John Currie, *Chairman*
Jan Corning
Vicky Gannon
Nancy Gerbino
Eugene Goldenberg
Dennis McNamara
Bruce Prince

Town of Somers

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SOMERS PLANNING BOARD MINUTES
JULY 11, 2018

ROLL:

PLANNING BOARD MEMBERS PRESENT: Chairman Currie, Ms. Corning, Mr. Prince, Mr. Goldenberg, Ms. Gerbino, and Mr. McNamara

ALSO PRESENT:
Director of Planning Syrette Dym
Town Attorney Gerry Reilly
Mr. Steven Robbins, P.E, LEED AP
Project Manager/Associate Principal
Woodard & Curran
Intermediate Clerk, Barbara Sherry

ABSENT: Ms. Gannon, Town Attorney Joseph Eriole and Consultant Town Engineer Joseph Barbagallo

The meeting commenced at 7:30pm. Intermediate Clerk Barbara Sherry called the roll and noted that the required quorum of four members was present in order to conduct the business of the Board.

Chairman Currie asked if there were any comments or questions from the Board on the April 11, 2018 draft minutes; there were none.

On a motion by Chairman Currie seconded by Ms. Gerbino and unanimously carried, the minutes of April 11, 2018 were approved.

GRANITE POINTE SUBDIVISION TM: 27.05-3-2&5

Chairman Currie stated this is the fourth request for a 90-day time extension for the Re-Grant of Final Subdivision Approval, Wetland, Steep Slopes, Tree Preservation and Stormwater Management and Erosion and Sediment Control Permits, as per Resolution 2017-10, from August 4, 2018 up to and including November 2, 2018 under Town Law Section 276 (7) (c) and Town Code Section 150-13M. This is the fourth request for an extension. The property is located on the east side of Route 118/202, adjacent to the Amawalk Reservoir and is located in an R-40 Zoning District for the development of 23 lots in a Cluster Subdivision.

On a motion by Chairman Currie, seconded by Mr. McNamara and unanimously carried, the Board moved to grant the fourth request for a 90-day time extension for the Re-Grant of Final Subdivision Approval, Wetland, Steep Slopes, Tree Preservation and Stormwater Management and Erosion and Sediment Control Permits, as per Resolution 2017-10, from August 4, 2018 up to and including November 2, 2018.

CONTINUATION OF PUBLIC HEARING:
GREENBRIAR SOMERS CORP. TM: 6.11-1-7.1

Chairman Currie stated this is a continuation of a Public Hearing for an Application for Wetland, Steep Slopes, Tree Preservation and Stormwater Management and Erosion and Sediment Control Permits for property located on Driftwood Drive and is part of the Greenbriar development for the construction of one residential house for former lots Sections 6.11-1-77 and 6.11-1-78 now merged as Lot 6.11-1-7.1.

Chairman Currie announced correspondence from the Open Space Committee, Director of Planning Syrette Dym and Consultant Town Engineer Joseph Barbagallo, Woodard & Curran.

Chairman Currie asked if there were any Board comments. There were none.

Mr. Joseph Buschynski, Applicant's Engineer, approached the Board and stated at the last meeting it was determined that a mitigation plan was necessary and it has subsequently been submitted, adding it is his understanding that it has been recommended for approval by the Consulting Town Engineer.

Chairman Currie asked the Board if they read Mr. Barbagallo's memo and if they were in agreement with the recommendation to accept the plan. All were in agreement.

Mr. McNamara added that the New York State Department of Environmental Conservation (NYS DEC) and the New York City Department of Environmental Protection (NYCDEP) are also in agreement with this plan.

Mr. Robert Gaudioso approached the Board on behalf of the Homeowners Association (HOA) and recapped many issues. Among them was the need for recirculation of the application to the NYSDEC and the NYCDEP, as in his view, permits were improperly issued because this is a coordinated SEQRA review and the Planning Board as Lead Agency has not yet issued a SEQRA determination; the Wetland Mitigation Plan was just issued in the past month and Mr. Gaudioso questioned its recirculation, asking if there is a document from the NYSDEC & NYCDEP stating they have reviewed it and signed off on the report.

Chairman Currie stated that is not the advice we have been given by Woodard and Curran.

Mr. Gaudioso asked if the application and Mitigation Report had been recirculated to the NYCDEP & NYSDEC since it was submitted as was recommended by the Director of Planning in the November 2017 report.

Chairman Currie stated he believed it was.

Mr. Gaudioso asked if there is a document that says the NYCDEP & NYSDEC agree with that Mitigation Plan.

Director of Planning Dym stated she does not think that is what happened, she believes what happened was this was all done within the context of what was previously processed as a subdivision, the lots then became merged and as a result of this merger it became a series of permits in front of the Planning Board and that is what is before the Planning Board at this time, not the subdivision application, and that is where the Board is being asked to look at this, including the Wetland Mitigation Plan.

Mr. Gaudioso stated the Mitigation Plan has not been reviewed by NYCDEP & NYSDEC; and the NYCDEC permit was invalid because it predated the SEQRA determination, the NYSDEC has wetland permit authority over it, the NYCDEP

has authority over the issue of the Stormwater Pollution Prevention Plan (SWPPP) and those reports have not been recirculated to the NYCDEP & NYSDEC.

Mr. Gaudioso asked with respect to the subdivision, he would like to state for the record that in March when they left it was his understanding that the Board asked advice from Council on whether a subdivision was required. Mr. Gaudioso asked about the meaning of Subdivision under the Town Code.

Chairman Currie asked Town Attorney Reilly to respond to Mr. Gaudioso's statement.

Town Attorney Reilly stated this is a merger, not a subdivision or re-subdivision so the subdivision rules do not apply.

Mr. Gaudioso asked even though it is a change of the original Subdivision Plat.

Town Attorney Reilly stated after discussion with Town Attorney Roland Baroni, this is a merger which can be affected by the applicant, it is not a subdivision, it is not governed by the Town's or any other subdivision regulations, it is a merger that has been effected.

Ms. Corning asked if this is subject to SEQRA.

Town Attorney Reilly stated not through a subdivision application.

Ms. Corning stated because it is not a subdivision.

Town Attorney Reilly stated it is not a subdivision.

Mr. Gaudioso stated that everything else is subject to SEQRA.

Ms. Gerbino asked if the merger is not subject to SEQRA.

Town Attorney Reilly stated he does not believe that the merger is subject to SEQRA as it is a Type II Action.

Mr. Gaudioso asked for copy of that for the record if this is in writing. He stated the next item is the Wetland Permit. The draft resolution specifically has a WHEREAS clause which concedes that the applicant stated they are not interested in swapping this site for another in the development. Mr. Gaudioso cited Section

167-8(B) of the Code of the Town of Somers which states, basis for denial, the approval authority shall deny a permit if there is a viable alternative to the proposed activities placement in the encroachment upon the wetland or wetland buffer.

Mrs. Gaudioso added as previously testified, the Homeowners Association (HOA) has offered other lands adjacent to other proposed developments by the applicant within this area. Mr. Gaudioso said in Section 167.8 there has to be a showing of necessary and unavoidable impacts, that criteria is not satisfied if "there is a feasible alternative to the proposed activity on another site available to the applicant that is not a wetland or wetland buffer". Mr. Gaudioso stated there is another alternative for this proposal on another piece of property that is not entirely in a wetland buffer, keeping in mind that this entire project is within a Town Regulated Wetland Buffer. Mr. Gaudioso added he does not believe that based on the criteria of the code as conceded in the actual draft resolution that there is sufficient findings under the code to sustain the wetland permit approval. On its face it cannot be approved based upon the expressed language of the Code.

Mr. McNamara asked, if the proposed lot that you are willing to swap, is it an approved building lot.

Mr. Gaudioso stated yes, there are two building lots with four units surrounding HOA property. The HOA would allow the applicant to merge portions of that property to those two building lots, that would then allow them to not only build one unit but actually build multiple units, so they would get more units by swapping land that the HOA has offered.

Ms. Gerbino asked if this is an existing approved site.

Mr. Gaudioso responded, yes it is two (2) lots with surrounding HOA land and the land could be swapped and there is nothing in the Code that says it has to be an approved building lot. The Code specifically says on the other land, in fact there is another section of the Code that says, "In case of an activity which cannot be undertaken on the property without disturbance to the wetlands, the availability of other reasonable locations for the activity, whether or not such locations are under the ownership or control of the applicant…" The Code speaks specifically to this issue, there is nothing in the Code that says the swap has to be for an approved building lot. It specifically talks about other land that may not be in control of the applicant.

Mr. McNamara stated this would not be an exchange for like parcels. The lot before us now is an approved lot, it can be built on, and the one that you are proposing to swap is not, you would have to go through a process.

Mr. Gaudioso stated all that has to be done is to merge.

Mr. McNamara stated the process is that you have a problem with this one.

Mr. Gaudioso stated the problem I have with this process is that the development is entirely within the wetland buffer whereas the land that the HOA is offering is not within the wetland buffer.

Mr. McNamara asked who owns the property that the HOA is offering.

Mr. Gaudioso stated the HOA, adding that the HOA has made this available.

Ms. Corning asked Mr. Gaudioso if it is his opinion that the two lots that currently exist are not buildable.

Mr. Gaudioso stated under the Town's wetland regulations they specifically say before this Board is allowed to issue a wetland permit there has to be an evaluation of unavoidable wetland impacts, and as part of that evaluation one of the expressed criteria is that there is other property available where the project could be located that is not in a wetland buffer. Under these facts and circumstance the answer to your questions is yes, these two lots which is now one lot by way of this merger are not buildable pursuant to the Town's wetlands code. But there is an alternative that the applicant would be able to use that has been reasonably offered by the HOA.

Ms. Corning asked, some of the arguments that we have heard on this Board have been that all of the other buildings on the street are attached buildings, and so if I am hearing you correctly, you are saying that even if this were to be presented before the Board as of right as an attached building that you would be against that.

Mr. Gaudioso stated the attached building is the underlining problem that this particular HOA has, because they have invested in a certain design, they bought into a certain design, they bought into an attached community and one stand-alone property would have an adverse impact as demonstrated by the unrefuted property value reports.

Ms. Corning stated you are not answering my question, my question is that right now they have a right, wetlands aside, to build an attached unit, two attached units.

Mr. Gaudioso responded, two attached units provided they were able to get the DEC permit, the DEP permit, the Town Wetlands Permit, the Towns Steep Slopes Permit, the Tree Clearing Permit and we believe other permits as well including the wetlands for the outflow.

Ms. Corning asked if the HOA believes that those permits would be accessible by way of this Board or is it because they do not want a single family home.

Mr. Gaudioso stated it is a bit of both, they do not want the single family home to have an adverse impact on their property values and on their neighborhood as it has been unrefuted by the Lane Appraisal Report, but the fact of the matter is that is irrespective of what your Town Code says. Your Town Code specifically sets forth criteria for the issuance of the wetlands permit which includes that the applicant must look at reasonable alternatives and in fact the draft approval resolution concedes and the applicant stated on the record that they did not even want to look at those alternatives. So the fact isn't that they looked at the alternative and they did not find it feasible, the fact is they stated for the record and it is in the draft approval resolution that they have no interest in even looking at it, and that on its face fails to satisfy the criteria of the Town of Somers Wetland Code.

Mr. Gaudioso continued, saying as mentioned earlier the NYCDEP and NYSDEC permits were not valid, as agreed with by Director of Planning Dym in the November 2017 report, the mitigation report has not been reviewed by those other agencies, there are soil testing noted in the Wetland Mitigation Report and he does not believe that those soil testing results have been submitted to this Board.

Mr. Gaudioso went on to say they have asked for soil testing results, mentioning Granite Pointe as an example of why that is prudent, the applicant has conceded that this was filled land and the Mitigation Report references minimal soil testing that has not been provided to the report and it is believed to be improper and the soil tests should be provided to the Board and allow the public the opportunity to review this information.

Mr. Gaudioso mentioned the lack of a Maintenance Agreement that has been put in place. This has been an issue in numerous correspondence from the HOA and the Open Space Committee (OSC). The OSC has been against this project from the

beginning and one of their most recent comments is that there has been no Maintenance Agreement put in place to be reviewed by the Board and the public and without that document as a public document to be reviewed and analyzed to ensure the ongoing maintenance particularly of some of the Stormwater Management practices that are proposed on this single family residential dwelling. The OSC acknowledges that this may be beyond the ability of the homeowner. Without that agreement in place and to make certain that agreement will be properly bonded and ensured that the schedule is taken care of, is believed to render the application incomplete.

Mr. Gaudioso stated there has been no review on the record of the Environmental Assessment Form and as previously stated this is a Type I Action and with that there is a presumption of an adverse environmental impact. There is no tree cutting requirement; when the NYSDEC looked at the property there is a threat to an endangered species in the area and there is a tree cutting restriction on this property. Certain trees cannot be removed except for a finite period of time and that must be a condition of the application, and that is just one example of why the EAF and the Part 2 should specifically be gone through line by line to make certain all the potential impacts have been identified and properly evaluated.

Mr. Gaudioso noted that the outfall has been cleaned and restored by the HOA. That changes the plans and the SWPPP. We believe both of those items have to be updated to account for that and that the over the top proposal of the access drive behind one of the HOA members property and the excessive improvements of the outfall should be reevaluated based on the fact that the outfall has been restored and cleaned under the supervision of the Town Officials.

Mr. Gaudioso stated that he has asked for the affidavit of posting for this meeting, and that the HOA does not believe the sign had been placed, therefore the Public Hearing this evening must be adjourned as the proper notice was not given.

Mr. John Parker, representative for the applicant, stated there have been a number of meetings and efforts undertaken to make certain all the provisions of the Code are complied with, and that all the environmental aspects that need to be addressed are done. After reading the resolution which contains 62 Whereas clauses and 14 Conditions that have to be met under 6 itemized items under the Conditions, this has been done.

Mr. Parker noted the Mitigation Plan was at the encouragement of the New York State Department of Conservation (NYSDEC) because they went on site and they

asked why the Homeowners Association (HOA) is not doing what they are supposed to do with respect to maintenance. As a result, that is part of the conditions with respect to the permit. It is a condition that is part of the Resolution along with 14 Conditions that must be met. Those conditions with respect to mitigation of the wetlands outfall, identified by the NYSDEC were also agreed to as part of the record in front of the NYCDEP. There was an environmental review at the last hearing with respect to the application by the NYCDEP, NYSDEC along with a long Environmental Assessment Form that was submitted.

Mr. Parker explained we are 62 Conditions, 31 months into an application for an as of right use for a single home on a piece of property.

Mr. Parker stated the HOA tries to make the issue of whether or not there is another way to handle the wetlands with respect to replacement of property. As discussed at the last meeting, Mr. Gaudioso did not want to recognize in the Maintenance Agreement filed with Westchester County in the 1970's and 1980's about maintenance the HOA was required to do. Similarly the community benefits from the 300 acre cluster subdivision, which has 200 acres of open space and 100 acres of development. In the same way that is filed and that cannot be upset, you cannot just give away common space property. We are in a locked in scenario, this is the last 2 lots of Section 6, and there is no more building in Section 6. The developer/applicant whose family business has been here from the beginning, has complied with all the provisions of the Town Code and has volunteered to use their right to clean up and deal with the dissipater. The resolution mentions we have to make certain the Conditional approval deals with all the previous engineering reports. My reading of this is that every single issue has been addressed. I understand that some residents there are not happy with this. However, this is property rights that are in the Town Code, it is not a subdivision, and there is not a notice requirement to be posted 7 to 10 days prior, it is not a subdivision application. It is an as of right single family home application, that was acknowledged in our letter to the Board in January, it was acknowledged by the Town Planner as early as March 8th or 3rd that this is not a subdivision, it is a single family home. So to produce issues and hope something sticks to the law might sound good, but these things have all been ticked off in a meticulous process. Single family, as of right approval is all we are talking about here. Any single family home has met the provision of a very progressive Town Code and the Resolution demonstrates adherence to the process, with communications back and forth with the applicant. There was an agreement to have communications and try

to be collaborative with respect to issues that were outstanding; none of those phone calls happened, Mr. Gaudioso did not join in any of those efforts, we have done everything possible.

Mr. Parker thanked the Town Officials, Bibbo Associates, DEC & DEP, concluding with this is a shovel ready site that has been sitting there as mowed lawn for 30 years. We are not talking about going out and destroying wetlands; there are no wetlands being destroyed. The only wetlands that have been compromised or destroyed is because the HOA wants to use that as a sword to say you cannot do anything because we did not maintain this. Outside agencies say it has to be fixed, which is why it is a condition. The applicant has agreed to do all this, and I believe the record stands for itself.

Chairman Currie asked if there were any questions from the Board, Director of Planning or Town Attorney.

Town Attorney Reilly stated the signage issue is for a subdivision, there is no subdivision here; and, in addition, the fact that the HOA is here and is represented in legal parlance constitutes a waiver even if there was an issue.

There being no questions or comments from the Board, Chairman Currie opened the Public Hearing to the residents asking that all comments be limited to three minutes each.

Mr. George Semmens, 46 Driftwood Drive, asked the Board to not approve the application and cited reasons expressed at the March meeting.

Ms. Mimi Horowitz, 59 Driftwood Dive requested from the Board in writing that the Offering Plan for the Greenbriar Development as approved by the Secretary of State in Albany does not need to be amended when you amend a Plot Plan. She questioned the appropriateness of how the developer came into title and implored the Board to not pass the Resolution.

Mr. Jack Newman, 238 Briarwood Drive, asked to hear from each Board member why they think this is reasonable when there is other property in this development that does not affect the issues that have been discussed with this lot.

Ms. Gerbino spoke to the history of this development since 1961 and the manner in which it developed and evolved over the years.

Town Attorney Reilly stated the Offering Plan issue has nothing to do with the Planning Board and this application. The merger of the lots is legal, this is a Type II Action for a single family house.

Attorney Robert Gaudioso spoke to the issues of Section 617 of SEQRA Legislation, Section 96-2A of the Code of the Town of Somers, Type I Actions, Unlisted Actions, and that the Single Family house is irrelevant, the need for coordinated SEQR Review, the length of time of this application, the long EAF, and compliance with the Town Regulations.

Mr. Stanley Rybicki, 232 Briarwood, spoke to the issue of the cutting of a tree many years ago and how that has brought about the perception of a lack of collaboration and trust on the HOA's part toward the applicant/developer.

Board member Mr. Goldenberg spoke about the settlement of the taking down of the tree.

Mr. Sergio Delaparra, 62 Driftwood Drive, has attended each meeting and implores the Board to not approve this project.

Ms. Serena Berger, 58 Driftwood Drive, stated she bought on a street with town houses, a conscious decision that this Board is ignoring. She spoke about the taxes that have been paid for the last 20 years by all the residents; about the mistrust between the developer and the residents, and hopes the Board will deny this application.

Mr. Joseph Starace, 42 Driftwood Drive, echoed all the same sentiments of Ms. Berger, and asked the Board to do the right thing and deny this application.

Chairman Currie asked if anyone else would like to speak; there were none.

On a motion by Chairman Currie, seconded by Ms. Gerbino, and unanimously carried, the Public Hearing for Greenbriar Somers Corp. for an Application for Wetland, Steep Slopes, Tree Preservation and Stormwater Management and Erosion and Sediment Control Permits for property located on Driftwood Drive and is part of the Greenbriar development for the construction of one residential house for former lots Sections 6.11-1-77 and 6.11-1-78 now merged as Lot 6.11-1-7.1 was closed

Discussion ensued regarding the amount of the Erosion Control Bond from $2,500 to $1,000 and the Engineering Inspection Fee from $1,500 to $1,000.

Additional discussion was had making minor amendments to the Resolution.

Chairman Currie stated on advice of Counsel, what the Board is approving this evening is for Wetland and Watercourse Protection Permit, Tree Removal Permit, Steep Slopes Permit and Stormwater Management and Erosion and Sediment Control Permit under the Town of Somers Regulations.

Chairman Currie asked if there were any other Board member comments; there were none.

On a motion by Chairman Currie, seconded by Mr. Prince, and unanimously carried, the Board moved to Grant, as amended, Resolution 2018-08 the Granting of Conditional Approval for Wetlands and Watercourse Protection Permit, Tree Removal Permit, Steep Slopes Permit and Stormwater Management and Erosion and Sediment Control Permit, to the Greenbriar Somers Corp. TM: 6.11-1-7.1 located at 35 Driftwood Drive.

There being no further business, on a motion by Chairman Currie, seconded by Mr. Goldenberg, and unanimously carried, the meeting adjourned at 8:45pm.

Chairman Currie announced the next meeting of the Somers Planning Board will be August 8, 2018 at 7:30pm.

Respectfully submitted,

Barbara J. Sherry

Barbara J. Sherry,
Intermediate Clerk, Somers
Planning Board

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