

DECEMBER 9, 2010 – PUBLIC HEARING

Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening December 9, 2010 at 7:40 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 this was a public hearing with regard to a proposed Local Law to amend Section 170-129.2 entitled Definitions; Word Usage, Section 170-129.6 entitled Special Use Permit, Section 170-105 entitled Notice of Public Hearing and Section 170-106 entitled Standard for Determination of the Code of the Town of Somers with regard to Wireless Telecommunications Facilities.

The Town Clerk presented affidavit of public notice of the public hearing that appeared in the North County News on November 24, 2010 and posted on the Town Clerk's bulletin board the same day.

The Supervisor explained that this was amendment to the Town's Wireless Telecommunications Facilities Code which essentially moved the authority from the Zoning Board of Appeals and the Planning Board to the Planning Board.

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

Mr. Manny Vicenti, Homeland Tower, LLC., said that they currently had an application before both the Zoning Board and Planning Board with regard to Wireless Telecommunications Facilities. He said that their Attorneys, Snyder and Snyder, had submitted a letter to the Town Board indicating their opinion that the Board should not change the Code. He explained why they were opposed to the changes and felt that the way the Code was currently it allowed for a much better coordinated review. Mr. Vicenti said that their current application had been before the Boards and had been there for over a year and they had done a lot of work. He asked that if the Town Board decided to change the Code, they respectfully requested that they be grandfathered on their current application. He said that there was also one more important fact that he wanted to mention; they had been discussing public safety benefits with the Fire Department. Mr. Vicenti continued that it was intended to have the Fire Department's communication equipment on the proposed facilities. He said that would enhance public safety communications for them in the Route 35 corridor.

The Supervisor asked the Town Attorney for his opinion of grandfathering for Homeland Towers; the Planning Board had indicated that they would like to see this project moved. The Town Attorney said that it was his opinion that applications that had been submitted and made their way to an agenda of the respective Board should be grandfathered. Councilman Garrity said that he agreed with the Town Attorney with regard to that. He continued that one of the applications had been in the process since October of 2009 and he did not want to see them start over, it seemed as if there was some progress being made on it. Councilman Bolton asked if this was an application mentioned in the Town Planner's memo. The Supervisor said that there were 2 applications that were discussed in her memo. She explained that the memo from the Town Planner was a reflection of what the Planning Board's opinion was. Councilman Garrity said that the memo was to bring the Town Board up to date that there were 2 applications and one had been before them for over a year and the other one was in the beginning stages and had not made its

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way to an agenda at that time. He said that the Town Attorney gave a good definition of if an application had been placed on an agenda.

The Supervisor said that for clarification, there was a memo submitted that day from the Town Planner on behalf of the Planning Board which Councilman Bolton was referring to. She said that later that day she had asked the Town Planner to give her the status of each application, where they were in the process. She said that the Town Planner sent a second e-mail which came later. The Supervisor explained that because the hearing was scheduled for that evening it was information she thought would be valuable to the Board.

The Supervisor said that she also agreed with the Town Attorney's recommendation with regard to things that have been placed on an agenda was a good breaking point for grandfathering.

The Supervisor said that there were also some other recommendations that the Planning Board had made with regard to language changes. She said that for the record the Board did receive a letter from Snyder and Snyder dated November 16, 2010.

The Supervisor said that there was an issue of the 2 Boards reviewing the applications and the variances issued by the Zoning Board. She asked that the Town Attorney address that for the Board. The Town Attorney explained that it was likely that variances may be required in a given application and there will still be a certain amount of coordination between the 2 Boards. He continued that the SEQRA determination was generally made on what the applicant was requesting and the Zoning Board when they went for the height variance certainly would not give a height limitation that was greater than what the applicant was requesting. He said that there should not be any discrepancy with what the Planning Board had done in the environmental determination because the Zoning Board's determination on what the applicant had requested. The Town Attorney said that if anything; the applicant would get less from the Zoning Board and this should not be an issue. He said that the advantage of doing it this way was the Planning Board would have locked down a site plan by the time it issued the environmental determination and the setback variances would be much easier for the Zoning Board to deal with because the Planning Board would have locked in a location. He said what had been happening was the Zoning Board had to lock in that location before it could consider variances and there had been nothing left for the Planning Board to do by way of site plans. The Town Attorney said that it was his opinion that this would work a lot better.

Councilman Clinchy said that the Federal Government imposed 90 and 120 day limits on this because of a desire to have these things happen quicker. He asked the Town Attorney if there were preferences given to certain areas to speed along the variances or was it entirely up to the Town to administer. The Town Attorney explained that it was up to the Town to administer and if there was going to be any preference given it was going to be to try and keep the applications flowing from agenda to agenda. He continued that sometimes there had to be some leniency with regard to submission dates in order to make it happen. Councilman Bolton said that the timeframe that is mandated did not apply to something that only half the information was submitted. The Town Attorney said that that when an application is submitted the time limit did not start until the application was deemed complete. He said that if they were going to declare something incomplete the respective Board must make the applicant aware of that within the first 30 days. Discussion ensued with regard to the mandated timeframe for Cell Tower Applications.

The Supervisor said that another question that was asked by Snyder and Snyder was what happened with regard to the 5 year recertification review; which Board would handle that process. She said that in her reading of the new law, 170-129.6 Section G, it was understood that recertification went to the Planning Board. She asked the Town Attorney if that was correct. The Town Attorney said that it was and that there was another issue with regard to colocations. He said that if they get an application for a colocation on an existing tower, it will go to the Planning Board.

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The Supervisor asked if they needed to add language in the Code that will reflect the grandfathering of an application. The Town Attorney said that he did not think it needed to be in the law; it needed to be part of the Resolution of adoption.

Ms. Fedora De Lucia, Planning Board Chairman, suggested that the grandfathering provision should not just state on an agenda but on an agenda and complete. The Supervisor said that there was a difference of opinion as to what the Planning Board had suggested and what Counsel had suggested with regard to this issue. She said that it was her sense of what the Board wanted was what Counsel wanted.

Ms. Vicki Gannon, Planning Board Member, asked for clarification with regard to something that had been adgendized. She explained that there was an upcoming Zoning Board of Appeals agenda with an application posted on it. She asked if that application would be grandfathered as well. The Town Attorney explained that the meeting would have had to occur. He said that the agenda that she was speaking about had not occurred.

The Supervisor recommended that they make the other changes that the Planning Board had suggested.

Councilman Bolton asked about the types of towers that were allowed to be placed and if the Town was allowed to limit what could be placed. The Supervisor said that the existing Zoning Code with regard to Cell Towers did provide a lot of guidance with regard to different issues. She said that the Boards, themselves were charged with making certain decisions and determinations along the way.

There being no one else to be heard on motion of Councilman Garrity, seconded Councilman Morrissey, the public hearing was declared closed at 8:05 PM.

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Town Clerk

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Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening December 9, 2010 at 8:07 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 this was a public hearing with regard to a proposed amendment to Chapter 133 entitled Professional Fees of the Somers Town Code. She explained that the Professional Fees were the fees that the Town collected in association of review of projects.

The Town Clerk presented affidavit of public notice of the public hearing that appeared in the North County News on November 24, 2010 and posted on the Town Clerk's bulletin board the same day.

The Supervisor explained that the legislation sets out a procedure that needed to be followed by Boards when they were using outside Consultants in terms of setting the scope of the review of the outside Consultants and the fees to be charged.

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

The Supervisor said that the Planning Board had a very good question with regard to this proposed Local Law. She said that their question was when it would become effective and applicable. She explained that it was applicable to any new application, in terms of current and pending applications it needed to be clarified. The Town Attorney said that the law took effect when the law was filed with the Secretary of State and it would apply to all new requests for services from any Professional. The Supervisor asked about current applications that were being reviewed by a Professional. The Town Attorney said any new requests of that Professional. He said that they did not want to stop work that had already been commissioned, but before a Board would commission any additional Professional to do any additional work the new procedure should apply. He said that should apply to all applications new or pending. The Supervisor said that any new work to be done it applied from the date it was filed with Secretary of State whether it was a pending application or new application.

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

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Town Clerk

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Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening December 9, 2010 at 8:011 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 this was a public hearing with regard to a proposed amendment to Chapter 86 entitled Dogs of the Somers Town Code. She explained that the State had turned this responsibility over to the Town and City Clerks.

The Town Clerk presented affidavit of public notice of the public hearing that appeared in the North County News on November 24, 2010 and posted on the Town Clerk's bulletin board the same day.

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

The Town Clerk said that they needed to set the fees for Schedule A. She said that there was a \$30.00 impound fee and a \$3.00 replacement tag fee as the State currently had. She continued for a neutered or spayed dog the fee was to be \$15.00 of that \$1.00 had to go to the State by Law and for an unneutered or unspayed dog the fee was to be \$20.00 of that \$3.00 went to the State. Councilman Bolton asked if \$3.00 was going to cover the cost of replacing that tag. The Town Clerk said that it would.

There being no one to be heard on motion of Supervisor Murphy, seconded by Councilman Garrity, the public hearing was declared closed at 8:12 PM.

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Town Clerk