

JUNE 29, 2010 – SPECIAL MEETING

Minutes of a special meeting of the Town Board of the Town of Somers held on Tuesday evening June 29, 2010 at 9:00 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 special meeting with regard to the Senior Affordable Housing project known as the Mews at Baldwin Place.

PUBLIC COMMENT:

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

The Supervisor said that the Town Attorney had indicated that the Town Board needed to enter into an executive session.

Mr. Barry Singer, Chairman of the Affordable Housing Board, asked to make a few comments before the Board entered into executive session. He said that what the Board was considering this evening had to do with the first and only significant affordable housing efforts that the Town had been able to muster together. He said that there had been obstacles and he was very appreciative of all of the things that the Town Board and the Planning Board had done to make it possible for this project to get this far. Mr. Singer said that he was puzzled by the one issue that was holding the project up. He said that apparently the Town was objecting to giving an Indemnity that was required by every other community that had received this kind of infrastructure funding. He continued that there had been efforts to work this out, which had involved the Developer, a non-profit organization, the Builder, an Affordable Housing Builder, who stepped forward and offered to give any indemnities and insurances that they could to help the project through. Mr. Singer said that the Town Board still seemed to be hung up on the fact that there was an environmental risk that they did not want to take. He said that he wanted to point out what the greatest risk that the Board would be undertaking if they didn't approve the project was that when people look to see whether the Town had made a good faith effort with regard to affordable housing and they could point to everything that they did facilitate the procedures but when they came to an indemnity that every other Town had give to the County for infrastructure money that the Town of Somers did not want to take the risk and that created a serious issue and risk of \$3,000,000.00. He said that should be considered in their decisions. Mr. Singer continued that the Town was going to be putting the contract out for bid, hiring the contractor and using do diligence to protect themselves. The Supervisor thanked Mr. Singer for his comments.

Thereupon motion of Supervisor Murphy, seconded by Councilman Clinchy, the meeting was adjourned to an executive session with regard to contractual issues at 9:15 PM, to return that evening.

10:40 PM – meeting reconvened

The Supervisor said that the Board had an extended executive session to speak with the Town Attorney with regard to all the conversations that had been occurring among the different parties with regard to the project, in particular the insurance indemnification issues. She continued that they had been going back and forth with the Developer and

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the Housing Action Counsel; they had the assistance of a Planning Board member who happened to an expert in the insurance field, which was very helpful to understand all of the issues that were being discussed.

Thereupon motion of Supervisor Murphy, seconded by Councilman Clinchy, it was,

RESOLVED, that the Town Board does hereby give authorization to the Supervisor to execute the Inter Municipal Developers Agreement (IMDA) in connection with the Senior Affordable Housing Project known as The Mews at Baldwin Place and documents associated with same including an easement to the County of Westchester contingent upon insurance being provided as discussed with the Town Attorney included but not limited to removal of the contractual policy exclusion and receipt of the entire application and documents offered to insurance company and receipt of an escrow at the closing in an amount to be determined sufficient to pay the second and third five (5) year premium for a total of fifteen (15) years of insurance policy to ensure the Town against the indemnification of the County in the IMDA as well as the deductible should it need to be paid.

VOTE:           Ayes – 4       Murphy, Garrity, Morrissey, Clinchy  
                  Nays – 1       Bolton

MOTION CARRIED

Councilman Bolton said that he wanted to explain why he was opposed. He stated that he did not feel that the Town had sufficient coverage in the event that they were required to remediate the entire site due to the adjacent or existing pollution on the site. He said that as much as they had done for all the coverage they possibly could do and the concept of the project was admirable. He said that he was rather upset and against going forward with this because he felt that it was a risk for the Town and in his mind it was an unacceptable risk.

The Supervisor said that she would like to explain why she was voting for the project. She said that they have had both their legal counsel and an expert in the insurance field look at the indemnity that was being provided in terms of the insurance that was being provided to the Town by the Developer. She said that it was indicated to the Board that the Town was protected. The Supervisor explained that they were talking about a 15 year indemnity that the Town was giving to the County, that was the length of the bond with the County, it had a \$25,000.00 deductible associated with it, they had been ensured that they will have the first 5 year policy in place and 2 subsequent 5 year policies put into escrow for the Town. She continued that they will be able to acquire the policies as well as pay the deductible for them and the escrows would be replenished should they be used for any reason for the deductible. She said that they also looked at the potential environmental risk and everyone was familiar with that particular part of Town and the issue of perk being on the adjoining site and that was the biggest risk in everyone's mind. The Supervisor said that the perk contamination was currently being continually rectified under DEC order by record of decision that was issued 15 years ago and the remediation was continual and ongoing with no indication that the remediation was ever intended to change. She said that there were numerous other parties who had looked at the project and were funding the project, including well known banks, investors, New York State and Westchester County, all of whom were subjecting themselves to the same risks that the Town was. She said that the Town had also obtained a personal indemnity from the Developer and the Town Board had been privileged to review the net worth of the Developer and make an assessment as to whether or not it provided for an adequate assurance to the Town that should anything occur they would be protected as well. The Supervisor said that not only did they have \$5,000,000.00 in insurance for 5 years plus the money in escrow to pay for the subsequent 10 years; they also have the personal indemnity of both Developers in connection with the property. She said that the issues that arose that were of concern had been addressed in contingencies that were added and in addition to that there had been an analysis of the Comprehensive Environmental Response Compensation and Liability Act. She continued that there was an opinion that the Town would be considered an innocent land owner because of the investigation that was already being done in connection with this property and as an innocent land owner

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they will be absolved from liability in that regard. The Supervisor said that the Baldwin Place perk problem was a known and disclosed issue and it was part of the insurance documents and was included in the insurance of the issue. She said that she did not think that anyone on the Board took their responsibilities with regard to protecting the Town lightly, everyone takes them extremely seriously, there had been conversation with regard to this issue on a daily basis in the last several weeks, as soon as they heard from the County that they refused to remove the indemnity clause from the IMDA. She said that this had not been taken lightly in any way and the majority of the Board was satisfied with both the insurance and the personal indemnity that were given. The Supervisor said that she did not want the Town to be under the impression that this was something that was taken lightly or had not been adequately addressed.

Thereupon motion of Supervisor Murphy, seconded by Councilman Clinchy, it was,

RESOLVED, that the Town Board does hereby authorize the Supervisor to execute the Escrow Agreement with Somers Realty Corporation.

VOTE:           Ayes – 4       Murphy, Garrity, Morrissey, Clinchy  
                  Nays – 1       Bolton

MOTION CARRIED

Thereupon motion of Supervisor Murphy, seconded by Councilman Garrity, it was,

RESOLVED, that the Town Board does hereby authorize the Supervisor to execute the Escrow Agreement with Housing Action Council, Inc. and Kearney Realty and Development Group, Inc.

VOTE:           Ayes – 4       Murphy, Garrity, Morrissey, Clinchy  
                  Nays – 1       Bolton

MOTION CARRIED

Thereupon motion of Supervisor Murphy, seconded Councilman Clinchy, it was,

RESOLVED, that the Town Board does hereby accept the dedication of the unimproved Right of Way know as Clayton Blvd.

VOTE:           Ayes – 4       Murphy, Garrity, Morrissey, Clinchy  
                  Nays – 1       Bolton

MOTION CARRIED

Thereupon motion of Supervisor Murphy, seconded by Councilman Clinchy, it was,

RESOLVED, that the Town Board does hereby adopt resolution rendering the property exempt and,

DOES HEREBY, authorize the execution of the revised PILOT Agreement with the Housing Action Council, Inc.

VOTE:           Ayes – 4       Murphy, Garrity, Morrissey, Clinchy  
                  Nays – 1       Bolton

MOTION CARRIED

The Supervisor said that the Town of Somers made a commitment to make a good faith effort to facilitate the building of affordable housing in the Town. She said that the Planning Board worked diligently with the project developer to come up with a plan to bring good reasonable affordable housing to the Town. She explained that this was a senior affordable housing project; it would not impact the school taxes. The Supervisor said that this was a good affordable housing project for the Town it will afford the

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availability for families that live in the Town and the seniors that live in the Town to stay here, close to their families when they need them the most. She said that she was happy to say the Town was meeting their good faith obligation to the County and she was happy to say that it was meeting it in a way that it was a good fit with the composition and make up of the Town. She said that she wanted to wish the Developer the best of luck with their project.

Thereupon motion of Supervisor Murphy, seconded by Councilman Clinchy, it was,

RESOLVED, that the Town Board does hereby accept and gives authorization to the Supervisor to execute the easement from Somers Realty for the temporary cul-de-sac and drainage detention basin needed for construction.

VOTE:           Ayes – 4           Murphy, Garrity, Morrissey, Clinchy  
                  Nays – 1           Bolton

MOTION CARRIED

Councilman Clinchy said that this was a good thing for the Town, like any agreement there was compromise on both sides. He said that this was a good thing for the Town of Somers and the Supervisor was correct; a lot of seniors want to stay close to their families and this will provide for that. He said that he understood the concerns of his colleagues as well; he felt that they had addressed all of the concerns and this was a good stand for Somers.

Thereupon motion of Supervisor Murphy, seconded by Councilman Garrity, the meeting was adjourned at 10:55 PM

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Town Clerk