

AUGUST 13, 2009 – SPECIAL MEETING

Minutes of a special meeting of the Town Board of the Town of Somers held on Thursday morning August 13, 2009 at 8:10 AM 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 Patricia Kalba, Deputy Town Clerk and Roland A. Baroni, Jr., Town Attorney.

The Supervisor said that it was in order for the Board to continue a public hearing with regard to the petition to extend the Somers Sewer District to include the Planned Hamlet Subdivision.

8:10 AM – hearing opened  
8:11 AM – meeting reconvened

The Supervisor said that it was in order for the Board to adopt a resolution to extend the Somers Sewer District to include the Planned Hamlet Subdivision as set forth in the resolution prepared by Counsel including the finding pursuant to SEQRA.

Thereupon motion of Supervisor Murphy, seconded by Councilman Meyer, it was unanimously,

**RESOLUTION TO EXTEND THE SOMERS SEWER DISTRICT NO. 1**

WHEREAS, an Amended Petition, Map and Plan have been prepared by SOMERS REALTY CORP. dated July 15, 2009, for the extension of The Somers Sewer District No. 1 of the Town of Somers, New York, and duly presented to this Town Board; (an original Petition, Map and Plan dated April 1, 2009 was found to include additional property, and the original proceedings were terminated in favor of the within amended proceedings); and

WHEREAS, an Amended Order was duly adopted by the Town Board on July 9, 2009, reciting the anticipated filing of said amended petition, the improvements proposed, the boundaries of the proposed extension, and the estimated expenses thereof and specifying August 6, 2009, at 7:30 p.m. as the time and the Town Hall in said Town as the place where the said Board would meet to consider the amended petition and to hear all persons interested in the subject thereof, concerning the same; and

WHEREAS, such amended Order was duly posted, published and served as required by law; and

WHEREAS, a hearing in the matter was duly held by the Board on the 6<sup>th</sup> day of August, 2009, commencing at 7:30 p.m. o'clock at the Town Hall in said Town and considerable discussion upon the matter having been had, and all persons desiring to be heard having been duly heard and thereupon the hearing being duly adjourned; and

WHEREAS, the public hearing was reconvened by the Board on the 13<sup>th</sup> day of August, 2009, commencing at 8:00 a.m., and upon additional discussion upon the matter having been had, the hearing was duly closed.

WHEREAS, the Planning Board as Lead Agency under SEQRA adopted a Positive Declaration in October 2005 and thereafter conducted a complete environmental

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review under SEQRA, including preparation of a DEIS (accepted as complete July 30, 2007) and FEIS (accepted on December 10, 2008); and

WHEREAS, the Town Board has reviewed the DEIS and the FEIS for the Proposed Action and, in particular, the subsections pertaining to the proposed expansion of Somers Sewer District #1; and

WHEREAS, based upon its review of the submitted petition and the environmental record for the Proposed Action, the Town Board makes the following environmental findings pursuant to SEQRA:

1. According to the FEIS, the estimated daily flow of wastewater from the subject site under the Proposed Action will be approximately 100,000 gallons per day, which is an increase in the existing daily flow of zero gallons per day from the currently undeveloped site.
2. The Petitioner is proposing to construct a pump station on the subject site that will pump sewage into the force main along U.S. Route 6 leading to the County Peekskill Hollow Sewage Treatment Plant. This pump station would be constructed by the Petitioner and will ultimately be owned and operated by Somers Sewer District #1.
3. At the request of the Town Engineer, the Petitioner will provide an easement to the Town and/or the owner(s) of the Somers Commons Shopping Center to accommodate the proposed installation of an eight inch gravity sanitary sewer line serving the Shopping Center and the pump station wet well on the subject site will be sized to 125% of the required capacity for this project to accommodate the projected sewage flows from the Somers Commons Shopping Center and the subject site.
4. Connection to the sewer district will eliminate several problems that would be associated with an on-site sewage disposal system, including on-site impacts associated with treatment and disposal, plant operational costs, reservation of land to accommodate an on-site plant, reservation of land to accommodate disposal fields and buffers for noise and odor.
5. As required by the conditions of Master Plan approval granted by the Planning Board on February 10, 2009, the Petitioner has applied for an extension of Somers Sewer District #1 and, if approved, will also be applying for an extension to the Westchester County Peekskill Hollow Sewer District. These prospective extensions are consistent with the Town's vision for future development on the subject site, as stated in the *1994 Comprehensive Master Plan*.
6. The Town Board has given due consideration to the Draft and Final Environmental Impact Statements (EISs).
7. The Town Board has weighed and balanced relevant environmental impacts with social, economic and other considerations.
8. These SEQRA Findings provide a rationale for the Board's decision(s).
9. The Town Board hereby certifies that the requirements of Part 617 of Title 6 NYCRR have been met.
10. The Town Board hereby certifies that consistent with the social, economic and other essential considerations, from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

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NOW, upon the evidence given at such hearing and on motion of Supervisor Murphy, seconded by Councilman Meyer, it is

RESOLVED AND DETERMINED, that (a) the amended petition aforesaid is signed and acknowledged or proved as required by law, it duly complies with the requirements of Section 191 of the Town Law as to sufficiency of signers with respect to the boundaries of the proposed district extension as herein approved and it is otherwise sufficient; (b) all property and property owners within the proposed district extension are benefitted thereby; (c) all the property and property owners benefitted are included within the limits of the proposed district expansion; and (d) that it is in the public interest to grant in whole the relief sought; and it is further

RESOLVED AND DETERMINED, that the extension of the Somers Sewer District No. 1 as proposed in said petition be approved; that such extension be designated as “Somers Realty - Planned Hamlet Extension”; that the improvements to be constructed by the Petitioner or its successors therein mentioned be constructed at the sole cost and expense of the Petitioner, and such extension be bounded and described as set forth in **Schedule A** attached hereto; and it is further

RESOLVED, that the Town Clerk shall file certified copies thereof, in duplicate, in the office of the State Department of Audit and Control in Albany, New York and record same with the County Clerk, County of Westchester, Division of Land Records within ten (10) days hereof.

Roll Call:	Vote:
Hon. Mary Beth Murphy	AYE
Councilman Paul Z. Meyer	AYE
Councilman George R. Dieter	AYE
Councilman Richard G. Clinchy	AYE
Councilman Thomas A. Garrity, Jr.	AYE

SCHEDULE A

**AMENDED SCHEDULE A**

All that certain plot, piece or parcel of land situate, lying and being in the Town Of Somers, County of Westchester and State Of New York, being more particularly bounded and described as follows:

BEGINNING at a point at the intersection of the Southerly side of Birdsall Road, also known as U.S Route 6, and the Easterly side of Mahopac Avenue, said point also being the Northwesterly corner of the premises here in described;

running thence from said point of beginning along the Southerly side of Birdsall Road the following courses and distances:

- North 47 degrees 07 minutes 00 seconds East, 1429.00 feet;
- North 55 degrees 07 minutes 00 seconds East, 251.40 feet;
- North 61 degrees 27 minutes 00 seconds East, 470.50 feet;
- North 65 degrees 03 minutes 00 seconds East, 200.86 feet;
- North 70 degrees 50 minutes 20 seconds East, 5.34 feet to a point on the

Northerly corner of lands now or formerly Somers Development Corp.;

thence turning and running along to Westerly side of lands now or formerly Somers Development Corp. the following course and distances:

- South 16 degrees 39 minutes 00 seconds East, 658.46 feet to a point on the

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Westerly side of lands now or formerly Straw Man Inc., shown on filed map no. 10108 as "Baldwin Place Shopping Center;

thence along the same, the following courses and distances:

South 05 degrees 50 minutes 57 seconds East, 370.00 feet;  
North 66 degrees 32 minutes 30 seconds East, 394.08 feet;  
North 62 degrees 05 minutes 20 seconds East, 255.00 feet;  
North 56 degrees 06 minutes 30 seconds East, 64.37 feet;  
South 10 degrees 56 minutes 10 seconds East, 118.61 feet to a point;

thence turning and running in a Southerly and Westerly direction thru the lands now or formerly Somers Development Corp. the following courses and distances:

South 06 degrees 52 minutes 50 seconds East, 645.93 feet;  
South 82 degrees 01 minutes 30 seconds West, 413.00 feet to a point on the Easterly line of lands formerly Alice Hinkle, now or formerly Hy Shore and Theodore Tetenbaum;

thence running along the same the following courses and distances:

South 82 degrees 01 minutes 30 seconds West, 196.25 feet;  
South 80 degrees 32 minutes 30 seconds West, 283.49 feet;  
South 08 degrees 21 minutes 30 seconds East, 439.92 feet;  
South 82 degrees 18 minutes 20 seconds West, 1,367.13 feet to a point on the Southeast corner of lands now or formerly Michael A. Russo;

thence turning and running in a Northerly and Westerly direction along the same for the following courses and distances:

North 10 degrees 14 minutes 30 seconds West, 202.19 feet;  
South 83 degrees 27 minutes 30 seconds West, 529.87 feet to a point on the Easterly side of Mahopac Avenue;

thence turning and running in a Northerly direction along the Easterly side of Mahopac Avenue the following courses and distances:

North 08 degrees 35 minutes 22 seconds West, 149.97 feet;  
North 07 degrees 19 minutes 40 seconds West, 483.42 feet to the point and place of Beginning.

Containing in area 79.3800 acres.

The Supervisor said that the next item was a resolution to authorize the Town Attorney to prepare a Petition to the Westchester Board of Legislators to extend the Sewer District. She said that the escrow account should be renewed by the Applicant before the Town Attorney started working on the Petition to the County. Ms. Linda Whitehead of McCullough, Goldberger & Staudt, LLP on behalf of Somers Reality Corp. owner of the Somers Reality Planned Hamlet project said that they had not seen any statements with regard to the escrow account. The Supervisor said she suspects between the Town Attorney and the Town's Planning Consultants the account was fairly close to depleted. She explained that the original escrow was for \$10,000.00 and they needed to stay ahead of it. Ms. Whitehead stated that she had not seen any statements with regard to the escrow. The Supervisor asked the Consultants update bills for any work that was done to that applicant. She said that she would direct that no work be done until the escrow account was replenished. Ms. Whitehead said that she was concerned that if the Petition did not get done in time that it would not get on the Board of Legislators agenda for the September 8<sup>th</sup> meeting. Councilman Meyer asked the consultants if it was possible to have invoices in by next week and they both agreed that they could. He suggested moving forward with this pending the resolution of the escrow account. Ms. Whitehead said that her concern was with timing. The Supervisor said that in the past it had taken a significant amount of time for them to submit an escrow replenishment and she was concerned with that. She said that she was not going to allow the Town to be in arrears

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with regard to this project. She suggested that Ms. Whitehead discuss this with her client and submit an escrow replenishment. Discussion ensued with regard to the escrow account. The Supervisor suggested that they submit another \$10,000.00 because they were in another stage of the process. Ms. Whitehead objected to the amount of \$10,000.00, it was a form Petition that needed to be filed and that was it. The Supervisor said that it was an easy resolution to the situation and if the money was not spent they would get it back. Ms. Whitehead said that her client has paid everything they were asked to and this was distrust with the Board. The Supervisor said that this was the easiest way to move the process forward. She said that work had been done with regard to the project over the last few months that had impacted the escrow account. Ms. Whitehead said that the Town had been remiss on their part by not giving them invoices.

Councilman Meyer said he would like to make a motion to authorize the Town Attorney to prepare a Petition to the Westchester County Board of Legislators to extend the Peekskill Hollow Sewer District to include the boundaries of the Somers Realty Planned Hamlet extension pending either pre-deposit of \$5,000.00 of additional escrow or resolution of the current status of the escrow account and replenishment as needed based on the review by Council. The Supervisor asked what that meant. Councilman Meyer explained that the applicant was either going to submit \$5,000.00 of additional escrow and not worry about the current bills or wait for the invoices to come in and see what was left in the account.

Ms. Whitehead said that they were being held up once again. She said that they would submit \$5,000.00 in additional escrow.

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

RESOLVED, that the Town Board of the Town of Somers hereby authorizes the Attorneys for the Town to prepare a Petition to the Westchester County Board of Legislators to extend the Peekskill Hollow Sewer District to include the boundaries of the Somers Realty - Planned Hamlet extension area of Somers Sewer District No. 1, and be it further

RESOLVED, that upon preparation thereof, the Supervisor be authorized to execute and file same with the Board of Legislators of Westchester County, and be it further

RESOLVED, that prior to commencement of this work the applicant post an additional escrow with the Town of Somers in the amount of \$5,000.

Roll Call:	Vote:
Hon. Mary Beth Murphy	AYE
Councilman George Dieter	AYE
Councilman Paul Meyer	AYE
Councilman Richard Clinchy	AYE
Councilman Thomas Garrity	AYE

Ms. Whitehead asked that invoices be provided as soon as possible, historically it had been 3 to 4 months before they have seen them. Councilman Meyer said that he thinks they will be getting the invoices next week. The Supervisor said for the record she believed Ms. Whitehead's statement was inaccurate.

Thereupon motion of Supervisor Murphy, seconded by Councilman Garrity, the meeting was adjourned at 8:25 AM.

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Deputy Town Clerk