

Town of Ballston  
Planning Board

**TOWN OF BALLSTON  
PLANNING BOARD**

**Regular Monthly Meeting: January 20, 2016**

Present: Richard Doyle, Chairman  
James DiPasquale  
Patrick Maher  
Audeliz Matias  
John VanVorst  
Kim Kotkoskie, 1<sup>st</sup> Alternate  
Thomas Johnson, Building Inspector  
Kathryn Serra, Town Engineer  
Peter Reilly, Planning Board Attorney  
John Munsey, C. T. Male  
Members of the General Public

Chairman Doyle called the January 20, 2015 meeting to order at 7:30 p.m. and led the Pledge of Allegiance. Chairman Doyle reviewed the agenda.

Chairman Doyle asked for corrections to the December 16, 2015 meeting minutes.

**MOTION:** Mr. Maher made a motion to accept the December 16, 2015. Mr. VanVorst seconded the motion and all present voted in favor. **CARRIED.**

**OLD BUSINESS**

**Dolomite Products, Inc. – Curtis Industrial Park (Site Plan Review – Asphalt Plant)** Adam Schultz, Esq. with Couch White and Steve LeFevre, Sr. Managing Geologist with Barton & Loguidice were present on behalf of the applicant.

Mr. Reilly recommended Chairman Doyle let the members of the public know what is happening this evening and that there will be no public hearing on the above said application.

Chairman Doyle stated that the applicant Dolomite is working on the DEIS and are at the point where we think we have resolved this and the next step would be FEIS.

Mr. Schultz stated as the Chairman was suggested we (the applicant) and Barton and Logudice have been working diligently to answer the questions that have been posed based over a period of meetings

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from this board and C. T. Male and have worked very hard to address those concerns. The applicant has provided responses to the questions and believes that C. T. Male has used those responses to prepare the FEIS.

Mr. Munsey stated December 30, 2014 was the close of the public comment period of the DEIS that the Planning Board accepted as complete as commencing for public comment on the project. After that, public comments were collated, provided to the applicant and asked the applicant in the role of Lead Agency to prepare a draft response to all of the public comments.

On August 12, 2015 the applicant provided an Applicant Prepared Draft of the FDEIS to the Lead Agency.

On September 30, 2015 was the last time believes that this project was on the agenda. At that point in time, the Planning Board members posed some questions to the applicant regarding the project.

On October 27, 2015 NYSDEC caught wind of the project being changed as a result of the FDEIS of the submission of the applicant. To summarize that change, what the applicant did to revise the FDEIS and attempted to make their project more palatable by proposing a different style of an asphalt burner plant. A portable drum mix asphalt plant – it's smaller, has a lower production rate than the batch plant that they had proposed, it's quieter, has less air emissions and will result in less traffic associated with the project. Essentially it was a mitigation measure for the project by proposing an alternative measure. There were discussions at that point in time as to whether this change by the applicant would prompt the need for a supplemental EAF and we (the board) came to the conclusion that we did not think that was necessary because this is additional mitigation offered to the project – a reduction to the EAF for the project. NYSDEC asked the applicant in their correspondence what is different about their project.

On November 3, 2015 the applicant provided written correspondence back to the Planning Board of any questions that were raised specially on noise, traffic, secondary access, emergency access, traffic signal at Zim Smith Trail crossing, loading on the sewer, hours of operation and paving of the access roads.

On December 2, 2015 the applicant provided additional correspondence to the Planning Board related to some of the email dialogue going on between Barton & Lagudice and C. T. Male as we (the board) were revising the FDEIS as a revised DRAFT.

On January 4, 2016 was when the revised FDEIS was provided to the Planning Board Chairman Doyle who decided to provide the applicant with the proposed revisions of the FDEIS although not required by the Lead Agency and asked the applicant for the comments on that.

On January 12, 2016 the applicant responded to the NYSDEC correspondence and provided and updated air emissions inventory to the NYSDEC essentially revising their air permit application with the NYSDEC.

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It's a reduced scale of air emissions as a result of the project change and anticipated that NYSDEC will issue a DRAFT permit and notice that DRAFT permit on the State Facility Permit as they did previously.

On January 14, 2016 the applicant provided revised updated site plans for the new layout for the project – should have been distributed by Mr. Johnson.

On January 15, 2016 the applicant provided a response to the FDEIS essentially asking the board to reconsider one on noise and paving of the access road. In consultation with Chairman Doyle, Mr. Johnson, Mr. Reilly and Ms. Serra made changes to comment 1(u) which is included on page 29. Mr. Munsey said, "Previously it said essentially the Planning Board's requirement post construction noise survey to be done to not create a problem. In parallel the Town Board is in the process of updating the noise ordinance code for the town level to make more compliant with current standards. The applicant's did not think it was fair to be held to a standard that was part of the code when 50-dB at the threshold/property/lease line since ambient noise is already like that. Mr. Munsey stated what the applicant proposed and what he asks that the board agree to is that it be essentially the higher of the town code limits that were in effect in that point that they do the noise study or the ambient noise levels. Mr. Munsey stated that he accepted all the changes and now just showing the new edits.

The second item the applicant asked the board to consider is a response to comment 4 (j) on the paving access road and essentially came to the conclusion that perhaps it's best we leave it as written where paving the access road is a requirement of this project as mitigation.

On January 18, 2016 the applicant's response was distributed to the Planning Board Members along with the revised site plan.

Mr. Munsey stated the only comments that have been made to this January 20, 2016 DRAFT FDEIS summarize the attachments. It's appropriate that the Planning Board take the time to go through these documents in detail to understand them before we find the FDEIS be complete in findings on the project. It's not a final document until the board votes on it and concur that the document is final. At which point that occurs, a 10-day waiting period until a findings statement can be issued on the project, which will close the SEQRA compliance aspect for the project.

Mr. DiPasquale concerns:

- Confirmation that the updated operational data relative to air emissions is representative of the revised facility. C. T. Male's reviewed indicated yes. Mr. Munsey stated shown on page 3 Appendix R – supplemental information provided by applicant.
- Clarification of termination of portable/temporary versus permanent. Mr. Schultz stated it's a distinction that a manufacturer makes as to whether it's movable and can be on wheels. The

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reason for using the portable is because they are the smaller plants. The applicant's intention is to locate it at the facility in a permanent fashion. Mr. DiPasquale said, "Permanent portable installation."

- Does that have an impact on the property taxes? Mr. Schultz said he does not believe so.
- Confirmation that it won't be moved off the site. Mr. Schultz said it will not be moved off the site.
- Reason for reduction in impervious cover. Mr. Lefevre stated originally there were going to be two access points for trucks and now one access road has been eliminated relative to the SWPPP.
- 22' high berm and fence. The purpose of the berm and solid fence is a noise reduction. Mr. DiPasquale asked the height of fence and height of berm. Mr. Lefevre did not know and will look into that matter.
- Access paving from the site to NYS Route 67 – any considerations for drainage. Ms. Serra stated the applicant is adding asphalt and would not be considered a change.
- Clarify indication of left turn lane into the Industrial Park with a turn lane by others at Commerce Drive. Ms. Serra stated that is referring to the Eastline Commons PUDD.
- On the new site plan, is the NYSDOT still included? Mr. Lefevre said yes for quality control.
- Saratoga County Planning Board – where do they stand on this project? Mr. Schultz stated that SCPB had previously reviewed this project and once they were made aware made the determination that it did not need to be seen by the Planning Board again. There will be coordination with SCDPW in regard to the signals. Mr. DiPasquale asked if the trail coordinating will be included. Mr. Schultz said yes.
- How do the signals work when a truck pulls up – do the lights go off to warn people on the trail? Mr. Lefevre said his understanding there is a motion detector/sensor that that if someone is on the trail, it flashes to allow trucks to know that someone is on the trail.
- What about a truck turning in.

The progress of this project would be conditioned on receiving all the necessary approvals and permits – NYSDOT, NYSDEC, and Saratoga County.

Mr. DiPasquale stated the latest submittal states – typically open five days a week, closed on Sundays, generally 7:00 a.m. to 4:00 p.m. hours of operation, frequently opened in the evenings for the emergency repair of local roadways. Mr. Schultz said, "That is language that C. T. Male developed." Mr. DiPasquale said it stated that it would be infrequently open in the evenings for the repair of local roadways – this would eliminate nighttime paving projects with most NYSDOT projects. Mr. Schultz stated the standard as discussed a few times – there are standard hours, but in the event that there is a need on an emergency basis to provide material, there has to be a reasonable ability to do so with the language that has been carefully reviewed by the town's technical and legal consultants – it's not what

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we (the applicant) want, but have agreed to it because we think it's a reasonable control. Mr. DiPasquale asked if the NYSDOT agrees. Mr. Schultz stated that it's standard.

Mr. DiPasquale stated generally according to the applicant's statement the hours of operation are 7:00 a.m. to 4:00 p.m. unless there is an emergency repair of local roadways. Mr. Munsey stated the word general is not in there. Mr. DiPasquale said, "Generally." Mr. Munsey state the applicant has stated that the facility operate with four full-time employees and normal hours of operation would be 7:00 a.m. to 4:00 p.m. Monday through Friday during the paving season – April through November. Mr. DiPasquale stated normal working hours would be 7:00 a.m. to 4:00 p.m. and under isolated emergency conditions (as stated in the narrative) would go to a 9:00 p.m. maximum time under certain conditions.

Mr. Munsey said, "What you're commenting on is on page 15 of the document where it is specified under item #2 – these are the conditions under which the applicant could request emergency authorization as to the operation outside of the normal hours of operation 7:00 a.m. to 4:00 p.m. Monday through Friday 6:00 a.m. the earliest start-up time and 11:00 p.m. is the latest time of seasonal activities. Mr. Munsey asked Mr. DiPasquale if his comment means that 11:00 p.m. is too late. Mr. DiPasquale stated no, apparently did not have that document in his possession. Where do the emergency operations fall under that? Mr. Munsey stated the applicant will need to ask for permission from the town to operate outside of the 7:00 a.m. to 4:00 p.m. normal operating hours, provide criteria from which that application will be reviewed. Mr. Reilly stated it's already in the document that the applicant would make an application to the town. Mr. DiPasquale said, "Maybe a portion of the confusion is due to the language in the narrative versus what is in the DEIS. Mr. Schultz stated the FDEIS is very comprehensive and put together in this way to directly in response of concerns of the board that there are established parameters for what would be of normal operating hours and how to go about a discretionary approval process by the Building Department of the hours outside. Mr. Munsey stated that there is a provision to operate outside. Mr. Munsey stated there is no provision that allows them to operate outside of the normal hours of operation on a regular basis and is specially defined as being occasional with occasional defined as occurring approximately 10 to 15 percent of the time. The fourth bullet item states – the applicant to make one request per month for occasional operations. The idea was to provide criteria to review the petition by the applicant to operate outside of the normal hours of operation.

Chairman Doyle stated this is a way to control tonnage (100,000 ton per year).

Ms. Kotkoskie asked if it would benefit the applicant to hear any questions the board may have. Ms. Serra asked on the FDEIS or Site Plan. Ms. Kotkoskie stated Site Plan. Ms. Serra stated no, Site Plan will commence after SEQRA.

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Ms. Kotkoskie noted that the Air Permit application ties into the hours of operation due to the production rates. Ms. Kotkoskie asked if the applicant has heard back from NYSDEC relative to the air permit application. Mr. Schultz stated yes and it is considered and ready to go to public notice. Ms. Kotkoskie asked if a cap was applied because it appears that over the 100,000 ton per year production rate, there are high levels of formaldehyde and benzene above state limits, Mr. Schultz stated yes, that is why they will take a cap of 100,000 tons per year.

Mr. VanVorst asked if there is a sink hole on Lake Road that the town has to repair – they are not going to wait five days to get permission to open up that asphalt plant. Chairman Doyle stated it's filled with crushed stone on a temporary basis and return and asphalt a day or two later. Mr. Schultz stated the five days as we (the applicant) understand it is the maximum time that the Building Department has to respond and does not mean they can't respond sooner. If there was a situation and was determined necessary, the response could be given right away. Mr. DiPasquale stated if they are available at 9:00 p.m. at night.

Ms. Kotkoskie stated if the applicant had a cap of 100,000 tons per year, and the max that you can produce hourly is 200 tons per hour, then through division we are talking about approximately 500 hours of operation, which is about 12 and a half weeks per year.

Chairman Doyle has a concern of dust control and asked if there was going to be asphalt around the scale house or something to control the dust. Mr. Lefevre stated as part of standard operating procedures, the applicant will keep the roads wet to keep the dust down. Mr. VanVorst stated that is addressed at the end. Chairman Doyle has a concern that the trees to west will be covered with stone dust and would like to minimize that type of thing. Mr. Schultz stated the internal travel way will be paved and best management practices that is used to keep the dust down. Chairman Doyle stated the public concern was relative to noise and stated there will be noise control at the property line that will be based on our giving standards over the initial noise level. Mr. Schultz said, "The easiest way to think about that is that at the property line, the noise level between the originally proposed plant and the currently proposed plant that noise level will not change; the noise level would be the same no matter which plant was used. A noise study will be required to confirm just that.

Mr. VanVorst stated on page 28 - Visual Impact and 10 (B) "This illustrates the view from Timber Creek Subdivision which is approximately 5,400 feet northeast of the project site. Mr. VanVorst stated it's actually southeast of the project site. Ms. Serra stated 5,400 feet is not Timber Creek – it's either the wrong project or direction.

Ms. Matias asked if comment 5 A.a. has been resolved. Mr. Munsey said, "We propose to leave that discussion as is. Chairman Doyle stated the board has a concern because exactly what size trucks will come in and what has been seen at their yards before, is the semi-tractor trailer type and a little type

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truck – three axels with four wheel on each axel on Rout 5S and Watervliet. Chairman Doyle stated the concern is where the original road was supposed to be as time generated and consequently was enough coverage provided for that and the board will follow up.

Mr. Munsey stated the findings statement will summarize in more detail what the mitigation measures are for the project, what the obligations are for the project.

Mr. Maher stated it may be advisable to send the board members a copy of the document. Chairman Doyle stated that Mr. Johnson will run off copies to board members. Mr. Munsey stated he had given a copy to Mr. Johnson.

Chairman Doyle stated the board to hold a meeting for this project to finalize the FDEIS. The Planning Board has a very heavy schedule and a further discussion was held on possible dates for the said meeting. Chairman Doyle stated the first week in February, will poll the board and make sure there is a place to meet and put out a date. Chairman Doyle stated in the meantime, get everyone a complete copy.

Application tabled.

**Brooks Heritage, LLC – Abele Woods; 249.-3-22, 23, 25, 33 (Major Subdivision/Site Plan Review -143 lots) Jason Dell, PE with Lansing Engineering was present on behalf of the applicant.** Mr. Dell stated the project is located between Benedict Road and Eastline Road it encompasses four parcels and approximately 96 acres and zoned Ballston Lake Residential.

The proposed project will include the creation of 123 single-family lots, 22 townhomes and 60 apartment units – totaling 205 units. The project originally started with 276 units and here before the board with 205 units.

The project will have sidewalks as well as street lighting and a park in order to be more of a TND. It will have two access points both on Eastline Road as well as Benedict Road. Water and sewer will be provided for the project and storm water mitigated on site by NYSDEC requirements.

The applicant has received several comment letters from C. T. Male and has responded. Mr. Dell stated that ACOE to weigh in on the culvert crossings relative to retaining walls. Greystone Engineering was retained to review the site plan.

Mr. DiPasquale asked Ms. Serra is the comments have been satisfied. Ms. Serra stated prior comments on the preliminary design. A lot of the final engineering is depending on the ACOE making their final

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determination. The ACOE cannot do that until the Planning Board grants preliminary subdivision approval.

Chairman Doyle opened the public hearing at 8:50 p.m.

**Dan Gibson, 107 Eastline Road, Bill Lorenson, Hearthside Drive and Stephen Gravereaux, 50 Woodstead Road** (Attached are letters of concern relative to the Abele Wood Residential Subdivision).

**Paul Bletsy, 4 Leah Court** referenced the meeting from October 2015 was addressed in theory the water management actually on this property and still not talking about water management that is abutting this property and our property abuts and are having problems day in and day out. If you recall at the October meeting had talked about every spring and fall his whole back yard gets filled with water and creates challenges with the septic system constantly pumping it out and cannot imagine when a road is constructed behind the back property line creating pavement with obvious with less area for water to drain. Mr. Bletsy asked the board how adjustments are going to be made to help the challenges of the cul-de-sacs that are creating and obviously in and out of the development.

Chairman Doyle asked for a motion granting preliminary approval and Lot Line Adjustment for the Abele Wood Major Subdivision)

**MOTION:** Mr. Maher made a motion that we adopt the preliminary plat approval as documented Resolution dated January 20, 2016. Mr. VanVorst seconded the motion and all present voted in favor.  
**CARRIED.**

Ms. Serra stating regarding the letter from Greystone Engineering that Dave and Susan Gibson obviously obtained and paid for and would request that Lansing Engineering provide a written response to that comment letter and also provide previous information that the Gibson's were not able to obtain from the town's files. Provide the documents they (The Gibson's) are referencing, previous test pit data from the SEQRA process, wetland hydrology that was done in September. ACOE relative to wetlands. Look into maintaining some sort of buffer on Leah Court. Mr. Brooks stated that we (the applicant) will make sure that ACOE is aware of it. Mr. Brooks stated that we (the applicant) will not be removing anything other than what that initial roadway in off of Eastline will be in terms of construction cleanout and usage and where utilities will be. Mr. Brooks stated since July 2013 when this process started, there were six lots abutting two lots on Leah Court and have removed the six lots. Mr. Brooks stated that we will make sure that the SWPP complies and delineate especially where the removal for the roadway during construction and the final roadway will be.

Application tabled.



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**Nuri Ozbay, 814 Route 50, Burnt Hills, NY 12027; 257.10-2-55 (Site Plan Review/Special Use Permit)**  
**Convert existing motor vehicle repair shop to convenience store with fuel sales.** Chris Meyer, PLS was present on behalf of the applicant.

Mr. Meyer stated this was before the board in October 2015 and after receiving conceptual approval, are back with the final submittal. Since that meeting, have made some revisions – submitted architectural drawings, corrected design brought up at last meeting, snow removal procedure, submitted NYSDEC file for any contamination spills or remediation that they have on record. C. T. Male has made the applicant aware during the excavation that any contaminated soil found will be reported and the appropriate action will be taken. A note was added to the plan restricting fuel delivery between 7:00 am and 8:00 pm. The assessment for the delivery for the route of the fuel truck would be acceptable and read into the record.

Ms. Kotkoskie stated there are two 1,500 gallon underground storage tanks, it's relatively small – the average size vehicle 15 gallons up-to 200 fill-ups per day (200 customers) that could be a frequent amount of deliveries. Mr. Ozbay stated it's quite a bit of storage – it should be maybe twice a week. Ms. Kotkoskie asked how deep these tanks are going to go for the size. Mr. Ozbay stated he did not know as the contractor who was going to install, said it will fit here. Ms. Kotkoskie has a concern for the water table. Ms. Kotkoskie stated there are two deliveries a week to those tanks and asked if the applicant would consider a hose rupture of this connection and the volumes to flow into that drywell – they make inserts and could be valve off during delivery.

Chairman Doyle stated it makes sense to cover all manhole covers when having a fuel delivery.

Ms. Kotkoskie asked when those wells were officially closed and sealed off as NYSDEC will want to know that it was officially closed.

Ms. DiPasquale asked about emergency generator and even though it's not required the applicant may want to consider because if there is a power outage the grinder pump will not work.

Chairman Doyle stated he likes the renderings.

Ms. Serra referenced the comment from their letter relative to deliveries and adds the note to the restrictions of deliveries and has obviously discussed the potential of future contamination, but that is something the applicant will have to deal with during construction.

Chairman Doyle opened the public hearing at 9:50 p.m.

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**Gary Bloomer** stated he lives adjacent to the property. After reading the minutes pertaining to the application some of the minutes could not tell if they were approved by the board or challenged by the board – there was no definitive resolve. One was the sidewalks that are not on LakeHill Road – there is a lot of talk about foot traffic, where the school is located this is going to be a convenient store. The town has sidewalks that don't go anywhere. We have sidewalks from Goode Street to NYS Route 50, the State spends "I don't know how much to put the crossing in on NYS 50 Route" and have sidewalks that go from the foot of the hill of Ballston Lake that go to Kingsley Road, but there is nothing to connect the town to the town. You cannot walk on that road without fear of getting by a rearview mirror of a vehicle – it's really tight there. The store will bring some kind of traffic from the schools and does not how you (the board) with expense. Chairman Doyle stated there are a group of businessmen on NYS Route 50 that are looking at connecting. Ms. Serra stated there was a committee set up by the town board for improvements to the Hamlet area and one of the suggestions is to revamp and attempt to put sidewalks on LakeHill Road and thinks that the current town board is much more in support than the previous ones that did the study. Ms. Serra completely agrees that the sidewalks in the town are segmented and something the town needs to deal with. Ms. Serra stated the procedure that the Planning Board has is when new developments happen, the busier corridor will have a sidewalk and if you ask a developer to put sidewalks in on their property; so obviously we are building sidewalks to nowhere, but don't want to come back in two years and have the town put sidewalks on the country highway and have the town put sidewalks in on the site that the applicant just built. The board is asking the applicant to do that with hopes that in the future a larger scale project would extend sidewalks to the school. Mr. Bloomer asked if any of the existing cuts to the highway going away. Ms. Serra stated the ingress/egress will be significantly improved on LakeHill Road is restricted to one area and the same on NYS Route 50. Ms. Serra stated the State and County are permitting this because they are reducing the width of the curb cuts – moving away from the existing intersection. Mr. Bloomer stated the town needs to look at the site if it brings a positive or negative impact relative to esthetics. Mr. Bloomer stated he thinks it needs to have a retaining wall on the perimeter backside of the property line there is tremendous erosion as evidence by the trees that are tipping over and dying. At previous meetings there was never further discussion about privacy travelling east to west relative to roof mechanicals and would request that they not been seen from his property. Mr. Bloomer stated a retaining wall is necessary for erosion control and vinyl fence on top would create that barrier. The conditions have really changed and that is the concern for negative or positive impact – 24/7 is a big deal – the Town of Ballston has to be careful that we don't do what the Town of Glenville has done and NYS Route 50 cannot handle the volume it has. The only positive impact on that proposal is the esthetics. Mr. Bloomer would like to see the town consider are the retaining wall, fence, nighttime and deliveries. Mr. Bloomer challenges the ground water depth of 7' at the proposed site. Chairman Doyle stated that most of the contractors are certified. Ms. Serra stated the site plan does show installation of a proposed vinyl fence. "It states to remove the existing rail fence, replace with a vinyl fence – renderings show 5 to 6 feet high. Mr. Bloomer asked who monitors the contamination as they do the excavation work. Ms. Serra stated they would have to comply with state regulations. Mr. Ozbay stated if an issue occurred

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would contact NYSDEC. Chairman Doyle looked at that wall and the trees are definitely leaning and asked Ms. Serra if she thinks it's unstable. Ms. Serra has personally not walked the property. Ms. Serra suggested that it be approved by the Planning Board contingent upon minor revisions being made. Ms. Serra would suggest the final plan submitted to the town for signature would have an actual height of the vinyl fence. Ms. Serra said it states "Remove the existing rail fence and replace with the vinyl fence. Ms. Serra recommends there be a height of at least five or six feet that way there are no disagreements. The vinyl fence needs to provide the visual screening. Ms. Serra recommends that note be amending on the site plan – six foot high vinyl fence for screening purposes.

**Carl Thurneau** wanted to call the board's attention to the fact that there are going to be 200 entrances and exists at that corner plus and unknown number of people who is going to stop and buy something – it's a very busy corner.

Chairman Doyle closed the public hearing at 10:07 p.m.

**MOTION:** Mr. VanVorst motioned to declare this an **unlisted action** under the SEQR process therefore will declare this a Negative Declaration under the SEQR process. Mr. Maher seconded the motion and all present voted in favor. **CARRIED.**

**MOTION:** Mr. Maher made a motion for 814 Route 50 sheet one through sheet 4 with the stipulations that a note be added to the site plan that fuel truck deliveries will be restricted before 6:00 a.m. or after 8:00 p.m. The truck turning plan be entered into the record for SEQRA as directed in C. T. Male's comment letter (The truck turning plan prepared by CME) that the fuel delivery to the site the one traffic route southbound on Route 50 turning left into the site, exiting the site by taking a left onto LakeHill Road eastbound and left onto Kingsley Road and northbound to Route 50. A note be added to the drawing the fence proposed to be installed by the applicant be a minimum six foot high and specified for screening purposes. Ms. Matias seconded the motion and all present voted in favor. **CARRIED.**

**Lamar Media (Lang), 20 Mourningkill Drive, Ballston Spa, NY 12020; 228.-3-36.1 (Site Plan Review LED Billboard) ).** Michael Fogel, Esq. with Brown Sharlow Duke & Fogel, PC council to Lamar Advertising Company.

As you know this application has been pending since March 2015 to modify the existing Special Use Permit to convert both sides of the existing billboard located on NYS Route 50 at Everson Way from static to digital. Since October 2015, Lange Media had sold its assets to Lamar Advertising and previously sent a letter to the board explaining those circumstances and requesting that Lamar be substituted as the applicant of record. Mr. Fogel stated that he does not have that much more to add tonight and we believe that the record is more than sufficient for the Planning Board to make a decision

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on a permit application. Again the permit was submitted back in March 2015 and this is the fifth Planning Board meeting and the public hearing has been open since March 2015 and has heard from everyone who has an interest in the application. In ten months, the applicant has established in our presentation with the Planning Board meetings, but also in various written submissions that a comprehensive record has been developed, which we believe demonstrates conclusively that the application satisfies all applicable zoning requirements and all the special use permit criteria that this board has to consider. We believe we have answered conclusively every question that the Planning Board has asked us, as well as questions from the town engineer that is relevant to the special use permit criteria and also believe that we have adequately and sufficiently addressed all public comments submitted to date at the hearings and point out that a lot of the comments heard have been repetitive some duplicative and do believe we have sufficiently addressed all the comments. Again, we did make a submission on December 17, 2015 that was specifically to address/request from the town engineer and the board that we go out in the field and identify how many homes are going to be able to see the billboard. Again, the billboard is existing, so and were able to determine in the submission have taken 18 photographs from various locations and vantage points to really conclusively demonstrate what we believe is the existing condition. We were able to determine that there will be approximately eight homes that currently see the board today and would be able to see the billboard once it's converted to digital. There are approximately seven units in the Beacon Hill Development (a number of the comments that were received were from Beacon Hill) and then there is one other home on Mourningkill Drive that currently has a view of the board and will be able to see the board once it's converted to digital copy. Mr. Fogel pointed out that just because it's visible, doesn't necessarily mean that it equates to an adverse impact and does not believe it amounts to an adverse impact at all. Importantly the new board will not create any new views; in other words, no one who does not have a view of the board now will be able to see the board upon its conversion to digital copy. Mr. Fogel stated before that submission was made had spoken to Ms. Serra because he wanted to make sure that we had clarification of exactly what was being asked. We did question initially whether it was required in order for the Planning Board to make the determination and wanted to accommodate the request so that submission was made. We think again based on the totality of the record that has been provided to this board both at the presentations at various meetings and the writing of the record is conclusive, provides sufficient information for the board to make a decision and believe that decision can be made tonight and are happy to answer and questions that you might have, but were hoping we are able to proceed to an approval this evening.

Chairman Doyle stated that we (the board) have some concerns and are going to have to go back out to the site and look at this. Chairman Doyle stated at the first meeting with Mr. Lang the board explained "and when he got his boards and wanted digital and we said they had to be still boards and we explained to him that we had zoning relative to digital boards and were really not comprehensive and were having trouble interpreting this and weren't looking for digital boards in that area. Mr. Lang accepted that and we have the two just flat boards." In January 2015 the State changed the code and

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the code basically says that you can have digital board within 300 feet of one another on basically any highway. The board still struggles with that a bit because on a two-lane road is 55mph and most people are driving 60mph and still have this safety concern that we have been talking about for some time. Chairman Doyle stated he appreciates the drawings that were provided to the board, but the numbers that you have of affected homes and the numbers at the December meeting are 3 to 1. Chairman Doyle stated it's 3 to 1 because you did not take into consideration the building that is going to happen in between Everson Way and Sherman Way and the building is going to go on the north side of the Sherman Way – right now we are discussing square footage, but the owner of the property is trying to develop that piece of property. Chairman Doyle stated that each unit has four dwelling units and came up with 78 and looked at it during the day and at night – at night it's worse than day. When the image changes, the colors are different and so consequently it's like watch a kaleidoscope or something – it keeps flipping all the time. A Street light you can get accustomed to, but this is a constant problem. Chairman Doyle stated the applicant provided the board with some Google maps, which are a "vertical type situation" and all these, are specific areas and looking straight down on them and humans look at things in a horizontal plane. Ms. Serra said, "She would like to disagree" as the applicant did take actual photographs. Mr. Fogel stated that is correct. Mr. Fogel stated we could have stopped there because the Google image is all that the board requested, but we agree that Google earth image was meant to orientate the board with respect to distances to adjacent units to the board and agree that did not tell the whole story so we did go out and took photographs from 18 representative locations from each direction towards the board. Ms. Serra stated all of the photos that were presented to the town were taken by the applicant and not from Google earth. Mr. Fogel stated that is correct. Chairman Doyle stated he has some from Google earth because they say Google on them and the other ones that he sees around here are really not the typical ones that he would look at where he thinks the congestion is. Chairman Doyle stated this is his opinion and looked at the photographs and goes up and looks at the road and it's totally different. Mr. Fogel stated there is only one Google earth image. Chairman Doyle stated that he did not think that was the point and does not want to get into a discussion and thinks that we have to go back out there. Chairman Doyle stated that he needs to write a letter and have that drafted and is getting help from the Supervisor and at least document our concerns that we have this. Mr. Fogel stated respectfully you have had this since March 2015 and now go back out there and write this letter and it's now January 2016. Mr. Fogel stated with respect to the zoning this is a billboard zone and is the only area where it's zoned for billboards including digital boards. With respect to NYSDOT and the safety concerns from the letter that you plan on writing we know that NYSDOT has already sent an email indicating they have been out to the site, the Traffic Safety engineer has reviewed the location – specially this location and has determined that there is no traffic safety issues. "That was not good enough so you guys asked for a meeting with NYSDOT – that happened in October 2015 and the same gentleman along with the Traffic Safety engineer reiterated the contents of his email explaining that they have been out to the site, carefully reviewed it, it met all their requirements and then they offered to go out to the site with you so you can explain your concerns and the board chose not to do so.

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Ms. Matias is curious to know why the diagram shows the distance for the homes on east side of NYS Route 50, but not for the ones on Mourningkill Drive. The pictures from Mourningkill Drive the houses are not parallel to the road they are perpendicular and asked the reasoning for doing it only for the east side and not the west side. Mr. Fogel asked the distances. Ms. Matias stated yes. Mr. Fogel stated the ones that are in the distances there are too far away across another two-lanes of highway – we took photos from Mourningkill Drive and there is only one home that can see it. Ms. Matias stated parallel to the road, but the houses are not facing north/south. Mr. Fogel stated that is just one of the photos and there are a series of photos that is directly from the front yard of the home. Ms. Matias stated she only sees one and you took it from the other side of the street. Mr. Fogel stated he is going to back to what he said a few meetings ago and were happy to do this and accommodate the board's request, but every one of those houses can currently see the board. Ms. Matias quoted Mr. Fogel "Just because it is visible does not mean there is an adverse impact." Ms. Matias agrees, but the same way is because it is not visible does not mean there is not an adverse impact. Ms. Matias stated she went to see the sign on Fuller Road and sat on the corner and that road has houses and the sign is not totally adjacent to the houses at night you can see a reflection of the changing colors even with the Evergreen trees you can see the reflection on the back side of the houses and the side facing Fuller Road. Mr. Fogel stated he does not know what else to submit. Mr. Fogel stated we have identified all the homes that can currently see the board and will be able to see the board on its conversion to digital copy. People can see the headlights coming down NYS Route 50 too. Mr. Fogel does not know what else to provide to the board and think there has been a pattern of continually a moving target for us and we continue to answer these questions, but at some point we think it was back in October 2015 this process needs to come to an end and this board needs to act one way or the other. If you are not satisfied with the application and think there is going to be an adverse impact, we can act and deny the application, but to keep putting us through this and requesting additional information and there really isn't anything else to answer here. Chairman Doyle stated we are also at the end of that too because we have worked and what we are getting is not what we need to do this and we have the responsibility of the safety of the people. The way this works is that the State says "well you can have that billboard there" and a board member asked you a month or two months ago about who is responsible if a major accident occurs there. Is it the Planning Board because we approved it at the end or is it Lamar. We have this concern for the people. Mr. Fogel stated that he appreciates that. Chairman Doyle stated the town board is looking at this too and looking at making some changes and so consequently we have to go back out there and look at this and see if we can find something that we can do with this. Mr. Fogel asked Chairman Doyle if he wanted him to address this. Chairman Doyle stated we started out with two billboards and Lamar owns all the others – 14 in total, but they all don't qualify because they all are not 300 feet apart. Matthew Duddy, Vice President of Lamar advertising stated the State limit for spacing is 2,500 feet and operate and oversee 13 digital locally and have over 3,000 nationally. Chairman Doyle stated that Mr. Lang had quoted 300 feet. Mr. Duddy will supply that documentation to the board. The spacing locally is 300 feet per static and stated he sat on the committee from the very first day digital was built in this market and built the first one on I-90 in the city of Albany and then the Town of Colonie

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and since then has been a boom for local businesses. It used to be 5,000 feet in six second intervals and as of January of last year 2,500 feet spacing for digital and eight second interval. Chairman Doyle asked that information be forward to Mr. Johnson. Mr. Reilly stated a question came up of a limited access highway of 2,500 feet and that was the question that did not seem to apply to this particular situation. The way the State previously had it was 5,000 foot spacing and then they had these measurements and a whole lot of traffic engineering issues. They were much more stringent than the Federal Highway Administration which dictates six seconds – this State is much more stringent and New York is one of the most stringent of all the states relative to digital. In working with the Outdoor Association and other DOT's, they adopted a few changes. The major one was they went from six to eight seconds, which is much more stringent than the Federal Highway recommends and in turn they changed the spacing. The fear of the State is that with every billboard become digital – that is not feasible, economically it's not feasible and there is not a demand there and we have proven it. The first one built was in May 2007 in the State of New York and have the Governor's Traffic Safety Council utilizing digital billboards for traffic safety messages and specifically request digital for their .08 and biker's safety so the Governor's office is investing in digital. We work with the FBI and personally work with Troup G to get the first billboard inmates up in Dannemora – over 55 billboards in six States in a day of that escape. Personally work with Special Victims Unit of New York to start the Amber Alert program started in 2007. The spacing is 2,500 feet for digital. In terms of safety, New York State undertook their own study without any body knowing trying to say these are not safe. They hired RPI to do a lighting study and their intent was to prove that they were not safe and every result came back that actually the traffic safety is better with less accidents. Chairman Doyle stated that he has not read that only federal groups on the internet stating that these are unsafe because they affect the individual driving. Mr. Duddy stated he has been working with the DOT engineers for many years and they have been trying to find a way to not let this happen; meanwhile it is everywhere across New York. There are definitive traffic studies that show there is no appreciation accidents or they would not be here. The gentleman you (the board) met with Mr. Roberts with the NYSDOT does his job very well, but will try and find a way that it is not going to work – when you (the board) met with him and if there is a way to say no, they would have. The traffic studies are there and published and anyone would debunk any assertion that they are not safe. If they were not safe and Lamar operates over 3,000 across the country, would be all over that because they do not want to see this flourish. Mr. Duddy stated if there is fear that there are going to be other billboards, there will not be and with NYSDOT spacing cannot convert the other boards to digital. Mr. Reilly said, "You would be willing as far as the spacing requirement would not apply for anymore additional billboards." Mr. Duddy stated yes.

Ms. Matias asked if there is an example of a similar type of setting. Mr. Duddy stated a sign was just converted in Clifton Park on NYS Rout 9 north of 146, south of Ushers Road last year. Chairman Doyle stated it's a four-lane highway. Mr. Duddy stated the traffic count is actually less than it was out here. Ms. Serra stated that was brought up by Mr. Lang – it's a five-lane highway and the Planning Board had asked if there were any on a two-lane road. Mr. Duddy stated there is also one located on NYS Route 9

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in the town of Colonie and they all met the zoning. Mr. Duddy asked does this meet the current zoning and are their regulations – yes. Mr. Duddy stated that his job is to follow the zoning and it fits the zoning.

Chairman Doyle stated we are going to have a special Planning Board meeting in early February and by that time will get ourselves lined up with this and vote up or down on it. The town is going to a process now – not to have this. The town board has a public meeting on February 9, 2016 scheduled. Chairman Doyle stated the people here are against it. If you take a look at the road and those two developments off Mourningkill and NYS Route 50 and the entrances may not be the best and people do not pay enough attention, but there has been some close misses and how do you measure a sign against a human life. Mr. Duddy stated he has had the question answered a lot and answered by traffic engineers. Chairman Doyle stated that we (The Town of Ballston) don't feel they fit and lots of other places to put sign. Ms. Serra said a questions was raised at one of the meeting by Ms. Matias (Mr. Lang had said no) if the applicant would consider to increase the refresh rate. Ms. Serra asked if the applicant would agree to an even higher refresh rate because the amount of changes in signs that a driver would see would be even less. Mr. Duddy stated the industry stands and have work with the State and the Fed and thinks eight seconds is proven and the DOT engineers have made a very educated decision and following the regulations setforth. Ms. Serra asked if the applicant was willing to work with the board and make a concession of 12 or 14 seconds and might be something that would help.

Chairman Doyle stated the board is going to have another meeting in approximately two weeks and would invite you to come back and would appreciate any information that you could send. Mr. Fogel stated a special meeting is being held the first week in February. Chairman Doyle stated yes and did not know the exact day. Mr. Fogel asked if there is going to be action on that night one way or the other.

Mr. Duddy stated in preparing for another meeting as Mr. Fogel has been working on this for a year, where in regulations, what are we not meeting in the letter of the law and understand the law may change, but this permit must be recognized under the way the application is now. There may be some applications for some additional units, but again we are here now. So I guess the question is so we don't waste the board's time – what do we need to do and where are we not meeting the code. Chairman Doyle said, "We are not sure what our code is for digital billboard signs." We told Mr. Lang at that time that we were not sure of that – the next thing he comes up and the State approves this and it should be o.k. with you. Mr. Fogel stated this is the first time this is being brought up in the past ten months and the zoning is very clear – the billboard overlay zone and it allows digital billboards and it has since that was adopted. Chairman Doyle stated it's the digital park we (the board) are having trouble with. Mr. Fogel stated the digital has always been in the zoning. Mr. Reilly stated that it speaks to digital pursuant to §138-35 A billboard may be illuminated, provided that all light sources shall be designed, shielded, arranged and installed to confine or direct all illumination to the surface of the billboard and away from adjoining properties. Mr. Reilly asked if the LED comply with that. Mr. Fogel stated that we have previously submitted a Daktronics report back in June or July 2015 that



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demonstrates that we have complied with that requirement and is directed toward the road. Ms. Serra stated that she does have that report. Ms. Duddy stated the study states there is less of a light source than currently. Ms. Serra concurs. Chairman Doyle stated people are concerned and have tried to get the speed limit reduced in that area.

Mr. Duddy stated if the plan meets the requirements, we must move forward. Mr. Fogel stated the concern is what we need to address. It's been a moving target, the records clear that since March 2015 you have asked us for information and we provided it and think it significantly addresses it and get to the next meeting and its - we need to do more homework – so what do we need to do so when we get here the first week in February and are able to obtain an approval. Mr. Reilly stated the Chairman did suggest that the photographs of the affected residences and was reviewed by C. T. Male recommended the board may want to look at it again. Mr. Reilly does not think there is additional information necessary, but does feel the board based on the applicants submittal, C. T. Male's recommendation. Chairman Doyle stated the County is looking at it tomorrow and reviewing the town board's new amendment that says there are no digital signs in the area. Mr. Duddy stated even if that law is passed in February, your ruling would not change and must honor and recognize the code as it is. Mr. Fogel stated that it does not apply to this application and it's clear that you can't delay an application because you are waiting to run out the clock before a zone change. Chairman Doyle stated we are not trying to do that. Mr. Duddy stated that if the law changes, you must honor this permit under current zoning. Mr. Reilly stated the town can enact a town ordinance and this board will be acting on this prior to the town board's amendment.

Mr. VanVorst stated that there is not one person on this board that is in favor of approving this and one of the reasons why we have procrastinated maybe, is because we are still waiting for some piece of evidence that is going to convince us that it's the right thing to do. Even though the zoning allows it, it does not mean that anyone in this town wants it. You can be a good neighbor or a bully and force us to do something that we don't want to do – so it's up-to you.

Mr. Duddy stated he will forward the regulations for the 2,500 feet and the eight seconds.

Chairman Doyle to contact the applicant of the next meeting date and the board is going to take one more look at it.

Mr. Fogel stated that this application has not been treated fairly and proceeded on the agenda by an application for a new fueling station that will be creating 200 new truck trips onto what somebody claimed to be a dangerous road/intersection. At the first public hearing, it's approved and this is a use that already in existence and the Lead Agency was declared in October and this is a use that is already there that is zoned that is not creating any new vehicle trips and NYSDOT signing off on the location being safe and yet we are onto our sixth meeting and the public hearing is still open – it's not fair

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treatment. Chairman Doyle stated at one time it was a gas station, which did very little business. Mr. Fogel stating it's going from very little business to 200 trucks trips with no review.

Mr. Duddy stated he will close our comments and the board is frustrated and does not appreciate being called a bully. Mr. VanVorst stated that he did not call you a bully. Mr. VanVorst stated that you have a choice. Mr. Duddy stated he feels they are abiding by the code and if safety is an issue will provide you more studies.

A further discussion as held on the location of the billboard relative to safety.

Chairman Doyle asked if the applicant wants to attend the special meeting in two weeks. Mr. Fogel said yes, we want to come to the special meeting. Mr. Duddy asked to work with Mr. Reilly on the interpretation of digital. Mr. Duddy said the only barrier is the legality of digital.

Chairman Doyle said the photographs just don't look or identify what we are looking at.

Mr. Reilly asked if you are looking at any other submission from the applicant. Chairman Doyle stated no.

Application tabled.

**MOTION:** Mr. VanVorst made a motion to adjourn. Ms. Matias seconded the motion and all present voted in favor. **CARRIED.**

Meeting adjourned at 10:55 p. m.

Respectfully submitted,

  
Michelle Dingman  
Planning Board Secretary

Enclosures