

Town of Ballston
Planning Board

TOWN OF BALLSTON PLANNING BOARD

Regular Monthly Meeting: February 3, 2016

Present: Richard Doyle, Chairman
Jeffrey Cwalinski
James DiPasquale
Patrick Maher
Audeliz Matias
James Fisher, 1st Alternate
Kim Kotkoskie, 2st Alternate
Kathryn Serra, Town Engineer
Peter Reilly, Planning Board Attorney
John Munsey, C. T. Male
Members of the General Public

Chairman Doyle called the February 3, 2016 meeting to order at 7:30 p.m. and led the Pledge of Allegiance. Chairman Doyle reviewed the agenda.

Dolomite Products, Inc. Curtis Industrial Park (Site Plan Review) Asphalt Plant Consider accepting FEIS.

Mr. Munsey stated to refresh the board on the overall SEQRA process.

- The DEIS was accepted some time ago;
- Public comment period ended;
- Applicant was asked to do an applicant prepared draft (first draft of the FEIS);
- Applicant provided the FEIS to the board;
- Technical consultants for the Planning Board have been taking over the editing of that document since then;
- The latest version of the FDEIS is dated January 20, 2016 (shows the last rounds of track edit changes);
- When the board formally accepts the FEIS for the project that ends the response to public comments aspect of the project. Thereafter, more than ten days, less than 30 days, it's going to be up-to the Planning Board to adopt a statement of findings for the project – it's the logical extension of the response of the FDEIS and what's contained in the DEIS. It's a slightly shorter document than the final DEIS – typically in the range of 30 to 40 pages, but it provides somewhat of an executive summary of the entire process - what was originally proposed, what was revised, how is the document revised and the project revised in response to public comment.

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- Once the finding statements are adopted as final by resolution by the Planning Board that effectively ends the SEQRA compliance aspect of the project;
- Along with the findings is the decisional aspect of the findings – is Site Plan Approval of the Dolomite Asphalt Plant;
- The Time frames set forth in SEQRA are within 30-days so theoretically the FDEIS is finalized tonight with consultation with the Planning Board and then have 30-days to complete the findings aspect of the project and be in a position to shortly thereafter or at the same time to vote on the site plan approval aspect for the project.

Mr. Munsey stated that is the objective and can certainly change that strategy a little bit in consultation with the applicant, but that is the general overall strategy for the project. The findings are equivalent to the Negative Declaration of Environmental Significance. The Negative Declaration (Neg Dec) is the final determination of no significant and adverse impact. The FDEIS and findings statement is a little bit different than that – the findings that the board will ultimately agree on is that the project as proposed, mitigated, all the environmental impacts associated with the project to the maximum extent practical for the project. It's not a finding that the project does not have any adverse impacts, but it's rather a finding that the project as proposed and as mitigated with conditions put upon it is minimizing impacts to the maximum extent practical.

Mr. Munsey stated there are two things to accomplish tonight

1. Objective of finalizing the FDEIS (first goes over the edits proposed in the document one by one and then turns it back to the Planning Board for any additional items better specified or further mitigated in the discussions.
2. The NYSDEC has issued a DRAFT Air Permit for the project and is presently the subject of a public review. The Planning Board has an opportunity to provide comments to NYSDEC for them to take into consideration before their issuance of the State Facility Permit on the project and recommended course of action in consultation with the Planning Board members is that they would like to make comments to NYSDEC. C. T. Male has put together a suggested DRAFT edits and can go those and then with the Planning Boards concurrence on behalf of the Planning Board, would submit a response letter to NYSDEC. It would trigger them to consider that response before issuance of the final permit.

The FDEIS

Four edits;

Change the date – if the board finds it complete, would propose to change the date. The Planning Board to authorize C. T. Male to finalize the document on behalf of the Planning Board as discussed here

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tonight – effective it would be final tomorrow. The requirement for the FDEIS is once it's completed, not only do you have to maintain a copy yourselves; you have to make a copy available on the web, which can be done through the town website and then there is a distribution requirement of the FDEIS to all the involved agencies and interested parties.

Mr. Munsey proposes to change the date to February 4, 2016.

Item #1

Page 26 item 10B

10B – This illustrates the view from Timber Creek Subdivision, which is approximately 5,400 feet northeast of the project site. The 70-foot balloon is mostly obscured by deciduous trees in the foreground from this viewpoint. It appears that even the tallest plant facilities will be screened by vegetation during leaf out and it is unlikely that any of the plant components will have a significant impact on the views from this viewpoint. Additionally, the 70-foot balloon falls below the top of the tree line along the horizon, indicating that the HMA equipment will not be a prominent feature stretching above the tree line.

There is a reference to Timber Creek Subdivision. Response: should state Timber Trace Subdivision.

Item #2

Hours of operation – page 15

operating outside of normal operating hours, and the Building Department's desire to provide clarity in the amount of operations that would be allowable outside of normal operating hours, Monday through Friday, 6 am to 5 pm.

1. All operations outside of normal hours of operation will require Town approval, specifically from the Town Building Department.
2. On a daily basis, Monday through Friday, 6 am is the earliest start up time, and 11 pm is the latest time of ceasing operational activities. On Saturday, 7 am is the earliest start up time, and 5 pm is the latest time for ceasing operational activities.
3. Occasional is defined as occurring approximately 10 to 15% of the time, equating to approximately 1 to 2 days during a two week period.
4. The Applicant can make one request per month for occasional operations outside of normal hours of operation.

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5. The repeated request of the same hours of operation on a consecutive basis, for example, requesting Saturday operations repeatedly during consecutive two week periods, is not acceptable and would serve as the basis of denial.
6. As part of the written request by the Applicant to the Building Department for operation outside of normal hours, it is required that the Applicant submit an updated nuisance complaint log for the preceding month, demonstrating that the operator has been responsive to substantiated complaints, or that there have been no substantiated complaints during this time frame.
7. The Building Department will provide a written response to the request within five (5) business days, using the above criteria as the basis for approval or denial.

Going through this in more detail, had identified an emission. In reading through all of these requirements, that would be applicable to the extra hours of operation – the occasional duration of operating the facility outside of the normal hours of operation.

On item #2 had identified in our first draft “On a daily basis, Monday through Friday 6 am is the earliest possible start up time and 11 pm is the latest time of ceasing operational activities. On Saturday 7 am is the earliest start time, and 5 pm is the latest time for ceasing operational activities. Since nothing is defined for Sunday there, it excludes Sunday, but for purposes of clarity suggest we add another bullet item #3 and renumber all the other ones below that that states “That excludes no Sunday and no NYS holiday work for this occasional working outside of the extra hours of operation.” Chairman Doyle asked if the board concurs. Board concurs. The Planning Board is basically putting restrictions on operations of this facility outside normal hours of operation. In consultation with many members of the Planning Board we got input from various parties including the Code Enforcement Officer who is going to have to enforce this. The direction that Mr. Johnson gave the board on that is to make something that is easy for me to do, don’t make it so I’m not sure what to do. That is the objective and tried to define occasional as approximately 10 percent of the time.

Another item was a typo on page 44 – Response to comment 1ccc:

Comment 1ccc: Section 6.2, Unavoidable Adverse Impacts: Air quality impacts and loss of wetlands should be added to this section, in addition to operational noise, dust and odors.

Response: The Applicant is of the opinion that the proposed plant will not result in any adverse environmental impacts on air quality, noise, or odors.

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The Planning Board disagrees with the Applicant's opinion and believes that implementation of the proposed action will have certain potential adverse impacts that cannot be completely avoided.

Page 80 – grammar check – Response to item 3gg-29

Comment 3gg-29: The DEC Visual Policy requires the Applicant to consider facility maintenance. The DEIS does not discuss how the facility will be maintained to assure that all mitigation measures remain effective in the future

Response: As noted previously, the proposed project is not expected to result in any adverse visual impacts (See DEIS, Section 4.4, Pages 55-67; DEIS, Appendix H). As such, further mitigation is not required or necessary and potential visual impacts from the proposed project have been mitigated to the maximum extent practicable. Nonetheless, the facility will be maintained in accordance with applicable best management practices.

Changes:

Response: As noted previously, the proposed project is not expected to result in any adverse visual impacts (See DEIS, Section 4.4, Pages 55-67; DEIS, Appendix H). As such, further mitigation is not required or necessary. With potential visual impacts from the proposed project have been mitigated to the maximum extent practicable. Nonetheless, the facility will be maintained in accordance with applicable best management practices.

Mr. Munsey stated those are all the edits that C. T. Male would propose based on our review of the document and based our sort of the monitoring of the public comments that have been coming in continuously on the project despite the fact that the public comment period has closed.

Ms. Kotkoskie stated we now know that January 12, 2016 Barton and Loguidice submitted some revised calculations for the air permit.

Comment No. 1h: 8. Section 4.1, Air Quality: The DEIS does not provide all documentation of the air dispersion modeling. A copy of the DAR-1 analysis for criteria pollutants (CO, NOX, PM and SO2) is not included for reference. Input files showing the data used for the ISCLT2 modeling were not included within the document (i.e., the document included only a summary of modeling results including coordinates and concentrations for formaldehyde and benzene; and coordinates and a "ratio of contaminant to AGC" for "combined contaminants" for the aggregated HAPs evaluated). In order to evaluate the reported results of the modeling completed, copies of the DAR-1 evaluations for the criteria pollutants should have been transmitted as part of the Air State Facility Permit Application. Similarly, in order to evaluate

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the ISCLT2 modeling, a summary of the model inputs should have been included to demonstrate the sources, emission rates and climate data used in the model.

Ms. Kotkoskie stated that a section needs to be added about the new calculations and the modeling that was done and thinks a section needs to be added about how the new calculations since the configuration changed to the plant, difference in tonnage and the result on the calculation.

The second set of calculations in the February 2016 assumed 100,000 tons per year asphalt production and thinks that should be described in the FDEIS as well as the results of that formaldehyde and the new dispersion modeling that was done. Mr. Munsey stated to emphasize that point we added a new (Appendix Q), which is the DEC correspondence on the State facility permit as well as a new (Appendix R), which specifically contains that January 12, 2016 B& L letter. Ms. Kotkoskie asked if Appendix R the DRAFT permit. Mr. Munsey stated no, he did not put the DRAFT permit in there and just the information that was provided to NYSDEC. They cannot finalize that DRAFT permit until SEQRA is complied with. They can close out their public comments, but could not issue the final permit until a findings statement has been adopted by the Planning Board, SEQRA Lead Agency for the project. Ms. Kotkoskie stated that she did not propose words to describe the results of those calculations, but will the board be able to see that before putting a date on tomorrow. Mr. Munsey stated no, not if we (the board) want to finalize it by tomorrow – I can give it to you tomorrow, but the board would not be able to vote on it unless they were together as a quorum. The more normal process is to agree a principle on how the document will be changed and then the document is changed without having an additional review. Mr. Reilly stated he would agree unless the board is going to have extensive comments subject to the edits done by C. T. Male. Ms. Kotkoskie has concerns because over 100,000 tons per year of asphalt production gives you air violations unless you are going to show additional dispersion modeling that at the boundaries you don't have issues with these contaminants. This document does not capture that right now nor does the DRAFT permits. If we can't finish SEQRA, then we have to decide without seeing a final permit. Mr. Munsey stated this is not the final step and considered the responsiveness summary to the public comments – the final step is the findings statement and that's where the ratchet will be cranked up in terms of all of- the conditions, mitigation, conditions of the Planning Board is imposing on the project are going to be defined with detail, however on the air permit, the way it's going to read is it's going to be a condition of the findings statement; you can never complete SEQRA after permit is issued on a project. With respect it's not the Planning Boards position

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to be the “purviewer” and not experts in air emissions; that’s NYSDEC role as the involved agency on the air permit aspect of the project. Ms. Kotkoskie stated as long as we have a period to review the mitigation measures – one would be the 100,000 ton per year production. Mr. DiPasquale asked for classification on the 100,000 ton per year. Mr. Munsey stated the 100,000 tons per year is going to be presented in the FDEIS as the limit of the operational limit of the capacity of this facility. Mr. Dipasquale stated voluntary limit. Mr. Munsey stated no, it’s not voluntary anymore once it becomes part of the FDEIS – it’s an enforceable action. Mr. DiPasquale asked who will enforce. Mr. Munsey stated the Lead Agency – it’s tough for a Planning Board to enforce that provision so that’s why we want to make comment to NYSDEC to try to make it an enforceable part of the air permit. Chairman Doyle stated the board has had an issue on how to monitor that 100,000 tons and we believe it would be a NYSDEC permit because 100,000 in emissions would be the same and then the State would monitor that. Mr. Munsey stated or they would correlate an air emission to that production. Mr. Schultz attorney for the applicant stated that they would accept the 100,000 tons per year cap, which is clear in the January 12, 2016 correspondence. Ms. Kotkoskie stated the January 12, 2016 correspondence is based on 100,000, but says please do not use this as a cap. Ms. Kotkoskie stated you may have verbally accepted it. Mr. Schultz stated that we will accept the conditions on the permit by NYSDEC. Mr. Munsey stated that the DRAFT permit the NYSDEC put out for public comment was not updated and is in error and the Planning Board caught that.

Ms. Kotkoskie stated the complaint process on page 37

Comment 1dd: Complaint Protocol: Considering the potential for the proposed action to result in offsite noise, dust and odor complaints from the public or other businesses in the Curtis Industrial Park, the Planning Board should consider implementing a public complaint protocol to further mitigate potential noise, dust and odor impacts resulting from facility operation. Such a protocol would require that the Applicant establish a publicly accessible phone number during all times of facility operations, maintain a record of public complaints, and then formulate a response action to validated public complaints.

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Periodic complaint protocol reports could then be submitted to the Planning Board.

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The last sentence of that comment states - Comment 1dd: Complaint Protocol: Considering the potential for the proposed action to result in offsite noise, dust and odor complaints from the public or other businesses in the Curtis Industrial Park, the Planning Board should consider implementing a public complaint protocol to further mitigate potential noise, dust and odor impacts resulting from facility operation. Such a protocol would require that the Applicant establish a publicly accessible phone number during all times of facility operations, maintain a record of public complaints, and then formulate a response action to validated public complaints. Periodic complaint protocol reports could then be submitted to the Planning Board.

Ms. Kotkoskie stated the last sentence states "Periodic complaint protocol reports could then be submitted to the Planning Board. Ms. Kotkoskie states that "Periodic" needs to be defined. Ms. Kotkoskie suggested a phrase "quarterly" or perhaps "quarterly perhaps, at the request of the town."

A further discussion was held on the complaint protocol reporting.

The consensus was every two months or at the request of the town. If they make an application to the Code Enforcement Officer for operating outside the normal hours of operation, is a requirement to submit that.

Ms. Kotkoskie stated when you add the description of the current air situation for that first comment made; there are subsequent responses that refer back to that comment just to make sure they address people's questions. Page 66 – someone had concerns about modeling of the air emissions, maybe a sentence or two explaining the dispersion modeling that was done and the specific results and why that acceptable as a practice with NYSDEC. Ms. Kotkoskie stated she feels it would help the public understand it versus – "it's not a smoke and mirrors thing using meteorological data and these results to show such and such,"

Page 85 – similarly to comment 5l – just an update when the new Air State Facility Permit. Mr. Munsey will update.

Page 95 – The last sentence will have to be revised or updated to current information because it talks about a potential was submitted to the State and really now it's going to be the actual. Mr. Munsey said to leave that sentence in there as is and provide an update for that.

Mr. Munsey would characterize all these comments as refinements, easily updateable, with factually correct information largely provided in the January 12, 2016 correspondence by B & L.

Mr. DiPasquale asked if the board will be receiving an update site plan. Mr. Reilly stated it's his understanding that as of January 15, 2016, the revised set of site plans was submitted. A new (Appendix P) is included (site plan) in the FDEIS – that does not mean they are approve, just incorporating into this document.

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Ms. Matias stated the applicant made great improvements and put a lot of information in this document and there were a lot of revisions. Ms. Matias stated in her opinion that traffic is an issue and has a concern. Chairman Doyle stated certainly the board had some firm concerns about traffic and work through that traffic and still a lot of concerns out there – intersection of Brookline Road and NYS Route 67, the alternate truck route over county road, the intersection of coming onto Middleline Road is a difficult intersection – all are covered in the CME report.

Mr. Reilly stated we are at a point where a board member would like to put forth a resolution to accept the final FDEIS subject to edits discussed this evening and authorize C. T. Male make those corrections.

MOTION: Mr. Maher made a motion that the Planning Board accepts the DRAFT FDEIS as final dated February 4, 2016 and subject to the edits and corrections that were discussed at the meeting. Mr. Cwalinski seconded the motion and all present voted in favor. **CARRIED.**

Mr. Munsey stated the second item is sending correspondence to NYSDEC on the DRAFT permit, identified six conditions put forth in an email.

1. Revise the project description and facility description to match B&L 112/116 redline language on page 13 and 14 of 29 of that January 12th correspondence. The NYSDEC DRAFT permit seems to be incorrect. Ms. Kotkoskie stated the project description are you referring to the redline in the permit that they redlined because there is a sentence that says “No capping condition requested.” Ms. Kotkoskie stated your purpose is the hourly rate the 200 versus the 240 – there was a sentence that was originally submitted that says no capping. Mr. Munsey stated it’s the portable drum as well.
2. Incorporate the 100,000 tons per year limit in the permit based on the air dispersion modeling that was done and submitted. Such an air permit limit will serve to match the applicants proposed yearly production output of 100,000 tons per year and provide an enforceable limit on yearly production of 100,000 tons per year.
3. Condition five does not appear to make a submission to NYSDEC of any subsequent reporting on the moisture reduction plan effectiveness. Ms. Kotkoskie stated her comment will extend to 3, 4, 5 and 6 is if there is anything the board wants to see now specifically for moisture reduction, covered storage areas that be proposed here. For example, frequency of opacity monitoring – does the board want to see it done once a year, every six months and we extend the comment. It’s a proposal and the applicant can negotiate with NYSDEC, but just so that something is proposed. Chairman Doyle stated he has annual in his notes. The board concurs with annual and ultimately it is NYSDEC that will write it into the permit.
4. It does not seem to require annual reporting that the annual dryer burner tune-up was completed. Ms. Kotkoskie stated she feels annual is fair. Chairman Doyle stated there are no concerns from the board and all of this will be during the operating time of the plant. Mr. Maher stated the board is talking

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about documentation...correct – submit something to report. Mr. Munsey stated yes, they are saying to do it annually, but no saying to report it. Ms. Kotkoskie stated the alternative is you could say “maintain” documentation and if an inspection were to occur; they would have to have it on file. Mr. DiPasquale stated that require you to maintain a record not reporting. Mr. Munsey asked if we want to keep item #4 as written. Mr. Munsey stated it depends on how the final permit is written. If the final permit is written that is a recording requirement then, it annually has to go to NYSDEC and get that information from NYSDEC if it’s just a requirement to maintain records. Chairman Doyle stated as long as it’s done, of course the concern is always it will be done if isn’t mandated. Ms. Kotkoskie stated maintenance and maintaining the records is fine. The DRAFT permit currently says “A tune-up must be performed on the dryer burner on an annual basis at any hot mix asphalt production plant that is in operation of the calendar year, “records maintained.” The board concurs to go with original wording.

5. Condition 8 requires intermittent emission testing for particulates does not specify that interval for testing. Ms. Kotkoskie stated some of the comments from the public that were in the FDEIS did deal with particulates, which dealt with opacity type issues. Ms. Kotkoskie stated monthly, but does not know. Mr. Munsey stated he was thinking monthly during operations. Chairman Doyle asked if anyone objects to monthly. No objections from the board. Chairman Doyle stated that it sounds rational. Mr. Munsey stated he is checking with Joe (C. T. Male) and does not want to say a month. Ms. Kotkoskie stated that it’s industry specific and operation specific.

6. Condition 9 requires opacity testing with EPA method 9, but does not specify an interval for testing. Chairman Doyle recommends annually. Mr. Munsey stated monthly during operations. Ms. Kotkoskie stated that requires someone who is specially certified and has to be hired and something that was annual. Mr. Munsey stated he will check with Joe on that and draft something up and forward to the board.

Mr. Munsey stated that he will be using the email distribution list and be looking for email input from Mr. Maher and Ms. Kotkoskie on finalizing that. Ms. Serra stated the comment period closed on February 19, 2016.

Mr. Reilly stated it’s his understanding that the site plans have been submitted and there is certainly enough time to get on the February 24, 2016 agenda and there is no further submission that the board is looking for and in the meantime, start working on the findings. Chairman Doyle stated there will be a public hearing for the site plan on February 24, 2016. Mr. Reilly stated it’s not required under NYS Town Law however, would think the board would want a public hearing.

Application tabled.

Lamar Media (Lang), 20 Mourninkill Drive, Ballston Spa, NY 12020; 228.-3-36.1 (Site Plan Review/Special Use Permit) LED Billboard). Michael Fogel, Esq. with Brown Sharlow Due & Fogel, LLP Inc. on behalf of Lamar Advertising.

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Mr. Fogel stated he does not have any more to add tonight and believes the record is completed and comprehensive and that it clearly establishes that the applicants has satisfied all applicable zoning requirements and all applicable special use permit criteria with justifying issuing the permit and hope that the board will be acting tonight on the permit application. The only thing submitted since the last meeting on January 20, 2016 is a letter from Lamar Advertising signed by Mr. Matthew Duddy, Vice President and General Manager of Lamar. The purpose of the letter was to memorialize what Mr. Duddy placed on the record during the January 20, 2016 meeting and that's the commitment upon issuance of the permit to convert the existing boards to digital copy that Lamar will commit and stipulate and will now not pursue any additional digital billboards in the Town of Ballston in the letter dated February 3, 2016. A copy was emailed to Mr. Reilly for distribution to the board. It's clear in the letter that "once this permit that we have applied for and have been trying to seek since March 2015 is issued to convert the existing signs to digital billboards – Lamar will stipulate that we will not pursue any additional digital boards in the Town of Ballston." It says signs because the sign that we are proposing to modify to digital is two sided. Mr. Fogel stated we have nothing more to add tonight and are hoping the board will take action on the application this evening.

Mr. Dipasquale asked to confirm the manufacturer of the sign. The actual vendor of the sign is Daktronics or Watchfire. Mr. Fogel stated he believes the sign equipment is standard in the industries and should not vary between vendors. Mr. Fogel stated if the board issues the permit, the applicant will commit the vendor will be Daktronics and the permit can be conditioned upon using Daktronics as the vendors so there is not an issue of what was previously submitted by Mr. Lang in June 2015.

Mr. Fischer was the one who asked the questions about the wording in the letter and was just for clarification purposes not to impugn anybody or that there was some sleight of hand attended by that. Mr. Fischer stated that anytime a ruling is made by a board such as this that is going to be permanent, and affect the residents of the town and be worth our while and clarify. Mr. Fogel stated that he hopes the clarification offered satisfies your concern. Mr. Fogel talked to Mr. Duddy prior to the meeting and would be willing to accept that specific language as a permit condition. Mr. Fischer stated there are 14 boards in a very short span of area and now with the digital boards are able to rotate messages; so you can have multiple advertisements basically on the same board that would be rotating. Mr. Fogel stated that is the purpose of the digital board is to display multiple ads that rotate every eight seconds according to NYSDOT requirements. Mr. Fischer stated will you have an excess of supply for this particular area/corridor and is it possible that Lamar might now need to have 14 billboards in that small area and would it be possible if not a condition of this, just as a consideration that Lamar might consider eliminating a few – instead of 14 maybe eight or ten. We understand your position and the law entitles you and enables you to go forward with this and understand the law, but this is going to be creating some real discomfort and some real objections to this particular project. Mr. Fischer asked if Lamar would consider removing some of the existing billboards that will be remaining that are not electronic. Mr. Fogel stated that he did not think so, its billboard zoned and Lamar does this all across the country;

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they are the experts in determining their market in whether it makes sense to have digital board and the analysis has been done and determined that it makes sense to have it here. Mr. Fischer stated it will always make sense because it's more profitable to have multiple messages on one board than have one message on one board; otherwise would not make the investment in it. Now there is an excess to the supply or the demand and would like to get rid of some of those boards and if you are able to get the same number of messages across with fewer boards, so we could get rid of some of those boards. Mr. Fogel stated this is not part of this application. Mr. Fischer asked the board if that is unreasonable to ask. Chairman Doyle said, "Every board member at this table has the same idea" – there are a slew of boards and some of them are dilapidated and certainly ruins our whole view and certainly does not fit our Comprehensive Plan that says, "We are a rural community and would like to look like a rural community and quite honestly the digital board does not match. Chairman Doyle stated that §138-35A basically says that we do not allow digital boards in that and that is why we did not go with Lang, but although the Comp Plan was updated in 2006, does not believe they made any change to this and could say that technology has caught up with us, but does not think digital boards are good for everyone.

Mr. Cwalinski stated in previous meetings had a concern regarding visibility of these signs to the residents and still has that concern. These residents will be sitting watching television and seeing this billboard flashes every six to eight seconds and will be annoying to them and they have nowhere else to go and they can't hide and does not expect them to draw their curtain and expect them to live in a cave. Mr. Cwalinski agrees with Chairman Doyle relative to the Comprehensive Plan – we want to be rural and this LED billboard is a far cry from rural. As far as §138-35A goes it says "All the illumination will be directed to the surface of the billboard" and LED is a light source and shining a light away from the billboard – shining in the wrong direction. Mr. Fischer stated that Mr. Fogel is here representing Lamar and feel they have a pretty strong position here from a legal standpoint – it's like our way or the highway at this point and would like to see Lamar Advertising be a good corporate citizen of the Town of Ballston. You guys are all over the country and a big company and are getting the sense that you guys are like "Hey were in here, we have a right to put this up and are going to do it or take you to court" and does not feel it is a good way to be a corporate citizen. We have people who have lived here all their lives who and as the Chairman has said, "move to this town because of rural character of this town and you guys are coming in to put up a Vegas style billboard in our little town opinion and you're saying "our way or the highway tough luck – take us to court if you don't like it." Mr. Fischer stated he does not like it and does not like the fact that you guys don't have the flexibility and would like to see you do is go back check your hearts and talk to your corporate board and say "you know what, are we good corporate citizens, do we want to be good corporate citizens or do we want to play hardball." Mr. Fischer stated to make that decision and will have to make our decision, but would like you guys to acts like good corporate citizens and consider giving something if you're going to get. Mr. Fogel stated this company is a very responsible corporate citizen; this use is permitted under the zoning and as stated in Lamar's letter from Mr. Duddy had made a concession to not pursue any other digital boards in the event that this permit is issued – that is a major concession and that is being a good neighbor. If nothing

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in the zoning prohibits applying for multiple digital boards, other than applicable spacing requirements and they are giving that opportunity up – that’s a big concession. Chairman Doyle stated that Mr. Fischer has a very good point and the town board has drafted legislation (Resolution #3) that says that they do not want digital billboards and that law expands on §138-35A and goes into current technology terms that says that we do not want electronic billboards where the source of the light comes off the billboard. We are trying to be friendly too, but this just doesn’t fit our town. There is a major safety issue and drives that road about four times a week. When these billboards were put in, that was a giant hay field and corn field – there was nothing there where the big development is with the two entrances. Since then, the farm across the road was sold and another development going in right of Mourningkill Drive and people coming in and going out of those roads all hours of the day and night. Chairman Doyle stated as a board member, would not feel that he would be doing his duty on this board if he did not at least mention that and supports that activity – this is dangerous. Other people say it’s dangerous, but we don’t have any laws work with. Ms. Matias has a concern with safety and the quality of life in that corridor and took one whole Friday to research anything similar to that corridor and could not find anything – everything is for a big road; nothing for a single-lane road. Mr. DiPasquale stated that no one will really know the real true impact on the neighbors until this thing is operating. Even what was submitted to us (the board) represents levels of lighting five feet off the ground and the residents who are facing the billboard are 15 feet (second story). Mr. DiPasquale asked if the safety data that was submitted (2009 – 2012) was the latest data available subject to the July 15, 2015 submittal. Mr. DiPasquale stated his concern if travelling north as you approach the sign is when you approach McCrea Hill Road, Meadowbrook Court, Sherman Way, Everson Way and Mourningkill Drive and the minimum time of change is eight seconds and refer to the impact on distraction and would definitely not consider voting for this without a review of the refresh time – essentially with one refresh rate there is four intersections and would hate to have accidents occur. Mr. Fogel stated with respect to traffic safety does not want to rehash what is already in the record and said it multiple times and thinks the record is clear, but DOT agency with the experience, expertise and jurisdiction specifically looked at its location along with its Traffic Safety Engineers and has determined that they don’t believe it opposes any traffic safety issue. Mr. Fogel obviously respects the comments of the board and the comments heard from the public with respect to traffic safety; no one is trying to create any sort of adverse traffic safety issue. The fact of the matter is that DOT are the ones that understand traffic safety especially with respect to digital billboards and have determined specially based on site visit and analysis of this sign that they don’t have any problem with it. Mr. DiPasquale attended the meeting on October 13, 2015 and the things that they run into a lot of times at the town level and were given a state agency and they have blank policy and very little discretion from specifics and situations and it’s typical of us dealing with the individual residents and the emergency squad versus NYSDOT’s blanket policy. Mr. Fischer stated we are the guinea pigs. Ms. Kotkoskie stated this is a case of technology growing faster than everybody can keep up with and things that the board has previously considered. There are four criteria for the special use permit that they have asked us to really look at closely and the fourth criteria states “The public convenience and welfare will be substantially served and appropriate use of neighboring property will

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not be substantially or permanently injured subject to appropriate conditions and safeguards that is determined necessary to promote the public health, safety and welfare.” Ms. Kotkoskie asked Mr. Fogel to describe how this sign will help our community. Mr. Fogel said, “I think, I know you have not been on the board since this application started, but and I guess initially already put it on the record with respect of the special use permit criteria that are supposed to be delegated boards and the conditions are supposed to be objective and supposed to be able to allow you guys to make that objective decision. We have a problem with some of the criteria, but we think that the record is clear and there is not going to be any adverse impacts to the community. Ms. Kotkoskie asked will it be substantially served the convenience and welfare will be substantially served. Ms. Kotkoskie stated she is looking at benefit. Mr. Fogel stated the benefit is the public service benefit associated with the ability to display public service announcements, amber alerts and things like that and we have explained previously. Ms. Kotkoskie said which does not happen very often.” Mr. Fischer stated that will be the sole benefit that you can see to the public that is impacted by this. Mr. Fogel said, “Yeah, I mean I think the fact of the matter is that no every you know, I’ve been here and watching other things get approved that this questions has not necessarily been asked about. The substantial benefit associate with it is the ability to display the public service announcements.

Chairman Doyle opened the public hearing at 8:55 p.m.

Paul Simpson, 80 Westside Drive said let’s go back to the comment you made for the special use permit item #4. “The use shall be of such location, size and character that it will be in harmony with the appropriate and orderly development of the district.” A digital sign there is not in harmony with anything. The property is in the Ag District, the residents of the town don’t want it for lots of reasons. In this special use permit, there are a number of questions that by the sound you folks have had in front of you and reviewed. Page 2 item 5b “Is the proposed action consistent to the adopted Comprehensive Plan? I would think that is no. “Is the proposed action consistent with the predominant character of the existing buildings or natural landscape? Myself I would say no. “8a “Will the proposed action result in a substantial increase of traffic above the preset levels – not specially traffic, but most definitely distraction – we have enough issues with phone usage and texting. I drive a school bus and have a lot of kids and the numbers of people that are on the phone have no idea what is going on in the surrounding area – they don’t really have time to concentrate on driving and you add another digital sign to this; I think the word would be distraction. Page 3 Impact Assessment “Will the proposed action create a material conflict with an adopted plan, use plan or zoning regulations – I don’t think so. “Will the proposed action impair the quality of the existing community?” We have heard a lot about that. “Will the proposed action result in an adverse change in the existing levels of traffic or affect the existing – probably not. There are no questionable answers in that form to justify not approving this application.

Herb Jackson stated he has traveled all over the country and noticed digital signs on I-787 and after listening to the comments tonight – this is a two-lane road, multiple intersections and believes this is

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going to be distracting. Are we guinea pigs for a two-lane road digital sign test because he has not seen any others around.

Chairman Doyle closed the public hearing at 9:00 p.m.

MOTION: Mr. Maher motioned to declare this an unlisted action under the SEQR process therefore will declare this a Negative Declaration under the SEQR process.

Ms. Serra stated that a recommendation for SEQRA is obvious that no one has decided to make an assessment and would go to Part 2 of the EAF questions that would prompt the board to be able make a decision.

Mr. Fogel stated with respect to the special use permit criteria would like to address that it be designated as a specially permitted use by the legislative body of the town (town board) that the determination that is consistent with the Comprehensive Plan and consistent with orderly development of the district. That determination has already been made and presumed by NYS Court of Appeals is that once the use is identified as a specially permitted use, that the finding it is consistent with the plan and orderly development and the district is presumed as a matter of law. Chairman Doyle stated he was looking for whether this would have any negative effect on the surrounding areas. We have heard from two citizens and numerous board members and there is a concern about that. The sign itself in its current form has no effect and the digital sign could have an effect. Chairman Doyle stated if the hoisting town agrees to this, then the State will authorize a permit to allow you to put in a digital sign. Chairman Doyle asked if the applicant agrees with that that they need the board's approval in order to put up a digital sign. Mr. Fogel stated we agree we need a special use permit.

MOTION: Mr. Cwalinski made a motion to go through Part 2 of the EAF. Mr. Fischer seconded the motion and all present voted in favor. **CARRIED.**

Could action result in any adverse effects associated with the following?

C.1 – Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic patterns, solid waste production or disposal, potential for erosion, drainage or flooding problems. The board concurs NO.

C.2 – Esthetic, agricultural, archeological, historic, other cultural or natural resources, community or neighborhood character explain briefly. Mr. Cwalinski said he thinks there is an issue with the character with this LED sign. The board concurs yes – specifically as to community or neighborhood character.

C.3 – Vegetation or fauna, fish, shellfish or wildlife species, significant habitats or threatened or endangered species. Mr. Fischer stated no. The board concurs.

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C.4 – A communities existing plans or goals as officially adopted or a change in use or intensity of use of land or other natural resources. Ms. Kotkoskie stated it's not consistent with the community's goals. The board concurs. Ms. Kotkoskie stated that the Town's Comprehensive Plan should be cited with a vision statement page 4, section 2.1. The board concurs.

C.5 – Growth – The subsequent development or related activities is likely to be induced by the proposed action. Mr. Fischer stated probably not. The board concurs to NO.

C.6 – Long term, short term, cumulative or other affects not identified. Ms. Kotkoskie stated there is the distraction effect. Mr. Fischer stated that it is not explicitly identified in C.1 through C.5. Ms. Kotkoskie stated that we have very specific requirements for buildings color pallets, go through many meeting where we talk about architectural styles and this going to be bright colorful and we even say we can't use fluorescent colors in certain sections and does not think that is consistent. Mr. Fischer asked if the board is agreeing that C.6 should be a yes. Mr. Cwalinski said yes. Mr. DiPasquale stated traffic and the residents directly facing the sign. Ms. Kotkoskie stated future residents. The board concurs YES.

C.7 – Other impacts including changes in use of either quantity or type of energy. Ms. Kotkosie said there is a statement that it runs 24/7 with the energy use. Ms. Serra stated there are specific energy thresholds. Ms. Kotkoskie stated NO. The board concurs.

D. – Will the project have an impact on the environmental characteristic that caused the establishment of the critical environmental area? Mr. Fischer stated NO. The board concurs.

E. – Is there likely to be controversy related to the potential adverse environmental impacts. The applicant answered NO. Ms. Kotkoskie stated we are definitely going to see controversy specifically which environmental impact cannot state, but knows the traffic and property values will come up from the public and is there likely to be – yes, and have not met single person in town and have spoken to many and got their opinion in a non-biased fashion and the closest she has come in liking it – is they live a mile away from the proposed site and said they guess they would get used to it, at least I don't have to look at it out my window. Mr., Fischer stated it certainly going to have a positive impact on Lamar's bottom line, which is the only positive impact to come out of this. Mr. Fischer said the applicants don't live in town and don't have to deal with this.

Chairman Doyle stated the board feels there is an environmental impact to this. Ms. Serra stated the short form EAF is completely appropriate for this application and a lot of times the applicant answers yes on the EAF and in reality are not a large impact and that is where the decision is made on the Neg Dec. If they have impacts and are not large or significant, then a Neg Dec is appropriate. Ms. Serra recommended the board go through the EAF and discuss the questions that the applicant answered yes and try to discuss the severity of them.

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C. 2 Ms. Kotkoskie stated the first was esthetic, agricultural, archeological, historic, other cultural or natural resources, community or neighborhood character. Ms. Kotkoskie stated there is a silo right next to the location. Ms. Fischer stated certainly will have a negative esthetic and a negative impact on the neighborhood character for those who live there. Chairman Doyle stated the digital sign is a substantial impact.

C. 4 Mr. Fischer stated communities existing plans or goals as officially adopted or a change in use or intensity of use of land or other natural resources explained. Chairman Doyle stated we are basically looking at the Comp Plan and in the beginning talking about a rural atmosphere, small town characteristics. Mr. Cwalinski stated page 4 "We have a desire to make things small town and rural qualities." Mr. Cwalinski stated it's going to look like Las Vegas. Mr. Fischer agrees and Ms. Kotkoskie agrees.

C.6 – Ms. Kotkoskie stated long term, short term, cumulative or other affects not identified in the previous C.1 through C.5. Ms. Kotkoskie stated we had in mind traffic, safety and distraction. Chairman Doyle stated he recently went to a seminar on traffic and spent 20 minutes on distraction discussing things that you should not do and digital signs on small highways indicate all those problems especially at the 55mph. The board concurs that is substantial.

Ms. Kotkoskie stated the last question – "Is there or is there likely to be controversy related to the potential adverse.

Ms. Serra of the three items the board just discussed, from a technical standpoint it's tough to quantify. If you read down to part 3 - Determination of Significance it asks you (the board) to prepare of determination of significance.

Mr. Reilly recommended what the board is going to have to decide on is make a Positive Declaration on this project and does allow the board to say that the applicant to go through a full EAF. Obviously it's either a Neg Dec or need more information. Ms. Serra stated the full EAF has a lot of information in it – questions, thresholds and better information.

Chairman Doyle stated we (the board) have been working on this for approximately ten months and after listening to the board have some concerns about the digital sign and feels we (the board) owe the people and up or down decision. The board concurs. After looking at that, the digital signs it has some problems and asked the board if they agree to a Positive Declaration. Mr. Maher does not agree to a Positive Declaration. Mr. Cwalinski asked Ms. Serra if the board agrees to a Positive Declaration, would have to technically justify. Chairman Doyle stated yes and the EAF is a way to do this, but in our discussion it took us to a special use permit and our concerns about the area, but if you look at the sign as such it's probably only substantial in the effect on a driver, but could certainly say it has an effect on the residents – I think it has an effect on the residence, but does not know if that is as substantial as the distraction to the drivers. Ms. Serra stated to be honest does not feel you (the board) have a real good

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technical reason to Pos Dec this. Ms. Serra stated the board did not Pos Dec Abele Woods or Wal-Mart and went through each of those questions and community character came up on both projects – those are much larger scope than this particular project. It might not be appropriate to Pos Dec it, it might be more appropriate to discuss it in the confines of a site plan and special use permit. A lot of the stuff you (the board) said community character to be honest is speculative and the Comp Plan may say we want this to be rural, but how many projects has the board Neg Dec'd in these rural zones and has trouble explaining things without numbers in front of us because we don't have numbers, you don't know how many additional accidents will be caused and not saying the project is not going to cause it, but how can you write a determination of significance and say we think it's going to cause it, but how it will hold up in court. Try to think back to the reality of the SEQRA determination.

MOTION: Mr. Cwalinski motioned to declare this a Negative Declaration under the SEQR process. Mr. Maher seconded the motion. Mr. Fischer voted no, Ms. Kotkoskie voted yes, Mr. Maher voted no, Ms. Matias voted yes, Mr. DiPasquale voted yes and Mr. Cwalinski voted yes.
CARRIED.

Chairman Doyle asked for a motion to consider this application based on our town code, Comprehensive Plan and our table discussion.

Mr. Reilly stated he is getting the general sense of the board perhaps a majority of the board is opposed to the issuance of a special use permit – a board member can make a motion to issue a special use permit or someone can make a motion to deny it. If that is going to be done, would encourage the board to articulate on what basis the special use permit should not be approved of the four criteria that was discussed.

MOTION: Mr. Maher made a motion to issue a special use permit for the LED billboards. Mr. Cwalinski seconded the motion. Mr. Cwalinski voted no, Mr. DiPasquale voted no, Ms. Matias voted no, Mr. Maher voted yes, Ms. Kotkoskie voted no and feels this is a case of technology has grown faster than we can keep up and have not found an citizens that are in favor of this and do not feel it is consistent with our towns comprehensive plan and vision specifically with the special use permit, not in harmony with the character of the town, the plan, nearby silo. This would be a big shocker for our town driving through and think people are having a difficulty pulling out and there is going to be future development near there and an ever changing billboard ad would be an additional hazard. There are articles where we have found many towns have banned LED billboards due to safety issues and our town just has not caught up to that yet. The location and height of the buildings in the zoning mentioned the color pallets were very specific on how we allow buildings in our town, colors should be from commercial paint distributors, historic color palette and fluorescent colors being prohibited, an

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LED billboard would be seen for many miles and not consistent with our town's desire. Our job as a Planning Board should interpret regulations and their intent as well. The public convenience and welfare does not think it is being substantially served and not an appropriate use of the technology. The Amber alerts is a positive, but does not see it overall as a positive.

Mr. Fischer votes no and concurs with Ms. Kotkoskie's comments.

Chairman Doyle voted no because of all the discussion we have had and does not see how this meets our Comprehensive Plan nor our existing zoning plan and can say that the plan has not kept up with technology, but had the same feeling two years ago or three years ago and would also vote no.

Ms. Kotkoskie stated that is how she interprets §138-35A and at the time it was written was for a board that was illuminated and not illuminating.

Chairman Doyle stated the town board made an addendum or resolution #3 which changes the discussion on LED boards.

Mr. Cwalinski stated this violates §138-35A of the town code – it causes distractions to the residents, which they cannot escape from and not in accordance with our master plan.

Mr. DiPasquale stated #4 of the special use permit and believes the use of neighboring properties will be impacted and possibly resulting in some economic impacts.

Ms. Matias stated 1, 2, and 4 of the special use permit and thinks the LED billboards are not in character or harmony of the area. That location, distraction and does not fit the Comprehensive Plan and town code.

Mr. DiPasquale brought up the five intersections within one half mile and there is no flexibility from the applicant considering the increased refresh time.

Chairman Doyle stated it just does not fit our town. I know it may be modern technology, but no in accordance with our Comp Plan or what the town fathers are thinking about or with the existing regulations.

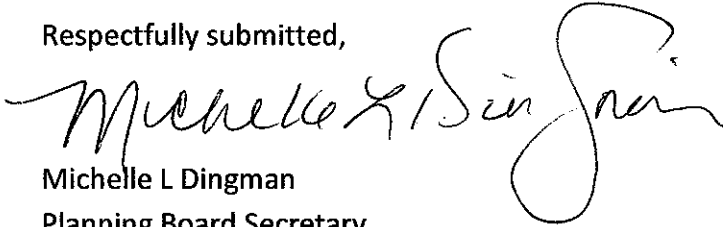
Application Disapproved.

MOTION: Mr. Cwalinski made a motion to adjourn. Mr. Maher seconded the motion and all present voted in favor. **CARRIED.**

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Meeting adjourned at 9:30 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michelle L Dingman". The signature is fluid and cursive, with a large loop at the end of the last name.

Michelle L Dingman
Planning Board Secretary