

## **Town of Wawayanda PLANNING BOARD**

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**April 22, 2009**

**7:30 p.m.**

**Members Present:**

Ann Yates, Chairperson  
Ben Dombal, Alternate Member  
James Driscoll  
Daniel Long  
Mary Markiewicz  
John Neiger  
Barbara Parsons  
Donald Siegel

**Consultants Present:**

Patrick Hines, MHE Associate  
William Bavoso, Attorney

**Special Consultants:**

Mary Ann Johnson, Greenplan  
George Janes  
Steven Fleischacker, Allegiance Resources

**Recording Secretary:**

Patricia Battiato

The Town of Wawayanda Planning Board meeting for April 22, 2009 was called to order by Chairperson Ann Yates at 7:30 p.m. This meeting constitutes both regular meeting applicants as well as work session applicants having been moved and placed together on this agenda due to a Public Hearing for CPV Valley on the Draft Environmental Impact Statement that was held at the April 8, 2009 meeting. All applicants that were involved in the change were more than willing to accommodate the rescheduling of their application. By having the combined meeting this way, the board will not be setting a precedent as there is a possibility that motions will be made that are not normally made at a Worksession.

**I. INFORMAL**

**CONKLIN / SBL# 4-1-81 & 4-1-82 / County Route 49**

Mr. Frank Conklin, applicant was present with his Attorney Mr. Kurt Johnson and a discussion took place on the past deeds that were filed with O.C. Tax Map and that the last two tax parcel numbers given

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appeared to have been subdivided by deed and not by a Lot Line Change through the Towns Planning Board . There were other issues as well and the applicant was told to start with a minor subdivision, lot line change. A variance may also be needed.

No action taken at this time.

**KESSLER / SBL# 22-1-109 / US Rte. 6**

The following MHE engineering comments were discussed:

1. The project site is located within the Town of Wawayanda Critical Environmental area based on elevations on the project site. The long form EAF should be submitted for future review and lead agency determination.
2. Three of the lots exceed the length to width ratio of 2.5 to1 identified in Section 162-26I.
3. Subsurface sanitary sewer disposal systems must be designed for future submissions. Representatives of the Town of Wawayanda must witness a percolation tests.
4. NYSDOT comments for driveways must be received. It is noted that shared driveways are proposed creating two new road cuts for the four lots.
5. Access and maintenance agreements for the shared portions of the proposed driveways must be provided for Bill Bavoso review.
6. Careful evaluation of the discharge locations for the DOT owned pipes must be undertaken with regard to septic designs and impacts to the property. A 30 inch pipe discharge is onto lot 2 and an 18 inch pipe discharge is onto lot 4 from the State Highway right-of-way.
7. Surveyor of record must stamp subdivision plans.

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8. Ridge preservation notes must be added to the plans based on the location in the critical environmental area.

Discussion on the property behind Mr. Kessler's being owned by Manning and that the board thought that maybe a Conservation Easement had been filed on it. Secretary will research.

No action taken at this time.

**HUTT / PRESSMAN / SBL# 22-1-82, 83 & 84 / County Rte 93 / Lot Line Change**

**Mr. John Bach**, Attorney in Goshen was present representing Mr. Pressman who was also in attendance and gave a brief background into the parcel to the board as follows:

Purchased the house in 1981, first house, everything seemed OK, I was not informed about the septic until we moved in. I noticed a little dip in the ground and realized that was where the septic tank had been. The original septic tank conformed to my property but there was leach field lines on the adjoining property in the back. The person, who owns the plot, owns this separate plot also. I had a new septic tank put in with his permission, with that owner and the Building Inspector at the time, Mr. Filipowski.

The septic tank itself extended over my property line by just a little less than a foot. I chose not to use the leach field. I was in that house for over twenty years. Maintained that system, I had no problem with that system. When I went to sell my house a problem came up with the neighbor. Subsequent to that the neighbor purchased these two parcels of land around me. So I attempted to purchase an easement from him, which he didn't accept. What he did offer was a piece of land, to buy a piece of land. We could never come to an agreement. To make a long story short I finally took him to court. At court we reached an agreement that he would sell me a piece of land, about twenty feet behind my house and he wanted to have that same extension on his property so we have a contiguous line going

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across. That is why we are here to get the lot line change on this piece in order to accommodate the septic system.

**Mr. Bach**, Mr. Pressman's attorney explained that the adjacent owner bought tax lots 22-1-82 & 83 in 1998. Mr. Pressman and his wife and two children lived there until 2002. They had no problem with the system. As the board can see the house as it exists, is only a few feet from the rear property line. Mr. Pressman tried unsuccessfully for about four years to try and negotiate, first as an easement, with the adjacent owner and when that didn't work he brought an action to have an easement established by law and negotiated over a two year period to purchase that piece for a sum of money from Mr. Hutt. We are here to legalize the location of where the septic system is. Mr. Hutt wanted his rear property line to conform with our new property line, where it would be, and so there would be additional area to be taken off of tax lot 82 to be added to the rear of this parcel.

**Chairperson Yates** asked how large are the lots?

The Pressman Lot is currently .28 of an acre and will be .35 after the lot line change. Mr. Hutt's property is .48 of an acre and will be .56 after the lot line change.

**Chairperson Yates** also asked where the septic for the other house (Lot 22-1-83) was located because the surveyor has not showed it on the map. A brief discussion and they would like that information to be shown on the plans also.

**MHE Comments discussed as follows:**

1. This is a proposed lot line change transferring .07 acres of property to Lot 84 and 0.8 acres of property to Lot 83. The subsurface sanitary disposal system for Lot 84 is apparently located outside of the lot lines and this lot line revision will bring the septic system into compliance with required separation from property lines. This results in a proposed radius impacting the lot geometry for Lot 84.
2. Reference to the Village of Sleepy Hollow in the certification block should be corrected.

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3. Bulk table 4, Lot 82 identifies lot width as 158.6, however it appears the lot width would be 214.7, this should be clarified.

Motion by James Driscoll, seconded by John Neiger for the board to act as Lead Agency in reviewing this project under SEQR.

All voting members voted yes

**Motion / Carried**

Motion by John Nieger, seconded by Barbara Parsons to set a Public Hearing date for May 13, 2009.

All voting members voted yes

**Motion / Carried**

**THOMAS COOPER / SBL# 11-1-22.1 & 22.2 / Extension of Approval**

Mr. Cooper was in attendance and requested an extension of his approval which expired on March 27, 2009.

After a brief discussion the following motion was made:

Motion by Donald Siegel, seconded by Mary Markiewicz to grant a two year extension of the Site Plan Approval from the date of the expiration of the previous approval which was March 22, 2009.

All voting members voted yes

**Motion / Carried**

**PALMER / O.C. PARTY RENTALS / SBL# 8-1-25 / RT. 17M**

**Mr. Palmer** owner of the property appeared before the board and said that he thought he had a signed site plan from 1975. We have researched our files here and we do not have one. Patrick Hines said that he feels the propose use of a Party Rental store is a change of use from what it is currently to what it is going to be and felt a site plan was needed.

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**MHE comments as follows:**

1. The applicant has identified a proposed change of use at the subject site. Any change of use requires site plan approval by the Planning Board. A site plan should be submitted for the Planning Board's review and approval.

No action taken.

**LEE'S TIRE/ SBL# 1-1-57 / DOLSONTOWN ROAD/ Amended Site Plan**

**Mr. Chris Dehaan** approached the board and explained to them why he was here. The reconstruction plans were taken to the Building Inspector and the Building Inspector referred him to the Planning Board to bring the board up to speed of what they are doing with the building and the Building Inspector's concern was whether or not an amended site plan was needed.

Went briefly over the original final approved plan, the demolition plan and the proposed new building plans. They are fairly close in size to each other. The new plan is 13500 sq, as the original building was 13800.

The following were the MHE Engineering comments discussed:

1. The applicant's representative is requested to update the Board on proposed changes to the site plan. The proposed structure is replacing a structure which was destroyed in a fire. The Planning Board should evaluate the changes to the site plan to determine if any amended site plan approval is required.
2. Comments from Jurisdictional Fire Department should be received regarding changes to the site plan and impact to the Fire Department operations on the site.

After a brief discussion the board made the following motion:

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Motion by Barbara Parsons, seconded by Daniel Long that the Planning Board is not going to require a new site plan based on the plans that they have seen and that the applicant, Lees Tire can proceed to the Building Inspector.

All voting members voted yes

**Motion / Carried**

## **II REGULAR BUSINESS**

### **LANDS OF DUL / SBL# 13-1-11.3 / Mt. Orange Road**

The following MHE Engineering comments were discussed:

1. The Planning Board previously discussed the length to width ratio for the lots. A waiver for this should be granted by the Board and noted on the plans.
2. Bill Bavoso's comments regarding extinguishing of a water taking easement should be received.
3. Our office witnessed deep soil and percolation testing on the site. Some evidence of mottling in the soil profile within 48 inches of the surface existed on one of the lots. The applicant's representative has proposed curtain drains on each of the lots to protect the subsurface sanitary sewer systems from the potential of seasonal ground water issues.
4. Cultural resources report has been prepared for the site. 191 soil test pits were excavated on the site with no pre-historic or historic artifacts recovered.
5. Highway dedication parcel is proposed, appropriate note should be reviewed by Bill Bavoso's office.
6. Ridge preservation notes have been added to the plan.
7. The long form EAF has been revised pursuant to our previous comments and re-submitted. Based on the revision this office would recommend a Negative Declaration for the proposed 5 lot subdivision.

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Motion by Barbara Parsons, seconded by Daniel Long for the board to act as Lead Agency in reviewing this application under SEQR.

All voting members voted yes

**Motion / Carried**

Motion by John Neiger, seconded by Donald Siegel to set a Public Hearing for May 13, 2009.

All voting members voted yes

**Motion / Carried**

**CARRETERO PROPERTIES / SBL# 12-1-46.3 / CT. Rt. 12**

The following MHE Engineering comments were reviewed:

1. A large portion of the project contains federal jurisdictional wetlands. Jurisdictional wetland delineation has been performed on the site. Information regarding the federal jurisdictional wetland delineation should be submitted for the Planning Board's files. It is noted that no impacts to areas identified as federal jurisdictional wetlands are proposed.

Planning Board should discuss whether to accept the Applicants' delineation performed by Robert Torgenson, Landscape Architect, or if a jurisdictional determination from the Army Corps of Engineers is to be received. No disturbance to the delineated wetlands is proposed.

2. The Planning Board should determine whether curbing of the site should be required. Planning Board typically requires curbing of commercial sites.
3. Project will require approval from Orange County DPW for highway access.

4. County Planning referral is required do to proximity to County roadway.
5. The Applicants' Representatives are requested to evaluate if the project is located in an archo-sensitive area based on New York State Parks, Recreation and Historic Preservation mapping.
6. Planning Board should determine whether the outside dustless area, identified on the plans, is to be permitted for storage of equipment.
7. Percolation testing and deep soil testing must be witnessed by representatives of the Town of Wawayanda, Building Department, or this office.
8. Limits of construction should include all areas of construction including; driveway access and area for existing gravel drive to be removed.
9. Stormwater management must be addressed on the site with regard to water quality. Water quantity control will not be required due to the site's proximity to the 100 year flood plain.
10. Copies of plans should be submitted to jurisdictional Fire Department for review.
11. Item #18, Page 5 of 21 on the EAF identifies the project is not located in the AG district, this should be further clarified.
12. Item #19 identifies the site is located in a critical environmental area, however elevations at the site do not identify within the Town's critical environmental area.
13. The EAF identifies total water use of 400 gallons per day while the design plans for sub-surface sanitary sewer disposal system identifies 150 gallons per day.

14. If floor drains are to be utilized within the building, the location of discharge of the floor drains should be identified. Sub-surface discharge of floor drains is not permitted.
15. The Applicants' Representatives are requested to clarify the use of the proprietary septic tanks/pump station identified to determine if Orange County Health Department considers this a conventional system.
16. Landscaping plans should be submitted to Robert Hansen, Landscape Architect once plan is completed.
17. Percolation and deep tests to be witnessed should be performed in the area of the sub-surface sanitary sewer disposal system.
18. Proposed 12" diameter HDPE pipe at driveway crossings should be up-sized to a minimum 15" diameter pipe.
19. Future submissions should identify how much of the building will be utilized for office, shop and other uses identified.

Send application to Orange County Department of Public Works and also to Orange County Planning Department for review.

### **CPV VALLEY**

The following are MHE Engineering comments submitted for this meeting as follows:

1. Follow up discussions with Emergency Service Providers, including the NYS Police and the New Hampton Fire District should be documented in the Final Environmental Impact Statement. Impacts on site design for providing 26 foot wide access roads for aerial device access should be addressed.

2. Traffic impact associated with construction activity along State Highway corridors should be further expanded. Temporary traffic stop and lane shifts are identified as potentially occurring, however, they are identified as occurring in off peak travel hours and will be in short duration. This should be further clarified and expanded upon such that mitigation measures can be specifically incorporated in a Findings Statement prepared by the Planning Board.
3. A preliminary sub-surface exploration study prepared for the project site by GZA Environmental of New York concludes that significant cut and fill operations will not be performed and that the extent of fill operations may raise some site grades by 2 feet. This is inconsistent with site grading plans which show significant modification to grading in the area proposed for the power plant. Impacts of the proposed grading on the foundation design etc. should be further clarified. Several of the tank foundations in the vicinity of boring B1, B6 and transformers in the area of B4 identify as shallow foundations which will be placed on fill. No discussion of the requirements of this fill have been identified. Dewatering operations are identified for the deep foundations. Discharge and treatments of this water should be further addressed.
4. Include a chart for depth to bedrock.
5. Several commenters have identified a concern regarding recent reports of seismic activity in close proximity to the site. This should be addressed including information available from the most recent events.
6. It is noted based on the geotechnical work performed to date that blasting will not be performed on the site and no analysis of impact associated with blasting has been required. Should blasting be identified as needed in the future, impacts associated with blasting would have to be addressed prior to issuance of any approvals or permits for that work.

7. Under construction related impacts Section 11.6.1, the final sentence identifies that agricultural soils will be stocked pile to prevent degradation and long term impacts on their productivity expected to be negotiable. This should be further clarified as to the meaning of this statement as it appears that an extensive portion of the property will be filled and not returned to agricultural production.
8. Section 11.6.1.2 mitigation identifies potential for off site disposal of unsuitable fill material. This should further clarified and explained as to the disposal site for this material, off site traffic related impacts and estimated quantity of unusable material.
9. Same paragraph identifies NYS Department of Agricultural Markets Farmland Reclamation notes to be added to the site plan. It is unclear current site plans contain such notes. This should be clarified. These notes should be included as an attachment to the document. Further explanation time period for the “exposure period will be shorter in duration than the agricultural tillage cycle” should be clarified as a two year construction time frame is identified. Are lay down areas and other disturbed areas proposed to be reclaimed prior to the completion of the construction.
- 10 Section 11.6.2.3, mitigation measures identifies an “environmental inspector”. It is unclear who this environmental inspector will be in what authority such person will have. This section should be further extended upon. This section further identifies that the environmental inspector will be paid for by CPV Valley. Clarification of this issue should be provided.
11. Approximately 2 feet of soil is required to re-establish agricultural use on disturbed sites confirm that adequate stock pile areas for this material are proposed on the site.
12. It is requested that the applicant further clarify the use of the City of Middletown grey water rather than the ground water supply at the project site.

13. Identify that the project is required to obtain a Water District extension and/or outside user agreement with the Town of Wawayanda for the use of the potable water proposed within US Route 6.

14. Further clarify the disposal for the sanitary waste water from the project site. During DEIS preparation an on site septic system was proposed as an alternative, however it is our understanding that current plans include the construction with on site pump station and forcemain tributary to the Town of Wawayanda sanitary sewer system. If plans continue for the potential on site alternative, additional soil testing and design work would be required. In light of the new location of the subsurface sanitary sewer disposal system away from the Cooley Cemetery.

15. The treatment and discharge of grey water during “commissioning” should be addressed. Is this water able to be returned to the City of Middletown’s discharge?

16. A discussion in the proposed water supply sewer 12.2.3.1 process makeup water identifies that the Middletown Sewage Treatment Plant will eliminate the same filters during the project upgrade, however future portions of this section identifies tertiary treated effluent. Will the removal of the sand filters impact effluent quality and require additional treatment by CPV to utilize the processed wastewater.

17. Table 12.5.1.1 identifies that the fuel unloading area for trucks would be located west of the containment area. This area would be paved and curbed and drained into the containment area. Further clarification of this should be provided including sufficient information to determine that elevations would not allow this drain to discharge product which have spilled into the containment area.

18. Section 12.6.5 identifies geo-textiles inlet filters to be placed over catch basins. This is not acceptable means of erosion control. Alternative catch basin inlet protection should be provided.

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19. Section 12.6.8 Erosion Sediment Control identifies temporary and permanent seeding to be established within 14 days after a construction activity; however re-vegetation section above that identifies 30 days of final grading. This should be clarified.

20. Section 12. 6.10.1 Dust suppression should identify that dust suppression vehicles capable of spraying water for dust control will be maintained on the site.

21. A review of the SWPPP provided for construction activities identifies generic language identifying National Erosion Discharge Elimination system. The SWPPP should specifically identify the NYSDEC's regulations in all cases rather than the National General Permit for Stormwater Discharges.

22. Under site description, the SWPPP identifies that it is prepared for construction of the two commercial buildings parking lot and associated drainage network only. This should be further clarified as additional buildings and occurrences here on the site plans.

23. Under Item 5, site description E, add the word impervious prior to service coverage.

24. Under same heading as above, F identify Carpenter Brook which is to be changed to Monhagan Brook.

25. Forms contained in the SWPPP identify weekly inspection form, however because the project will impact greater than 5 acres at one time under current plans, twice weekly inspections greater than 3 days apart will be required under the latest NYSDEC permit requirements.

26. The Stormwater Management plan identifies that the outlet control structure will not be placed into service until such time the site has been

stabilized and the proposed detention pond will serve as a sediment basin. Our office has concerns regarding Stormwater Management aspects of the basin functioning to control water quantity once the basin fills without benefit any discharge orifice.

27. Further explanation of the correlation between the 92 gallon per minute pump testing and the assumed 250 gallon per minute yield of the test did well should be provided if the on site ground water resources are going to be furthered considered. The preliminary site assessment provided, provides basic data however, significant additional testing would be required to develop the groundwater source.

28. Water quality data was to be provided from the groundwater resource on the site. This has not been included in the preliminary site assessment.

29. The Stormwater Management report should be further expanded to include discussions regarding compliance with all design guidelines for the micro-pool detention pond based on NYSDEC Standards and Guidelines.

30. Pre-development and post-development time of concentration flow path mapping should be provided as part of the Stormwater Management report.

31. Calculations for discharge velocity for design storm events of the Stormwater Management pond should be provided. Discharge velocity should be limited to 3.5 to 5 ft. per second.

32. Identify pond design elements such as safety bench, and aquatic bench.

33. Landscaping requirements for detention ponds should be addressed in the report.

34. The Stormwater Management plan fails to address areas impacted during construction which are greater than 8 acre disturbance. Several

construction lay down areas are proposed which are not addressed in the construction stormwater SPDES permit and Stormwater Management report. These areas must be incorporated in the report with proper Erosion Sediment Control and Stormwater Management as construction lay down areas may be active for greater than 2 years.

### **CPV VALLEY**

**Chairperson Yates** explained to the Board that we had received a phone call today from the NYS Department of Public Service and that they were requesting a one day extension to get comments in, possibly we may want to give them two days to be on the safe side.

**Consultant Johnson** from Greenplan said that the applicant is preparing the ecological studies that were not included in the DEIS. We are suggesting that you hold the public comment period open and have them submit this information as a supplemental EIS and we are recommending you do that, so that this information gets circulated to all the interested and involved agencies. Otherwise the only time they are going to see it is in the FEIS and there is not really a public comment period on the FEIS there is only a public consideration period. If anybody had any issues and it was raised, I believe at the public hearing and a couple of the letters have mentioned it, I think it would be better for the board to give the public the opportunity to review them as they would have reviewed it in the DEIS if they were there.

**Chairperson Yates** said that in the DEIS it says “studies to be performed” and the reason they weren’t done is because of the time of year.

**Board Member Parsons** asked Applicant Remillard when he thought that they would have those studies ready. Mr. Remillard said that he has spoken to the ecologist today and they are working on final reports to get them out. Part of the dialogue of developing the DEIS we agreed that these studies would be done and be provided in the FEIS, so I think we are deviating from what we intended of the DEIS.

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Chairperson Yates said that honestly, she didn't think it makes a whole lot of difference. The only difference is the public comment issue and for a lot of people to comment and the circulation to the agencies. Time frame wise it is not going to make a lot of difference.

Applicant Remillard asked if we are talking that the only comments are going to be limited to that particular component of the studies or are you saying the whole thing open.

Chairperson Yates said that was a difficult question, because if we do get comments about a significant issue we are obligated to address those at any time as far as I understand it.

Consultant Johnson from Greenplan responded that their recommendation would be hold the whole thing open. Most people are under the assumption that it's closed as of today. You could put something on the town's web site, not any real formal mechanisms.

Board Member Parsons asked Consultant Johnson how long did you want to keep it open for.

Consultant Johnson explained to have them submit the supplemental EIS, have it be reviewed for adequacy, and then at that point once it's adequate you can decide to close the public comment period. It's optional to hold a public hearing – you are under no obligation to do it in SEQR.

Board Member Parsons said she thought this was going to be included in the FEIS?

Chairperson Yates said that it is suppose to be in the DEIS.

Board Member Parsons, said right, but how long are we going to keep this open, it sounds to me like this could be another month or more.

Chairperson Yates explained that the issue isn't whether it's a month or more the issue is it is suppose to be done. That is the issue as I see it.

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**Chairperson Yates**

The studies have to be done, we have to review them and the public is supposed to have an opportunity to comment on them. That is the way it is suppose to be done and I don't see why we would not want to do it the way its suppose to be done. There are some other issues as well as the DEIS, and Steve (Fleischacker) has some issues as well.

**Consultant Flieschacker** from Allegiance Resources said that what we had done in order to satisfy the deadline for the DEIS there was an analysis that had to be done on what we call as indicated in the letter that we submitted today an issue pertaining to fine particulate matter. What we all had agreed on at the time was an evaluation of this secondary formation of fine particulate matter which it means after it comes out of the stack and gets into the atmosphere and it interacts with the atmosphere and then there is the potential for more to form. There is no set way in which to analyze that. So at the time recognizing the need to get everything done by March 1<sup>st</sup>, we said that we would write the language in the DEIS acceptable to everyone and the Planning Board accepted as well, that said this analysis will be done after the DEIS is completed. So that exercise needs to be done, and it says very specific language in the DEIS that their going to be working together with the applicant and the regulatory agencies to come up with a method on how to do that, because it is not crystal clear how one does that analysis. But we felt and we recommended to you and you accepted that something needed to be done to account for this phenomenon and we would come up with that, so that is going to happen. This has to be reasonable and the reason we said it needed to be reasonable is characterize the environmental impacts is different than getting an air permit.

**Board Member Parsons** said, because it said here you don't or are not required for the air permit.

**Consultant Fleischacker** said the point is that this has yet to be done, this has to be done. So you do have another thing besides the ecological assessment that's an activity being done.

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Board Member Parsons said that she has no problem with what your saying; that needs to be done and the ecological that's no problem, What I don't want to see is .....

Chairperson Yates said to Board Member Parsons, there is more....

Board Member Parsons said that is what I'm saying all of a sudden how much more have we got.

Board Member Driscoll said wait and see.

Chairperson Yates replied, Barbara we are going to do it till it's complete. It is going to take the amount of time it takes. We are not trying to hold anybody up; its going to take the amount of time it takes whether we call it DEIS or we call it FEIS it has to get done and it has to get done right. That's the way I see it. George (Janes), I think you also identified a problem?

Consultant George Janes said that he had no opinion on the public comment period being open or closed. The questions he had which were identified in his letter regarding the plume length, because of the deadline something we notice in the air quality section where the plumes can be upward of six-(6) miles long and five-(5) hundred meters which is larger than the empire state building. Its only a fraction of time, there is language in there about artifacts of modeling and functions, it's just not very clear how very significant these very, very large plumes are. There needs to be a lot more discussion about these plumes, there is a very substantial difference than what is shown in the visual section. Another major issue I have is the power lines that are onsite are actually shown in the visual simulations, there also not on the technical drawings. The site plans big layout. There in the document itself in the non technical drawing but there also not clear if they were apart of the view shed map. I just have questions about the materiality of not including those in the visual analysis. There addressed in two paragraphs of the text and that's it. So its just additional material that would explain what if any visual impacts those electrical transmissions lines would have.

Mary Markiewicz said doesn't these all have to be here in the FEIS?

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Chairperson Yates said they all have to be addressed in the DEIS. The problem is we shortcutted the DEIS to make the applicants ISO deadline as a favor to the applicant. We need these studies to be sure that these studies are sufficient and adequate for review.

Mary Markiewicz said but they'll be in the FEIS.

Chairperson Yates said that she thought Mrs. Markiewicz was misunderstanding.

Applicant Remillard asked to make a statement and that was he agree as we go thru the process, part of this is to get comments and feedback, we have a number of them and we are going to get them from Steve, George and Maryann and any other consultants saying we need more information or there is going to be a lot of dialog as you go thru the process we did talk about particulate matter and said that we will as part of the FEIS process, sit with the right folks, come up with it and agree upon methodology....

Board Member Parsons said that she thought that we all agreed upon that.

Applicant Remillard continued, and then capture that in the FEIS. As part of the FEIS process we will be submitting these responses back to your consultants, say it acceptable or it's not acceptable before we get into a draft of the FEIS. There will be a lot of dialogue back and forth.

Said he was under the impression that the discussion was to how you take all the comments and deal with them, get the input from the consultants and all the right folks, so to get it back into your hands for consideration for the FEIS. In terms of the visual to sit down and address this, lets put this forward and take a look at these and put into the FEIS and then we'll bring back to this group again.

Consultant Johnson said to the board that the difference between putting this information on the FEIS vs. the SEIS is that the public will still have an opportunity to comment on the supplemental EIS in a written format if that is what you choose. With the FEIS they can submit comments but they do not have to be responded to. So if there is an issue in your ecological studies no one is under obligation to address it. If you put it in

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the supplemental there is an obligation to address it and that is the difference.

**Board Member Markiewicz** asked that the Planning Board has the option to address what would be said by the public? In the FEIS; Right?

**Consultant Johnson** responded that by the time the FEIS goes out there will be no more revisions. By the time it goes to the public there will be no additional reviews to the FEIS.

**Consultant Hines** said that there is a completeness review of the project.

**Applicant Remillard** replied yes, there will be a back and forth of revisions.

**Consultant Johnson** said but the public won't see that.

**Barbara Parsons** said but you have a public hearing on the FEIS.

**Consultant Hines** and **Attorney Bavoso** both responded "no", it's not required.

**Chairperson Yates** responded that the question is one has more public comments and disclosure why would we not go with that one? Are we trying to keep people out of this? I don't see where it is delaying things; I see it as doing it the right way.

**Board Member Parsons** said she just assumed, what we discussed before was the DEIS as complete, we accepted it as complete, then we put it out for public review, then comments from the public were going to be looked at, and some of those items were discussed but I thought they were going to be addressed in the FEIS – that is what I understood.

**Consultant Johnson** said what we said was we still have issues with completeness but due to the time frame we were willing to let this go so that they could meet their deadline.

Chairperson Yates responded that is how she also understood it; I thought they said certain things weren't included.

Consultant Johnson said that there was a commitment on their part to do the studies and that's what we are seeking, was the commitment to do the studies.

Board Member Parsons said she thought it was going to be addressed in the FEIS.

Applicant Remillard said that in the document it states that these studies will be completed and provided as part of the DEIS process.

Board Member Parsons said that was what she thought. I'm not trying to hide anything from the public and I want this to be a complete study, but I just felt that was what was agreed upon and then we go backwards on to something else and I just don't know....

Chairperson Yates said let me ask you this question; even if that is what was agreed upon, is it the better way to do it and why would we not want to do it this way?

Board Member Parsons said but is that the better way to do it, I don't know for sure.

Chairperson Yates said that was what we have to decide.

Board Member Parsons said there are comments that came thru the public that have to be addressed. There are things coming from Orange Environment and people like that would have to be addressed. There were a number of things that definitely have to be addressed. I thought our part was, were not done of course we still have a long way to go on this. I was just wondering how long this will now be kept open and I'm not trying to rush things, it can be here for two years. I know I was involved in Calpine and I know how long some of that took. I just want to make sure that what we agreed upon is what we are doing.

Board Member Driscoll said to Board Member Parsons that I didn't understand it the way you understood it.

Board Members Parsons asked how the rest of the board felt about it.

Board Member Siegel said that it will take how long it takes, simple.

Board Member Driscoll said that we are trying to help; they can't say we haven't made a big effort to do this.

Chairperson Yates said that if they didn't have that ISO deadline there is no way that the DEIS would have been declared complete.

Board Member Parsons said well she didn't understand that. She thought everybody had signed off on it.

Board Member Long said come back and revisit it, which is how I understood it.

Board Member Driscoll asked Chairperson Yates if she needed a motion to keep this open.

Consultant Johnson responded that a motion would be needed to keep this open.

Board Member Driscoll said alright, I'm making that motion.

Board Member Long responded I'll second that.

Board Member Parsons asked if we can discuss how long we are going to keep this open.

Chairperson Yates responded until they give us the studies and there complete.

Board Member Siegel asked if there was a mandated time frame.

Chairperson Yates said that they have to give us the studies first.

Board Member Driscoll said that he didn't mind setting a limit after we get everything (the studies)

Chairperson Yates said they may not give us the studies say for two years.

Board Member Driscoll said that we don't, we do it from the time we get the studies.

Board Member Long said right.

Chairperson Yates said that she did not know how to set a limit on this.

Consultant Johnson said there not going to wait two years.

Board Member Parsons said that was ridiculous Ann, there not going to wait two years.

Applicant Remillard said what's the list, if it's everything submitted to date, if that's the list then it's going to be extensive and holding the public comment period open for additional comments and then additional comments upon additional comments. That was what the process was to sit down with your consultants to take all those comments, address them and to make sure the consultants are satisfied with them.

Board Member Driscoll replied, but the hearing was for the public not our consultants.

Applicant Remillard replied that he agreed, but we are saying is that

(Everyone is talking at once) and Mr. Remillard's comment cannot be heard.

Board Member Parsons said what you want then is can we widdle it down that those items / issues are that were going to take additional comments on, on what studies. Steve (Consultant Fleischacker) has come up with four

that I see.

Consultant Fleischacker asked if I can just make a recommendation and our job here is to provide some advice to you guys. There were issues that needed to be continued and analyzed. They weren't fully defined during the completeness review. So it seems to me, and certainly on the air side, we accomplished a lot of review, technical review during the course of the completeness review. This applicant is very responsive to a lot of our comments and from the air side, we really only have the one issue remaining. We have already even identified that the issue was there and we were going to address that in the future, so it was very clear. I think what Maryann (Johnson) issue is here is that you all may not have recognized that the public won't have the ability to comment to the extent that they other times do. I think what I am hearing, what Steve (Remillard) is talking about and perhaps you may want to consider those things that were not completely evaluated, those things that we identified needing to be analyzed down the road after the DEIS Completion. Perhaps and I don't know if you can do this legally, but perhaps you can keep the comment period open for those items that were not resolved during the course of the DEIS.

Board Attorney Bavoso replied that he did not see why not.

Consultant Fleischacker continued, and then if I could just add one more thing that did not come up and we counted four items right but there maybe another one or two.

Chairperson Yates said that the NYSDEC may have some.

Board Member Driscoll said yes, if something else comes up that didn't come up before.

Board Member Siegel said there may be five, or six or seven.

Chairperson Yates said that it was suggested to her (and she couldn't remember by who) to hold a Worksession, possibly next week.

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**Board Member Parsons** said that what she thinks, I'm not against doing it, maybe.....

**Board Attorney Bavoso** offered the word – focus.

**Board Member Parsons** continued and said to focus on what has to be done, not on everything. We could be here six months to a year from now because I know what goes on with this.

**Consultant Johnson** said that they agree, they were not suggesting that.

**Board Member Parsons** said that was what she was hearing, we have to confine it, if the DEC comes in with something, MaryAnn, Steve, what they feel we need to address that way it can be contained.

**Chairperson Yates** said that basically it's the things were talking about.

**Board Member Parsons** said she had no problem with that because that can be contained, other wise it becomes a barrel of monkeys and it just keeps going and going and going. I don't think that's fair to the applicant, so as Steve said they all worked together and all worked very well together so I think we can bring it to, maybe we should have a special meeting and define exactly just what has to be addressed.

**Consultant Hines** said and that they just got a lot of these public comments today.

**Chairperson Yates** said can I just say the comments were pouring in this afternoon, and the phone was ringing off the hook, it was ridiculous.

**Consultant Johnson** said that there are only certain circumstances under which you can actually request a supplemental, it is not wide open, and I would guess those DEC comments are not supplemental comments, those are comments to be responded to in the FEIS.

**Board Member Parsons** said that she agreed.

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Consultant Johnson said that the difference is they (the DEC) are commenting on content that WAS there, we are talking about content that was NOT there and that is the difference.

Chairperson Yates said that the issues (DEC) had to do with groundwater vs. gray water, the DEIS should address where the balance of the water would be obtained if ground water is actually depleted, I think that was the main one.

Board Member Parsons said that she thought she had asked for that back a while ago.

Board Member Driscoll said that I think you did.

Board Member Parsons said that she did ask for that and if you're going to use the ground water the answer was at his point their going for the gray water, if they go for anything else they have to re-open everything.

Chairperson Yates asked how does the board feel about setting a special meeting.

Board Member Neiger said that he thought it was a great idea, because if they have a work session where the consultants can hash it out with Steve (Remillard)...

Board Member Parsons said no, we want to be involved.

Chairperson Yates said that it is us and our consultants making the decision, I don't want a Worksession where were going to argue back and forth with the applicant. We need to just give a concise list of what we need.

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Board Member Parsons said right, and if we all go through this we'll make sure we got it all.

Consultant Johnson encouraged all the board members to go through all the comments and if any questions or there is a need for clarification on something to call them.

Discussed when to close the comment period the following motion was made:

**Motion by James Driscoll, seconded by Donald Siegel to set a start time of 6:00 p.m. for Planning Board meeting May 13, 2009 and to keep the Public Comment period open until May 14, 2009.**

**All voting members voted yes**

**Motion / Carried**

Donald Siegel asked whether the Department of Homeland Security should be advised of this application, a discussion took place and it was decided that our Consultants would check into this for us.

#### **BROOKFIELD / SBL# 1-1-52.1 & 6-1-3.2**

James Ullrich the applicant's representative discussed the visual impacts with the board, some additions were added. Mr. Ullrich also said that they were in the process of setting up a consultants meeting.

No action taken.

All regular business was concluded for the April 22, 2009 meeting.

#### **IV. OTHER BUSINESS**

Consultant Patrick Hines discussed with the board RAJA Convenience Store and there was a modification to the site plan. Currently the approved site plan shows the drive thru window to the rear of the building and the Franchise people would like it to be on the side of the building.

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Motion by Daniel Long, seconded by Donald Siegel that the Town of Wawayanda Planning Board has no objection to relocating the drive thru window on the side.

All voting members votes yes

Motion / Carried

Approval of Minutes for March 25, 2009 and April 8, 2009.

Motion by Barbara Parsons, seconded by Mary Markiewicz to approve the March 25, 2009 and April 8, 2009 minutes as submitted.

All voting members voted yes.

Motion / Carried

The Town of Wawayanda April 22, 2009 Planning Board Meeting was adjourned at 9:39 p.m.

Submitted by,

Patricia Battiato  
Secretary to Planning

