

PLANNING BOARD

John Currie, *Chairman*  
Vicky Gannon  
Nancy Gerbino  
Dennis McNamara  
Bruce A. Prince  
Christopher Zaberto  
Jack Mattes

**Town of Somers**  
WESTCHESTER COUNTY, N.Y.

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**SOMERS PLANNING BOARD MINUTES  
REMOTE MEETING HELD VIA ZOOM  
November 18, 2020**

**ROLL:**

**PLANNING BOARD**

**MEMBERS PRESENT:**

Chairman John Currie, Dennis McNamara,  
Vicky Gannon, Nancy Gerbino, Chris Zaberto,  
Jack Mattes, Bruce Prince

**ALSO PRESENT:**

Director of Planning, Syrette Dym, Consulting Town  
Engineer Joseph Barbagallo, Planning Board Town  
Attorney, Joseph Eriole, Esq.

The remote meeting commenced at 7:30 p.m.

Chairman Currie asked everyone to say the Pledge of Allegiance. He then welcomed the new Planning Board member, Jack Mattes.

Director of Planning, Syrette Dym called the roll and noted that the required quorum of four members were present in order to conduct the business of the Board.

**APPROVAL OF DRAFT MINUTES:**

Chairman Currie asked if there were any changes, concerns, comments or corrections from the Board on the draft minutes of the September 9<sup>th</sup>, 2020 meeting.

On a motion by Christopher Zaberto, seconded by Ms. Gerbino, and unanimously carried, the Board moved to approve the September 9<sup>th</sup>, 2020 minutes, as written.

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1 **TIME EXTENSION:**  
2

3 **THE PARAMOUNT AT SOMERS: TM: 28.17-1-19.1**  
4

5 Chairman Currie explained that the application is for a request for a one-year time extension for  
6 Site Plan Approval of The Paramount at Somers, as per Resolution 2019-14, from November  
7 13, 2020 up to and including November 13, 2021, as per Town Code Section 170-114H and  
8 170-114K. The Property is located on the west side of Route 100 and is located in an R-80  
9 Zoning District. He asked Director of Planning Dym to bring everyone up to speed on this item.  
10

11 Director of Planning Dym explained that the Town was reminded about the Site Plan Approval  
12 for the entry canopy and patio expiring and moved it along very quickly, as it met all of the  
13 requirements, and got their site plan in and Chairman Currie signed it. She further stated that  
14 the reason it needs to be on the agenda for the extension is because it actually expired prior to  
15 this meeting and therefore the Board needs to fill that gap and needs to vote to approve it but it  
16 really is perfunctory as it is moving along and will probably get the building permit soon.  
17

18 On motion by Chairman Currie, seconded by Ms. Gannon, and unanimously carried, the Board  
19 approved the time extension as previously presented.  
20

21 **PUBLIC HEARING**  
22

23 **BLUESTONE PEAK ACADEMY (NEW PRIVATE SCHOOL IS SOMERS) – TM:**  
24 **17.19-1-1 (Opened February 12, 2020; Adjourned from April 15, June 10, July 8, August**  
25 **12, September 9, October 14 and November 18, 2020)**  
26

27 Chairman Currie explained that at the request of the applicant, the Public Hearing has been  
28 adjourned to 12/9/2020.  
29

30 Mr. Prince asked Chairman Currie if there was anything the Board should know about the  
31 extension.  
32

33 Chairman Currie responded that he was not aware of anything and asked if Director of Planning  
34 Dym or Consulting Town Engineer Barbagallo knew of anything.  
35

36 Ms. Gerbino replied stating that the Board has to extend it because they have not adopted the  
37 new zone yet.  
38

39 Chairman Currie stated that Ms. Gerbino was correct and they were waiting for the Town  
40 Board.  
41

42 **NEW YORK AMERICAN WATER CO. INC. APPLICATION FOR SITE PLAN**  
43 **APPROVAL FOR GRANULAR ACTIVATED CARBON (GAC) TREATMENT**  
44 **SYSTEM BUILDING AT DYKEER WATER TREATMENT FACILITY AT THE**  
45 **WILLOWS AT KRYSTAL DRIVE AND US ROUTE 202/MILL STREET: TM: 16.6-3-**  
46 **22**

1 Chairman Currie stated that the Board was in receipt of a Memo from Woodard and Curran. He  
2 asked the applicant's representative to bring the Board up to speed and then hear from  
3 Consulting Town Engineer Barbagallo.

4  
5 Kristen Barrett, PE of Hazen and Sawyer replied that she was representing New York American  
6 Water and stated that John Kilpatrick, from NY American Water was also present.

7  
8 Engineer Barrett stated that since they were there one month ago, lots of things have happened.  
9 She stated that they had a meeting with the President of the Willows, Mr. Cashman, and Chris  
10 Peters from NY American Water, as well as a representative from the HOA to discuss what  
11 their concerns were. This project was brought up regarding some of the landscaping requests  
12 and as a result they have included a landscaping plan that was reviewed with them at the  
13 meeting, on October 29<sup>th</sup>, and that has been included in the submittal that the Board received  
14 two weeks ago, and is a combination of a few trees and a few various shrubs along on the guide  
15 rails; the guide rail has been changed to a merit style timber guide rail as well as some screening  
16 around the generator so that the biggest change since they last spoke. She further stated that  
17 they have not received any other comments from the residents or the HOA.

18  
19 Chairman Currie stated that if she didn't have any other comments, and they are still in the  
20 Public Hearing, so if there's anyone from the public would like to be heard, please contact us.

21  
22 Ms. Gannon stated that they were no new texts.

23  
24 Mr. Zaberto asked if there were any emails.

25  
26 Director of Planning Dym stated that she did not see anything.

27  
28 Mr. Prince asked if one of the residents sent an emails about when the wells were being done.

29  
30 Director of Planning Dym stated that was from the last meeting not for this meeting.

31  
32 Chairman Currie asked Consulting Town Engineer Barbagallo to speak.

33  
34 Consulting Town Engineer Barbagallo stated that they had three things that are items to check  
35 off. (1) is relative to the SWPPP where all the submitted documents and language we are  
36 comfortable with; we just need the middle of the revised slip that incorporates those changed  
37 but the changes that have been identified are acceptable. (2) The other open item is the  
38 Westchester County Health Department approval to be obtained is not only to be provided.  
39 That's all they had left from the previous comments. The only thing he would ask Engineer  
40 Barrett to add was her mentioning the submittal of the landscaping plan – he would like her to  
41 include a note on that drawing – right now she references a certain amount of watering over a  
42 certain amount of time period – he would like a note on the plan that states watering will be  
43 ongoing to make sure the plants survive. There were other incidents in town where they did a  
44 great job in the initial watering and then they got into a drought and plants died and that  
45 becomes a challenge so he would like a note on the drawing that would suggest that the

1 landscaping would be continually watered until they're well established and as needed to  
2 survive or replaced.

3  
4 Mr. Prince asked if it would be better just to say that they should be replaced.

5  
6 Consulting Town Engineer Barbagallo stated that it should be both: they should be watered to  
7 keep them alive, and if they don't, that they be replaced.

8  
9 Engineer Barrett agreed and stated that hopefully they did a good job selecting the plants so that  
10 once established will do well in this climate so that was definitely a goal of the selection. She  
11 further stated that she knows that we can experience droughts.

12  
13 Consulting Town Engineer Barbagallo stated that the Board concurs with that. He further stated  
14 that he ran it past the Board's landscape architect and they were very comfortable with the plan  
15 selection as well. However, having the experiences that they have had, where they have had  
16 good plants in the past and then when the rain doesn't fall from the sky when they're young,  
17 sometimes they still don't make it – the first two growing seasons are very important and then  
18 after that point they are pretty much established.

19  
20 Mr. Zaberto asked Consulting Town Engineer Barbagallo if they were native or relatively native  
21 plants?

22  
23 Ms. Gerbino commented that it was requested by the Open Space Committee.

24  
25 Consulting Town Engineer Barbagallo stated that there are a few are bark maples and an eastern  
26 red bug – this is shown in different seasons – spring and summer; and a few of the Bluemist  
27 shrubs, mountain laurel and this is also the paper bark.

28  
29 Mr. Prince commented that they were all deciduous plants. He asked what would happen  
30 during the winter and stated that if they were planning to put screening up, that screening is  
31 going to be non-existent during the winters.

32  
33 Chairman Currie stated that the mountain laurels are not deciduous.

34  
35 Mr. Prince stated that was the only one. He asked what about the Green Giant Arborvitae or  
36 Pine?

37  
38 Engineer Barrett stated she believed the mountain laurel are the plants around the generator.  
39 She indicated on her screen where the generator is, with a chain link fence around it, and those  
40 are year round, and showed the road around it. She stated that she believes that the others  
41 provide a more seasonal .... She showed a mountain laurel along the timber guardrail.

42  
43 Consulting Town Engineer Barbagallo stated that he believes the plants have been strategically  
44 placed.

1 Mr. Prince stated there was a problem there – if you know anything about mountain laurel, after  
2 they start to grow, they basically, the first two or three feet, start to become just branches or  
3 trunks and no leaves – mountain laurels are known for that – so after three or four years there  
4 may be some upper greenery that stays all year but the bottom is going to be basically just  
5 trunks and stems and branches. He further stated that he is not a horticulturist so if it's  
6 approved, that's fine.

7  
8 Mr. McNamara asked if the deer eat them.

9  
10 Ms. Gerbino answered that the deer don't eat them – they're poisonous.

11  
12 Mr. John Kilpatrick of NY Water introduced himself and stated that (1) if any of the plants  
13 don't make it through the winter, they will get them fixed and (2) the year round plants are  
14 covering the generator which is the most industrial looking thing on the site so the building is  
15 going to look nice. The rest of site – you wouldn't know it's a utility plant – it's going to be  
16 nice looking building – that's just additional landscape and additional interest to look at on the  
17 site. It's not really hiding anything on a permanent basis.

18  
19 Ms. Gerbino stated that she believed he said that the homeowners association was satisfied.

20  
21 Engineer Barrett confirmed that.

22  
23 Consulting Town Engineer Barbagallo stated that was what he was looking at – to know that the  
24 people who live in this community were satisfied and we do have the screening for the  
25 generator, which he thinks is the most important and, as said, the most industrial looking piece.

26  
27 Consulting Town Engineer Barbagallo stated that was really the only comments the Board had  
28 and the Board was good with everything Engineer Barrett submitted; it just needs to be  
29 incorporated into the Stormwater Pollution Prevention Plan (SWPPP) so they can verify that  
30 they were in the final SWPPP. They just have one note on the plantings and then of course, we  
31 have to follow through with the Westchester County Health Department. He commented to Mr.  
32 Kilpatrick that other than that, they were good to go.

33  
34 Mr. Kilpatrick thanked Consulting Town Engineer Barbagallo.

35  
36 Chairman Currie asked Director of Planning Dym if she had any comments.

37  
38 Director of Planning Dym stated only that they have to do SEQRA on this project but other than  
39 that, no comments.

40  
41 Chairman Currie asked Director of Planning Dym if there were no other Board comments, did  
42 she want to go through SEQRA now.

43  
44 Director of Planning Dym stated the Board already declared itself the Lead Agency and she  
45 forwarded the Part 2 and the Neg Dec; the only issue from an environmental point of view is  
46 that it is an area with the potential northern back so any site disturbance has to happen between

1 now and a period of March 31<sup>st</sup> but otherwise the Board can make a determination of no  
 2 significance and issue a Negative Declaration.

3  
 4 Chairman Currie addressed the Board Members for their input.

5  
 6 On motion made by Mr. Zaberto, seconded by Mr. McNamara and unanimously carried, the  
 7 Board approved the Negative Declaration based on the information supplied.

8  
 9 Chairman Currie further stated that if everyone was in agreement, he would instruct Director of  
 10 Planning Dym to prepare a resolution for his signature for the December 9<sup>th</sup>, 2020 meeting.

11  
 12 Mr. McNamara asked if the Public Hearing was still open.

13  
 14 Chairman Currie stated that it was and asked Ms. Gannon if anything came in.

15  
 16 Ms. Gannon commented that no calls had come in.

17  
 18 On motion made by Chairman Currie, seconded by Ms. Gannon, and unanimously carried, the  
 19 Board moved to close the Public Hearing for the NY American Water Co., Inc. Application for  
 20 Site Plan Approval for Granular Activated Carbon (GAC) Treatment System Building at  
 21 Dykeer Water Treatment Facility at the Willows at Krystal Drive and US Route 202/Mill Street,  
 22 conditional upon a Resolution being prepared for Chairman Currie's signature with three of  
 23 Consulting Town Engineer Barbagallo's conditions that include (1) Putting a note on drawing  
 24 regarding landscape plan that plants to be insured of survival or be replaced. (2) SWPPP needs  
 25 revision and (3) Health Department approval needs to be obtained.

26  
 27 Ms. Gerbino asked if there were two Public Hearings on this project.

28  
 29 Chairman Currie explained that there are two separate agenda items and this one is just for the  
 30 building and the second one is still open.

31  
 32 **PUBLIC HEARING:**

33  
 34 **NY AMERICAN WATER COMPANY DYKEER SITE WETLAND AND**  
 35 **WATERCOURSE PROTECTION PERMIT FOR PROPERTY ON KRYSTAL DRIVE:**  
 36 **TM 16.16-2-20-24; 16.16-3-13-29 (Opened October 14, 2020, adjourned)**

37  
 38 Chairman Currie stated that the applicant asked to be adjourned to the December 9<sup>th</sup>, 2020  
 39 meeting.

40  
 41 Consulting Town Engineer Barbagallo gave a quick update stating he spoke to their consultant  
 42 and they walked through some of his approach towards the hydrogeology study required for the  
 43 Groundwater Overlay District and they are on the same page and he walked through what they  
 44 heard from the public, which is the broader concern; the Board's concern has been relative to  
 45 the source of the PFOAS and PFOS contamination and he's indicated that they completed their  
 46 Phase 1 and done the site walk to verify that there is no ongoing source and we should see that

1 documentation, in four reports, coming into the next meeting so it seems like we should have a  
2 pretty robust amount of material to review at the next meeting.

3  
4 Chairman Currie stated that for the record the Public Hearing will continue at the December 9<sup>th</sup>  
5 meeting on this item.

6  
7 Ms. Gerbino asked if she understood correctly that these wells are 800 to 900 feet deep.

8  
9 Mr. McNamara responded that it's projection.

10  
11 Mr. Gerbino stated that it means they don't actually exist yet.

12  
13 Mr. McNamara responded that they are going deeper into the aquifer.

14  
15 Consulting Town Engineer Barbagallo stated that there's one of them that's in and then the  
16 other three that are in the wetland that are subject to the application have not yet gone in.

17  
18 Mr. McNamara stated that it's deeper than most in this town. Most of them are 200-400 feet.

19  
20 **INSITE WIRELESS GROUP LLC, SPECIAL PERMIT RENEWAL FOR THE**  
21 **PROPERTY KNOWN AS 121 ROUTE 100 (AMATO PROPERTY): TM 38.17-1-5**

22  
23 Chairman Currie asked if David Kenny would give a summation of where they are at on this  
24 item.

25  
26 Mr. David Kenny introduced himself as attorney with Snyder and Snyder, representing **Insite**  
27 **Wireless Group LLC**. He stated that at their last meeting there was a request to make sure  
28 there was an inspection on an in-person review and also that they had the correct certifications  
29 for our engineer. They made a recent filing and received a memo from Consulting Town  
30 Engineer Barbagallo with limited comments just making sure that the engineering firm that  
31 submitted the structural certification has the correct certifications from NY. They are working  
32 with them, and their corporate office, to obtain that certification and they can file that with the  
33 Planning Board as a condition of approval should the Planning Board choose to approve the  
34 Special Permit renewal tonight.

35  
36 Consulting Town Engineer Barbagallo stated to Attorney Kenny that one of the things he  
37 wanted to share with him was that he knows there was a business license that they saw a copy of  
38 but they actually contacted the Office of the Professions and they are not registered with Office  
39 of Professions to practice in the State of New York so that's something that they are going to  
40 have to resolve.

41  
42 Attorney Kenny stated that they informed their engineer of that and they are working on it.

1 Consulting Town Engineer Barbagallo stated he believes that they just have to get that  
2 certification and he concurs that the other documentation that they requested with the site, with  
3 the in-person site visit, has been addressed it's really just down to making sure that they have  
4 the appropriate authorizations in place and then the Board is ok with proceeding.  
5

6 Chairman Currie asked Director of Planning Dym if she had any comments.  
7

8 Director of Planning, Dym stated that Attorney Kenny knows, because they have been in touch  
9 with him several times, two things and one thing is the escrow has not been forthcoming; She  
10 further stated that she thinks in the transition from the Zoning Board of Appeals (ZBA) to the  
11 Planning Board, a lot of these applicants are going to have to get used to the fact that initially  
12 there is going to have to be a larger escrow for the Board to process these applications because  
13 they really happened almost immediately at the Zoning Board and our requirements are real  
14 and by the book. Attorney Kenny and I have spoken about that, but the one thing she would  
15 like the Board to address is the report identified many of what they called housekeeping items  
16 on the site, in terms of the cleanliness of the site, broken fences, things that need a clean-up to  
17 be part of their renewal approval.  
18

19 Ms. Gerbino, Mr. Zaberto and Chairman Currie agreed with Director of Planning Dym.  
20

21 Attorney Kenny stated that he would agree with that as well; those housekeeping items are  
22 going to be done but he doesn't see why they can be a condition of approval. He further stated  
23 that as far as the escrow, they were only informed of the amount last week and just received  
24 confirmation that he would have that escrow amount on Friday and would get it to the Town.  
25

26 Mr. Prince asked Attorney Kenny if it would be out of place to ask to delineate what those  
27 housekeeping items are or is that too much to ask.  
28

29 Attorney Kenny responded that he had a copy of the report and could go through it.  
30

31 Planning Director Dym asked Attorney Kenny to address the items that were listed in the report.  
32

33 Attorney Kenny stated he had the report and was going to screen share them so that everyone  
34 could review them. He stated that it wasn't on page 5, under Housekeeping, but listed  
35 elsewhere under Recommendations: Potential for Improvement – these are the category of  
36 Housekeeping items: They will install the new faux pine needs to make sure that the tree has  
37 the correct stealth design. He believes that there is some feed lines that are required; there were  
38 some cut feed lines from previous installations; they have to remove the old them and install the  
39 new pine branches and reinstall the faux pine branches – they have it for each different height  
40 where they noted it, repair the fence in the compound gate as required; there are some areas of  
41 the fence that are damaged to they have to repair the fence. He further stated that there is some  
42 minor vegetated debris around the compound area – that usually means some weeds when they  
43 refer to minor vegetation – so they will remove. There is some minor erosion of the tower



1 compound, inside the fence area and have to backfill some areas or put some extra gravel down  
2 to make sure that there is a flat grade; the grounding access tube to the PVC cap is missing so  
3 we just have to put a cap on this grounding tube. The AT&T surge arrester is not properly  
4 secured so we have to make sure it's properly secured.

5  
6 Ms. Gerbino asked if the surge arrester is technically a ground.

7  
8 Attorney Kenny stated he doesn't have more technical information than that and could ask and  
9 get more information for the Board but he will absolutely make sure that all of these  
10 housekeeping items are properly addressed. The properly secured could be as simple as that  
11 may not be a locked door on the cabinet.

12  
13 Ms. Gerbino asked if Attorney Kenny could get more technical information on the surge  
14 arrester.

15  
16 Chairman Currie asked Consulting Town Engineer Barbagallo how does it work for these  
17 housekeeping items to be taken care of before they get their final approval.

18  
19 Consulting Town Engineer Barbagallo stated he thinks they are going to list them as a  
20 contingency item that say that they need to address these prior to issuance of the renewal.

21  
22 Attorney Kenny offered some advice that maybe a final signed resolution could be withheld  
23 until that point.

24  
25 Mr. McNamara asked if the Building Department does their own inspection.

26  
27 Mr. Zaberto asked who is going to ensure that the housekeeping work has been completed  
28 before we give the renewal.

29  
30 Consulting Town Engineer Barbagallo stated that normally it would be the Building Department  
31 but he can go and look at it too. He can talk to the Building Inspector, Tom Tooma and  
32 coordinate something. They will verify before the approval is done.

33  
34 Attorney Kenny stated that they will also file the report. He further stated that many of these  
35 reports that they file include photos of the area so they will have photos to refer to but  
36 absolutely the Board can have their own engineer confirm that they made the correct repairs.

37  
38 Director of Planning Dym asked Attorney Kenny how he will secure with his client once they  
39 have secured the renewal – (if his job is done) – how will he know to inform the Town that they  
40 are going about doing these things because these don't require building permits of any sort.  
41

1 Attorney Kenny stated that's why he offered one way for the Board to help protect against the  
2 condition is to not issue the signed renewal until the Board has all of these conditions  
3 completed.

4  
5 Mr. Prince stated it was a good idea and Chairman Currie agreed.

6  
7 Ms. Gannon asked Consulting Town Engineer Barbagallo if they could circle back to his  
8 Memo, Item #3, and asked him to address that item. Ms. Gannon recited "it is our  
9 recommendation that the Board consider where the applicant shall complete a coverage analysis  
10 to demonstrate sufficient wireless coverage is provided"...

11  
12 Consulting Town Engineer Barbagallo responded that if the Board recalls, this was discussed in  
13 one of the earlier meetings and probably should have identified that in the memorandum but we  
14 are discussing today the Tower today and not the equipment; he stated he believes that the  
15 coverage issue becomes the equipment issue not the tower issue.

16  
17 Attorney Kenny stated that when he represented T-Mobile, a similar comment came up and they  
18 were able to get maps because T-Mobile, that applicant had access to those coverage maps. He  
19 further stated that this Insite Wireless Group just owns the infrastructure so they are not actually  
20 the antenna operator.

21  
22 Consulting Town Engineer Barbagallo stated that right now this is just the issue of the Tower  
23 but this comes to that broader issue that we should have a broader conversation with our council  
24 to understand how we can wrap this together; we're doing this at one time and we can handle  
25 the Tower but it's complicated as we talked about last time because you never know when a  
26 new antenna renewal is going to come up but we absolutely should be talking about a code  
27 revision around this.

28  
29 Mr. McNamara stated that it's a coordinated review.

30  
31 Consulting Town Engineer Barbagallo agreed. He stated that we are looking at everything  
32 together and not one off because what happens, as we all know, everybody is putting their  
33 finger in everything at one time and it comes in piecemeal; it's better when call come in  
34 together, and our code doesn't require that, and a revision should be required.

35  
36 Attorney Kenny stated that he thought that would be an organized approach to these.

37  
38 Ms. Gerbino stated that she thought it would be in order for the Board to formalize that request  
39 from the Town Board.

40  
41 Consulting Town Engineer Barbagallo stated that he agreed - to authorize the work.  
42

1 Director of Planning Dym stated that essentially there is a Task Force and she thinks we have  
2 two members that are on the Task Force.

3  
4 Mr. Mattes stated that he is on the Task Force.

5  
6 Director of Planning Dym further stated to bring it back to the Task Force and she believes the  
7 Task Force is the best avenue for looking at what these issues are and coming up with some  
8 solutions.

9  
10 Consulting Town Engineer Barbagallo stated that he provided this input to Councilman Cirienco  
11 because he is part of the Task Force as well.

12  
13 Mr. Zaberto confirmed that Councilman Cirienco is a part of the Task Force and stated that we  
14 have two Town Councilmen that are on it and very much taking ownership of this endeavor and  
15 he will definitely reiterate some of the comments made here today to them about the  
16 consolidation of that process.

17  
18 Mr. McNamara stated that it makes it more manageable.

19  
20 Consulting Town Engineer Barbagallo stated that it makes it easier on the applicants too.

21  
22 Chairman Currie agreed with Consulting Town Engineer Barbagallo and stated that it was a  
23 two-way street.

24  
25 Ms. Gannon stated that's why she wanted to bring this out to make clear that if the issue is  
26 raised, to acknowledge that we are not overlooking it but it is indeed not their responsibility  
27 tonight.

28  
29 Director of Planning Dym wanted to mention that she thinks the best thing to do is when we  
30 come out with a final version of this resolution, prior to signing, she would send it over to  
31 Attorney Kenny so he can make it available to his client to see what all the conditions are and  
32 let them know that we won't sign it until they meet those conditions.

33  
34 Attorney Kenny agreed and thought that was a great approach but added that they already told  
35 them to complete the housekeeping items and he believes they are already getting the  
36 contractors in line to make sure they get the work done.

37  
38 Chairman Currie asked Director of Planning Dym and Consulting Town Engineer Barbagallo if  
39 they felt comfortable with instruction to have a resolution prepared.

40  
41 Mr. Zaberto stated he wasn't comfortable yet. He wanted to circle back to the engineering issue  
42 and the licensing in the state. Is there any chance that at the time the inspection was done, that  
43 people were not licensed to perform that inspection in NY would that invalidate it because what

1 he is hearing from the council is that they are going to retroactively renew their license but his  
2 understanding is that at the time the inspection was completed, they weren't supposed to do it in  
3 NY so does that in validate the results?  
4

5 Ms. Gerbino stated that Mr. Zaberto has made a very valid point because the Town requires any  
6 engineering be done by a registered engineer.  
7

8 Consulting Town Engineer Barbagallo responded that the engineer who did the inspection is  
9 licensed to practice in the State of NY so the inspection was done by someone with a valid  
10 license. The interpretation of the code is really not permitted to offer or provide engineering  
11 services in the State of NY.  
12

13 Attorney Kenny stated it comes down to is that the engineering company owes some money to  
14 NYS doing this business in NY. The engineer, as we stated is licensed to practice in the State  
15 and all of the conditions in his report and design requirements in the report are correct; the  
16 report is done by a licensed engineer but the engineering firm let a certification lapse that they  
17 don't have and they're working on getting it renewed but they did have it before – they just  
18 didn't make the payment when they should have.  
19

20 Mr. Zaberto asked how does that make it any different than a NYS licensed driver who gets a  
21 ticket and doesn't pay it, and now his license is suspended, to operate a motor vehicle in NYS at  
22 the time he operates a vehicle he is not supposed to be operating it. I see that as the same thing.  
23

24 Attorney Kenny responded that it's not a license – it's a certificate of authorization which is  
25 legally a different document. They have a certificate from NYS Dept. of State to be an  
26 authorized business in the State but there is also a separate certificate under NYS Education  
27 Law that they have to have from the Office of Profession as an engineering firm, a surveying  
28 firm or an architectural firm. The actual licensed engineer though, the driver in your metaphor,  
29 was licensed – he properly did everything but the engineering firm has to pay certain money to  
30 have their certificate retroactively activated. They can do this; there is even a process in the law  
31 that if you let the renewal lapse, you have to pay some money and then it reactivates it  
32 retroactively. It's not the same issue as a license not being there. It's about money being owed  
33 to NYS and that's what it comes down too.  
34

35 Mr. McNamara stated it's the right to do business.  
36

37 Attorney Kenny agreed – they are based out of Georgia and they have to pay dues to do  
38 engineering business in NY, as a firm, as a company of more than one person.  
39

40 Consulting Town Engineer Barbagallo stated that his understanding is that the certification  
41 would hold but he's not an attorney. However, he can verify with the Office of Professions that  
42 they concur and then if they say no, we might just need a new date on the report.  
43

1 Attorney Kenny stated that would be the only thing but his understanding of the law is that if  
2 the license of the engineer who did the work was out, then it would be a different issue but this  
3 really going on fees owed to the State that need to be paid.  
4

5 Planning Board Attorney Eriole stated stating the question is would it in fact invalidate that  
6 under these circumstances because he doesn't think that invalidates that inspection because the  
7 distinction that the engineer has the license speaks to the qualifications to give us what we are  
8 demanding; it is a compliance issue for them – they have a problem – and if we knew about it  
9 ahead of time, we certainly would have asked them to remedy ahead of time to avoid this  
10 conversation but I don't think in retrospect it invalidates the inspection. This is an excellent  
11 question but it's more than just a minor irregularity so to speak but if the question is – does it  
12 invalidate the inspection, his legal advice is that it does not.  
13

14 Mr. Prince asked if the application is signed by the Corporation and not the individual engineer.  
15

16 Consulting Town Engineer Barbagallo stated that it's signed by the engineer but on the  
17 letterhead of the company. He stated there is a loophole, or a technicality here. He added that  
18 he might suggest that there was going to be a draft of a resolution for Chairman's signature.  
19 Why don't we have this one come back – get the resolution drafted and come back to the Board  
20 and in the meantime, he will give the Dept. of Education a call to assure that the Board is on  
21 firm ground.  
22

23 Ms. Gerbino asked if there was anything wrong with the Board requiring that actual engineer  
24 who did the work, that he use his NYS seal – that's all that she would require.  
25

26 Consulting Town Engineer Barbagallo responded to Ms. Gerbino that the engineer's seal is on  
27 there.  
28

29 Ms. Gerbino stated then that she doesn't think there is a problem. She is satisfied that it meets  
30 the Board's requirements and the engineer has a NYS valid license.  
31

32 Consulting Town Engineer Barbagallo stated that the issue is that the company has an issue now  
33 that they have to resolve and he would agree that the certification is firm for the Board's  
34 purposes but he's happy to follow up with them to confirm that.  
35

36 Mr. Zaberto stated to Consulting Town Engineer Barbagallo that he thought it would be prudent  
37 to cover that base. He understands totally, as he is a licensed NYS holder as an individual. He  
38 understands that the engineer was certified at the time and his opinions and evaluations based on  
39 his training and knowledge is probably valid but he is concerned about the company who  
40 dispatches that person, if they weren't supposed to do that, it might be an issue down the road.  
41

42 Planning Board Town Attorney Eriole stated that one of the key issues, because he can imagine  
43 a situation, is where we would have a compliance issue essentially with the company, but I did

1 not fall on the same side of this equation where he might say he thought there would be a  
2 problem. One of the reasons in this particular type of failure is the very fact that when they pay  
3 it, and his is why they should get busy paying it, so we can put this to bed, is actually  
4 retroactively effective. He asked Attorney Kenny if he was correct in that fact.  
5

6 Attorney Kenny stated that Planning Board Town Attorney Eriole was correct.  
7

8 Planning Board Town Attorney Eriole further stated that it retroactively goes back and it would  
9 actually cover the issue. The problem is that they were not in compliance but they can resolve  
10 that problem.  
11

12 Attorney Kenny agreed with Planning Board Attorney Eriole and stated that what he believes is  
13 a more important point which is there is a distinction between the license and the certification.  
14 They absolutely should have had the certification in place but he's not absolutely sure that it's  
15 the jurisdiction of this Board to enforce the certification. He further stated that he doesn't mind  
16 it being a condition of approval because they have to get it done and it is the prudent thing to do  
17 but the issue is that they have to get to the Office of Professions and get their certificate be  
18 renewed.  
19

20 Mr. Prince asked Consulting Town Engineer Barbagallos if he suggested that they change the  
21 date on the inspection.  
22

23 Consulting Town Engineer Barbagallos stated that he suggested changing the date on the final  
24 report would be the ultimate remedy if it wasn't retroactive but stated he can check on all that  
25 before the December 9<sup>th</sup> meeting. He suggested getting the resolution drafted, and he would  
26 check on this issue, and come back to the Board and provide it with a summary of that  
27 conversation. He further stated that, if in the process of that conversation he learned that they  
28 should forward date the report, he will pass it on to Attorney Kenny and get that documentation  
29 and the resolution will reflect that requirement.  
30

31 Attorney Kenny agreed with Consulting Town Board Engineer Barbagallos.  
32

33 Mr. Zaberto stated he was comfortable with that.  
34

35 Mr. McNamara stated that the Town Board can address the coordination issue.  
36

37 Consulting Town Engineer Barbagallos confirmed Mr. McNamara's statement.  
38

39 Planning Director Dym stated that by then we will know that all of the housekeeping has been  
40 accomplished.  
41

1 Consulting Town Engineer Barbagallo confirmed Director of Planning Dym’s statement and  
 2 stated that by December 9<sup>th</sup>, we will get that sign up and Attorney Kenny will let him know and  
 3 he will go out and take a look and we will get that sign-off done.  
 4

5 Ms. Gannon stated that just to be sure she is correct, the personal inspection that has to be done  
 6 will supercede NBNC’s inspection report because NBNC doesn’t supply evidence of licensing  
 7 either. She then asked Consulting Town Engineer Barbagallo if that is what he was looking for.  
 8

9 He responded that ultimately Bennett & Press is the one that is ultimately signing off on the  
 10 document; they are relying on information by others, which they are allowed to do, and then  
 11 they’re saying that we’ve done a personal site visit and now they are signing off on it as a  
 12 collective .  
 13

14 Ms. Gannon replied that’s even more reason why the state license is necessary because they are  
 15 then presenting under their auspices under licenses this inspection by another secondary party.  
 16

17 Mr. Zaberto stated that he doesn’t think he’s secondary because he is an agent/employee of that  
 18 company .....

19 Ms. Gannon stated – yes- a contractor whose licensure we don’t see here in (b) and (c).  
 20  
 21

22 Attorney Kenny commented that, as Consulting Town Engineer Barbagallo stated previously, in  
 23 many profession they are allowed to take the information that are supplied by non-engineers and  
 24 so the NBNC did a personal inspection site and they had all the reports and then this engineer  
 25 did a personal inspection site visit and reviewed all the information and certified it with his  
 26 NYS licensed engineer seal so that is common practice in engineering.  
 27

28 Consulting Town Engineer Barbagallo then stated to Ms. Gannon that the key point is the  
 29 certifying site engineer didn’t take somebody else’s site inspection; the relied on that but then  
 30 went out themselves as well and did their own so the person whose seal is on this document also  
 31 did a site inspection using the information that was done by the other company as supporting  
 32 documentation while he did that and then via his certification adopts it and takes responsibility.  
 33 In the end, we need somebody who is taking responsibility and the individual who stamps the  
 34 drawing takes responsibility and that also transfers to his company and therefore it’s not a  
 35 license for the company’s certificate of authorization as an engineer.  
 36

37 Ms. Gannon then confirmed that it’s not that he personally was there because the language is  
 38 that the person coordinated and overseen.  
 39

40 Consulting Town Engineer Barbagallo stated she was correct and that the person was  
 41 overseeing that work which he is allowed to do as an engineer.  
 42  
 43

1 Ms. Gannon stated for the purpose of that personal inspection is not by the person who holds the  
2 license; the personal inspection was still by the agent but the person who holds the license  
3 coordinated it.  
4

5 Attorney Kenny stated that he is basically taking responsibility for all that work and he put his  
6 license out there.  
7

8 Chairman Currie stated that he or she who puts their stamp on it is the one that is still  
9 responsible – that's the key.  
10

11 Attorney Kenny confirmed Chairman Currie's statement that he put his license out there and  
12 took responsibility for this work.  
13

14 Chairman Currie stated to summarize that the Board will see Attorney Kenny back at the next  
15 Planning Board meeting on December 9<sup>th</sup>, 2020. He then asked if anyone had any further  
16 comments or questions.  
17

18 Mr. Prince replied that he had a question corollary to this and it doesn't have to do with this  
19 particular case. We're talking about changing the code so that we get the users and the owners  
20 at the same. He asked if the Board had any input with regard to someone having a short  
21 renewal period.  
22

23 Mr. McNamara stated that the Town Board will change those guidelines.  
24

25 Mr. Prince that stated that on this particular project if in two years the operators come in for a  
26 renewal, we're going to bring back this owner to get it all together and asked if that was correct.  
27

28 Attorney Kenny stated that may be the case and they will comply with that. The issue being  
29 once the Town sets the new code, then we'll have more instructions on how to follow that  
30 process. The case may be we come back in two years because that's the time period set from  
31 the last carrier's renewal. He further stated that if more recent information presents, they may  
32 use the basis of some of the materials they have now.  
33

34 Chairman Currie stated that it's only going to happen once.  
35

36 Director of Planning Dym stated that she wanted to make one point: even though the Board  
37 coordinates renewals, there will still be ongoing applications for upgrades on a regular basis so  
38 the only thing that will get coordinated are the renewal application; there will still be regular  
39 Verizon and AT&T and T-Mobile applications that are separate from that as they modify  
40 whatever they have on these poles so don't think you're only going to see one set of things  
41 every five years – that's not going to happen.  
42

43 Mr. McNamara asked if that will still be a conversion to 5G.



1 Attorney Kenny stated not exactly – you will have sites where you have T-Mobile and Sprint’s  
2 merger. There may be some done to turn Sprint equipment into T-Mobile’s equipment and then  
3 you have regular upgrades that happen with these sites. You will see these sites come to you  
4 more than just the renewals but I think it’s still a good goal to organize the renewals if the goal  
5 is to have the carriers and tower be together on those renewals.

6  
7 Mr. Zaberto stated that if you consolidate only 30% of our applications from cellular and  
8 telecommunications companies, it’s a 30 % consolidation that you would have had otherwise.  
9 He further stated that he thinks it makes better record keeping for all of it – everyone coming in  
10 front of the Board – we’re knocking this out and gives us more room for other projects and  
11 approvals when they come up. He stated he is all for it.

12  
13 Chairman Currie agreed that it’s a win win situation.  
14

15 **DISCUSSION:**

16  
17 **PLANNING BOARD CALENDAR FOR 2021**

18  
19 Chairman Currie stated that the next item is the Calendar for the year 2021 and asked if anyone  
20 had a chance to review it.

21  
22 Ms. Gerbino stated that she had.

23  
24 Mr. McNamara stated he had no problem with the calendar.

25  
26 Chairman Currie asked Director of Planning Dym if they have to approve the calendar with a  
27 motion.

28  
29 Director of Planning Dym stated that she wasn’t sure.

30  
31 Planning Board Town Attorney Eriele stated they should because they usually do.

32  
33 On motion by Chairman Currie, seconded by Mr. Zaberto, and unanimously carried, the Board  
34 moved to accept the 2021 Calendar as presented.

35  
36 **AFFORDABLE HOUSING BOARD**

37  
38 Chairman Currie stated he had one thing to mention: somebody from the Affordable Housing  
39 Board asked him if there was some way they could be more in the loop on things coming before  
40 the Town, just for them, and wanted to know if anyone would be interested in being a liaison.  
41 He asked if there was any reason why the Board couldn’t send them information when it comes  
42 to the Board – on new projects.

43  
44 Mr. McNamara asked on what type of application.  
45

1 Chairman Currie stated that he assumed that it meant some housing that may fall under the  
2 criteria of affordable housing.

3  
4 Ms. Gerbino asked if they realized that the Board doesn't originate anything – but are  
5 applications that are made to the Board.

6  
7 Chairman Currie stated he would assume that they know that.

8  
9 Ms. Gerbino stated that she believed that they should work with the Town Board.

10  
11 Director of Planning Dym stated that it's not just the Town Board. For example, and maybe it  
12 should be at the discretion of her office – sometime in the last year, the Energy and  
13 Environment Committee was not on a regular basis for receiving applications from the Planning  
14 Board and they made a request to be a regular recipient. Perhaps that is what the Housing  
15 Board would want and that would be appropriate for certain applications, not for all – certainly  
16 not for a CVS application or wireless.

17  
18 Mr. Zaberto stated that in the case of the Energy and Environment Committee he is the liaison  
19 to them so if any plans that are forwarded to them, he would be able to “liase” with them and  
20 explain it through. He further stated that if the Board is to consider this, now or in the future, he  
21 believes there should be a liaison to explain a report – it might be easier to attend those  
22 committee meetings and disseminate that information as he does. He believes it is effective and  
23 so does the Energy and Environment Committee.

24  
25 Chairman Currie stated that he should just keep them in the loop at Director of Planning Dym's  
26 discretion. He asked if the Board agreed with that.

27  
28 Ms. Gerbino confirmed that stating they should get the Planning Board Minutes and Agenda to  
29 educate them.

30  
31 Mr. Zaberto asked if they could request their mission statement. He knows that they have  
32 existed but would be interested in their mission statement.

33  
34 Chairman Currie agreed with Mr. Zaberto and stated he would call them back.

35  
36 Chairman Currie wished everyone a Happy Thanksgiving.

37  
38 **There being no further business, on motion made by Chairman Currie, seconded by Mr.**  
39 **Zaberto and unanimously carried, the meeting adjourned at 8:28 p.m. The Chairman**  
40 **announced that the next Planning Board meeting will be held on Wednesday, December**  
41 **9<sup>th</sup>, 2020 at 7:30 p.m.**

42  
43 Respectfully submitted

44 

45 Loretta Pugliese, Transcriber  
46

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4 Somers, NY 10589  
5 914-277-3504  
6  
7