in. The Supervisor said that once Ms. Whitehead gave them that, they would have to get proposals from the Town's Consultants. Ms. Whitehead said that next week they would need to adopt a resolution on the incompleteness so that would be done. She said that then they would get something to the Board on the new plan and the revised scope.

9:35 PM – 5 minute break
9:50 PM – meeting reconvened

This being a work session no actions were taken.

Thereupon motion of Supervisor Murphy, seconded by Councilman Clinchy, the meeting was adjourned to executive session at 10:50 PM with regard to real estate, not to return that evening.

Town Clerk