

SEPTEMBER 10, 2009 – PUBLIC HEARING

Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening September 10, 2009 at 8:45 PM at 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 public hearing with regard to an extension of the Amawalk-Shenorock Water District to include the Martin/Pierz properties.

The Town Clerk presented affidavit of public notice of the public hearing which appeared in the North County News on August 26, 2009 and was posted on the Town Clerk's bulletin board the same day.

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

Mr. Michael Martin, explained that he had been having problems over the years and they would like the opportunity to enter into the Water District.

There being no one else to be heard on motion of Supervisor Murphy, seconded by Councilman Clinchy, the hearing was declared closed at 8:50 PM.

Town Clerk

SEPTEMBER 10, 2009 – PUBLIC HEARING

Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening September 10, 2009 at 8:51 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 public hearing with regard to a proposed amendment to Chapter 167 entitled Wetlands and Watercourse Protection and Chapter 156 entitled Tree Preservation.

The Town Clerk presented affidavit of public notice of the public hearing which appeared in the North County News on August 26, 2009 and was 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 Clinchy, the hearing was declared closed at 8:52 PM.

Town Clerk

SEPTEMBER 10, 2009 – PUBLIC HEARING

Minutes of a public hearing of the Town Board of the Town of Somers held on Thursday evening September 10, 2009 at 8:53 PM 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 a 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 would like the Board to consider closing the hearing that evening and direct the Town Attorney to draft a Resolution for the Board's consideration at the next meeting. He said that Mr. Dan Kaufman, the Project Engineer was present to answer any questions that the Board may have about the technical aspects.

The Supervisor said that they were still looking at the issue of the looping of the Water System. She said that they received a memo from the Town Engineer with regard to that issue explaining some of the discussions that took place at the Planning Board. She said that at the last meeting they discussed the adjoining properties. Mr. Mandelbaum said that he discussed this with his client and sent the Town Attorney a case that was right on point. He said that if or when the property would enter into the Water District they would pay their fair share of any District wide improvements. He continued that the need to loop the Main existed before the project; to impose the entire cost on the applicant was unfair and not permissible under the applicable New York State Case Law and Regulations. Mr. Mandelbaum read from the Case that he had forwarded to the Town Attorney. The Supervisor said that the Town Engineer suggested in lieu of looping the District, a second Water Tower would need to be built because of the added burden that would be put on the District in terms of the water coming through a single source. Mr. Mandelbaum said that the land had been set aside for such a Water Tower but there were some ascetic concerns with the surrounding area. He said that the looping of the Main may be the better option for the community, but they were only willing to pay their fair share. He asked Mr. Kaufman to explain the competing option to the Board.

Mr. Kaufman said that he understood the Town Engineer's philosophy; there were 2 distinct districts, the Amawalk-Shenorock Water District and the Windsor Farms with 2 different sources. He said that the Town Engineer's philosophy was it would be better to have 2 sources with 2 districts. He said that the Windsor Farms District would also be benefiting. Mr. Kaufman said that the looping would tie in an emergency connection from Yorktown to the Amawalk-Shenorock Water District and back. He said that the connection could not be used on a regular basis because the 2 Water Supplies were distinct. The Supervisor said that the water source for both were the same. Mr. Kaufman said that the Somers Realty project could be built and survive without the loop, similarly to the adjacent Shopping Center. The Supervisor said that the more users on the tank the quicker the tank will deplete and they were adding a burden to the system that the Board needed to determine whether or not it thinks it was a reasonable burden. Mr. Kaufman said that the applicant was ready, willing and able to pay their fair share of the improvement. The Town Attorney said that the Town Engineer's point was that the tank

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was only required because of their development. Mr. Kaufman said that was not correct. The Town Attorney said that the second tank was required if there was no looping. Mr. Kaufman said that it was not their project that was mandating a second tank. He said that they agreed that the District would benefit from the looping and they were willing to pay their fair share of the cost.

Councilman Meyer asked the Town Attorney if he had a chance to review the case that the applicant's Counsel forwarded to him. The Town Attorney said that he did and what Mr. Mandelbaum stated was correct. He explained that they could not exact an impact fee from one developer unless the project triggered the need for the improvement or they proportionately benefit to a greater extent than others in the district. He said that the latter prong had not yet been demonstrated. The Town Attorney suggested having the Town Engineer present at a meeting to elaborate on his opinion. Councilman Meyer said that it seemed to him that the commercial component would benefit greater than the residential if in an emergency situation the water went out.

Mr. Mandelbaum suggested that the Board consider closing the hearing, have them meet with the Town Attorney and the Town Engineer before the next meeting and hopefully they could come back next month and the Board would be in the position to adopt the petition. The Town Attorney said that the Board should keep the hearing open because if they cannot resolve the issue in a professional meeting he would like the Town Engineer's report to be made to the board while the record was still open. He said that keeping the hearing open should not be a delay and if they reconcile at the professional meeting he could have the resolution ready for the Board's consideration.

The Supervisor asked if anyone had reached out to the surrounding property owners to see if there was an interest in participation of looping the Water System and providing easements. She said that one of the issues that were raised by Ms. Whitehead was that the expense of installing the loop in the State right-of-way was cost prohibitive. Councilman Meyer said that one of the commercial properties on Mahopac Avenue had requested that the Water District be extended to include their property and maybe they would be willing to partner with them to provide an easement across their parcel. Mr. Kaufman said that they could contact the property owner but is the Board willing to put them into the District it made no sense for a property owner to grant an easement if they were not going to be included into the District. He said that there was also an environmental issue; there was a brook that came down the corridor. The Supervisor said that the sewer line traversed that brook. Mr. Kaufman said that the sewer line was in the State right-of-way and there was not much land on either side. The Supervisor said that this was something they would have to discuss with the DEP. Mr. Kaufman said to get the answers to all the questions was not going to be timely enough for the applicant at hand and the Realty was the Housing Action Counsel had a short timeline. The Town Attorney said that procedurally they would need to run a separate extension because this one was based on certain boundaries. He said that they would have to go back adopt a new order, a new public hearing date and start all over again. Councilman Meyer said that they could have a separate extension for the additional properties or they could have a handshake understanding that if the property owners would allow for an easement for a waterline that would benefit them that the Town would work with them to include them in the Water District. The Town Attorney said that they could ask the applicant within the next month to study the feasibility. Mr. Mandelbaum said that even if they added these other properties they would still be imposing an improvement that benefited the whole district. It was agreed that the applicant would get back to the Board at the next meeting with regard to the questions that were raised.

Councilman Meyer asked about the piping layout in the southern portion of the property boundary and why it went to the end of the property line. Mr. Kaufman said that it did not; it ran into the loop of the map. Councilman Meyer asked what the red line on the map was that ran to the property line. Mr. Kaufman explained that it was a possible future road to the property to the south. He said that during the planning process it was discussed that the adjoining property owner may in the future want to connect the road. He said that Somers Realty did not need or want that extension although there was a right-of-way shown being preserved. Councilman Meyer asked if the right-of-way covered water and sewer. Mr. Kaufman said that it did and explained that it was actually

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a Town right-of-way for the future. Councilman Meyer asked if there was a waterline extending to where the recreation area was. Mr. Kaufman said that there was. Councilman Meyer asked where it terminated. Mr. Kaufman explained that it capped within the property and pointed it out on the map. Councilman Meyer said that his discomfort with that was that it unduly encouraged development of the adjacent landlocked parcel. Mr. Kaufman said that he had no problem eliminating the waterline in that area.

There being no one else to be heard on motion of Supervisor Murphy, seconded by Councilman Meyer, the hearing was declared adjourned to the October 8th meeting at 9:20 PM.

Town Clerk