

**TOWN OF SOUTHEAST
PLANNING BOARD MINUTES
June 20, 2016**

Present: Chairman Tom LaPerch; Boardmembers Paul Jonke, Michael Hecht, Phil Wissel and Dan Armstrong (joined the meeting at 7:50 pm); Town Planner Ashley Ley; Secretary Victoria Desidero. Absent and Excused: Vice Chairman David Rush; Boardmember Eric Cyprus; Town Attorney Willis Stephens

PUBLIC HEARINGS:

REGULAR SESSION:

Chairman LaPerch announced that Boardmember Armstrong is on his way to the meeting and is needed for one of the actions the Board needs to take tonight. He said he is on Route 7? Secretary Desidero said yes, he is about 20 minutes away. Chairman LaPerch said OK, let's get started with the regular session.

- 1. AT&T, 300-310 Route 22** – This was a review of an Application for Final Site Plan Approval. Sunil Schnyder of FDH Velocitel appeared before the Board. Chairman LaPerch said tell us again where this site is: is it south of the Village? Mr. Schnyder said yes it is off of Route 22. He said it is next to Reed Farm but you cannot see it from the road. Chairman LaPerch said so you are just adding something to the tower and Mr. Schnyder said yes, a generator in an existing cell tower compound. Chairman LaPerch said and they have done everything they need to and Town Planner Ashley Ley said yes. The motion to grant Final Approval of the Site Plan and Conditional Use Permit was introduced by Chairman LaPerch, seconded by Boardmember Jonke and passed by a roll call vote of 4 to 0 with 3 absent.
- 2. 131 FIELDS LANE, 131 Fields Lane** – This was a continued review of an Application for Site Plan and Wetland Permit. Jamie LoGiudice of Insite Engineering appeared before the Board. She said we have addressed all of the concerns of the lead agency letters. Chairman LaPerch said can you just give us an overview? Ms. LoGiudice said yes and we also made some changes. She said we made a change to flip the building around to go with the contours of the land. Chairman LaPerch said how many square feet is it and she said 10,200 with two stories. He said is this a spec building and she said yes, there is no one identified to use it yet. She talked about where the parking is located and the disturbance to the wetlands. She said we added plantings and now have greater than one-to-one mitigation for the wetland disturbance. He asked about the septic area and she said it is up the hill now and explained why they moved it after they did testing and the fill areas they will need. Chairman LaPerch asked if they need any variances and she said we do need variances. Ms. LoGiudice said based on the amount of land to be cut from the hill they will need to go over the 30 ft. maximum and, also, they are requesting, instead of a "two on one slope,; a "one and a half on one" slope. During testing, she said, they cut into rock so they are interested in having (inaudible)... Boardmember Hecht asked where this is in relation to the ice arena and she showed him it is up to the left of this parcel on the plans. He asked if they had someone in mind to use this and she said they did but not at the moment. The Board discussed the classic car tenant and Ms. Desidero said that was for the BRAVCOR project, not this site. Chairman LaPerch asked Ms. Ley if they have anything else to discuss and she said no. The motion to Adopt a Negative Declaration under SEQRA was

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introduced by Chairman LaPerch, seconded by Boardmember Hecht and passed by a roll call vote of 4 to 0 with 3 absent. The motion to refer the application to the Architectural Review Board as a Major Project was introduced by Chairman LaPerch, seconded by Boardmember Wissel and passed all in favor. Ms. LoGiudice asked if they could be referred to the Zoning Board of Appeals (ZBA) for the variances they need and Ms. Ley said yes, we can do that tonight. The motion to refer the application to the ZBA was introduced by Chairman LaPerch, seconded by Boardmember Hecht and passed all in favor. Ms. Desidero asked if someone would send her the list of variances she needs to send to the ZBA and Ms. Ley said yes, she will get the information from Ms. LoGiudice and write something.

3. **MACO LAND PROPERTIES, 1651 Route 22** – This was a review of a Request for Final Site Plan and Wetland Permit Approval. Engineer Joe Buschynski of Bibbo Associates and Owners Representative Jim McNamee appeared before the Board. Chairman LaPerch asked for an overview of the project, why they are here and the zoning issue that triggered this. Mr. Buschynski said the Zone was changed to RC and this was a 2.6-acre parcel with 100 foot setbacks in RC which made it virtually undevelopable. He said the procedure was to appeal the Town Board for a Zone change. As a result, he said, we were referred to various Boards that had involvement in the project: the Planning Board, Zoning Board of Appeals and Architectural Review Board. Mr. Buschynski said we made all our visits, received the Zone change and received the variances from the ZBA for the retaining wall configurations. He explained the retaining walls for the steep slopes and how they are terraced. He said we submitted an application for final approval of the site plan tonight. Chairman LaPerch asked Mr. McNamee if he will be using the building and he said we will occupy part of it. Boardmember Jonke asked about the terraces and said he recalled they were supposed to be 10 ft. wide and asked what they are down to now. Mr. Buschynski said they are at 3 ft. Chairman LaPerch asked how big is the building? Mr. Buschynski said a little over 10,000 sq. ft. on three floors. Chairman LaPerch asked if they have ARB approval and Ms. Ley said yes, they received ARB approval and the Town Board signed off on it. The motion to Grant Final Site Plan Approval and a Wetland Permit was introduced by Chairman LaPerch, seconded by Boardmember Jonke and passed by a roll call vote of 4 to 0 with 3 absent. Chairman LaPerch asked how long it took them and Ms. Ley said just a little over a year. Chairman LaPerch asked what's next for them. Ms. Desidero asked Mr. Buschynski if they are going to submit cost estimates so they can get a bond recommendation from the Town Engineer and Planning Board or if that had already been set. He said yes, we will do that before the next meeting. Ms. Ley said she reviewed the plans and they are good to be signed by the Chairman.

Chairman LaPerch said I am going to skip Santucci for now because Boardmember Wissel will be recusing himself so we need to wait for a quorum. He said he (Boardmember Wissel) did ask for a favor to vote on the Meeting Minutes of June 6th and Boardmember Wissel said we can't because Boardmember Hecht wasn't here so we only had three members. Boardmember Wissel said you need Mr. Armstrong for that as well. Chairman LaPerch said let's talk about the next meeting: what do we have for that meeting? Ms. Desidero said nothing. Then she said she did get an application today that she barely had a chance to look at but she thinks it is for a minor site plan amendment to BRAVCOR. Ms. Desidero said she doesn't know what happened to the other AT&T project. Ms.

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Ley said they did submit two different applications but only completed the one. Ms. Desidero said they had to slow down on the other one for some reason but should be back at some point. Chairman LaPerch said I would like to compliment Victoria (Desidero) on the beautiful new Website: it is very user friendly and very good looking. Ms. Desidero said you should also compliment (Town Councilwoman) Lynne Eckardt because she was very involved with the re-design. Ms. Eckardt said she is very happy with how it turned out as well. They discussed some of the new features of the Website and that the feedback has been very good. Chairman LaPerch apologized to the Santuccis for the delay and said we are just waiting for Boardmember Armstrong and our action tonight is to set a Public Hearing for this matter. He said it should go fairly quickly after he arrives. There was some discussion about recent staff meeting subjects that may result in new applications to the Planning Board. Chairman LaPerch asked Ms. Eckardt for an update on what is happening in the Town and they talked about a few things.

Chairman LaPerch said we will vote on the Meeting Minutes so Boardmember Wissel can leave. Boardmember Armstrong apologized for being late. The motion to approve the Meeting Minutes for June 6, 2016 as written was introduced by Chairman LaPerch, seconded by Boardmember Armstrong and passed all in favor with Boardmember Hecht abstaining. Boardmember Wissel left the meeting.

4. **SANTUCCI, 5 Shady Lane** – This was a continued review of a Request from the Building Inspector for the Planning Board to determine if there is a need for a Special Permit. Attorney Michael Liguori and Owner Dennis Santucci appeared before the Board. Ms. Ley said they are on the agenda so the Planning Board can set the Public Hearing for the second meeting in July. There were no questions from the Board. Mr. Liguori said just some comments: there is no provision in the Zoning Code for a Public Hearing on this type of referral. So, he said, I'm not going to stop you from setting a Public Hearing for the second meeting in July but I'd like you to go back to Joe (DePaolo, Special Counsel) on this because I know he has advised you... Chairman LaPerch said I don't mean to cut you off but I was on the e-mail chain today and he (Mr. DePaolo) didn't say anything that we can't have a Public Hearing so that is why I am a little curious. Mr. Liguori said I don't think there is a provision... I think the Board has discretion and that is what the Board is relying on to set the Public Hearing but there isn't a provision in the Code that authorizes the Board to have the Public Hearing on this type of matter. My recommendation is, he said, here's how we look at it: there's only two other parties who are going to come and comment on this and they don't seem to have a problem knowing when to show up or not. They are easy enough to get in touch with, he continued, so we don't feel it is necessary to have a formal Public Hearing which then has to take to the second meeting in July. We can move forward at the first meeting in July with the Town's consultants present, he said, on the matter because there is no liability on the part of the Planning Board as it relates to a referral... Chairman LaPerch said let me just stop you, my friend, because you are making a lot of sense but we are not the attorneys so we are going to have to defer to Joe (DePaolo) and Ashley (Ley) in the morning. He said I understand your logic and what you are saying but I am not sure we can say we rescind our Public Hearing vote right now. Ms. Ley said if the Board makes a determination that this does require a Special Permit then it does require a Public Hearing. Mr. Liguori said well that I understand but it is two separate things. He said there is a referral to the Planning Board... Ms. Ley said I mean the Board could take an

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action tonight before you set a Public Hearing that it wants to make a determination that it does require a Special Permit and then set the Public Hearing. Mr. Liguori said well that is the whole gist of this matter: we have a disagreement as to whether a Special Permit is required and we haven't vetted that out yet. A determination has not been made yet by the Planning Board that a Special Permit is required, he said, and that's the whole point of this thing. Ms. Ley said that's true it has not been made yet. Chairman LaPerch said unfortunately, Mike (Liguori) I hear you and I understand exactly what you said but according to our Counsel Joe (DePaolo) he just told us to set the Public Hearing so... Mr. Liguori said so my request to the Board is... I'm not asking you not to set the Public Hearing, set the Public Hearing, go back to Joe and ask Joe if it is legally required to have a Public Hearing... Chairman LaPerch said I understand: fair enough, I can live with that, absolutely. Mr. Liguori continued: then if it is not required we can move forward on July 11 instead of it taking another 30 days... Chairman LaPerch said that's very fair. Ms. Ley said what you could do is set the Public Hearing and make a determination at the following meeting as to whether or not the Special Permit is required. Ms. Desidero said if I am understanding what Michael (Liguori) is saying is that he wants this to be treated as this request from the Building Inspector first, right? Mr. Liguori said that is precisely what is before the Board. Ms. Desidero said so all I want to know from a procedural point of view, from my point of view, is if the Board votes to set a Public Hearing and then we talk to Joe (DePaolo) tomorrow or next week when he gets back from vacation, and he says you don't have to have a Public Hearing then can we not have it if the vote was already made? Ms. Ley said yes, you could rescind it. Chairman LaPerch said and then move forward with the discussion of the Special Permit... Ms. Desidero said so I wouldn't notice it, because I would have to notice it like next week... Chairman LaPerch said so yes, we have an out: if Counsel says we don't have to have a Public Hearing we can go right to the discussion of the Special Permit. Chairman LaPerch said he seems to be responding to e-mail so we can try that. Ms. Desidero said he is on vacation but does seem to be on e-mail. Mr. Santucci said we can respect that but with all due respect, we were referred to the Planning Board in February and it's been five months now that we have been waiting and waiting: we had different things: let's have a work session, let's have a site visit, let's do this and that. He continued: Five months and it's only another 30 yards of material on that site that needs to be moved to close out this permit and it's unreasonable. Chairman LaPerch said I think there were a couple of other things... Mr. Santucci said and now tonight my neighbors are not here; we were only notified a couple of hours ago that there was going to be this kind of a response so... a little birdie told them too (indicating a woman and young man in the rear of the room)? I mean it's politics at its worst... Chairman LaPerch said first of all its on our Website, our new Website, so I'm... Ms. Desidero said people get the agendas sent to them, you know that right? She said you can subscribe on our Website to have agendas sent to you every time they're issued and people who are interested in certain projects are definitely signed up to receive our agendas. Mr. Liguori said we understand that. Chairman LaPerch said this is what we can promise you: we'll try to get this expedited as fast as possible and get clarity on the Public Hearing issue and if there doesn't need to be one and we can put you on the next agenda, you're on, OK? Mr. Liguori said that's all we ask. He said that's the best I can do for you tonight. Mr. Liguori said OK. Ms. Desidero said if we can... Chairman LaPerch said yes, if we can. She said I can tell you that there are other people who are not available on July 1: I can tell you already. Chairman LaPerch said from

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the Board here? She said our consultant is not available. Mr. Liguori said which one? She said Tom Fenton (Town Engineer) may be on vacation. Mr. Liguori said can Joe Dillon come? Ms. Desidero started to answer no, I don't believe so. Mr. Liguori said do you know for sure? She said I don't think so, we can ask him but I don't think he knows... he has never been out there. Chairman LaPerch said the answer is, Mike, let's talk tomorrow... we can contact Joe (DePaolo) and find out if we can put you back on the regular session and then we can call Joe (Dillon) and find out if he is comfortable and if Tom Fenton is comfortable enough having Joe speak on his behalf because Tom is the one who has the history here, not Joe, unfortunately, and that's the problem. Ms. Desidero said and Joe has not been out there. Mr. Liguori said just like any other office, usually someone can pick up where someone else left off... Chairman LaPerch said I get that... why don't we do this so everyone is on the same page: let's set a time for you, me and Ashley (Ley), we'll talk and make sure we are on the same page. Mr. Liguori said OK. He said once again I apologize for the delay tonight... and I think your timing was a little wrong with the application, right? Ms. Desidero said it's not been five months you have been waiting around: you put in an application... Mr. Liguori said time out, time out... this was referred in February by the... Mr. Santucci said by the Building Department and then Mr. Liguori said by the Building Department... Chairman LaPerch said hang on Dan (Armstrong) you'll get your time. Mr. Santucci said the application was if we wanted to do extra work but we decided at this point we would like to close out the permit that was on it and its if we need a Special Permit and, like I said, it's only another 30 yards of material that has to be moved to close out the permit that's on it. Chairman LaPerch said you want to close it out. He then acknowledged Boardmember Armstrong who said I have a couple of procedural questions: Mike (Liguori), are you saying that the Planning Board can't set a Public Hearing until it takes some other action? Mr. Liguori said yes. Boardmember Armstrong said what is the other action you think we need to take? Mr. Liguori said so here is the discussion: there is only one action for the Board. There is a provision under Chapter 69 that says the Building Inspector has the authority to refer a questionable project to the Planning Board, period, end of sentence, he said. We have been referred, OK, so the subject of that referral is whether a Special Permit is required. We haven't been referred for a Special Permit, OK, we've been referred for a determination, he said, so the issue that we have is we are here tonight for the setting of a Public Hearing because the Board has been advised that a Public Hearing is recommended, OK. Boardmember Armstrong said I am glad you just used that word and thank you for the clarification. Mr. Liguori said that was my point when I first started this was to say look, I am not here to stop you from setting a Public Hearing. Boardmember Armstrong said that was my next point: you are not saying the Planning Board doesn't have authority under this... Mr. Liguori said it could have discretionary (inaudible)... Boardmember Armstrong continued: it could have discretion where it could determine on its own that it feels that a Public Hearing is necessary? Mr. Liguori said that's right. There is no prohibition against the Public Hearing, Boardmember Armstrong asked? I am not arguing that: I'm not saying there is a prohibition, Mr. Liguori said. Boardmember Armstrong said OK, fine then what about deciding if we are going to set a Public Hearing and then having the Special Counsel determine tomorrow if that is procedurally correct and ... Ms. Desidero said that's what he's asking... Boardmember Armstrong said and if it's not... Chairman LaPerch said then he is back on the regular session and he saves himself a couple of weeks. Ms. Desidero said and the only thing I just wanted to remind everyone on

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the Board is that it was the Special Counsel who suggested and recommended that we have this Public Hearing because he felt that that was the best way to give everybody an opportunity to come and speak: that's what he said. Mr. Liguori said that's fine: I don't disagree with Joe's (DePaolo's) advice... Ms. Desidero said but now you are asking him the same question that he already gave an answer to... Mr. Liguori said my point is that there's only two other parties that are gonna come speak... Ms. Desidero said which makes sense... And there's absolutely no reason to have the formality of a Public Hearing when we could easily just call them and say we are going to be on the next agenda: they come for every agenda meeting anyway, said Mr. Liguori. Boardmember Armstrong said but when you have a Public Hearing you don't know who is going to show up. Mr. Liguori said yeah but the point is if there is no legal requirement for the Public Hearing... Boardmember Armstrong said I agree but now we are talking about two different things: you said that only two people are going to be interested: I don't know that. Mr. Liguori said well... right... Boardmember Armstrong said you may know that but the Board doesn't know that. Mr. Liguori said but the point is, on the determination as to whether or not a Special Permit is required, there is no legal requirement for a Public Hearing. Boardmember Armstrong said I know (inaudible). Mr. Liguori said so those other people that you're... Chairman LaPerch said all right, we are going around in circles here, let me just finish: tomorrow morning we'll jump on the phone or get an e-mail out to Joe as soon as possible to get this cleared up so you have a path, all right? He said we can go back and forth on this discussion all day but I think you made it very clear what you want and I am not arguing with what you want but let's get Joe (DePaolo) to give us his opinion and if that's his opinion then we can go right to a regular session and discuss the Special Permit: and that's "A", great, and "B" is I think the Town wants to make sure that they have the consultants available who have been a part of this journey so we may have an issue with whether Tom (Fenton) is available or not and I'm going to have to talk to Tom (Fenton), Joe (Dillon) and Ashley (Ley) and see...that could be where the hiccup is... He said I think the first part of the argument makes sense and the second part is going to be proper representation for our Town is going to be the issue. Mr. Liguori said all right (inaudible). Mr. Santucci spoke to Mr. Liguori... Mr. Liguori said he (indicating Mr. Santucci) just asked if Tom can't be there that Joe Dillon can pick up... it's no different than me picking up another file in my office and taking... Chairman LaPerch said well, we'll have that discussion but let's try to get an answer for you tomorrow then. He said I am sorry again for the delay tonight. The motion to set a Public Hearing for the Santucci matter for July 25, 2016, was introduced by Chairman LaPerch, seconded by Boardmember Hecht and passed all in favor. Chairman LaPerch said subject to Special Counsel's recommendation. Ms. Desidero said tell me how you want me to word it. The Board decided to make the motion "subject to a discussion with Special Counsel about the merit of this based on the challenge of Mr. Liguori."

Chairman LaPerch recognized the woman and young man in the audience and said welcome, good evening: what application were you here for tonight? The woman said he is working on a merit badge. Chairman LaPerch said oh, good for you, did you learn anything tonight? (*Laughter from the Board.*) Chairman LaPerch said this was one of our more boring meetings but at least you saw some of the things we are required to do. He said if you need anything else to get that badge, please give Victoria a call or me or Ashley and we will help you out with anything you need. He

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said your name is? The young man said Peter Arnold. Chairman LaPerch said great: thanks for coming.

The motion to close the meeting was introduced by Chairman LaPerch, seconded by Boardmember Armstrong and passed all in favor.

July 6, 2016/VAD