

**TOWN OF SOMERS  
CONSERVATION BOARD  
MINUTES OF MEETING  
NOVEMBER 23, 2010**

The November 23, 2010 regular meeting of the Conservation Board was called to order by Chairman Gary Meixner.

Attendance: Eric Evans, Michael La Gue, Dr. Edward Merker,  
James Moriarty, Gary Meixner

Absent: Shoshana Hantman, John Purcell

**Guests:** **Town Board**/Richard Clinchy

**Announcements:**

Board member Eric Evans had to leave the meeting early.

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**Approval of Minutes:**

A motion was made by James Moriarty and seconded by Michael La Gue to approve the minutes of the November 9, 2010 regular meeting of the Conservation Board. All members present approved.

**Old Business:**

- A)** Guerrero/#213 Rte. 100/Update/Building Inspector: (GM)  
The Conservation Board tabled discussion of the above matter on the Guerrero property until the next Conservation Board meeting.

Chairman Gary Meixner will follow-up on the permitting process and give a report.

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

- B)** Postcard/Cornell University/re: Survey on Climate Change in New York State, 607-255-3786/C.B. received survey: (EM)  
Board member Dr. Edward Merker informed the Conservation Board that he mailed the Survey on Climate Change to Cornell University.

Dr. Merker advised the Board that the survey was written for a response from an individual (not a Board) and there were many areas that did not pertain to global warming so he did not respond to those questions.

The Board members took no further action at this time.

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**Old Business:**

- C) Sussmann Mobil Station/Site Plan/Planning Board; Project Drawings SP-2, SP-3, SP-6, SP-7, SP-8 dated November 18, 2007, revised; Prepared by Van Lent Architects & Planners, Bibbo Associates, LLP, (Rte. 100/across from IBM): (JP)

The Conservation Board tabled discussion of the above Planning Board application for Sussmann Mobil Station site plan, project drawings until the next meeting.

Board member John Purcell is reviewing the plans and application. He will give a report to the Board.

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

Due to the fact that the applicant removed the trees in the rear portion of his property a discussion took place among the Board members with reference to the Town Code regarding the Town Tree Ordinance.

Chairman Meixner mentioned that if the tree-cutting permit is located in a wetland or steep slope then it would fall under a different criteria.

C.B. Secretary Ms. Davis informed the Board that the Engineering Department use to have a simplified form (1 page) that explained the tree-cutting permit process and it was very easy to understand and very helpful for the Board and residents.

Board member Dr. Edward Merker advised the Board, upon reviewing the Code Book at the meeting, that trees requiring a permit should be twelve inches at breast height, which he noted is approximately 4.5 ft. above the ground. If the tree is located in the steep slopes or wetlands it requires a permit to be cut however he said that it would still need to be twelve inches in diameter.

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**Old Business:**

**C) Sussmann Mobil/SP:**

Dr. Merker specified that according to Town Code if you can prove that you planted the tree(s) then you do not need a permit to cut them and he cited the Town Code 156-4/Section B #5 dated January 2006.

Chairman Meixner said that the applicant in this particular case did plant those trees (formerly located at the top of the hill behind the gas pumps).

Discussion ensued among the Board members with reference to the proximity of the nearby wetland located behind the property and what documents would be needed to prove that trees have been planted by the applicant.

The Board members took no further action at this time.

**D) BVS Acquisition Company, LLC/Site Plan/Planning Board (aka Chase Bank/fka Bank of America), plans dated October 28, 2010, Letter dated October 28, 2010 to Planning Board from Hocherman, Tortorella & Wekstein, LLP; Stormwater Analysis dated October 25, 2010; Letter dated October 25, 2010 from Atlantic Traffic & Design Engineers, Inc., Plans/A1.1; A4.1; A4.2 Floor Plan & Elevations; Topographic Survey dated 4-6-07; C-1/Cover Sheet; C-2/General Notes; C-3/Removals Plan; C-4/Site Plan; C-4a/Overall Shopping Center Plan; C-5/Grading & Drainage Plan; C-6/Soil, Erosion & Sediment Control Plan; C-7/Utility & Sanitary Plan; C-8/Landscape Plan; C-9/Landscape Notes; C-10/Lighting Plan; C-11/Site Details; C-12 & C-13/Site Drainage & Utility & Details, Prepared by Hocherman, Tortorella & Wekstein, LLP, (#95 Rte. 6/Baldwin Place): (JM)**

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**Old Business:**

**D) BVS Acquisition Company/SP:**

The Conservation Board reviewed the above Planning Board application for BVS Acquisition Company, LLC, site plan, grading-drainage plan, soil-erosion and sediment control plan, landscape plan and site drainage and utility at their meeting.

Board member James Moriarty reviewed the application, performed a site inspection of the property and gave a report to the Board.

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Report:

- Mr. Moriarty informed the Board that a positive addition to the project is that the applicant incorporated a Baysaver Separation System (brand name), which is a really good product that keeps the oil from running out of the parking lot. He explained that it is an oil separator that is one of the best on the market.

Town Board member Richard Clinchy inquired about the process and the fact that these units are generally installed in a parking lot.

Mr. Moriarty explained that the oil floats up into a chamber and the water can pass under it. He specified that there is also a chamber that requires cleaning on a regular basis.

Chairman Meixner mentioned that Sussmann Mobil has an oil/grease separator and noted that it would be a good idea in every parking lot. He stated that many parking lots have the unit already.

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**Old Business:**

**D) BVS Acquisition Company/SP:**

Town Board member Clinchy remarked that maybe these units should be a requirement that is installed in every parking lot according to Code.

As a point of interest Dr. Merker explained that he and Gary reviewed the storage facility that is located at Heritage Hills and at that time they requested that the applicant install these units in the parking lot.

Mr. Clinchy reiterated his original thought that the Town Code should reflect this feature be installed in parking lots.

Dr. Merker responded that the oil separators should be installed in commercial facilities, not residential.

Chairman Meixner said that he attended the Planning Board meeting where they discussed oil separators. He informed the Board that they spoke about putting pavers down to have the water go through. At the time he told them that they should have the applicant put asphalt and oil/grease separators in order to remove the oil from the water and not have it seep into the groundwater. He explained that pavers do not protect the environment from the oil and grease associated with cars and trucks and also there will be fertilizer dropping onto the ground (Heritage Hills).

Mr. Clinchy said that it all depends on the situation at hand, pervious versus impervious.

Chairman Meixner noted that there will be a 10-inch pipe coming from the parking lot and it does not appear to be able to handle a heavy storm.

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**Old Business:**

**D) BVS Acquisition Company/SP:**

Board member Moriarty continued his report.

- Board member Moriarty noted that on page C-3 of the Engineer Drawings Removals Plan there is a conflict. He explained that first it says that the monitoring wells will be removed (page 1) and later it states that they will not be removed. It appears that the applicant never addressed the C.B. comments on this feature.
- Mr. Moriarty further noted that the attached report made a statement that the concrete is remaining on site (page 2 of 2 in the letter dated 10-20-10 to Kenneth Cartelli) . . . *all demolition materials will be removed from the site with the exception of the concrete and masonry materials. These materials will be crushed and reused as fill on the site.*
- However he said that if one turns to page C-3 it states, . . . *that everything will be removed from the site, this includes all masonry and everything that is masonry;* which is a conflict that needs to be corrected he said.

Town Board member Clinchy inquired about whether or not the C.B. had any knowledge on when the applicant intended to start building on this project.

Mr. Moriarty responded that the Board does not know.

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**Old Business:**

**D) BVS Acquisition Company/SP:**

Chairman Meixner advised that the applicant keeps changing the application plans to suit their needs. He explained that it appears that they renewed the application under the old application (Bank of America) before the permitting time ran out and extended the time. Now they are revising the plans to suit their needs and specifications, everything is being changed.

In all likelihood he said that the applicant just wanted to keep the application open so that they did not have to start the process all over again.

- Board member Moriarty continued his report noting that on page C-6 of the drawings the applicant needs to make a couple of corrections. It shows the construction entrance and exit notes and in the details it shows a 50 ft. minimum as an anti-tracking pad for the construction entrance, but on the drawing it shows a 40 ft. entrance.
- He said that it appears that the applicants drew the plans different from what they are specifying. The applicant needs to clarify what they are intending to do there he said, because if they need to extend the tracking pad on the plan right now it does not fit. More specifically he said that the entrance and exit notes on page C-6 do not match.
- Mr. Moriarty explained that the applicant has a stockpile management section for excavated material. Number 2 on the notes says that the stockpiles need to be a minimum of 50 ft. away from drainage and inlets.

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**Old Business:**

**D) BVS Acquisition Company/SP:**

- However, he said that on the drawing it does not match the notes, it shows that the stockpile will be 5 ft. away from a drain. This needs to be corrected.
- Board member Moriarty informed the Board that on page C-8 the New York City DEP rules require protection of water supply from contamination.
- The drawing shows that the preparation of trees and shrubs (300 plantings) includes 20% cow manure, which conflicts with DEP, regulations. The applicant is planting 300 trees and shrubs and putting the cow manure on the surface after they plant. Due to the number of trees needed for this project the applicant should consider removing the cow manure.
- Mr. Moriarty said that on page C-9 in the Landscape notes the detail also shows manure as a planting material. It appears that there will be a substantial amount of manure on site, which is a contaminant. He noted that it might be a runoff issue over time.

Board member La Gue asked if manure could be aged and processed. He was wondering if there were different requirements between fresh manure and processed manure.

Mr. Moriarty said that in New York State and New York City one of there big concerns happens to be manure runoff.

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**Old Business:**

**D) BVS Acquisition Company/SP:**

Mr. La Gue said that there are two different kinds of manure. One is fresh and the other is processed.

Chairman Meixner said that he did not think that the applicant would be using fresh manure.

Mr. Moriarty said that the application leaves it open because it just says cow manure.

Mr. Clinchy asked for clarification.

Mr. Moriarty said that the applicants are going to use one part peat moss, one part cow manure, and three parts topsoil and then they will mix it all together before spreading it out.

Mr. Clinchy was wondering where they would get the raw materials.

Mr. Moriarty said that the ingredients would be trucked onto the site and then they would mix them together at the site.

Discussion ensued among the Board members with reference to this process that involved cow manure for fertilizer (mixed on site).

- Mr. Moriarty went on to say that on page 2 of 2 of the letter to Mr. Cartelli dated 10-20-10 in the section that says soil sample, the Town should request a copy of the removal reports on the soil samples.

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**Old Business:**

**D) BVS Acquisition Company/SP:**

- He went on to say that most are related to demolition and soil contamination testing. It is important he said that the soil contamination report and tank closure report should be sent to the Town.

C.B. Secretary Ms. Davis inquired about the oil tanks.

Mr. Moriarty mentioned that according to the documentation provided the oil tanks were still located in the ground.

Discussion ensued among the Board members with reference to this application and Board member La Gue mentioned that he would review the Landscape Plan for this parcel of property and give a report.

After the discussion the Board decided to write a memo to the Planning Board stating their concerns and recommendations.

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A memo (#10-47) 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, stormwater analysis, grading, drainage, soil-erosion-sediment control plan and landscape plan at their meeting on November 23, 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:

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**Old Business:**

**D) BVS Acquisition Company/SP:**

- 1) The Board applauds the applicant for installing the Baysaver Separation System for oil/grease separators.
  
- 2) On page C-3 of the Engineer Drawings Removals Plan there is a conflict. The applicant should correct this.
  - Page C-1 states that the monitoring wells will be removed.
  - Page C-3 states that the monitoring wells will not be removed.
  
- 3) The applicant should correct the conflict in the letter dated 10-20-10 to K. Cartelli on page 2 of 2.
  - First it states that the concrete is remaining on site . . . *all demolition materials will be removed from the site with the exception of the concrete and masonry materials. These materials will be crushed and reused as fill on the site.*
  - Then on page C-3 it states, . . . *that everything will be removed from the site, this includes all masonry and everything that is masonry.*
  
- 4) The entrance and exit notes on page C-6 do not match with regards to the anti-tracking pad.
  - In the construction entrance and exit notes and in the details it shows a 50-ft. minimum as an anti-tracking pad for the construction entrance.

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**Old Business:**

**D) BVS Acquisition Company/SP:**

- The drawing displays a 40-ft. entrance.
  - The applicant should clarify the notes and details; if they were to extend the tracking pad on the plan as submitted, it would not fit.
- 5) The applicant has a conflict in the stockpile management section for excavated material. The drawing does not match the notes.
- # 2 on the notes states that the stockpiles need to be a minimum of 50 ft. away from drainage and inlets.
  - The drawing shows that the stockpile will be 5 ft. away from the drain.
- 6) The drawing shows that the preparation of trees and shrubs (300 plantings) includes 20% cow manure, which conflicts with NYC-DEP guidelines.
- Due to the number of trees and shrubs (300) the applicant should consider removing the cow manure as it is a contaminant.
- 7) On page, C-9 in the Landscape notes the detail also shows manure as a planting material, which is a contaminant.

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**Old Business:**

**D) BVS Acquisition Company/SP:**

- There will be a substantial amount of manure proposed for the site; over time it could be a runoff issue.

8) On page 2 of 2 in the letter to Mr. Cartelli dated 10-20-10 regarding soil samples, the Town should request a copy of the removal reports on the soil samples; most are related to demolition and soil contamination testing.

- The soil contamination report and tank closure report should be sent to the Town.

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

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The Board members took no further action at this time.

**New Business:**

**A) Referral & Comment Conservation Board/Email from Planning Department/Proposed Change in Code/Addition to Code of Town of Somers Chapter 170-129; Wireless Telecommunications Facilities Code Amendments dated November 10, 2010: (CB)**

The Conservation Board will review the above-proposed change to the Town Code regarding wireless telecommunications facilities in the Town of Somers at their next meeting.

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**New Business:**

**A) Addition Town Code/Wireless:**

The proposed changes can be found in the packet that was received for the meeting tonight said C.B. Secretary Ms. Davis.

Board member Dr. Merker thought it would be a good idea if all of the Board members reviewed the information and came prepared to discuss the information at the next meeting.

Dr. Merker said that one of the things that stands out is that the proposed code change concerns a change from Zoning Board to Planning Board and he was wondering why.

Town Board member Clinchy responded that the intent going back was that it would be bifurcated where the two Boards would have separate input, which would result in better decision making.

Mr. Clinchy advised that those who advocate the change would say that the process is inefficient and by the time that the Planning Board gets the application it has in effect been decided by the Zoning Board.

However, he explained that there are time constraints involved on the process, which do not allow for extra time that the Planning Board would need to make their comments and those time constraints implemented by the Federal government are very strict.

Chairman Meixner inquired about the time constraints.

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**New Business:**

**A) Addition Town Code/Wireless:**

Mr. Clinchy said that they are 120 days on a new tower application and 90 days on an addition to the tower. If you do not get the comments in by the appropriate time then the process could proceed without the comments from the Board due to Federal regulations.

Dr. Merker said that there are areas that do not need variances from the Zoning Board.

Mr. Clinchy agreed.

Discussion ensued among the Board members with reference to the towers and their necessity and the type of tower to be installed in any given area.

Chairman Meixner brought up the fact that the cell tower in Mahopac has a beautiful flag on it and it happens to look good.

Mr. Clinchy said that he finally saw the pole that Gary was talking about and he agreed that it was good looking. He went on to discuss pros and cons as well as other technology that is forthcoming involving renting space on rooftops for solar panels.

The Board members took no further action at this time.

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**New Business:**

**B) Planning Board Minutes dated 10-13-10/page 12/Regarding Homeland Towers Cingular Wireless: (JM)**

The Planning Board made their decision regarding the Homeland Towers and it is too late now, but the applicant's lawyer made a statement concerning the hydric soils, which in effect cuts the property in half. It is inaccurate and it stands out said Board member Moriarty.

The lawyer stated that . . . . *the stream is a 24 inch pipe and there are no hydric soils.* The statement is inaccurate and it stands out. There is not a 24-inch pipe there is an area of hydric soils that cut the property in half. He explained that it is like an underground stream and it is depicted on the drawing submitted.

C.B. Secretary Ms. Davis said that she remembered the memo and the fact that the applicant is going to be packing down the earth with heavy equipment and it is an area that should not be packed down due to the hydric soils. Mr. Moriarty had said that it would be better if they did that somewhere else and not in that area of hydric soils.

Mr. Clinchy said that the lawyer for the applicant made a statement saying that it does not exist.

Ms. Davis said that in fact it does exist and the C.B. commented on it in a memo to the Planning Board.

Discussion ensued among the Board members and they decided to send a memo to the Planning Board advising them of the Board's concerns.

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**New Business:**

**B) Planning Board Minutes 10-13-10:**

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A memo (#10-48) will be sent to the Planning Board stating that the Conservation Board reviewed the above Planning Board Minutes for October 13, 2010, page 12 regarding Homeland Towers Cingular Wireless at their meeting on November 23, 2010.

The Board members reviewed the Minutes submitted, and noted that the lawyer for the applicant misstated his information when he said, *the stream is a 24-inch pipe which conveys a regulated stream and there are no hydric soils. He indicated that during construction there would be a construction plate over the are for protection.*

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

- 1) The statement made by Mr. Gaudioso is inaccurate.

The Conservation Board will continue to review this application for Homeland Towers-Cingular Wireless as revisions are submitted.

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The Board members took no further action at this time.

**C) Zoning Board/Site Walk & Balloon Test/#2580 Rte. 35/BZ11A/09 (Santaroni) for 37.13-2-3/will be scheduled for Saturday December 11, 2010 between 9 AM and 12 PM/inclement weather – December 12; Pending weather conditions alternate dates are – Saturday 12-18; Sunday 12-19; Saturday 1-8; Sunday 1-9, etc.: (GM/CB)**

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**New Business:**

**C) Zoning Board Site Walk:**

Members of the Conservation Board including Chairman Meixner are going to try to attend the site walk and balloon test for this application if time allows.

Dr. Merker reminded the Board that the date happens before the next C.B. meeting. He said that the site is not Amato, it is located at the bottom of Orchard Hill Road.

Dr. Merker checked the map and said that it was in fact the Santaroni property. He said that when one is on Orchard Hill Road it is difficult to see the site of the cell tower. He mentioned that he would like to know what the tower would look like from the Lasdon property.

Discussion ensued among the Board members with reference to the cell tower and potential location, etc.

Chairman Meixner mentioned that the site is located in a hollow and appears to not be the best site location for the cell tower; Lasdon would actually be a better location he said.

The Board took no further action at this time.

**D) Conservation Board Protocol/Discussion/Planning Board site walks, etc. and C.B. attendance:**

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**New Business:**

**D) C.B. Protocol/Site Walks:**

The Conservation Board members discussed the protocol (in general) for attending the Planning Board site walks.

Chairman Meixner said that the Planning Board first meets at the Town House before going on the site walks. He explained that they all like to go together.

C.B. Secretary said that sometimes the Planning Board may cancel a site walk and they do not let her know, so she cannot let the Board members know what is going on with the site walk in a timely fashion.

Ms. Davis said that it happened last year to one of the Board members.

Dr. Merker volunteered that it happened to Charles Friedberg last year.

Chairman Meixner said that an individual on the Conservation Board can attend the Planning Board site walk and they do not have to comment at that time. They can just listen to what the Planning Board is saying during the site walk.

The Chair commented that the Planning Board mentioned canceling the site walk if it rains, but he said that it is the perfect time to look at the site, when it is raining and he said that they agreed with him.

C.B. Secretary Ms. Davis said that anyone can speak at the site walk as an individual, however, they cannot speak for the Board unless it was discussed previously and written in a memo or the minutes.

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**New Business:**

**D) C.B. Protocol/Site Walks:**

Ms. Davis went on to explain that it is more important that the C.B. member hears what the Planning Board is saying because they are the ones that have access to the professionals and know more about what is going on with each application. Then it can be reported back to the Conservation Board so that the rest of the Board can know what is going on. Also, the C.B. member can tell the Conservation Board what they think about what went on in the field, which is valuable information.

Ms. Davis noted that it is more of an educational learning experience than a potential for conflict. It would be good for new members to go on site walks and become familiar with how the Planning Board operates.

The Board members took no further action at this time.

**E) Conservation Board Memos/Planning Board/Engineering Department, etc./Discussion regarding responses:**

The Conservation Board discussed the fact that many of their memos go unanswered (formally).

C.B. Secretary Ms. Davis said that in the past she had mentioned to the former Town Engineer that the memos could be marked up in response or an email could be sent with the answers (if we ask any questions).

Chairman Meixner agreed.

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**New Business:**

**E) C.B. Memos/response:**

Ms. Davis said that without a Town Engineer, there is no one to consult with regarding our questions. She explained that the Principal Engineering Technician does not do Planning Board work, Consulting Engineer Barbagallo is the one that is involved with the Planning Board directly. However, she was told by email that contact with Mr. Barbagallo costs the Town money so it is not possible to consult with him even by email.

Town Board member Clinchy mentioned that the Principal Engineering Technician could answer questions.

Ms. Davis said that she was told that he does not have anything to do with the Planning Board.

Chairman Meixner said that the Planning Board has stated that we should attend their meetings, but since they are usually the evening after our meetings it is not realistic for someone to attend.

Board member Dr. Merker said that in the Planning Board Minutes they usually have a note that states that they received a memo from the Conservation Board.

Ms. Davis said that the Planning Board is getting the C.B. memos, however, we are operating in the dark most of the time when it comes to specifics that we might need. Without the Town Engineer it is more difficult to get answers to questions.

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**New Business:**

**E) C.B. Memos/response:**

Mr. Clinchy said that maybe the Town Planner could respond. He noted that maybe the Chairman could email the Town Planner and ask the questions. He explained that maybe the C.B. should meet with the Town Board and work it out that way. He advised that if that is what is needed it can be arranged.

Board member Dr. Merker said that he does not feel that the Conservation Board should have to attend another Board's meeting in order to communicate. Moving forward we should track our comments and see what happens he said. We should have specific questions and follow up on whether or not they were addressed by the Planning Board at their meeting.

Chairman Meixner said that when he was at the Planning Board meeting they said that they would respond to all of our questions. However, he said that was probably because I was present at the meeting.

Mr. Clinchy said that it appears to be the process that needs to be worked on so that the C.B. can be informed and move forward or know if they are going off track or whatever.

Chairman Meixner agreed and said that it is a timely thing. He went on to say that by the time it shows up in the Planning Board Minutes it is usually late.

Dr. Merker said moving forward we should keep track of what we want responses for and work it out that way.

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**New Business:**

**E) C.B. Memos/response:**

Discussion ensued among the Board members with reference to working out the process in order to get the necessary response from the appropriate entity.

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 9:30 PM by Board member James Moriarty 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 December 14, 2010 at 7:30 PM.

Subsequent Conservation Board meetings are tentatively scheduled to be held at the Town House on December 28, 2010 and January 11, 2010 respectively.

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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