

AUGUST 6, 2009 – PUBLIC HEARING

Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening August 6, 2009 at 7:50 PM at the Town House, 335 Route 202, Somers, New York.

ROLL CALL:

PRESENT: Supervisor Mary Beth Murphy
 Councilman George R. Dieter
 Councilman Richard G. Clinchy
 Councilman Thomas A. Garrity, Jr.

ABSENT: Councilman Paul Z. Meyer, Jr.

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 public hearing with regard to amending Chapter 158 entitled Vehicles and Traffic of the Town of Somers with regard to proposed stop sign for Tulip Road. She explained that the stop signs that were passed last month were based on recommendation by the Police Chief but was not what was requested by the residents.

The Town Clerk presented affidavit of public notice of the public hearing which appeared in the North County News on July 22, 2009 and posted on the Town Clerk's bulletin board the same day.

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

There being no one to be heard on motion of Supervisor Murphy, seconded by Councilman Garrity, the hearing was declared closed at 7:51 PM.

Town Clerk

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Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening August 6, 2009 at 7:52 PM at the Town House, 335 Route 202, Somers, New York.

ROLL CALL:

PRESENT: Supervisor Mary Beth Murphy
 Councilman George R. Dieter
 Councilman Richard G. Clinchy
 Councilman Thomas A. Garrity, Jr.

ABSENT: Councilman Paul Z. Meyer, Jr.

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 amending Chapter 158 entitled Vehicles and Traffic of the Town of Somers with regard to Parking Prohibited in Designated Locations. She explained that the legislation was to prohibit parking at Van Tassell Park Monday thru Friday unless the driver was attending a park facility.

The Town Clerk presented affidavit of public notice of the public hearing which appeared in the North County News on July 22, 2009 and posted on the Town Clerk's bulletin board the same day.

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

There being no one to be heard on motion of Supervisor Murphy, seconded by Councilman Garrity, the hearing was declared closed at 7:53 PM.

Town Clerk

AUGUST 6, 2009 – PUBLIC HEARING

Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening August 6, 2009 at 7:54 PM at the Town House, 335 Route 202, Somers, New York.

ROLL CALL:

PRESENT: Supervisor Mary Beth Murphy
 Councilman George R. Dieter
 Councilman Richard G. Clinchy
 Councilman Thomas A. Garrity, Jr.

ABSENT: Councilman Paul Z. Meyer, Jr.

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 Chapter 74 entitled Building Construction of the Town of Somers to add Article V entitled Energy Star Regulations. She explained that the legislation would require that no Building Permit would be issued unless the applicant can demonstrate that the building met the New York Energy Star Labeled Home. She continued that prior to the issuance of a Certificate of Occupancy certifications needed to be submitted.

The Town Clerk presented affidavit of public notice of the public hearing which appeared in the North County News on July 22, 2009 and posted on the Town Clerk's bulletin board the same day.

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

There being no one to be heard on motion of Supervisor Murphy, seconded by Councilman Garrity, the hearing was declared closed at 7:55 PM.

Town Clerk

AUGUST 6, 2009 – PUBLIC HEARING

Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening August 6, 2009 at 7:54 PM at the Town House, 335 Route 202, Somers, New York.

ROLL CALL:

PRESENT: Supervisor Mary Beth Murphy
 Councilman George R. Dieter
 Councilman Richard G. Clinchy
 Councilman Thomas A. Garrity, Jr.

ABSENT: Councilman Paul Z. Meyer, Jr.

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 petition to extend the Somers Sewer District to include the Planned Hamlet Subdivision.

The Town Clerk presented affidavit of public notice of the public hearing which appeared in the North County News on July 22, 2009 and posted on the Town Clerk's bulletin board the same day.

The Supervisor said that this was also a public hearing with regard to a petition to extend the Amawalk Shenorock Water District to include the Planned Hamlet Subdivision.

The Town Clerk presented affidavit of public notice of the public hearing which appeared in the North County News on July 22, 2009 and posted on the Town Clerk's bulletin board the same day.

The Supervisor said that this public hearing was a continuation and a re-noticing of both of the public hearings.

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

Ms. Linda Whitehead of McCullough, Goldberger & Staudt, LLP on behalf of Somers Realty Corp. owner of the Somers Realty Planned Hamlet project said as was already referenced after the last meeting they did submit an amended petition and they were there to process the application request in accordance with the Planning Board approval. She said that they had submitted a few things within the last few days and she wanted to go over them with the Board. She continued that they had been working with the Town Attorney the last few weeks to address some issues that had come up. Ms. Whitehead said her primary concern was if only the 5 acre Affordable Housing lot was allowed into the Districts at this time and not the balance of the property. She said that there was a discussion at a meeting that she had had with the Supervisor, Town Attorney and Joann Meder of F. P. Clark the Town's Planning Consultants, about a procedural concern because the Department of Health has to sign the subdivision map stating that each lot had adequate water supply and sewage disposal. She said that if the properties were in the Districts and the mains were there and they could show that the mains had access to the property that would satisfy the Health Department. Ms. Whitehead stated that was what had always been anticipated through the Planning Board approval process. She said that they had concerns with the idea of not doing it that way and putting only the Affordable Housing parcel into the Districts at this time. She said as they looked at it further and looked back at the Planning Board documents a number of other issues had come up relating to the Planning Board SEQRA process, Planning Board Master Plan approval as well as the requirements of the Town's Zoning Code. Ms. Whitehead continued that part of the SEQRA review and Master Plan approval that it was always anticipated that the entire development would be placed in the Districts. She said that the Master Plan approval contained a provision that if the property was not in the Districts the Master Plan becomes null and void. She said that the Planning Board also required that the site be in the Districts before any subdivision of the property. Ms. Whitehead said that they were concerned that if the entire property was not put into the Districts the

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Planning Board would be asked to approve a subdivision inconsistent with their SEQRA review and finding and the prior approval of the Master Plan. She said that the Planning Board spent many years working on this project, going through full EIS, findings and Master Plan, always in anticipation that the entire parcel would be put into the Districts. She said that the Planning Board's approvals state that they would not approve a subdivision that was inconsistent with their prior Master Plan approvals.

Ms. Whitehead said that she also tried to summarize the Planned Hamlet Zoning requirement. She said that there were concerns raised about putting the whole property into the Districts what could potentially be built there. She said that when the Town Board rezoned the property from GB to PH in 1996 it was very specific about what was permitted in the PH District. Ms. Whitehead said that there was a long list of uses for the PH District however no individual use could be permitted at a FAR greater than .04 which worked out to be about 122,000 square feet based on their net acreage. She said that in addition any development on this site had to include a multifamily component and that had to have a minimum of .04 FAR and a maximum of .06 FAR and the maximum was what was proposed in their Master Plan. She said that it was her opinion that the Town had very good controls over what could be built on the property in the future, any change from the Master Plan the Planning Board would have to review it and determine if there were any additional impacts and possibly reopen the SEQRA process.

Ms. Whitehead said that she also wanted to address other concerns with regard to the history and the issue with regard to a need for a global review. She said that she looked back at the history and the global review was done and she summarized the history for the Board. She said that the 1994 Comprehensive Master Plan recommended sewerage for this portion of the Town. Councilman Clinchy asked what the current figures were for the capacity. Ms. Whitehead said that she did give the Board a section out of the Somers Realty DEIS with regard to the current capacity for their project and the County Plant was still only operating at 7,000,000 gallons per day and there was a 3,000,000 gallon excess. She said that their flow was sized to incorporate the current Shopping Center. The Supervisor asked where the 7,000,000 gallons was documented. Ms. Whitehead said from the Department of Environmental Facilities (DEF). She said that when they have to go to the County for them to expand the County District the Board of Legislators refers it out to a committee who then refers it to the DEF. She continued that before the Board of Legislators would act they get a whole analysis from DEF discussing capacity and use. Ms. Whitehead said that what she tried to do was show that there was an exhaustive study done at that time and she provided the Board with an excerpt from the Engineers Design Report that was used to get the Health Department, DEP and the DEF approvals for the sewer. She said that was how they ended up with 2 force mains on Route 6; they did not want 1 large one because it would not work well when the flow was lower. She said that was done to handle Shenorock, Lake Lincolndale, the Shopping Center which at that time was not there and all the other areas. Ms. Whitehead stated that she understood the Board's concerns with regard to a more global study but in this case the analysis had been done and they updated the analysis for their site in their DEIS.

The Town Attorney asked what was being referred to in the DEIS where it was stated that in the future that the pump station could potentially be expanded to accept flows from the Somers Sewer District # 1 and it would require an increase in pipe size in order to obtain approvals. Ms. Whitehead said that to handle additional areas the pipe would have to be larger. The Town Attorney said that the pump station was not being designed to accept the flow of the other areas. Ms. Whitehead stated that they could not over design because it would not work correctly. She explained that design to the Board and how it could be changed in the future. She said that they tried to address the global issue for the Board and hoped that the information that they provided was helpful. Ms. Whitehead said that the entire parcel needed to be in the District, if it was not they did not have a project. She continued that the project was not marketable, that it did not conform to the approvals and the Planning Board would not approve the subdivision. She said that they had said very specifically in their findings and resolution before a subdivision was approved the property had to be in the district. Ms. Whitehead said that she did not understand why they would not put the whole parcel in the District, it was something that had been studied and analyzed by the Planning Board who was the lead agency under SEQRA. They did the analysis and looked at the impacts. She said they all agreed that it

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was important that they move the project forward for the Housing Action Counsel but they did not want to do it in exchange for a significant risk for their client. She said that the 5 acres that they were proposing putting into the district did not exist on its own. Ms. Whitehead said the Board was asking her client to take a huge risk and cost.

Councilman Dieter asked the Town Attorney if the Planning Board's intent was to deal with this as one parcel. The Town Attorney said that he thought it was possible the Planning Board's conditions were for the entire parcel but he did not believe that it mandated approval. He continued that as part of the subdivision process the Planning Board would have to go back and tweak the Master Plan for the project. He said that was part of the reason that he did not have a resolution prepared for the Board's consideration because they needed direction as to what the Board's preference was. Councilman Dieter said that the Board was told the Board of Health would not approve the plan if the whole site was not in the Districts. The Town Attorney said that they had received word back from the Board of Health that the alternative available for the applicant was if they could show the Housing Action parcel as one lot and the rest of the parcel as a second lot. He said that they could design a septic and well for 1 building on that second parcel and then that would be acceptable. He continued that they realized at their meeting yesterday was that the building could be the proposed Fire House. Ms. Whitehead stated that they did not agree with that and she had a number of concerns with that concept. She said that she did not know who the Town Attorney spoke with at the Board of Health or what they were told about the parcel. She said that SEQRA finding discussed the benefit of Public Water and Sewer opposed to wells and septic, based on that SEQRA finding neither the Planning Board nor the Department of Health can approve a plan that showed wells and septic. Ms. Whitehead said she did not see how the Planning Board could tweak their findings based on the DEIS and FEIS that repeatedly discuss the benefits of Public Sewer and Water verses wells and septic. She asked how they would be able to use that DEIS to come up with an amended finding. She explained that the PH Zoning required multifamily residential; they cannot show wells and septic to accommodate 122 or 180 square feet and the Planning Board would not be able to approve the septic because it was inconsistent with what had been done. Ms. Whitehead said that she disagreed with the statement that it was an easy tweak of the Planning Board approvals. She said that the tweak would take 6 to 8 months which would throw off the entire planning because they would not be able to have a Subdivision Map filed. She said that it was also a significant expense to ask her client to incur for something they did not want. Ms. Whitehead said that the use of ground water for potable water was limited on this site because of the past contamination issues. The Supervisor said that the Housing Action Counsel recognizes that the Water District issue was not as urgent for them as the Sewer District was because there were 2 processes for the sewer, the Town process and the County process.

Ms. Joanne Meder, F.P. Clark, the Town Planning Consultant, joined the Board.

Ms. Whitehead said that with regard to the water several years ago her client agreed to give an easement for a Town Water Main in relation to the new development of the Shopping Center at no cost. She said that in the Easement Agreement the Town was party to and signed there was language that stated in exchange for the easement at no cost the Town Board upon petition for the property owner would not unreasonably delay or withhold the ability to enter into the Water District. She asked the Board to consider the position that the Board was putting her client in.

The Supervisor asked Ms. Meder to share some of the conversations that they had earlier. She said that one of the concerns that Ms. Whitehead raised was put just the Senior Affordable Housing District into the Sewer and Water Districts that the Zoning would not permit that. Ms. Meder said that she had researched this a little further and came to the preliminary conclusion that it may not run afoul with the Zoning. She explained one of the provisions of Zoning Law for the PH District was multifamily dwelling and a secondary requirement was for a percentage to be affordable and the 5 acre parcel covered that requirement. She continued for the second larger portion of the site municipal use was permitted and the Town Attorney and herself thought that a Fire House could be considered a municipal use. She said that this would allow the Town Board more time to look at the global issue as they were advised to. Discussion ensued with regard to what could be placed in the PH District and at what size. Ms. Whitehead

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said that the Master Plan that was approved by the Planning Board said if the property was not put into the Districts the approvals were null and void. She said that it was not as easy as they were saying it was and did not see what the Town would gain by segmenting the approvals.

Councilman Clinchy said he was most concerned with getting the Senior Affordable Housing going and with segmenting the parcels that could be done faster. The Town Attorney explained that was not the case. He said that the path that Ms. Whitehead was suggesting the entire property would go into the District and proceed to the County and the County would presumably extend their County District to include the property and that process would unfold quickly. He said that if they decided to put only a portion of the property into the District at this time they would be doing that on the basis that they think additional studies needed to be done. He said that if the Board was satisfied with the older studies then they should proceed. Councilman Clinchy asked if there was any reason for them to believe that there would be a problem. The Town Attorney said that they would have to ask the Town Engineer about that. Councilman Dieter asked that if they segregated the parcel then it would be up to the Town to do the additional studies. The Town Attorney said that it would. Ms. Whitehead said that she thought that it would also slow down the process because the Planning Board would have to amend their prior approvals. Councilman Clinchy asked that Town Attorney if he agreed with Ms. Whitehead. The Town Attorney said that the Planning Board would have to go back and amend some of the findings and approvals for the Master Plan. He said that they would be doing it concurrently with the review of the subdivision plat. He said that the Planning Board could be delayed in getting to the final vote on the subdivision because they needed to amend their prior work and that was a risk to the Housing Action Counsel. Councilman Clinchy asked Ms. Rose Noonan of the Housing Action Counsel how they would be affected if there was a delay. Ms. Rose Noonan, Housing Action Counsel, explained that they were on a tight schedule; they needed to be under construction by early March. The Supervisor asked Ms. Noonan if the process could be started. Ms. Noonan said that they started the process a year ago and now they were at a stand still until action was taken on expansion of the Districts and the subdivision. The Town Attorney asked when the site plan would be submitted for review. Ms. Noonan said that they were waiting for additional information from Somers Realty's Consultants but they expected to submit the Site Plan application in September. Councilman Clinchy said that the issues were in the capacity figures that the Board was given were accurate and if they were they should move ahead with this. The Town Attorney explained that was why it was being proposed to take the affordable housing portion separately so that it would alleviate the time restraints while giving the Board time to be ensured that the figures were accurate and the Town Engineer time to report that to the Board. Ms. Whitehead said that the Town had all of that information, it was a Town owned Facility. She said that the County would look at the Plant capacity before allowing them in the County District. The Supervisor said that the County would not be looking at the global issues and other areas. Ms. Whitehead said that the Board needed to think about the time and money that her client had spent with the years that they spent before the Planning Board for the SEQRA review. She said if the Board does not do this tonight and they go and do the studies are they going to come back and not put the property in the District. The Supervisor said that she did not anticipate that happening, it was necessary to look at the global impact for the other properties that may need to go into to the District. Ms. Whitehead said that the Board was putting them at a significant risk because if the Board did not put them into the District the Master Plan was null and void. Councilman Dieter asked the Town Attorney if what Ms. Whitehead was saying was an accurate interpretation of the Planning Board approval. The Town Attorney said that the SEQRA findings and the Master Plan clearly call for the entire property to have both water and sewer. He said that it did not state that the property had to be all put in at the same time. Councilman Clinchy asked if the Master Plan or the SEQRA findings addressed the capacity question. Ms. Meder said that the DEIS recites the same specifics as Ms. Whitehead presented earlier. Councilman Dieter said that their concern was as with other area in Town that may need the public sewer in the future. Ms. Meder said that had been addressed in the data that was supplied to the Board that afternoon. She said that she looked at it quickly and it seemed the development potential of other un-served areas had been considered. Ms. Whitehead said that the Town had accepted the figures, they were in the DEIS that was accepted by the Planning Board and the figures service the basis for

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a Findings Statement that was adopted by the Planning Board. The Town Attorney said that some of the line of thinking was first expressed by Ed Burrows of Westchester County Planning. Ms. Whitehead said that she had not seen the letter that the Town Attorney was referring to. The Town Attorney continued that he sent a cautionary note to the Town Board to make sure that the global need was taken care of and not to make assumptions that the capacity exists whenever they think they may want entry into the system.

Councilman Clinchy asked to what extent could the Board look globally, wasn't that the County's responsibility. Town Attorney explained that globally meant the outlining areas of Somers. The Supervisor asked Ms. Whitehead if she felt comfortable that there was enough potential at the Plant that all of the areas that may need to be sewerred that would logically go to the Peekskill Plant could be serviced. Ms. Whitehead said that she did although she would allow Mr. Dan Kaufman, the Project Engineer address that. Mr. Kaufman said that the County Plant was the County's responsibility and explained that responsibility to the Board. He ensured the Board that at this point in time there was enough capacity in the County Plant. Councilman Garrity asked if they were thinking of other communities surrounding Somers when they were making those statements. Mr. Kaufman said that the application goes to the County and they would determine if they have the capacity to allow the expansion. He said that the County was not going to take into mind the future and if there was a need to expand the Plant they would do that when needed. Councilman Clinchy said that the only other concern was if they get the approvals for the whole project does the Town have any insurance that the project would not be started and then stopped and they would leave a half built project. Mr. Kaufman said by segmenting the property that was what would happen. The Supervisor said that Councilman Clinchy's concern was that there would be half built buildings left on the site. Ms. Whitehead said that would not be in the developer's best interest, they would lose their investment if that happened and she did not know how that was insured on any property. The Supervisor said with regard to infrastructure there was the question of the bonding which warranted some discussion. Ms. Whitehead stated that the bonds were generally required by the Planning Board as part of the subdivision approval. A discussion ensued with regard to the subdivision application and the bonding of the phases for the infrastructure.

Mr. Barry Singer, Chairman of the Affordable Housing Board, said that he was working with the Housing Action Counsel when they persuaded the developer to amend their plans to include affordable housing. He said that they told the developer that they would have a hard time getting their extension into the County Sewer Plant if they did not have the affordable housing and he thinks that was what persuaded that. He urged the Board to look at the bigger picture. Mr. Singer said that it was very important to building affordable housing and develop the Planned Hamlet which would provide tax revenues for the Town. He asked that the Board not jeopardize the affordable housing. He said that he hoped the Board would find a way to do this and quickly.

Councilman Dieter stated that he agreed with Mr. Singer.

Ms. Polly Kuhn, League of Woman Voters, said her interest in this project was to see the affordable housing. She said that she thinks that the Town needs affordable housing and that the Town Board recognized that. She continued that they had made an agreement with the County to make an effort for housing. Ms. Kuhn said that this was an opportunity for the Board although the details of the application had obscured the Boards problem solving abilities. She urged the Board to make this happen.

Councilman Clinchy said that he felt that they had the responsibility to make sure that there was capacity for the other areas in Somers and if all the figures were accurate they should move forward. Councilman Dieter asked Councilman Clinchy how they were going to guarantee the capacity in the future. Councilman Clinchy said that they could not but they can for the present time. The Supervisor said that they can have the Town Engineer comment on the figures. She said that the Board should call for a special meeting and have the Town Attorney draft the necessary documents.

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Mr. Clifford Wohlberg, Heritage Hills Resident, said that in his capacity on a different Board he had to take continuing education and just completed a class on the cost of development. He suggested that the Board streamline the permitting process.

The Supervisor said that the special meeting was going to be Thursday, August 13th at 8 AM.

The Town Attorney said that they had been focusing on the Sewer Extension because that was what had to get to the County for approval. He continued that the Water Extension did not have to be approved by the County and they needed to discuss the issue with regard to the potential looping of the system. He asked the Board if they were intending to go forward with both of the matters. The Supervisor explained the waterlines and that there was a gap between Mahopac Avenue and Windsor Farm Road. She said that there was no loop and if something happened to the transmission line they would be floating on the tank for as long as that would carry them. She said that they can solve the problem by looping the system. Ms. Whitehead said that was an almost \$1,000,000.00 project, it was in the State right-of-way and in State wetlands. The Town Attorney said that it seemed that there was some compensation that had to happen with the Water District and the Board did not have to decide on the Water Extension as quickly. He suggested that they approve the Sewer District at the special meeting and hold open the public hearing on the Water Extension until the Board's next meeting. Supervisor asked Ms. Whitehead if they could find a way to do most of the looping on private property would they be in favor of it. Ms. Whitehead explained that if any of the project was in the State right-of-way it needed State DOT permits and if any of it crossed State Wetlands on private or public property in needed a Wetlands Permit. She said that their position with regard to this was that it was a District improvement and to ask her client to pay the full amount of the improvement it would be an illegal impact fee. She said that they were willing to pay their proportionate share. Ms. Whitehead suggested that the Board do this as a district improvement and bond it. She said that she would provide the Board with a copy of the easement agreement acknowledging their willingness of placing the property in the Water District. The Town Attorney confirmed at the special meeting the Board would be considering the SEQRA finding and the Resolution of approval for the Extension of the Sewer District.

There being no one else to be heard on motion of Supervisor Murphy, seconded by Councilman Clinchy, the public hearing with regard to the petition to extend the Amawalk Shenorock Water District to include the Planned Hamlet Subdivision was adjourned to the next regular meeting September 10, 2009 at 9:30 PM.

There being no one else to be heard on motion of Supervisor Murphy, seconded by Councilman Garrity, the public hearing with regard to a petition to extend the Somers Sewer District to include the Planned Hamlet Subdivision was adjourned to a special meeting August 13, 2009 at 9:30 PM.

Town Clerk