

John Currie, *Chairman*
Vicky Gannon
Nancy Gerbino
Eugene Goldenberg
Dennis McNamara
Bruce Prince
Christopher Zaberto

PLANNING BOARD

Town of Somers

WESTCHESTER COUNTY, N.Y.



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SOMERS PLANNING BOARD MINUTES
REMOTE MEETING HELD VIA ZOOM
MAY 13, 2020

ROLL:

PLANNING BOARD

MEMBERS PRESENT: Chairman Currie, Ms. Gannon, Mr. Goldenberg
Mr. McNamara, Mr. Prince and Mr. Zaberto

PLANNING BOARD

MEMBERS NOT PRESENT: Ms. Gerbino

ALSO PRESENT:

Consulting Town Engineer Joseph Barbagallo
Director of Planning Syrette Dym
Planning Board Town Attorney Joseph Eriole
Planning Board Secretary Barbara Sherry

Chairman Currie asked that everyone say the Pledge of Allegiance together.

The meeting commenced at 7:30 p.m. Planning Board Secretary Barbara Sherry called the roll and noted that a required quorum of four members was present in order to conduct the business of the Board.

TIME EXTENSION:

ANIKO BANFI & BRUCE WARD – APPLICATION FOR FINAL SUBDIVISION
APPROVAL – TM: 48.08-1-34

Chairman Currie stated that Syrette Dym's, Director of Planning, memorandum explained the circumstances of why the subdivision plat has not been filed. He noted that Aniko Banfi & Bruce Ward are requesting a 90-day time extension for the filing of the subdivision plat with the County Clerk. Chairman Currie asked if there were any board member's comments or if Director of Planning Dym had any comments?

Director of Planning Dym stated Aniko Banfi has been on top of everything and obviously there has just been a holdup. She noted that we did get some kind of correspondence from the county, but it's not clear and we all felt it was best if we gave her the extension just so there are no issues.

Chairman Currie agreed.

Mr. McNamara stated that we may expect a few of these with what's going on at the county office and the state offices.

On motion by Chair Currie, seconded by Mr. McNamara, and unanimously carried, the Board moved to approve the 90-day time extension for the filing of the subdivision plat with Westchester County Clerk beyond the 62 days of signing of the plan, and that the property is located at 37 Mekeel Street in the R 80 zone.

INFORMAL APPEARANCE:

SOMERS SANITATION INC: - TM: 28.10-1-7.1, 9 and 11

Chairman Currie stated next on the agenda was the Informal Appearance concerning Somers Sanitation. He asked if those who are representing the applicant would just give a brief presentation.

Leslie Snyder, partner in the law firm of Snyder and Snyder, stated she was here tonight on behalf Somers Sanitation, Inc.

Attorney Snyder acknowledged that it's good to see that all are well during this difficult time and she appreciates the Board taking the time to consider this application. She explained that Somers Sanitation has submitted a sketch plan, and other documentation, in order to have the Planning Board perform an informal review so that Somers Sanitation can proceed to a more formal site plan. She noted that Somers Sanitation is requesting approvals to improve its existing solid waste transfer recycling facility at the property known as 241 Route 100. Attorney Snyder stated that this property consists of over 13 acres and is located in the Office and Light Industry (OLI) zoning district where recycling facilities are permitted. She explained that the proposed improvements are solely in order to comply with recent requirements from the Department of Environmental Conservation (DEC), and in order to comply with these DEC regulations, the applicant is required to have a fully enclosed building so that all the materials the applicant processes at the site will be handled in a fully enclosed building prior to being transported to an

off-site location for final disposal or reuse. She further explained that in addition to the fully enclosed building, the applicant is proposing to replace its existing scale house, with an updated scale house, to weigh the material and a parking pavilion to cover the applicant's vehicles. Attorney Snyder noted just by way of background, for more than 30 years the applicant has been operating the facility, providing transfer and recycling of non-hazardous materials, to service the town of Somers and the surrounding area, providing necessary infrastructure to the community; designated as a Town of Somers recycling facility and it annually sponsors the bulk refuse drop-off as well as many other community programs.

Mr. Zaberto asked Attorney Schneider if this project is an elective project or is this pursuant to some sort of regulation legislation to have this done.

Attorney Schneider stated it's pursuant to the New York State Department of Environmental Conservation (DEC) regulations. She explained that the regulations are requiring a fully enclosed building and right now they have a roofed enclosure that she actually worked on and got approval for from the town in 1993.

Consulting Town Engineer Joseph Barbagallo asked if this was the result of a violation or just simply a regulatory change?

Attorney Schneider stated there is no violation and that this is just in connection with recent regulations that will be put into effect over about the next two years.

Rich Calogero, Senior Project Manager from Cornerstone Engineering, put the conceptual site plan up on the screen so everyone could see it and explained that he is the Project Manager on this project and there is a professional engineer that is reviewing and signing all of the plans. He explained that the New York State DEC changed their regulations a couple of years ago requiring the handling of all solid waste, construction debris recyclables within a fully enclosed building. He further explained that the current structure doesn't have doors, it has two openings and that the vehicles back into the building and can tip but can't completely get inside the building so that's the requirement today. Mr. Calogero noted that a facility currently can continue to operate under its existing permit but needs to come into compliance with the new current regulations by May 2022, when their permit would be up for renewal. Mr. Calogero noted that as stated, right now there are two scales; there's a scale that's basically right on the property line which is going to be removed to sit between the two scales. He explained that there's an inbound scale and an outbound scale; the vehicles come in on the inbound scale, as they currently do, and they tip in the existing structure. Mr. Calogero noted that with the construction in the new structure, they'll be weighed, they'll come in and they'll back into the building completely and then either tip construction debris, solid waste or recyclable material on the tipping floor which is then loaded into larger tractor trailers to be sent off-site for either disposal or in the case of the recycled materials, taken to a processing facility where there they are reprocessed and dealt with that way. He explained that the trailers will be in a loading tunnel, they'll be loaded, there will be a scale in the loading tunnel so that when the trailers meet their weight they can then be removed and either taken directly off-site either to the recycling facility, to a disposal facility or they can be parked in the parking pavilion, which will be

covered. He noted that there's an outbound scale so the trucks coming in, after they tip, can then be weighed so that the care weight can be obtained and then they exit the facility.

Attorney Snyder stated that those are the three details of the improvement that Mr. Calogero explained. Attorney Snyder explained that they will need three variances, which we will end up having to go to the Zoning Board of Appeals for. She stated the scale house building will only be 24 feet from the property line and there's a 40 foot setback, which is shown in the green dashed line. She also stated there is a requirement in the code for a 50 foot vegetated area between this project and a residential zone so this property is all residentially zoned although it's UNAUDITABLE - 13:15 on you tube) and not sure that it's even really buildable. Attorney Schneider stated that's the Majestic property and it is very vegetated back there but we'll look around as we're going to need some relief. Attorney Snyder opined that they just wanted to show the three improvements being proposed to make sure the Board doesn't have any objection to anything that is being proposed so that they can proceed to Site Plan and go to the Zoning Board for the necessary variances.

Chairman Currie asked if that was all from the applicant and asked for comments from Consulting Town Engineer Barbagallo or Director of Planning Dym.

Director of Planning Dym stated that she has had several conversations with Attorney Snyder and looked at this initially and thought the applicant should come to the Board informally. Director of Planning Dym noted the property is three lots: A long skinny lot, where the scales are, which is where the entrance driveway is off of Route 100, the main central lot, where the new building would be and the pavilion is on the third lot. She noted that she discussed with Town Attorney Baroni about the merging of the three lots and after she had a conversation with Attorney Snyder, it became clear that the original approvals really were for the first two lots and that third lot, which is where the second access off of Route 100 is, was a separate approval. She explained that what they are going to do is merge the first two lots so when we see in their final application the bulk table calculations will not be for the 36 acres. It will be for the acreage of the first two lots and the requirements that they need for their variances will be based on that. She explained that the building, which the pavilion is on, is actually on the third lot so it gets a little more complicated. She noted that the applicant now knows what they have to do and according to Town Attorney Baroni, they will do these calculations now, they don't actually have to accomplish the merger until we get close to final approval and they need to accomplish that before any final approvals are granted. She opined that this is a good reason why they did this informal initially and got this part kind of straightened out.

Consulting Town Engineer Barbagallo asked if Town Attorney Baroni discussed if the pavilion is going to be on its own lot. He noted that the pavilion has no access from the lot in which it's on so essentially we're building it in the corner of that lot.

Director of Planning Dym stated that Town Attorney Baroni didn't talk about that but she and Attorney Snyder talked about that for exactly the reasons that Consulting Town Engineer Barbagallo is looking at now in that you can't access it because of the steep slopes. She noted the worst thing that they determined is that the applicant will also have to provide an easement

from what will turn out to be the first two merged lots in order to have access to that parking pavilion, which has access from the first driveway off of Route 100.

Consulting Town Engineer Barbagallo questioned that even if we had an easement from one lot to the other, right now both lots are owned by the same entity but what's to say that in the future they won't be?

Director of Planning Dym explained that the first two lots are owned by the same entity, which is why they can be merged and according to Attorney Snyder, the third lot is not owned by the same entity and that is why all three lots are not being merged together.

Attorney Snyder explained that that's not exactly accurate but the reality is the two lots, 7.9 and 9 will be merged prior to final approval. She noted that lot 11, which is the big lot to the left of where the parking pavilion is, has access and frontage on the street but it will be accessed going through lot 9 so what I discussed with Mr. Baroni is that lot can operate independently so that will have an access easement which we'll record so you can get???? (Joe Barbagallo interrupted...23:30 on you tube).

Consulting Town Engineer Barbagallo stated that he understands all has been discussed and trusts that legal instruments will be put in place. He explained that he is looking at this a little differently, meaning there is access off Route 100 into this lot but there is no way to get to this building from that access and that's the lot that it's on. He questioned if they need to demonstrate that it is possible to build access?

Attorney Snyder explained that if you have a valid access easement, as long as it fronts a road, then you're allowed to do it through an easement but we can talk about that offline.

Consulting Town Engineer Barbagallo explained that he wants to think about it and talk to Attorney Baroni about it because it raises questions why we're not cutting a piece off of that other lot merging it with this one for example to keep all the things on one lot because otherwise you wind up with a building on a lot that the only way you can access it is through another property. He noted that unless that's going to be in perpetuity, the access, if they sold it, that the person they sold it to could still leverage that same access.

Attorney Snyder stated it would run with the land.

Town Consulting Engineer Barbagallo questioned if they are looking for an increase in the thru traffic capacity in any way, the recyclables or solid waste as part of this coming to compliance with code?

Attorney Snyder answered no, nothing will change.

Town Consulting Engineer Barbagallo asked if the exact permit limits that are now in place would remain in terms of tonnages in recyclable so there won't be more traffic because there's more waste coming through; it is the same amount of waste, just doing it in a building instead of a combination of in and out?

Attorney Snyder answered, exactly.

Director of Planning Dym stated she thought she read something in the materials that was submitted, that there was going to be some new activity on the site.

Attorney Snyder answered, no, not this application; everything is the same and we will be operating under the same permit renewing that same permit.

Town Consulting Engineer Barbagallo asked Mr. Calogero that when the site plan is prepared, it is really important understanding existing surface conditions from impervious perspective versus existing business proposed for the stormwater. He noted that the stormwater is going to be a pretty big issue. He stated there is not a whole lot of space to do anything with and there may be more easements required on the other lot in order to accommodate more stormwater patrols. Consulting Town Engineer Barbagallo suggested that the applicant should be leveraging the redevelopment rights and see what can be done from a stormwater perspective.

Mr. Calogero stated that currently, all the Stormwater is directed to a large stormwater basin on lot 11 and the plan is to continue to direct all stormwater to that basin.

Town Consulting Engineer Barbagallo stated that we will have to prove out the sizing that works; it might have to be expanded, it might need to prove additional treatment and he suspects there may be a need for easements; stormwater easements and maintenance agreements, because you are relying on a stormwater treatment that lies on a lot not owned by the applicant. He noted that he will have to understand the maintenance agreement and how the maintenance agreement between the two land lots function.

Attorney Snyder explained that won't be a problem because the same entity controls all three of the lots.

Chairman Currie asked if there are any Board Member comments.

Mr. Prince questioned if the three lots are controlled by the same entity, why is the ownership separate; who owns the third lot?

Attorney Snyder stated that the three lots are separate legal entities but the owners of the three separate entities are related, so there are three legal separate entities for each lot but the related parties are the principles and that's why we will be able to work collectively.

Mr. Prince stated he is still confused and asked why the 3 lots can't be combined?

Attorney Snyder stated that lot 11, several years ago, had its own site plan; it actually may have some other potential uses in the future so it really should be treated separately. She opined that there is no real reason to treat all three lots as one lot.

Ms. Gannon stated that she can see that there's an access drive coming off of Route 100 that comes in and above that. Below the proposed parking pavilion there is an area called empty container parking but has not been to the site so asked the applicant to indicate where the drive goes and to describe the type of ground coverage that there is and what goes on at empty container parking.

Mr. Calogero explained that when you enter the area, it's all basically gravel open area/open yard. He stated that Somers sanitation actually leases this area and they store empty roll-off containers down there.

Ms. Gannon asked how long has the area been gravel?

Mr. Calogero stated it has been that way as long as he's been working with Somers Sanitation, 15 years now, that they have been using it for empty container storage for quite some time.

Consulting Town Engineer Barbagallo stated he has two questions now associated with that aspect; will that area continue to be used for empty containers in the future?

Mr. Calogero said I believe so.

Consulting Town Engineer Barbagallo asked if that should be part of the site plan?

Attorney Snyder stated she believed they already had a site plan to put those containers there.

Consulting Town Engineer Barbagallo stated as we start looking now at this as really two connected approvals, shouldn't lot 11 start with what was approved before and this is going to be a modification to that site plan.

Attorney Snyder stated she thought that is actually a good point. She suggested that the lot 11 site plan be modified and agreed to keep that lot separate and then she suggested that the other two lots will become one lot and that'll have its own site plan.

Consulting Town Engineer Barbagallo agreed.

Attorney Snyder stated that's very helpful.

Mr. Prince asked Mr. Calogero if he could trace on the map how you get out from the proposed parking pavilion back out to Route 100 because he distinguish that on the map.

Mr. Calogero agreed and said that it will be a lot clearer when the plan is actually engineered. He explained that right now this plan this is just a concept plan, a sketch and then showed the exit process on the map.

Mr. Zaberto noted to Mr. Calogero that he stated that the trucks are required to do the tipping, and I'm assuming dumping the refuse inside the building. He asked how much higher is the new

proposed structure compared to the current; is there any increase in height and any increase in square footage, is it going right over the current footprint?

Mr. Calogero stated yes, one of the bearings that we need is a variance. He explained that the existing building is 32 feet high, which is two feet higher than the code allows, it allows for a 30 foot structure building and a 34 foot high building is needed. He further explained that the building is approximately 40,000 square feet, which is more than double the size of the existing building, and the reason for that is to be able to get the vehicles in but the collection vehicles will come and they need to be fully inside the building not just the back end.

Mr. Zaberto asked if they are required to have carbon monoxide ventilation systems in there now since you're going to have trucks coming in and out, is there an exhaust system on the roof?

Mr. Calogero stated there is ventilation requirement and the building will be designed to include that.

Mr. Zaberto then asked if the machinery that's required for that on the roof if it encompasses the 34 foot height or is it proposed to go even higher than that with that equipment?

Mr. Calogero stated no, INAUDIBLE (36:30 ON you tube) the fans will be on the rear of the building.

Attorney Snyder stated that the equipment is not going to increase the height of the building more than the 34 feet.

Mr. Zaberto asked if the proposed parking pavilion is fully encompassed with walls or is it just a canopy top or is it just open?

Mr. Calogero stated that it's just a canopy top and it will be connected to a storage tank for any fluids leachate that could drip out of the trucks. He explained that right now, the full trailers, if they're not removed immediately, are stored over here, this is where the existing building sits right on the property line. He noted that there is a concrete pad that has a wall and there's a drain that's connected to an existing tank so all of those fluids are collected in a tank and then removed for disposal periodically. Mr. Calogero further explained that the roof is intended to reduce the volume because right now any rain water that falls on the parking area is leachate and ends up having to be trucked off-site for disposal so by putting a canopy over the top, the amount of water that has to be removed for disposal will be significantly reduced.

Mr. Zaberto asked if none of this is to accept hazardous waste at this facility, right, like waste oil or anything like that.

Attorney Snyder stated no hazardous waste.

Mr. Calogero stated no and it's just it's taken off-site to a wastewater treatment site.

Director of Planning Dym asked Attorney Snyder if this is in a groundwater protection overlay district?

Attorney Snyder stated it is so we'll need to get that special permit for that as well.

Director of Planning Dym stated we need to make sure that we look carefully at how they're collecting everything and what the impacts are.

Mr. McNamara stated that we are quite a ways away from site plan approval so we'll probably wait to see what happens when you go for your variances.

Director of Planning Dym stated that they will be coming back after they appear before the ZBA and asked Attorney Snyder if the intent is to really make these into full site plans.

Attorney Snyder stated that they will submit plans in June for the July meeting.

Director of Planning Dym stated a full engineered plan based on all these comments needs to be submitted and Consulting Town Engineer Barbagallo and I will be talking with the applicants about a couple of things between now and then but there's lots of things that they need to do. She expressed that they need to clearly identify where the driveways are and how all these things on the site are accessed from these driveways and the scales etc. make it all very clear; it's almost impossible to see where those are now. She explained that at the meeting in July is when the Board would indicate its intent to be lead agency and they would clearly identify, at that time, what their need for variances are. She agreed with Consulting Town Engineer Barbagallo regarding a Site Plan for lot 11, that building itself may require another variance if we have to make sure it is or isn't defined that pavilion as a structure. She explained if it's a structure, it won't need variances but it clearly is closer to the property line then setbacks would require so all of this has to be looked at carefully. Then the Planning Board would presumably take a look to see what they think and would then move onto the Zoning Board and the Planning Board give some type of a memo to the Zoning Board related to it's acting as Lead Agency and where it stands on these variances. Director of Planning Dym stated that another thing that was just brought up is all of the fans in the big building and one of the things the Board and staff need to see in the EAF when its revised is what the increase is from the building sizes, what the existing is versus the proposed on all of these and what kinds of noise factors what DBAs.

Attorney Snyder said this will actually be an improvement because right now it's outside, it's not enclosed so the noise will actually be less but will be able to present that.

Mr. Calogero stated that the fans wouldn't be running at night either.

Director of Planning Dym stated that will need to be explained.

Consulting Town Engineer Barbagallo stated that since Lead Agency was brought up, he asked how the DEC permitting is being handled and asked if the Town is coordinating in any way with the DEC and if the DEC is also going to seek to be Lead Agency on their permit? He asked if

the applicant has had any conversations in that regard about the DEC's role or is the applicant getting the DEC solid waste permit as a condition for final approval

Attorney Snyder stated that this is a renewal. Since they have a permit and they've had some preliminary discussions with DEC, they were looking for the town to be Lead Agency so they'd be looking for the Planning Board to be the Lead Agency. She noted that this is an enhancement and that obviously these are all improvements that make the site better so they're just waiting for the Town's Negative Declaration.

Mr. McNamara asked that because these ultimate site plans are intrinsic and busy, can the Board get full-size paper copies?

Attorney Snyder stated, of course and opined that it's a lot easier than looking at it on the screen and understands that concern.

Mr. Prince stated that the Board would have to have a site walk then have some input on these variances that the Zoning Board is going to be asked to approve

Chairman Currie stated that we are not yet near a site walk.

Town Attorney Eriole stated that if the applicant goes to the ZBA, the procedure for obtaining a variance would be the same as is typical and that would involve referral to the Planning Board for its comments.

Chairman Currie stated that maybe the Board should set up a site walk.

Mr. Prince stated that having recently been on the Zoning Board, the variances that they're asking seem to be extremely complicated and he opined that they need the expertise of the Planning Board to make their suggestions so that the Zoning Board will have a lot more information than they normally have on approving variances because this seems to be a unique problem here.

Mr. McNamara said he doesn't disagree.

Mr. Calogero asked if he could just point out a couple of items with regards to the variances that they are going to seek, right now there is a scale house building that is right on the property line which is proposed to be removed and put a scale house 24 feet from the property line and this vegetated buffer area is supposed to be 50 feet (the requirement is 50) from a residentially zoned area, which is inside of this blue area, right now the transfer station building is literally on the property line so the structure will be away from the property line.

He explained that this is all woods and as you go to the north there's a steep slope to the next roadway which is eight or nine hundred feet up the hill; this is all heavily wooded, it's a relatively narrow strip with overgrown trees and shrubs so the variances are not that complicated but the three lots and some of the idiosyncrasies of that maybe. He opined the variances are

relatively simple and are less than the existing issues with the buildings being literally on the property line.

Attorney Snyder stated that just so the Board is aware, variances were obtained for what's there now.

Mr. McNamara stated he's used the facility several times and never realized that the scale house was on the property line, it just appears to be totally onsite.

Attorney Snyder agreed and said because it is so wooded, the scale house does appear to be totally onsite.

Consulting Town Engineer Barbagallo stated there are two different scale house locations; the one right on the property line is not the one used routinely for the public; the one more interior is what they use routinely for the public and the traffic flow is in a clockwise direction now, but they are putting it back to where it should be in the counter clockwise direction so that's good. Consulting Town Engineer Barbagallo stated he will need to pull out the old Site Plan and then that'll be the starting point from looking at going to a modification. He opined that impervious surfaces, for example and if the old site plan showed impervious surfaces in one area and now over time those have grown, those areas that it has grown is not considered existing for our stormwater analysis; it's going to go back to what you had a permit for. He questioned how closely the existing operations are to the existing Site Plan. Consulting Town Engineer Barbagallo stated that he has lived in this town for twenty something years and has seen the town grow, adding recyclable areas here, adding drop off areas there and is just wondering if they were ever on the original site plan.

Mr. Calogero stated he did not know but this area right here is all millings that most of the site is covered with asphalt millings.

Consulting Town Engineer Barbagallo agreed and stated that his question ultimately comes back to is are those areas and compliance with your site plan or are you in violation of your existing site plan.

Attorney Snyder stated that they are not in violation of the existing site plan but as the original properties go way back, more than 30 years, and was originally from a predecessor of two owners ago so when you say site plan, there's probably pieces that have come over the many years. She stated that lot eleven has a site plan in 2000 and whatever year the other ones are so old because this actual property has been used, it's more than thirty years she believed it was been used for this use since like the 1920's. Attorney Snyder said they appreciate this because their proposal is to improve the existing operation and they want to work collaboratively.

Mr. Calogero said in 1993, when this building was put up, there was a concrete slab here and the materials were brought onto that slab, loaded into larger vehicles and taken off site for disposal. He further explained that in the early 1990's, the DEC changed their regulations and required that the waste be transferred under a roof. He explained that Attorney Snyder and its predecessor to the current applicant went to the town and received approval to put the structure up as an

improvement by putting the material in a building and we're basically back doing the same thing for another upgrade to meet new regulations.

Mr. Zaberto stated he's sure all that's true but the Board has to make sure since 1993 there's been a lot of changes to our town code and that's why Consulting Town Engineer Barbagallo is really concerned about stormwater. He noted that Planning Board and staff want to be thorough and make sure that everything is in compliance and that's really for the applicants safety as well as the safety of everyone within the town to make sure that the facility is operating properly, and he agreed it's collaborative but the Town has to make sure that it's conforming with all regulations and a variance may be necessary. Mr. Zaberto agreed with some of the sentiments on the Board that a site walk would be too premature. He believes that there is a lot of research that's got to get done to make sure that this is heading in the right direction from the beginning.

Ms. Gannon asked who is the engineer for these plans?

Mr. Calogero said Francis Schlock.

Chairman Currie asked if there were any other board member comments and there were none. Chairman Currie directed the applicant to get in touch with Consulting Town Engineer Barbagallo and Director of Planning Dym.

Attorney Snyder stated they appreciate the Board and staff's input and for this time.

DISCUSSION:

DRAFT LOCAL LAW RE: AMENDMENT OF ARTICLE IIIA CONSERVATION ZONING OF CHAPTER 170 ZONING OF THE CODE OF THE TOWN OF SOMERS:

Chairman Currie said last on our agenda is the discussion of the Draft Local Law. He asked Director of Planning Dym to lead the discussion.

Director of Planning Dym stated that this came about as part of the review of the Cobbling Rock Estates Subdivision and what was determined, as she looked at the zoning, was that even though the Board had treated two prior subdivisions in a similar manner, the zoning itself actually did not address the way the Town wanted to treat these. She noted that she discussed with Town Attorney Baroni what she felt was missing in the ordinance and he agreed and determined to make a very simple addition to article IIIA the Conservation Zoning and that happens in Section E. She explained that currently the way the Conservation Zoning reads, the only way you can do a hunt or create a conservation area is if a recognized conservation organization or the town is willing to accept those conservation areas. What we found in the past was, except for very large significant conservation areas such as Stewart's Farm, there aren't conservation organizations that are willing to take them and the town is not interested in taking these so we now have projects where there are smaller areas that encompass either steep slopes or wetlands or areas that are environmentally sensitive. The proposals have been to include these on individual lots to preclude the need for a homeowner's association which the Board and the rest of us have

determined, in the end, are not that effective in controlling these so in order to create subdivisions where these type of sensitive areas can be deed restricted on individual parcels, an amendment to the zone is needed. Director of Planning Dym read the new language and says the ownership of all open space areas, and this is the change within the conservation subdivision, shall be divided among all owners of building lots having such open space areas on their respective lots. She noted that as long as they are within a lot and they are a deed restricted area it becomes the responsibility of the individual homeowner who purchases that lot with the deed restrictions all of that will of course be made known as part of the purchase of that property, and there those properties will remain in perpetuity that they will not be able to be built upon or in any way destroyed so that's really what this is all about. It is on for a Public Hearing tomorrow night at the Town Board and if the Planning Board is an agreement, she will take your recommendation, write something tomorrow morning and send it over to the Town Board so they know what the Planning Board's disposition is on this and then presumably the Town Board will be able to open/close the public hearing pass it and if Cobbling Rock appears at the June Planning Board meeting, then the Board will be able to act of the preliminary subdivision because this will have been approved and the Board will be able to act on the lots that actually are reflected of this new type of zoning.

Mr. Zaberto asked for clarity, does that mean now that these conservation lots will be married to a lot that will have a house on it?

Director of Planning Dym stated that is correct.

Mr. Zaberto asked if it's the homeowner's responsibility to maintain?

Director of Planning Dym stated that is correct and that will be part of the deed restricted and the amendment identifies that each individual homeowner has the responsibility for conserving these. She explained that the Board actually did this in the past on two different projects without understanding that in fact the zoning did not address that so we're now correcting that.

Mr. Prince asked if the homeowner is required to maintain it or just not build on it.

Director of Planning Dym said they're not to disturb the area.

Mr. Zaberto said he doesn't expect them to trim trees and grass but it can't be touched UNAUDIBLE and asked if it goes towards their total acreage, for example, their deed acreage and potential tax calculations based on the lot size, for example,

Director of Planning Dym stated she didn't know how the tax assessor treats the fact that they have these conservation areas on their lots but she can certainly ask.

Town Attorney Eriole stated that in these situations, and this is a relatively common approach in zoning ordinances, but on the specific question usually one of the advantages of accepting the burden of a conservation set-aside on your property that is taken into account is because it diminishes the development value of your property and so usually it does affect so the trade-off for the town is the open space, etc and for the individual they get an amenity and for the town

you end up with a deed restriction where every owner knows going in that they've got responsibility there. He stated he wanted to adjust one other thing that came up which is that the language of the restriction itself will spell out what their obligations are so it's not just a matter of where the deed restriction will say and you've got a conservation easement on your property. He explained the language as it's ultimately crafted will let the owner know both their obligations but more likely as Director of Planning Dym said, it's more about non disturbance actually and what they can't do in the area but to answer the question that was asked it will be spelled out in the language.

Mr. Zaberto said he doesn't have any objections to the way Director of Planning Dym presented that language to recommend to the Town Board.

Ms. Gannon asked if the original language is written toward clustered development. She stated, imagine a situation where you have, like my screen in front of me, a big rectangle, but we have some land we want to conserve off to the right hand side so we cluster the housing and it's appropriate to the situation and we cluster it off to the left and leave that portion of the right as the conservation easement with the responsibility equally divided. She noted that it sounds more like it's written for that situation and changing it would seem, in the way it's changed, she opined it's totally appropriate the change has suggested for Cobbling Rock, but Ms. Gannon wondered how it would fit if at some point with a parcel that was appropriate for cluster development and a conservation subdivision. She asked Director of Planning Dym, Town Attorney Eriole and Consulting Town Engineer Barbagallo if they foresee any problems down the road for development that the Board can't see and don't have on the table today would this be an impediment doing something with.

Director of Planning Dym stated she is not clear on what Ms. Gannon is saying. She noted that the language is saying that before it was allowing to be equally divided and required the creation of a homeowner's association.

Ms. Gannon stated that's what she is thinking, it's sort of meant for a cluster because you don't have to be adjacent to it you could be off to the side but everybody together had a responsibility for the whole thing that's why it feels like it was written for cluster subdivision situation.

?? (maybe Eriole??) said he thinks that's true and the idea here would be that Ms. Gannon concerns would be covered by the fact that not every homeowner would necessarily share in the new way that this is being proposed, that it might turn out to be like in the example of Ms. Gannon's rectangle. He explained that if the set-aside land was all to the right side of your rectangle, then the only adjacent properties that would have that deed restriction and be responsible for it and the lots would be appropriately sliced up in this way would be the ones that bordered, on for lack of a better word, that or included that land to the right of the rectangle and so what it does is it takes out the notion of the entire community supporting that through a homeowner's association and just makes it something that any buyer is taking into account when they say hey I love this lot and this is one of the things I love about it and this is one of the things you've got to know to take care of it.

Ms. Gannon stated that as long as it doesn't cluster development on a subdivision in the future because that can provide the avenue toward a less intrusive development of the land.

Consulting Town Engineer Barbagallo stated, it's a great concern and simply you will not be impeded in that consideration.

Ms. Gannon stated that in that case, she has no problem with it.

Mr. Prince stated to Chairman Currie that he is confused with what Ms. Gannon is saying. I think it's important why aren't we adding this as an alternative way of doing conservation and not in replace of homeowners or am I misunderstanding this.

Consulting Town Engineer Barbagallo stated one of the things the Board could discuss is whether or not it wants to add this kind of possibility as one of the ways without eliminating the other that are already in the code, that certainly could be part of the Board's recommendation. He opined the primary focus is that it's a really prudent thing to add one way or another. I will say that is a way from the homeowners association concept and even the town ownership concept because once upon a time when these provisions were originally conceived of, there were these conservation entities. The towns themselves were excited about managing such properties and incentivizing people to do it and kind of UNAUDITABLE credit for having locked these things down these days that's just not the case anymore. It's become very rare that anyone can be found to take care of this so the homeowners association solution theoretically solves that but you then potentially end up with and they have also fallen a bit out of favor because for one thing, if the homeowners association fails you know because there's some really systemic fundamental problem with the homeowners association ability to keep things up. You've kind of got know where to go with it but also the homeowners in that case you do sometimes have lots participating that aren't really benefitting from the adjacency, for instance, of that conservation area so he's not suggesting that leaving those things in the provision are a bad idea because it's possible that a case will come along where somebody is willing to do it and it seems like the right thing to do so that's certainly something the Board could consider but that that's kind of where the trend is.

Mr. Prince opined the Board should leave the option open for both things a UNAUDIBLE - (1:14:50 on you tube) said you could have a situation where this cluster housing and you don't want to put responsibility of a conservation area on the one house that happens to be adjacent to the conservation area when the other houses are in a homeowner's association for say ??

Director of Planning Dym stated you comment on this if there is one home that has responsibility for it there will not be a homeowner's association.

Consulting Town Engineer Barbagallo stated that's right. He explained that in a particular case, if the Board opted for the option that's being described by this zoning code change, this text amendments, then there would be no need for a homeowner's association. If there was a homeowner's association, they wouldn't have responsibility for it; it would just be that one owner or the various owners whose land encompassed the conserved area. He opined what's being suggested by Mr. Prince is that you could have a situation where, in particular, the applicant was

willing to establish a homeowner's association and it seems to the Board like a reasonable thing to do a better plan. Consulting Town Engineer Barbagallo explained that in other words, maybe the conservation area is part of like a centrally located area that everybody does benefit from, they are not mutually exclusive necessarily and it is something the Board could discuss if they were inclined to go that way.

Mr. McNamara said this town has had two basic different types of developments; one built single-family homes on oversized lots, which typically have conservation areas within an individual lot for which that homeowner is responsible; and the other is the cluster like the Willows or Greenbriar where the homeowners deliberately form a homeowners association to take care of centrally located lands used by all of the members. The Town has to have regulations which covers both types.

Mr. Zaberto stated that he agrees with Mr. McNamara but has one question; what can a homeowner's association physically do with the land that's designated under a conservation situation like this; can they make trails; can they put benches; or is it just land that can never be touched; what's the functionality?

Mr. McNamara stated it's land that is not developed. He opined that homeowners associations have failed, for example, look at Greenbriar, look at the drainage easements problems that they've never addressed.

Mr. Zaberto stated that he can argue about Lake Shenerock and their association and in Purdy's. He opined that he noted that he that the individual homeowners associations fail for different reasons. He explained that if he was in this situation and wanted to form a homeowner's association within my clustered homes and has these conservation easements that are within the development, what can I do with them other than never touch them, so what is the incentive for an HOA. He noted that he understands Mr. Prince's point about common areas right roads, areas that aren't designated as conservation that they can utilize an empty lot/double lot, the Town can put a park there but what exactly can be done with one of these designated areas other than attach it to a deed and tell the homeowner that the four acre lot that you were about to buy is now six and you can't do anything with those two acres. Mr. Zaberto opined that the new proposed legislation would end up doing.

Consulting Town Engineer Barbagallo stated that he didn't think having the easement means you can't use it. The hard restriction is you can't develop it with anything that requires a permit. He stated you can't cut trees, you can't put down impervious surface but you could walk your property, you could probably hunt that property, but doesn't think that there are access restrictions.

Director of Planning Dym stated that the whole point is that these are environmentally sensitive features and need to be preserved.

Town Attorney Eriole stated that typically the language that is used in this type of easement is that passive recreation is the most that's allowed. He agreed with Consulting Town Engineer Barbagallo that you can't do anything that would require a permit. He opined that what

Mr. Prince is saying is the nature of the restriction will be determined by the Planning Board's review; for instance, if the conservation easement area, whether it's controlled by individual land owners or a homeowners association, whatever the case may be, is going to describe what that applicant or what that owner is allowed to do in the property so you could have a situation where they've got an affirmative obligation to develop walking trails or whatever the case maybe; or you could have a restriction when the approval comes down that says you can't do anything there except walk and enjoy the view. Town Attorney Eriole agreed with Mr. Prince that in order to accomplish that, why not have at your disposal any of the three options. He explained, for instance, let's say you had this incredible vista in a conservation area and some local land conservancy actually was interested in taking it, you might want to do it, right, maybe the town's interested in taking it for some particular reason that makes kind of sense. He noted why should you replace those things with this language and simply you could consider your comment to the Town Board being why not leave those two possibilities in and simply add the possibility of these individuals. Director of Planning Dym stated the language, if the Board decides that they want to make that recommendation for the Town Board that could read is actually the following: "We believe the language basically where it starts at the ownership of all open space areas, currently it says shall be divided, I would say areas shall either be divided equally or then we add the other one or shall be located within the conservation; shall be divided equally among so we have everything that's there now or this alternative.

Mr. Prince agreed.

Consulting Town Engineer Barbagallo agreed as well.

Mr. Zaberto also agreed with Town Attorney Eriole.

Ms. Gannon asked Director of Planning Dym, if the initial edition of the language needs to be kept within the conservation subdivision because you took the ownership of all open space areas shall be divided and omitted that initial addition do you need to retain and make it the ownership of all open space areas within the conservation subdivision shall be divided and then proceed from there?

Director of Planning Dym stated the whole thing is about conservation subdivisions, that the entire section is conservation subdivisions.

Everyone agreed and Director of Planning Dym stated she will write a recommendation to the Town Board and get it to them for tomorrow night's public hearing.

Ms. Gannon thanked Director of Planning Dym.

Chairman Currie stated that's a good amendment.

Mr. Zaberto opined the inclusion of all three options is really good for the town to be able to customize some of these site plans to fit. He agreed that all the options should be at the disposal, let the applicant put one fourth and determine whether or not it's applicable in that case, if not, the Board can offer other solutions and now we would have that.

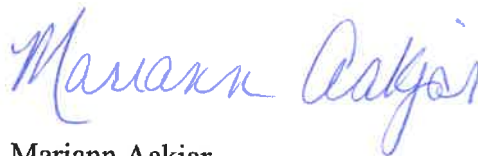
On motion by Chairman Currie, seconded by Mr. Zaberto, and unanimously carried, the Planning Board recommended to the Town Board to permit deed restricted conservation areas to be located within individual lots within a conservation subdivision rather than on lots owned in common by a homeowner's association, by a recognized conservation organization or by the Town of Somers to be added to the current options for creating conservation subdivisions.

Ms. Gannon asked if the next Planning Board meeting will be a Zoom meeting.

Chairman Currie responded yes, however, he hopes to soon get back to some type of normalcy.

There being no further business, on motion by Chairman Currie, seconded by Ms. Gannon, and unanimously carried, the meeting adjourned at 9:00pm. The Chairman announced that the next Planning Board meeting will be held on Wednesday, June 10, 2020 at 7:30 p.m.

Respectfully submitted,



Mariann Aakjar
Office Assistant