

**Town of Hamburg**  
**Planning Board Meeting Minutes**  
**March 19, 2008**

The Town of Hamburg Planning Board met in regular session on Wednesday, March 19, 2008 at 7:30 p.m. in Room 7B of Hamburg Town Hall. Those attending included Chairman Gerard Koenig, Vice-Chairman David Phillips, Secretary Stephen McCabe, Karen Rogers, Sasha Yerkovich, Richard Taber and Peter Reszka.

Others in attendance included Andrew Reilly, Sarah desJardins, Richard Lardo, Councilman Kevin Smardz and Attorney Don McKenna.

Excused: Attorney Timothy Quinlivan

**Public Hearing – Omni Pain & Wellness Center (Camp Road)**

Mr. McCabe read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by Zaxis Architectural, P.C.

The applicant proposes to construct a 28,575 sq. ft. medical facility on vacant land on the east side of Camp Road, north of Southwestern Boulevard.

In accordance with the new Town of Hamburg site plan ordinance, a Public Hearing will be held on March 19, 2008 at 7:30 p.m. in Room 7B of Hamburg Town Hall.”

Colby Smith and Patrick Feeley, both from McGuire Development, appeared on behalf of the proposed project.

Mr. Feeley stated that the medical building proposed is identical in design to the existing medical building that has recently been completed adjacent to this site. He further noted that the requirements of the Camp Road Overlay District will be complied with.

Mr. Reilly noted that, at its previous meeting, the Board advised the applicant that it would prefer that the parking areas behind the two buildings be connected for cross-access. Mr. Smith responded that the applicant would rather not connect them, if at all possible.

Chairman Koenig stated that it is his understanding that if, in the future, the

applicant finds that cross-access in the rear is necessary, they would have to return to the Planning Board for approval of such.

Chairman Koenig asked the applicant if they have discussed the internal traffic flow with the Traffic Safety Advisory Board (TSAB). Mr. Smith responded that they have made repeated calls to Tim Ellis, Chairman of the TSAB, but have not had a response yet. Chairman Koenig noted that the next meeting of the TSAB will be on April 3, 2008. It was decided that the applicant will attempt to discuss the project with the TSAB at its next meeting.

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. No one spoke.

Chairman Koenig declared the public hearing closed.

The Planning Board members authorized the Planning Department to begin preparing resolutions for the Board's April 16, 2008 meeting.

Mr. Phillips made a motion, seconded by Mrs. Yerkovich, to table the request for Site Plan approval until the Board's April 16, 2008 meeting. Carried.

Engineering Department comments are attached.

### **Public Hearing – Benderson Development (Brierwood Plaza)**

Mr. McCabe read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by Benderson Development Co., LLC.

The applicant proposes to construct a +/- 110,000 sq. ft. retail/restaurant/office development on property formerly known as the Brierwood Plaza, north side of Southwestern Boulevard, east of Rogers Road.

In accordance with the new Town of Hamburg site plan ordinance, a Public Hearing will be held on March 19, 2008 at 7:30 p.m. in Room 7B of Hamburg Town Hall.”

Tony Battista and James Rumsey, both from Benderson Development, and Chris Wood from Carmina & Wood appeared on behalf of the proposed project.

Mr. Battista stated that the site plan shows five proposed buildings and that the building in the rear is proposed for office use. He further stated that the largest building would be the “anchor” of the Benderson part of the plaza and would be occupied by multiple and/or mid-sized users. The remaining three out buildings could be a combination of retail or restaurant, or office-type uses. Mr. Battista noted that a sidewalk is proposed on Rogers Road from the curb cut north to the property line and that quite a bit of interior sidewalk is proposed within the development. He further stated that Benderson is not proposing a sidewalk along Rogers Road south of the curb cut into the development because of the grade issue in that area. He noted that the rear of the larger building is designed to look very much like the front of the building and landscaping is proposed between that building and Rogers Road.

Mr. Battista stated that the location of the curb cut onto Rogers Road has been approved by Erie County.

Mr. Reilly stated that the entire plaza site was the subject of an Environmental Impact Statement when Wal-Mart was proposed last year and therefore the SEQRA aspect of this project is finished.

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. The following residents spoke:

1. Donald Weiss, 2963 Cloverbank Road, voiced concerns regarding the following issues:
  - The turning lane from the development onto Rogers Road and its distance from the entrance to Brierwood Country Club. Mr. Weiss is also concerned about traffic attempting to turn into Brierwood and what might happen if that traffic has to stop because vehicles ahead are backed up trying to turn into the plaza. He asked if a Traffic Impact Study (TIS) was done on this area taking into account both the Wal-Mart and the 110,000 sq.ft. Benderson Development proposal and Mr. Reilly responded that a TIS was indeed done.
  - Sidewalks along Rogers Road. He believes that the Town of Hamburg is looking for sidewalks along all of its roadways. He stated that currently there are no pedestrian walkways along Rogers Road and he feels there will be many people walking to the plaza from the surrounding neighborhoods. He would like to see sidewalks from Southwestern Boulevard north to the plaza property line.

- Restrictions for large trucks entering the roadway into the plaza from Rogers Road.
- The fifty-foot landscaped buffer along Southwestern Boulevard. He feels that it is important that the trees and bushes planted in that area be maintained. He also feels it is important that the proper number and species of trees be installed in the fifty-foot buffer.
- The number of parking spaces proposed as it relates to the proposed uses. He is concerned that if a majority of the space is restaurant use and the applicant comes up short on the number of provided spaces, they will ask the Zoning Board of Appeals for a variance to provide a lesser number of spaces than what is necessary to accommodate all of the uses in the development.
- The locations of the fire hydrants. He further stated that the development is situated in the Wanakah Water District and the buildings should be taxed on the \$9.3 million dollar bond that residents are paying for.

Chairman Koenig declared the public hearings closed.

It was determined that the applicant will respond to the comments made at the public hearing.

Mr. Phillips made a motion, seconded by Mr. McCabe, to table this project. Carried.

Engineering Department comments are attached.

### **Public Hearing - Benderson Development (Proposed Bank 5334 Southwestern Boulevard)**

Mr. McCabe read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by Benderson Development Co., LLC.

The applicant proposes to construct a +/- 3,037 sq. ft. bank building on property located at 5334 Southwestern Boulevard.

In accordance with the new Town of Hamburg site plan ordinance, a Public Hearing will be held on March 19, 2008 at 7:30 p.m. in Room 7B of Hamburg Town Hall.”

Mr. Reilly noted that this property was rezoned by the Town Board to C-2 recently with the condition that only one access be provided to Southwestern

Boulevard, a cross-access be provided to the Wal-Mart site and a potential future cross-access to the property to the north be provided on the site plan.

Tony Battista and James Rumsey, both from Benderson Development, and Chris Wood from Carmina & Wood appeared on behalf of the proposed project.

Mr. Battista stated that Benderson Development purchased this property from Mr. Rhodie and is proposing to locate a First Niagara Bank on the site. He showed the Board members a rendering of what the bank building would look like. He noted that only one driveway into the property is proposed, which has been approved by the New York State Department of Transportation, and it is a full in and out driveway. He further stated that Benderson will supply a cross-access easement agreement with Wal-Mart to the Town of Hamburg for its review and a possible future cross-access to the parcel to the east of the plaza will be shown on the site plan.

Mr. Battista stated that, although the Southwestern Boulevard Overlay District requires a fifty-foot landscaped buffer along Southwestern Boulevard, Benderson is proposing a thirty-five foot landscaped buffer because the bank needs the area for parking spots. He further noted that in lieu of the fifty-foot buffer, Benderson is proposing to enhance the landscaping in the thirty-five foot area to compensate for the loss of green space.

In response to a question from Mr. Phillips, Mr. Battista stated that sidewalks already exist along Southwestern Boulevard in front of the proposed bank.

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. The following residents spoke:

1. Donald Weiss, 2963 Cloverbank Road, voiced concerns regarding the following issues:
  - The sizes of the proposed trees in the buffer area along Southwestern Boulevard. He feels this area should be well maintained by the developer.
  - The drive-thru lanes of the bank and what would happen if someone is in line and needs to exit for whatever reason.
  - The entrance/exit to the bank property to/from Southwestern Boulevard. He feels that making a left-hand turn out of the bank property would be very dangerous and that left turns should not be allowed.
  - The interior traffic pattern of the site.
  - The ownership of the Bank of America building.

Chairman Koenig declared the public hearings closed.

Mr. Reszka made a motion, seconded by Mrs. Rogers, to table this proposal. Carried.

Engineering Department comments are attached.

**Public Hearing – Hilbert College Proposed Dormitory (5200 South Park Avenue)**

Mr. McCabe read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by Hilbert College.

The applicant proposes to construct a 155-bed dormitory on property located at 5200 South Park Avenue.

In accordance with the new Town of Hamburg site plan ordinance, a Public Hearing will be held on March 19, 2008 at 7:30 p.m. in Room 7B of Hamburg Town Hall.”

Greg Carballada from Foit-Albert Architects and Richard Pinkowski from Hilbert College appeared on behalf of the proposed project.

Mr. Carballada stated that Hilbert proposes to build a 155-bed residence hall to the rear of the college campus on land that is currently paved. He further stated that the plans have been recently revised to address the comments received from the Engineering Department.

Mr. McCabe stated that he visited the site and found no problems with the location, as it is far removed from South Park Avenue and will be buffered from surrounding uses.

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. No one spoke.

Chairman Koenig declared the public hearings closed.

Mr. Phillips made a motion, seconded by Mrs. Yerkovich to issue a Negative

Declaration for this project, as the Board has reviewed the plan and the Environmental Assessment Form, as well as comments from the advisory boards, committees and departments and has determined that the project will not have a significant effect on the environment. Carried.

Mr. Phillips made a motion, seconded by Mrs. Rogers, to grant conditional site plan approval to Hilbert College for a new residence hall with the following conditions:

1. Approval is subject to the Engineering Department comment letter dated March 19, 2008.
2. The Building Inspector will review and determine the number of parking spaces required.

Carried.

Engineering Department comments are attached

### **Lowe's of Hamburg**

Attorney Jay Pohlman, as well as Taylor McDermott from Lowe's, appeared on behalf of the project.

Mr. Reilly stated that this project was the subject of an Environmental Impact Statement and the Town Board rezoned the property with conditions. Subsequently, three public hearings were held by the Planning Board (for Subdivision, Special Use Permit and Site Plan approval).

Attorney Pohlman stated that Lowe's will retain ownership of the rear parcel and construct the Lowe's store, while the developer will retain ownership of the front parcel and will landscape the front parcel at the time the Lowe's store is completed.

Regarding the conservation area around the Lowe's store, Attorney Pohlman confirmed that Lowe's will own that land and the conservation easement on that land will be in the name of the Town of Hamburg, which will have enforcement rights.

Mr. Reilly stated that the Town Board has indicated that it would like the conservation area rezoned to PR (Park/Preservation Lands District) so that the nearby residents are permanently protected.

Attorney Pohlman stated that Lowe's has received the water quality permit from the New York State Department of Environmental Conservation for the project

and that the plans have been submitted to the New York State Department of Transportation for the road work and the new signal. He further noted that the site plans have been revised to reflect the comments received from the Engineering Department. In addition, Lowe's received three variances from the Zoning Board of Appeals for a reduction in the number of required parking spaces, the height of the building and building signage.

It was determined that the fencing around the detention ponds will be four feet in height. It was also determined that the detention ponds, sound barriers and all disturbed areas will be outside the conservation easement area.

Chairman Koenig asked if anyone in the audience had any questions.

Mr. Warren Joseph, residing at 3670 Pleasant Avenue, asked if the conservation area will be fenced. Attorney Pohlman responded that it will not be fenced and that the Town Building Department will act as the enforcement arm for the restrictions placed on the conservation area.

Mr. Donald Weiss asked about the wetland issues on the front parcel. Attorney Pohlman responded that the applicant has a permit to fill the wetlands on the front parcel. Mr. Weiss further asked if the applicant is aware that Lowe's is dropping twenty stores from development. Attorney Pohlman responded that he is aware of this and that the stores being dropped are primarily on the west coast.

Mr. Phillips made the following motion, seconded by Mr. Reszka:

"Whereas, the Town of Hamburg Planning Board received an application from Lowe's of Hamburg to subdivide vacant land located on the north side of Southwestern Boulevard, east of Oregon Place, and

Whereas, the Town has determined that this is a two-lot minor subdivision, and

Whereas, in accordance with the Town of Hamburg subdivision regulations, the Town of Hamburg Planning Board has reviewed this subdivision request and held the required public hearing on February 20, 2008, and

Whereas, the impacts of the subdivision of the property, the rezoning of the land from R-2 and R-3 to C-2 and the development of the site was fully evaluated in the SEQR EIS process, and Findings to Approve were issued by the Town of Hamburg Town Board on December 10, 2007.

Now, Therefore, Be It Resolved that the subdivision of this property meets Town of Hamburg zoning and subdivision requirements and is hereby approved with the following conditions:

1. The final design of the out parcel(s) are dependent on the resolution of the issues outlined in the November 14, 2007 letter from the NYSDEC. If these issues cannot be resolved, the parcel(s) may have to be reconfigured, reduced or eliminated.
2. If the out parcel(s) are developed, they will not include any automotive uses (car sales, repair, gasoline stations, etc.) per the rezoning.”

Carried.

Mr. McCabe made the following motion, seconded by Mr. Phillips:

“Whereas, the Town of Hamburg Planning Board received an application for a Special Use Permit to construct a Lowe’s Home Improvement Center in excess of 100,000 sq.ft. (building will be approximately 139,410 sq.ft.), and

Whereas, the Town of Hamburg Planning Board has extensively reviewed this application and the materials submitted during the review of this project, and

Whereas, the Planning Board has also extensively reviewed related applications by Lowe’s for rezoning, subdivision approval and site plan approval, and

Whereas, in conformance with the State Environmental Quality Review Act (SEQR) the Town of Hamburg Town Board issued Findings to Approve on December 10, 2007, and

Whereas, the Planning Board held a public hearing on February 20, 2008 on the Special Use Permit request as required in accordance with Article XXXIV of the Hamburg Town Code, and

Whereas, the Planning Board also held public hearings on the proposed subdivision and site plan approval, and

Whereas, the Hamburg Planning Board has reviewed the criteria for the issuance of a Special Use Permit and has made the following findings:

1. The project will be in harmony with the general purposes and intent of Chapter 16 of the Hamburg Town Code. The general intent of a Special Use Permit for a building in excess of 100,000 sq.ft. is to acknowledge the fact that larger buildings have a greater likelihood of impacting areas, and that all C-2 zoning areas may not be suitable for these larger uses. The Hamburg Planning Board has thoroughly analyzed the potential impacts

from the development of this site and has determined that the large amount of vegetative buffer to remain makes the project less invasive than some of the existing smaller uses and properties along Southwestern Boulevard. The proposed Lowe's Home Improvement Center, with its large setbacks, is consistent with the present commercial uses along the south side of Southwestern Boulevard (documented in the Environmental Impact Statement).

2. The project will not create a hazard to health, safety or the general welfare of the public. This has been illustrated through the environmental review of this project, traffic studies, storm water analysis, design changes and restrictions, etc.
3. The project will not alter the essential character of the neighborhood, nor be detrimental to the residents thereof. The proposed development of a Lowe's Home Improvement Center complies with the Town of Hamburg 2010 Comprehensive Plan, which calls for this area to continue as a regional commercial area with improved buffer and setback requirements from adjacent residential properties. The existing 200- to 300-foot wooded area that is to be preserved around the east, north and west sides of the building will act as a buffer between the Lowe's building and adjacent residential properties.
4. The project will not otherwise be detrimental to the public convenience and welfare.

Now, Therefore, Be It Resolved that the Town of Hamburg Planning Board hereby approves the Special Use Permit for the Lowe's Home Improvement Center (for a building in excess of 100,000 sq.ft.) with the following conditions in accordance with Article XLVI:

1. The approximately 16-acre vegetative buffer area will be owned and maintained by Lowe's. In addition, a conservation easement in the name of the Town shall be provided for this buffer area.
2. Final architecture of the building is to be as shown on the Lowe's exterior elevation plan dated 2/21/08 as prepared by Costich Engineering.
3. A Landscape Plan shall be provided meeting the Southwestern Boulevard Overlay District requirements (minimum of 33 street trees) and the conditions of the SEQRA Findings.

4. A follow-up traffic study shall be completed to Town of Hamburg and New York State Department of Transportation requirements after the first out parcel is developed and before the second out parcel is developed.
5. The Lowe's site shall be designated as a "no idle" area for heavy duty diesel trucks. In addition, the site shall incorporate regulations restricting the use of back up and other noise sensors on delivery trucks, dumpsters, snow plows, etc. Truck deliveries to the site will be prohibited between the hours of 11:00 PM and 5:00 AM.
6. If required, an off-site wetland mitigation replacement area of 2.5 acres shall be developed at the Town Nike Base site.
7. Out parcel development is contingent upon addressing the NYSDEC comment letter dated 11/14/07. In addition, the out parcels, if developed, will not include any automotive uses (car sales, service, gasoline sales, etc.)
8. Transportation improvements in accordance with the DEIS are required as follows: turn lanes, a traffic signal and a restricted second entrance. In addition, a sidewalk connection shall be constructed between the existing sidewalk along Southwestern Boulevard and the site and shall be extended throughout the site.
9. Two sound barrier walls of approximately ten feet in height shall be constructed along portions of the side and rear of the site to meet New York State Department of Environmental Conservation and Town of Hamburg standards for noise reduction.
10. The storm water management ponds shall be enclosed by a four-foot high wooden split rail fence with a wire fence behind it (not chain link).
11. The garden center shall be fenced and canopied as shown on the Lowe's exterior elevation plan dated 2/21/08 as prepared by Costich Engineering.
12. Temporary and permanent erosion control measures shall be put in place to limit the amount of sediment buildup in on-site and downstream waterways.
13. During construction of the Lowe's building, the non-disturbance areas of the site shall be clearly demarcated by fencing.

14. The proposed landscaping for the vacant front parcel (Lot #2) will be implemented by the then owner at the time the Lowe's building is constructed.

15. Lowe's shall reduce the parking lot lighting after hours using a central timing device."

Carried.

Mr. Phillips made the following motion, seconded by Mr. Reszka:

"Whereas, the Town of Hamburg Planning Board received an application for site plan approval for the construction of a Lowe's Home Improvement Center of approximately 139,410 sq.ft., and

Whereas, the Town of Hamburg Planning Board has extensively reviewed this application and the materials submitted during the review of this project, and

Whereas, the Planning Board has also extensively reviewed related applications by Lowe's for rezoning, subdivision approval and Special Use Permit for this property, and

Whereas, in conformance with the State Environmental Quality Review Act (SEQR), the Hamburg Town Board adopted Findings to Approve on December 10, 2007 (and is hereby incorporated by reference), and

Whereas, the Planning Board held a public hearing on the subdivision request, the Special Use Permit request and the request for site plan approval on February 20, 2008.

Now, Therefore, Be It Resolved that the Hamburg Planning Board hereby approves the site plan submitted by Lowe's dated March 23, 2007 as revised March 2008 with the following conditions:

1. Site Plan Approval is subject to the Town Engineering Department and Planning Department's final review and approval.
2. Site Plan Approval is subject to the conditions and mitigations described in the SEQR documentation and in the Special Use Permit approval."

Carried.

Engineering Department comments are attached.

**Berkley Square III**

Mr. Andrew Romanowski appeared on behalf of the proposed project.

Mr. Reilly stated that the applicant proposes to build residential housing in an area of the Berkley Square PUD (Planned Unit Development) that was originally designed to be commercial. He further stated that the applicant is requesting a rezoning from the PUD as originally approved to a PUD that includes the change from commercial to residential use in this area of the development. He noted that the Planning Board is being asked to make a recommendation to the Town Board on the requested rezoning. Subsequent to the property being rezoned, the applicant would be requesting subdivision approval from the Planning Board.

Mr. Reilly stressed that at this point the Planning Board should be considering the concept of rezoning this area of the PUD and that if the property is rezoned, the Planning Board would look at more specific issues regarding this residential proposal.

Mr. Reilly confirmed with Mr. Romanowski that the homes proposed would be single family homes only.

Mr. Al Amelotte, president of the Berkley Square Homeowners' Association, stated that the commercial area was never part of the Association. He further stated that the original sponsor and the second sponsor tried to get the property rezoned. He noted that the Homeowners' Association is supportive of the concept.

Mr. Phillips made a motion, seconded by Mrs. Rogers, to forward a positive recommendation to the Town Board regarding Mr. Romanowski's proposal to rezone the commercial area in the Berkley Square PUD to residential because it is a very effective use of the property. Additionally, it appears that that area will never be a commercial area and a single family development is a very good idea for this area. The vote being six (6) in favor and one (1) abstention (Mr. McCabe), the motion carried.

Engineering Department comments are attached.

**Oakwood Grove Subdivision**

Andrew Gow of Nussbaumer & Clarke appeared on behalf of the proposed project.

Mr. Reilly stated that at its last meeting, the Planning Board asked the applicant to show on the plan what is planned for sub lot #11 along Lake Avenue. He further noted that the applicant has indicated on the plan that two (2) four-unit apartment buildings will be proposed in the future.

Mr. Reilly noted that the applicant proposes to build zero lot line duplexes on the lots fronting Oakwood Avenue.

Mr. Gow stated that the plan now shows access to Lake Avenue for sub lot #11 across from the existing curb cut on Lake Avenue and noted that the applicant has confirmed with the Thruway Authority that the taking of lands by the Thruway Authority for the bridge along Lake Avenue included rights of access to the parcel. He further noted that the applicant's traffic engineers did a site distance analysis, which has been forwarded to Erie County Highway Department. Additionally, he stated that the site distance analysis determined that there are no site distance issues coming from the bridge on Lake Avenue or from the other direction.

Mrs. Rogers stated that she visited the site on March 17, 2008 and had the following to report:

"The proposed project on the south side of Oakwood Avenue is located in a heavily wooded area with some very lovely trees. On the north side of Oakwood are small, well maintained ranch homes. This appears to be a very quiet residential neighborhood. It has a recreation area and baseball field for the residents. The project area has been staked on both sides of the streets to include the engineering work that would need to be done. The proposal of building ten two-unit townhouses and two four-unit apartment buildings seem to be too ambitious of a project for this small area. An exit onto Lake Avenue from the apartment buildings would be problematic due to traffic and visibility of the traffic going west. The influx of traffic entering and exiting the plaza on the south side of Lake Avenue could also be difficult. I spoke with Mr. Richard Pukalo at 4302 Oakwood Avenue who feels this project would not be in the best interest for his neighborhood. He spoke on behalf of himself, Mr. Paul Rosolowski, Laurie Best and Rick Pohwat. All are residents of Oakwood Avenue."

Mrs. desJardins stated that she received a call from the Village of Blasdell Planning Board Chairman, as well as from another representative of the Village of Blasdell, both of whom have concerns regarding infrastructure, and she was told that the Village of Blasdell may have some comments for the Planning Board in the near future. It was determined that the applicant will get in touch with the Village to see what the issues are.

It was determined that the Conservation Advisory Board will be contacted for its input regarding the wooded area on the south side of Oakwood Avenue.

Mr. McCabe made a motion, seconded by Mr. Reszka, to schedule a public hearing for this request to be held on April 16, 2008. Carried.

Mr. Paul Rosolowski, who resides on Oakwood Avenue, stated that the wooded area across from the homes on Oakwood Avenue is lovely and maintained by the residents. He further stated that it would be a shame to eliminate the green space and recreation areas that the children in the area use.

Mr. Richard Pukalo, who also resides on Oakwood Avenue, stated that he and a neighbor have maintained the wooded area (cleared brush, disposed of garbage, etc.) and have created a park-like setting there for the neighbors.

Mr. Phillips made a motion, seconded by Mr. Taber, to table this proposal until the Board's April 16, 2008 meeting. Carried.

Engineering Department comments are attached.

### **Steel Winds II Wind Energy Facility**

Paul Curran and Timothy Ryan, both from BQ Energy LLC, appeared on behalf of the proposed project.

It was learned that the City of Lackawanna issued a Negative Declaration on the wind energy project on February 20, 2008 and a copy of the Negative Declaration was submitted to the Planning Board by the applicants.

Mr. Reilly stated that a condition of approval would be the issuance of a decommissioning bond, which would have to be negotiated with the Town of Hamburg. He further noted that another condition of approval would be the requirement that the applicant work out the tax issues regarding this project with the Town of Hamburg.

In response to a question from Mr. Reilly regarding the existing windmills in Lackawanna, Mr. Curran stated that the gear boxes are being replaced and the blades are being inspected and reinforced. He further stated that the blade inspection and repair work is being completed now and by April all of the windmills will be up and running.

Mr. Phillips made the following motion, seconded by Mr. Reszka:

"Whereas, the following findings have been made:

1. The City of Lackawanna Planning Board, as Lead Agency, issued a SEQRA Negative Declaration on February 20, 2008.
2. The proposed Commercial Wind Energy Conversion System (WECS)

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is consistent with the Town of Hamburg Comprehensive Plan and Local Waterfront Revitalization Plan.

3. The proposed Commercial WECS will not unreasonably interfere with the orderly land use and development plans of the Town of Hamburg. It is a good re-use of this property.
4. The benefits to the applicant and the public of the proposed Commercial WECS will exceed any burdens.
5. The proposed Commercial WECS will not be detrimental to the public health, safety or general welfare of the community. (As detailed in the applicants "Analysis of Environmental Impacts" document and the application materials.
6. The proposed Commercial WECS complies with all required provisions of the Zoning Code, and no variances are needed from the Town of Hamburg Zoning Board of Appeals.
7. The proposed Commercial WECS is in compliance with the Town of Hamburg's Commercial WECS Law, based on the documentation dated June 25, 2007 submitted to the Town of Hamburg, and based on the conditions attached.

Now therefore, the Hamburg Planning Board hereby approves the Special Use Permit for the Steel Winds II Wind Energy Facility with the following conditions:

1. The applicant shall provide the appropriate removal bond and insurances to the Town for its approval. The Town will work with the applicant to determine the appropriate bond amount. The figures provided by the applicant are not acceptable (placing too much weight on the "salvage" value of the units). The bond may need to be re-evaluated each year.
2. The applicant shall meet all the requirements of the fees and costs section of the Commercial WECS Law.
3. A letter from Buffalo Southern Railway indicating its approval of the setback from its rail line shall be submitted to the Planning Department.

4. The applicant shall provide the certifications required per the Town's Commercial WECS ordinance to the Code Enforcement Department.
5. The applicant shall perform the monitoring requirements for commercial wind energy conversion systems as noted in the Town Code (avian/bat impact monitoring studies, power production reports, yearly structural inspection reports and construction reports). The avian/bat impact study will be in accordance with NYSDEC requirements (contact Brianna Gary at the NYSDEC in Albany).
6. The routing of materials to the site during construction will not utilize any Town of Hamburg roads. Proper permitting and approvals will be obtained for the utilization of any New York State or Erie County roads or facilities.
7. Approval is subject to the conditions of the Engineering Department's comment letter dated March 19, 2008."

Carried.

Mr. Phillips made a motion, seconded by Mr. Reszka, to grant Conditional Site Plan approval for a commercial wind energy conversion system with the following conditions:

1. The applicant shall obtain all other regulatory approvals.
2. A site plan shall be submitted to the Planning Department clearly demarcating the required area (10 acres) for these five windmills.
3. Aviation warning lights shall be installed at the top of each of the wind turbine support towers in conformance with Federal Aviation Administration regulations.
4. Approval is subject to the conditions of the Engineering Department's comment letter dated March 19, 2008.
5. The developer will submit a decommissioning bond, as well as all other requirements of the Town.

Carried.

Engineering Department comments are attached.

## OTHER BUSINESS

Mr. Taber asked about the status of the request the Planning Board made of the Building Inspector for a report regarding the Carubba Collision building on Camp Road, as well as the Tractor Supply building on Southwestern Boulevard. Mrs. desJardins responded that the Building Inspector indicated that the report will be forthcoming, hopefully by the Planning Board's April Work Session.

Mr. Reilly spoke to a resident who had questions regarding the Steel Winds project.

Mr. Reszka made a motion, seconded by Mrs. Rogers, to approve the minutes of March 5, 2008 as originally written. Carried.

Mr. Phillips made a motion, seconded by Mr. Reszka, to adjourn the meeting. Carried.

The meeting was adjourned at 10:08 p.m.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board