

OCTOBER 8, 2009 – PUBLIC HEARING

Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening October 8, 2009 at 7:45 PM at the Town House 335 Route 202, Somers New York.

ROLL CALL:

PRESENT:	Supervisor	Mary Beth Murphy
	Councilman	Paul Z. Meyer, Jr.
	Councilman	George R. Dieter
	Councilman	Richard G. Clinchy
	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 this was a continuation of a public hearing with regard to the petition to extend the Amawalk-Shenorock Water District to include the Planned Hamlet Subdivision.

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

Mr. Seth Mandelbaum of McCullough, Goldberger & Staudt, LLP on behalf of Somers Realty Corp. owner of the Somers Realty Planned Hamlet project said that they had the meeting with the Town Engineer and Water Superintendent as requested at the September 10th meeting to discuss the issue of the Water Main loop. He said that it was a productive meeting and they thought that they reached an agreement to address the issue of to what extent the Planned Hamlet would benefit the Water Main loop verses the other existing properties. He said that Ms. Whitehead submitted a letter to the Town Board in which she detailed the discussions and the proposed solution. Mr. Mandelbaum said that the solution was that Somers Realty would agree to pay its proportionate share, which was based on assessed value not on the vacant land but on the full build out of the project. He explained that would accelerate the proportionate share beyond what would normally be calculated by the Assessor. He said that they received a copy of the memo late that afternoon from the Town Engineer that was submitted to the Board which was inconsistent with the discussions at the meeting. Mr. Mandelbaum said that he had spoken to the Town Attorney briefly about the memo before tonight's meeting. He said that he wanted to go through some of the points in the memo because he thought they could address them. He said that they would ask the Board to consider their responses and consider whether there was a way to close the hearing and adopt the Resolution to extend the district that evening. Mr. Mandelbaum said that first issue that was suggested in the memo was a notion of a second Water Tank. He said that they talked about it in the meeting and they thought they had resolved it. He continued that throughout the SEQRA process, DEIS and SEQRA documents included that the second tank was not required, it may be a future requirement and his client had agreed to donate the land to the Town for the second tank should it be needed in the future. Mr. Mandelbaum he said that it was not part of the action that was approved by the Planning Board under SEQRA, therefore it could not ever legally be built if it was needed. He said that the SEQRA documents concluded that it was not for this project, it was future consideration.

Mr. Mandelbaum said that the second point he wanted to address was a notion of the District wide improvement and how it can be assessed to the properties. He said as they discussed last month there was Case Law regarding not being able to require entry into a District to pay for a District wide improvement, the Town Engineer's memo did confirm that it was not just the Planning Hamlet but the shopping center and several other residential surrounding properties that would benefit from the loop therefore it could not just be put on the Planned Hamlet to pay for the loop. He continued that was how they came to their conclusion recognizing that this was a large project but there were other properties that would benefit.

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Mr. Mandelbaum said that once the extension was hopefully granted the Board could have an improvement District within the Water District whereby whenever the Water Main was built and bonded at that time they could reconfirm which properties specifically were benefited directly and then the improvement District would be assessed for the particular improvement. He said that there was a mechanism that was in State Law which would address the issue of which properties were directly benefiting verses the whole District but also allow the Board to consider the extension of the District so the issue could be resolved and allow them to move forward.

The Supervisor said that she had only received Ms. Whitehead's memo that morning and she had not had a chance to read it closely in terms of what the implications were for the Town, how the assessed value would be computed and how this was going to be in such a way that the Town would be protected. She said that they were her primary concerns at that point. Councilman Dieter said that he did not have a chance to review the memo either. Mr. Mandelbaum apologized that they received the memo so late. He said that it took some time to get the meeting with the Town Engineer scheduled and there were some additional discussions with the Town Attorney, they wanted to have an accurate proposal before it was submitted, which caused the delay. He explained that it would be an agreement similar to a pilot that would be recorded against the property and be negotiated with the Town Attorney as far as protecting the Town's interest; it would run with the land and be a recorded document. Mr. Mandelbaum said that it would address the concerns that the Town may have moving forward. The Supervisor said that one of the concerns she had was that the negotiated agreement had not yet been negotiated and if there were road blocks during the negotiation they would have no recourse. She said that she wanted the agreement to be firmed up before moving forward. Mr. Mandelbaum said that they did agree that no building permits could be issued for any development in the Planned Hamlet until the agreement was finalized and recorded. He said that he hoped that addressed the Supervisor's concern. The Town Attorney said that it was going to take some time to get the agreement negotiated. The Supervisor asked what happened when the Housing Action Counsel wanted a building permit and there was still no agreement. The Town Attorney said assuming they did not want a building permit for 6 months or so that would give them sufficient time and it provided the Town with leverage to ensure that the agreement was done and completed to the satisfaction of the Board.

The Town Attorney said that the Town Engineer's memo did raise some issues that warranted further discussion with the Board. He said that the agreement should also encompass the construction of a Water Tank not just a looping improvement. He said that if a future Board wanted to make the decision to go in a different direction and build a second Water Tank they would want it to apply to that as well. He said that it may be that the Town has to put this over until November.

The Supervisor said in terms of the ratable it was her understanding that there had been some estimates with regard to the ratable in the SEQRA documents that have been prepared, it may give her an additional level of comfort if the ratable was set at 4. The Town Attorney said that he spoke to Ms. Whitehead with regard to that as well and they would have to pull the numbers out of the DEIS.

Councilman Dieter asked the Town Attorney what the circumstances were that they would negotiate to build the loop and decide at a later date that a Water Tower was needed. The Town Attorney said that as he understood it there were some other jurisdictions that needed to approve the construction of the looping systems, Yorktown and the Joint Waterworks and if for some reason they do not fall into place the Town Engineer felt that the Water Tower was a back-up system. The Supervisor said that she did not think that Yorktown's permission was required; the connection was at Windsor Farms Road, which was Somers, there was already an agreement with Yorktown with regard to the meter that exists at the Town line and with regard to the Northern Westchester Joint Waterworks, Somers was a member entity that was allowed to take water from the system. The Town Attorney said that he was picking up on that from what the Town Engineer told him. He suggested that the Board ask the Town Engineer to come to the next meeting to answer these types of technical questions.

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Mr. Mandelbaum requested that the Board consider wrapping up that evening to keep the ball moving. He said that they still had to work through the Department of Health, on behalf of the Housing Action Council they wanted to keep the ball moving as quickly as they could.

Councilman Meyer asked what the Housing Action Council's timeframe was as far as when they think that they would be ready to file for a building permit. Mr. Tony Hoetzel of the Housing Action Council said that they were working towards a date. He said that they were under an awful lot of pressure because of the stimulus money from the State; they wanted projects that were ready. He said that what they have heard was that other projects in the State had used all of the stimulus money. He said that the pressure had been released a bit but they still needed to proceed as quickly as they could. Councilman Meyer asked Mr. Hoetzel at the point that they know when they were going to apply for a building permit if they would let the Town Board know. The Town Attorney said that they still had to go through Subdivision and Site Plan Review process before the Planning Board. He said that they were on the Planning Board agenda for the first time next month. The Supervisor said that they could follow that as well.

Councilman Meyer said that he quickly glanced through Ms. Whitehead's memo and she mentioned some difficulty with looping and having to get easements with the existing shopping center. He said that he was not following that because he thought all of the agreements were already in place to allow connection to the waterline at the shopping center. The Supervisor said that Ms. Whitehead was discussing a loop within the system itself not to Yorktown. Mr. Mandelbaum said that it was his understanding that was a band-aid solution which did not solve the large issue that they were looking to address. Councilman Meyer said that if that was the band-aid approach he did not see it providing adequate coverage. Mr. Mandelbaum said that was the conclusion at the meeting as well.

The Supervisor said that they were on the right track addressing the concerns that the Board had and still moving the process forward but she did not think that they were ready to close the hearing at this point. She said that there were additional considerations and information that they needed to see. She said that she would feel more comfortable if the essential nuts and bolts of the agreement were set before moving forward. The Supervisor said that she did not want to come to a major roadblock 2 months from now. She suggested that they put the hearing over to the November 12th regular meeting. Councilman Meyer asked if this was something that they may want to address at the work session. The Supervisor said that they could discuss it at the work session as well. The Town Attorney suggested having the Town Engineer attend the work session. Councilman Meyer said for the purpose of maintaining the record could they plan to reopen the hearing at the work session and the regular meeting. The Town Attorney said that they would have to schedule the work session as a meeting. Councilman Meyer said that he thought that they should because he wanted whatever discussion that occurred to be part of the record.

Ms. Polly Kuhn, said that she wanted to inquire as to exactly what the issue was. She asked if that there was a District wide improvement verses whether the applicant should make an improvement for the whole District or just themselves, who should pay for what. The Supervisor explained that was the issue. Ms. Kuhn asked what kind of proportion were they talking about. The Supervisor explained that the applicant was proposing that they would participate as full assessed value at build out, opposed to the assessed value of vacant property. Ms. Kuhn asked what the usual procedure for that was, on the agenda there was another application to enter into the Water District. The Supervisor said those applicants were paying for everything as well as their participation in the Water Transmission Main that had already been built and those properties were already at full assessment. Ms. Kuhn asked how that assessment was arrived at. The Supervisor said that they were single family homes that were existing in the Town of Somers and they have assessed value associated with them. She said that they were not properties that were going to be improved, the Planning Hamlet was going to be improved and the amount that was contributed was based on assessed value. She said that the contribution on a vacant parcel was much smaller than on a developed parcel. Ms. Kuhn asked if this came up late in the discussion with Somers Realty. The Supervisor said that they had been discussing it since the beginning of the process. The Town Attorney said that the

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idea for the looping of the system was part of the SEQRA record through the whole process.

Mr. Barry Singer, asked why this was an engineering issue, it was clear that they were either going to have a Water Tower or a loop and that was the engineering issue. He continued that the question that was before the Town Board was how the cost was allocated and he did not know what the Town Engineer had to do with that. The Supervisor explained that the Town Engineer sent a memo to the Board which had a number of different things and it had been suggested that he be present to have a discussion with the Board. She said that she agreed with Mr. Singer, in principal they were headed on the right track. She said that she wanted to get closer to where they were going to be at the end. Mr. Singer said that he understood that but they had a policy decision to make and the Town Engineer does not have anything to add to that. He said that it was going to be a delay if they keep discussing engineering when it had nothing to do with engineering. He said that he hoped that they could do this quickly; he would hate to see this whole project fall apart. The Town Attorney said that the Town Engineer did factor into this because there was a dispute among the Engineers as to whether or not the Planned Hamlet could be negatively impacted when it was built if it only had one source of water. He said that what their appropriate contribution was was directly related to the dispute between the two Engineers. Mr. Singer said that they already agreed that they were either going to have a Water Tower or a loop. The Town Attorney said that they have not agreed that it is a necessary component of the project.

Ms. Harriett Lieb, said that she appreciated that the Board wanted to make sure that Somers was not hurt in any way although they also had to look at the other side. She said that Somers can be hurt by losing out on the funding if they continued to have delays. The Supervisor said that she felt that the Board had acted expeditiously. She said that they acted on the sewer matter because that had to go to the County and the County just sent them a letter asking the Town for additional information with regard to their process. She said that it needed to be respected that the Town needed to ensure that their Districts were protected. The Supervisor said that there were already taxpayers living in those Districts and the Board had to ensure that they were protected. She said that they recognized that the housing needed to be built; they heard from the Housing Action Counsel that they were not under the same constraints that they had been. She continued that the Board understood their enthusiasm and they had the same enthusiasm. The Supervisor said that the Housing Action Counsel just submitted their Site Plan to the Planning Board and it will go through the review process at the Planning Board. She said that they did not have to go to the County for the water extension, once the Town Board made the decision it was final. She said that the design of the system involved the Health Department but that was something that she thought they were already working on. The Supervisor thanked everyone for their concerns and interest and said that the Board was as anxious as they were but they would be remiss if they did not know what the essential components of the agreement were before they signed off on things.

Councilman Clinchy said that he understood their concerns and the appearance that in some way this was an unnecessary delay but it was simply that between yesterday and today they received new information. He said that he was sure Counsel would advise them to make sure that the details were done. He said that he felt confident that the Board was going to do what they needed to, to make sure this was going to go through because they were committed to it. Councilman Clinchy said that he understood their concerns based upon what appeared to happen, he did not think that it was unreasonable at this point and the commitment of the Board had been made and it will be fulfilled.

Ms. Selma Feinberg, asked the Board why the Town Engineer was not present that evening to answer questions.

There being no one else to be heard on motion of Supervisor Murphy, seconded by Councilman Meyer, the public hearing was adjourned to the November 5, 2009 work session at 8:15 PM.