

**TOWN OF SOMERS
CONSERVATION BOARD
MINUTES OF MEETING
OCTOBER 26, 2010**

The October 26, 2010 regular meeting of the Conservation Board was called to order by Chairman Gary Meixner.

Attendance: Eric Evans, Michael La Gue, James Moriarty, Gary Meixner

Absent: Shoshana Hantman, Dr. Edward Merker, John Purcell

Guests: None

Announcements:

Conservation Board member Shoshana Hantman emailed the C.B. Secretary to inform her that she would not be able to attend the meetings on October 12, 2010 and October 26, 2010.

Conservation Board member Dr. Edward Merker phoned the C.B. Secretary to inform her that he would not be able to attend the meeting tonight.

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Approval of Minutes:

A motion was made by Eric Evans and seconded by James Moriarty to approve the minutes of the October 12, 2010 regular meeting of the Conservation Board. All members present approved.

Board member James Moriarty amended the Conservation Board Minutes of October 12, 2010 on pages 18, 19, 20, and 21.

Old Business:

- A)** Guerrero/# 213/Rte. 100/Update/Building Inspector, etc.: (GM)
Chairman Gary Meixner discussed the above administrative application for Guerrero at the meeting. He gave the Board members an update on recent endeavors with the Building Department while trying to unravel what happened with the application and permitting process with the Guerrero property.

The Chair explained that he spoke to the Building Inspector regarding the above application. Mr. Citarella informed him that he spoke to the applicant and was told that Mr. Guerrero has received notification that the check had been cashed by the State. He noted that Mr. Guerrero advised the Building Inspector that he would forward a copy of the canceled check to him. He informed the Board that Mr. Citarella had mentioned that he would get Gary a copy of the canceled check when it comes in the mail.

Board member Evans asked for clarification on whether or not the application was accepted or denied.

Chairman Meixner responded that it means that the check was accepted by the State, so apparently it was approved.

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Old Business:

A) Guerrero/#213 Rte. 100:

Discussion ensued among the Board members with reference to the procedure on an application such as Guerrero. They did not understand how a canceled check from the State would prove whether or not the applicant has a permit for the work that has already taken place. They were wondering if there was a copy of the permit that could be obtained from someone.

Chairman Meixner responded that the check was accepted by the State and the canceled check was returned. He said that apparently the State received the application.

Mr. Evans said that an application is not necessarily an approval.

The Chair informed the Board that the Building Inspector told him that if the applicant does not get the approval then the stone wall would be continued along the property line, across the driveway and there would not be two entrances to the property. He mentioned that they are in all likelihood not going to have the applicant take the structure down.

Board member Evans said that the project (structure) complies with the Town Building Code, however, the applicant just might not have a second driveway.

Board member Michael La Gue noted that the project is rapidly being finished.

Chairman Meixner informed the Board that he 'officially' signed the sheet at the Building Department in order to review the plans.

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Old Business:

A) Guerrero/#213 Rte. 100:

Ms. Davis asked the Chair about the protocol with regards to the permitting process.

The Chair responded that according to his knowledge the permits for a parcel are usually available in the Engineering Department before they are passed over to the Building Department for their use.

Discussion ensued among the Board members with reference to the permitting process in the Town of Somers and the protocol regarding these activities.

The Board members took no further action at this time.

B) Postcard/Cornell University (from Correspondence)/re: Survey on Climate Change and Global Warming in New York State, 607-255-3786; Secretary phoned them August 6, 2010 for copy of survey/CB received survey: (EM)

The Conservation Board tabled discussion on the above survey regarding Climate Change and Global Warming in New York State until Board member Merker gives a report.

Dr. Edward Merker on behalf of the Conservation Board was asked to fill out the above postcard and give a report to the Board.

A report will be forthcoming at the next Conservation Board meeting.

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Old Business:

- C) BVS Acquisition Company, LLC/aka Chase Bank – fka Bank of America dated October 1, 2010; Site Plan/Planning Board, Site Plan/C4; Overall Shopping Center Plan/C-4a; Landscape Plan/C-8; Prepared by Hocherman, Tortorella & Wekstein, LLP, (#95 Rte. 6/Baldwin Place):
(GM)

The Conservation Board reviewed the above Planning Board application for BVS Acquisition Company, LLC aka Chase Bank site plan, overall shopping center plan and landscape plan at their meeting.

Chairman Gary Meixner reviewed the materials submitted, performed a site inspection of the property and gave a report to the Board.

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Report:

- The Chair informed the Board that the applicant made some changes to the plans including the rotation of the building so that it faces a different direction (the shopping center).
- The applicant also changed the traffic pattern he said. Originally the plan had all of the traffic flowing in one direction.
- Chairman Meixner explained that now the plan has been revised to exhibit a two-way flow of traffic for the parking area. The newly revised version on the plan flows into the existing shopping center and does not enter onto Rte. 6.
- Chairman Meixner advised that the applicant is closing the existing entrances on Rte. 6, which he opined is an improvement. All traffic will flow into and out from the shopping center he said.

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Old Business:

C) BVS Acquisition/Chase Bank:

Board member Eric Evans noted his concern regarding old gas stations and the problems associated with them. He was not sure when the gas station was shut down and what the regulations were at that time. He explained that during the environmental studies that are subsequently done to these sites there has to be some sort of check such as an Environmental Phase I Study at minimum before they just blacktop over it and build on it.

Board member James Moriarty agreed and asked if the site was partially remediated.

Mr. Evans asked if there had been a spill on this site.

Chairman Meixner responded that the entire site had some problems associated with dry cleaner fluid.

Mr. Evans asked if there was an independent spill at this site.

Mr. Moriarty said that there were test wells on site.

Chairman Meixner said that he did not know if those were for gasoline he thought they were for the dry cleaning fluids.

Board member Evans said that if there was a spill then the DEP would have a spill number in a file number and that until the remediation is finished the spill number remains on their list to be checked.

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Old Business:

C) BVS Acquisition/Chase Bank:

Mr. Evans went on to explain that during his work career he came across some issues in New York concerning residential home heating oil spills. He noted that the best way for an individual to find out if the property has been remediated is by going on line or calling the DEP.

He went on to say that the spill number is eliminated/erased from their list if the site has been remediated. He suggested that someone should ask that question to the Engineering Department and if they do not know then certainly the DEP should have that information. If anyone knows about open files/open spill numbers on this property (or any property) at any time and they have been properly closed out, that entity would be the DEP.

Board member Michael La Gue said that he has seen old gas stations that have gone out of business and was wondering if in fact there was no known spill on the parcel would they then be all right?

Mr. Evans responded that he has to believe that there are additional regulations, where if the use of the tanks are going to be discontinued he would be surprised if there weren't some sort of check and balance. He noted that it is a good idea before permits are issued (on such a property) that someone checks to make sure that proper clean up and sign off has taken place.

Mr. La Gue agreed with Mr. Evans statement.

Chairman Meixner said that the Board's questions have not been answered to date.

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Old Business:

C) BVS Acquisition/Chase Bank:

C.B. Secretary Ms. Davis noted that the Planning Board meeting is scheduled for tomorrow night, so maybe we will find out more after their meeting.

Board member Evans opined that the Board is doing their job by at least raising the questions for the Planning Board to answer.

Board member Moriarty questioned the use of the monitoring wells. He was wondering if they were for the gas station or possibly for something else.

Board member La Gue noted that they show up in the legend, but are difficult to find on the plan.

Mr. Evans inquired about what was on the plan to help prevent erosion problems associated with the development of the parcel and to prevent the drainage system from clogging.

Discussion ensued among the Board members with reference to this application and the plans submitted. They asked to see the grading and drainage plan that is on file.

C.B. Secretary Ms. Davis procured the file for the Board.

After reviewing the plans, Board member Moriarty said that the information is located on plan C-6 of the original site plan dated 8-18-10.

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Old Business:

C) BVS Acquisition/Chase Bank:

Chairman Meixner asked the C.B. Secretary to send an email to Planning Board member Chris Foley regarding the recent C.B. memo for this application along with some questions that he will relay pertaining to possible contamination on site and the test wells.

The Chair noted that the Board would appreciate a response to their memo regarding the possible pollution on site and if so where would the remediation take place, where would the applicant put the equipment?

Mr. Moriarty informed the Board that note #15 on plan C-6 is incongruous, it says that the monitor and well will be removed and also that the contractor will protect the existing monitor and well during construction activities. This needs to be clarified he said.

Chairman Meixner agreed.

Mr. Evans noted that the applicant is doing many things in every aspect to prevent erosion and sediment runoff as depicted on the plans provided.

Mr. Moriarty advised that there is no mention of any underground tank on the plans submitted. He commented that maybe they have been taken away already.

Mr. La Gue agreed with Mr. Evans that the erosion and sediment control plans seem reasonable for the proposed activity.

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Old Business:

C) BVS Acquisition/Chase Bank:

Discussion ensued among the Board members with reference to this application and they decided to write a memo to the Planning Board stating their concerns.

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A memo (#10-44) will be sent to the Planning Board stating that the Conservation Board reviewed the above Planning Board application for BVS Acquisition Company, LLC, site plan, overall shopping center plan and landscape plan at their meeting on October 26, 2010.

The Board members reviewed the materials submitted, performed a site inspection of the property and discussed the application among them.

The C.B. has the following concerns and recommendations:

- 1) Is there an open DEP file on a spill # issued for this site.
 - If so, was it properly satisfied?

- 2) There are monitoring wells on site according to the legend.
 - What is the purpose of these wells?
 - They appear in the legend but are difficult to locate on the site plan.

- 3) On the plan dated 8-18-10 C-6, note #15 is incongruous.
 - The plan states that there are monitors on site.

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Old Business:

C) BVS Acquisition/Chase Bank:

- Are they being pulled or not because the plan makes both statements, (i.e. that they are being pulled/that they are not being pulled).

4) If the ground has pollution issues, where would the applicant place the remediation equipment?

The Conservation Board will continue to review the application for BVS Acquisition Company, aka Chase Bank as revisions are submitted.

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The Board members took no further action at this time.

D) Naclerio/Site Plan/Waiver of Application Processing Restrictive Law by the Town Board/Violations/information pertaining to application before the Board, (# 75 Rte. 6, south from Baldwin Place/on right side/before Mahopac Avenue): (RD)

The Conservation Board discussed the above Planning Board application for Naclerio site plan, violations and waiver of the application processing restrictive law by the Town Board at their meeting.

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Old Business:

D) Naclerio/Violation:

C.B. Secretary Ms. Davis advised that while she was working on the memo for the Conservation Board she came across information that had not been addressed by the Board at their previous meeting. She explained that at that time the Board members had many questions and were concerned about the site plan process going forward with numerous violations still present on the parcel of property located on Rte. 6.

Ms. Davis said that she had found that on page 2 of the applicant's (Jeffery Contelmo, President) memo regarding Naclerio to the Planning Board dated September 13, 2010, it stated that Mr. Woelfle, Principal Engineering Technician for the Town sent a memo to the Town Board requesting a temporary waiver of the application processing restrictive law to allow the applicant to submit a site plan application to the Planning Board. This fact had been overlooked at the last meeting she said.

Ms. Davis noted that in retrospect the only way that the site plan for Naclerio could in fact be before the C.B. is that this event took place and the Board was not informed.

She went on to say that the Town Board must have waived the restrictive law to enable the site plan to go forward without the applicant removing the damages to the property.

Ms. Davis advised that at the last meeting the Board was not aware that this event took place and they were wondering why the applicant was moving forward with a site plan without cleaning up the environmental violation.

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Old Business:

D) Naclerio/Violation:

Chairman Meixner questioned why the Board did not get notification that the property was in violation.

Ms. Davis said that she did not recall whether or not the Board did get a letter. However, she pointed out that if it did not contain any pertinent information (i.e. lifting the environmental violations) then it would not have been of any use to the Board in this case.

She commented that it appears that the Board is not being kept informed about what is going on in the Engineering or Planning office with regards to this application. If there is a violation on a property that is significant then the Board should be copied on pertinent information so that we are aware of what is happening. She advised that she receives many emails but nothing had been sent to her regarding the Naclerio application and the waiving of the restrictive law to allow for site plan submittal.

Ms. Davis was wondering how the Board could adequately do their job when the Engineering Department and the Town Board are apparently circumventing them. She made note that this was a major oversight. Although we are an environmental Board she said we are not being informed with regards to a status change on an application with major environmental violations that we are being asked to comment upon.

Chairman Meixner asked for a copy of the memo that they were discussing and mentioned that he might attend the Planning Board meeting the following night.

Discussion ensued among the Board members with reference to the Naclerio application and it was decided that a memo should be sent to the Town Board.

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Old Business:

D) Naclerio/Violation:

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A memo (#10-42) will be sent to the Town Board stating that the Conservation Board reviewed the above Planning Board application for Naclerio site plan, violations, grading-filling, steep slope alteration and erosion-sediment control at their meeting on October 26, 2010.

The Board members were concerned by the actions of the Town Board who gave a waiver of the application processing restrictive law on violations to the parcel.

The C.B. has the following concerns and recommendations:

- 1) The Board should have been an involved agency in this type of violation.
 - We were not copied on the letter to the Town Board from the Principal Engineering Technician.
 - We were not aware that the Town Board agreed to the waiver of the application processing restrictive law on this violation.
- 2) This type of action is contrary to our Town Code and the responsibility of the Conservation Board to the Town of Somers.
- 3) The violation exhibited on this parcel of property epitomizes one of the worst possible scenarios that could take place when it comes to the environment.
 - The Board may not have agreed with the waiver that was granted to the applicant, as there is much debris, etc. to be cleaned up on site prior to the approval or site plan process-taking place.

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Old Business:

D) Naclerio/Violation:

- 4) The applicant should have first satisfied the clean up of this site before being able to petition the Town Board for any type of waiver.
 - There is much debris, etc. to be cleaned up on the site.
 - We refer you to our memo #10-40 that has already been submitted.

- 5) We hope that in the future the Town Board and Principal Engineering Technician would use our expertise as counsel prior to making a decision of this nature.
 - On matters that involve violations to the Environmental Regulations of the Town of Somers, we should be an involved agency particularly in this type of severe violation.

The Conservation Board works to ensure protection of the environmental regulations in the Town of Somers. Left out of the process from the inception, how can we protect the very statute that we are sworn to uphold.

The Board members took no further action at this time.

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New Business:

- A)** Invitation from Open Space Committee/to attend the One Year Celebration of the Opening of the Angle Fly Preserve/Saturday October 23, 2010 at 1 PM; there will be an *Inaugural Community Hike to Open the New Blue Trail*; park cars at Reis Park, for more information visit website www.somerslandtrust.org:

The Conservation Board members acknowledged receipt of the above invitation from the Open Space Committee for the opening of the Angle Fly Preserve on Saturday, October 23.

Board member Michael La Gue advised that he attended some of the festivities until 1 PM. He said that he was on site at the Anglefly Preserve clearing trails (Orange Trail) with about 30 other people. He mentioned that there was a tree company on site also that volunteered their time to help clear some dead trees.

Mr. La Gue informed the Board that at the function they opened the Blue Trail and congratulated the people that helped them. He explained that many of the Open Space Committee members attended the event.

Some discussion ensued among the Board members with reference to the event at the Anglefly Preserve.

The Board members took no further action at this time.

- B)** Conservation Board Budget Hearing/November 8, 2010 at 8 PM in the Library: (RD)

C.B. Secretary Ms. Davis informed the Board members that the Town Board would be discussing the Conservation Board Budget for 2011 at a meeting in the Library on Monday November 8 at 8 PM.

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New Business:

B) C.B. Budget Hearing:

Ms. Davis advised the Board that she would be attending the meeting to speak to the Town Board regarding the Budget for the Conservation Board.

The Board members took no further action at this time.

C) Hudson River Proposal/Champlain Hudson Transmission Line/discussion/Email from ELLA Janet Andersen to the Board:
The Conservation Board members discussed the above-proposed Hudson River Transmission Line and email from Janet Andersen who is affiliated with the Environmental Leaders Learning Alliance at their meeting.

Board member Eric Evans referenced the fact that it appears to be an immense project that is proposed for the undertaking. The plans call for the activity to go from Canada to New York City, out to Long Island Sound and up to Connecticut. It is an amazing project that is proposed for construction, laying a cable down in the middle of the Hudson River for 500 miles. It appears to be an extreme, but temporary disturbance of the entire ecology of the river.

Board member James Moriarty agreed and noted that it is a large project that is being proposed for the entire river.

Mr. Evans specified that they are starting up stream. He informed the Board that he has been learning about rivers and river management at a hunting club in Newton, Connecticut for the past 25 years.

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New Business:

C) Hudson River Proposal:

Board member Evans went on to say that he has been helping his friend and the caretaker, who happens to be an environmentalist, in the management of the paperwork and permits involved in maintaining the river.

He went on to explained that it is a hunting club and they are involved in fly fishing and things of that nature and noted that the one thing that is usually avoided is the disturbance of the bottom of the river. He advised the Board that if they think of every living creature that can be in dirt, there is about 100 times that in a riverbed. Whether it is worms, algae, microorganisms, the fish that eat the algae and the larger fish that may eat the smaller fish and then also the animals that eat the fish. He noted that there are so many factors that should be considered in a situation of this nature as it affects the entire ecosystem.

C.B. Secretary Ms. Davis was wondering why the cable has to go in the river (as opposed to alongside the river).

Board member Michael La Gue responded that it is probably the easiest way to go. The applicant would only need to get the approval of New York State because no one owns the riverbed. It would not involve private property owners at all.

Mr. Evans said that probably the cost would be less because they probably would not bury it in the riverbed. He advised that it would just be laid down, however, it would still disturb the river.

Ms. Davis asked why would we consider doing this, what is the matter with what we have now.

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New Business:

C) Hudson River Proposal:

Board member Evans said that the other point that was made in the letter was why are we considering doing this, as there is ample power supply to New York City and the surrounding area right now. However, there is always planning for the future, maybe that is what they have in mind he said.

The Board members took no further action at this time.

D) Sussmann Mobil Station/Discussion/Conservation Board/re: Tree Clearing, (Rte. 100/across from IBM): (GM)

The Conservation Board discussed the above Planning Board application for Sussmann Mobil Station, site plan and recent tree clearing at their meeting tonight.

Chairman Meixner explained that he asked that this item be placed on the agenda tonight.

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Report:

- Chairman Gary Meixner informed the Board members that the applicant for this application has apparently cut down the row of trees that bordered their property in the rear portion of the station, on the hillside and above the pond.

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New Business:

D) Sussmann Mobil Station:

The Board members discussed the tree-cutting event and decided to write a memo to the Planning Board stating their concerns.

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A memo (#10-43) will be sent to the Planning Board stating that the Conservation Board discussed the Planning Board application for Sussmann Mobil Station at their meeting on October 26, 2010.

The Board members reviewed the materials submitted, performed a site inspection of the property and discussed the application among them.

The C.B. has the following concerns and recommendations:

- 1) The Site Plan dated November 18, 2010 displayed several trees located in the rear portion of the property on the hillside above the pond.
 - The plan noted that they were existing trees located on the parcel.
 - The Board's original site inspection noted that the trees were still viable.

- 2) A recent site inspection by the Board determined that the applicant had removed the trees located in the rear portion of the property on the hillside above the pond.
 - The trees were taken down; the applicant has flush cut them.
 - Is there a permit on file for this activity?

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New Business:

D) Sussmann Mobil Station:

- 3) The Board would appreciate information on whether or not the applicant has a tree-clearing application and permit on file, as we are not in possession of such documentation.
- According to Town Code 156-4, any trees located in a regulated buffer zone require a permit for removal.
 - According to Town Code 156-2 any tree in a wetland or wetland buffer area designated in Chapter 167 requires a permit for removal.

The Conservation Board will continue to review the application for Sussmann Mobil Station as revisions are submitted.

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The Board members took no further action at this time.

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There being no further business to discuss, a motion to adjourn was made at 10 PM by Board member Eric Evans and seconded by Board member Michael La Gue. All members present approved.

The next regular meeting of the Conservation Board will be held at the Town House on November 9, 2010 at 7:30 PM.

Subsequent Conservation Board meetings are tentatively scheduled to be held at the Town House on November 23, 2010 and December 14, 2010 respectively.

Respectfully submitted,

Rosetta Davis
Secretary
Conservation Board

Cc: Town Board
Town Clerk
Town Engineer
Town Planner
Planning Board
Zoning Board
Open Space Committee
Architectural Review Board
Landmark Committee