

**Town of Allegany Planning Board**  
**Meeting Minutes**  
**April 11, 2011 at 7:00 PM Allegany Senior Center**

**Present:**

Bob Phillips, Chairman  
Peter Hellier  
Rick Kavanagh  
Frank DeFiore  
Helen Larson

**APPROVED**

**Also Present:**

Carol Horowitz, Town Planner; Daniel Spitzer, Esq., Patrick Eaton, Supervisor; Lynette Semsel, Secretary; Phil Winger, St. Bonaventure; John Bhe, St. Elizabeth Motherhouse; St. Elizabeth Motherhouse Representatives: Mark Boelhke, Caleb Henning; EverPower Representatives: Kevin Sheen, Doug Ward (EverPower's attorney), Ben Brazell, EDR; Camie McGraw, CRA; Dave Britton, CRA; Townspeople from Allegany and Olean.

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Chairman Phillips opened the meeting with the Pledge to the Flag at 7:00 PM.

***Mr. Hellier made a motion to approve the minutes of the March 21, 2011 meeting, with the correction on page 2, under Allegany Wind LLC: FEIS, to change the second sentence to read: There are no restrictions at 3 decibels beyond 2500 feet in terms of noise. Second by Mr. DeFiore. Ayes all. Carried.***

Chairman Phillips said he is switching the old and the new business as the St. Elizabeth Motherhouse presentation will not take much time.

**NEW BUSINESS:**

**St. Elizabeth Motherhouse**

Mark Boehlke, a landscape architect from Hoffman LLC, presented the plan for the addition to St. Elizabeth's Motherhouse. The project was introduced in February and nothing substantial has changed. Mr. Boehlke covered the points in the staff report:

Using an aerial photograph of the existing conditions and a colored site plan for reference, he explained the majority of the project is the renovation of the existing building, with upgrades to the mechanical system and the fire protection system; mainly a sprinkler system, the addition of a 12,000 square foot two-story wing for residence and nursing home type environment, new storage building (which is up) and areas that need to be regraded.

**Turnaround:** Handicapped entrance that will accommodate a small truck and cars and is not a loading area for large vehicles.

**Courtyard:** Redoing with a dining patio, sidewalks and an enclosed garden intended for potential memory care residents.

**Fire Lane:** Met with Town to confirm that the plans meet the Building Code.

**Parking:** Even with losing some parking stalls due to the addition, others will be added. Since the number of residents will not be changing drastically, the parking should be sufficient.

**Drainage:** Proposing several infiltration areas, did soil testing and will do more, will direct the roof water and storage building to infiltration areas, and will make sure they meet the final testing by the State.

**Utility plan:** Met with representatives for the Motherhouse and the Town of Allegany. For fire protection the best solution is to bring a new waterline from 7<sup>th</sup> Street and connect into the system and add one new hydrant by the building. They intend to seek an Agreement with the Village of Allegany to maintain the system and fire hydrants as the Motherhouse is currently under Village water rates and the lines tie into village water lines. The county health department will need to sign off on it also.

**Elevations:** Similar brick, two story and not as massive as the present building.

**Landscape Plan:** No formal landscape plan has been submitted. Interviews with landscape designers will be started April 12. The landscape features that need attention are the garden and the courtyard; therefore, the applicant wants the designer to be involved in how this is landscaped. There are a lot of trees on the site but weren't shown on the original plan. A new survey will be done that will show where the trees are so they will be included in the landscaping.

Sr. Melissa and John Bhe met with the three neighbors to the north to make them aware of the process. The feedback was positive.

**Questions:**

Mr. Phillips: When you spoke of 12,000 feet, was that one or both floors?

Mr. Boehlke: 12,000 per floor.

Mr. Hellier: From 7<sup>th</sup> Street across the houses that exist, that's a very steep drop down to those homes, what are you going to do to stop anything from sliding during construction?

Mr. Boehlke: After construction, any downspouts or roof drains that come off this building will be collected in some way through infiltration facilities and a 4 foot high retaining wall which will help level it off for the walkway for the sisters to use. During construction, there will be silt fence by the homes directly impacted and stone filter berms to relieve water so it doesn't build up behind the silt fence. Construction of temporary sediment basins will also be done.

Mrs. Horowitz: After development, the runoff should be less than it is now.

Mr. Kavenagh: Village water, fire system, sprinkler systems fall on the village and not on us?

Mr. Henning: We did a hydroflow test at the Motherhouse and it shows, under current situation, they can get 920 gallons a minute maintaining a 20 PSI residual. With the fire pump they are installing to provide sprinkler system for the whole building, it requires 1000 gallons a minute at 20 PSI residual. With the 8 inch line that will be installed, we will be able to provide that.

Mr. Phillips stated we cannot do anything tonight granting anything; however, it will go to the County Planning Board meeting on April 28. He asked if the landscaping plan will be in place at that time.

Mr. Boehlke: I doubt we would have anyone on board by that time.

Mr. Kavanagh: Overall, the mature vegetation is about 99% and will stay so literally we are drawing straws on 4% of the property.

Mrs. Horowitz: If the county made a comment, it would be along the lines that you should make sure you have a landscaping plan.

Mr. Phillips: The majority of your landscaping is inside in two areas that will not be seen.

Mr. Hellier: Carol, would a letter with him making the statement that he is interviewing landscapers suffice?

Mrs. Horowitz: I will make sure Mark and I are in concurrence on the level they need.

Mr. Phillips stated that one thing that can be done tonight is to determine if a public hearing is needed.

***Mr. Kavanagh made a motion that no public hearing is needed. Second by Mrs. Larson. 1 Nay - Mr. Hellier, 4 Ayes. Carried.***

Mr. Hellier felt that the pitch in the one area is rather steep and felt an engineer should look at it. He is concerned about runoff during construction onto the abutting properties.

Ms. Horowitz will have the town engineer look at this issue.

## **OLD BUSINESS:**

### **Allegany Wind LLC: FEIS**

Reviewing the section 4.8 on sound on the FEIS, Mr. Phillips asked for comments by the board.

**Mr. Kavanagh: Page 33, 2<sup>nd</sup> paragraph—*Within one year of commencement of commercial operations, the project proponent shall submit a noise study of operation conditions to ensure that the project is in compliance with the standards of this section. The study shall be based on receptor points identified during the application review process. In addition to the initial study, the Planning Board may require periodic additional noise studies.*** I think we really need to have those locations identified to what will be the criteria for this one-year noise study.

Mr. Spitzer: There are a number of ways you can do that assuming you approve the project as a permanent agreement and you have identified eight modeling points. At that time, when one year comes up, you go to CRA and say you want them to do the post construction study now; and, in addition to those eight modeling points, there are additional modeling points you want them to look at. The planning board would have continued jurisdiction to do that. If the members of the board agree, when we write the permit, we would identify the same eight modeling points unless the board wants to add or subtract some at that point. It seems to have worked so far in terms of quantifying the validity of the studies of which way to go. From a modeling point of view, I would think you would start there and then add as you see fit. For example, within a year, somebody opens up a nursing home near; you very well would want to add that to make sure it's in compliance at that point. I would recommend handling this, we have identified the eight modeling points to start with in the permit, we add one year out when we actually start the study and to direct CRA in what to do.

Mr. Hellier: Why wait a year?

Mr. Spitzer: Generally you want to wait a year as turbines don't all start at once. They are often brought on line at different times. Sometimes there are mechanical problems as they come on board or you might have a compliance issue. This is a mandatory post construction study to show that the modeling is correct; it is called basically "benchmarking." You go back a year later, as is done a lot with green building where people make promises that you are going to save energy, and prove that you really do. That's what this study is. This is in addition to any specific compliance problem; so, if three days after the turbine starts operating, there is a legitimate compliance problem, the town directs its building official and its engineers to take action as appropriate. So don't think this is the only thing you are doing if there are problems. This is just a mandatory study. Now in terms of timing, a

year is a typical thing in the industry but certainly you have some leeway in terms of when you do it. I think the key point is you want to make sure it is done in a specific period of time after all the turbines are brought on line so you are getting the full impact of the community in terms of this post construction study.

Mr. Hellier: What is the definition of commencement of commercial operations when the first tower goes on or the last tower?

Mr. Spitzer: For purposes of this one year, I would recommend the last tower. I would want to know they are all up and running. For example, if they take six months to bring all of them up on line, you don't necessarily want to do the study when only half of them are up. Whenever we start counting that period, whether it is a year, it should start from the day they are all spinning.

Mr. Phillips: Page 25, 1<sup>st</sup> paragraph, you are making reference to your figure 2. The last two sentences say, *As depicted on this figure, there are currently ten non-participating residential structures that do not meet the potential 40 dB(A) threshold; however, the Applicant is working with these residences in order to obtain an easement/waiver.* My question is, looking at your figure, down here it shows little dots that state permanent residents. I counted twelve, so based on my logic, you probably have two of these participating and ten are not. I have no idea whose house it is you are referring to and, since apparently when you say they do not meet the potential 40 dB(A) threshold, I would like to know what resident and, with respect to that resident, what turbine doesn't meet it. Also, you must have paperwork to back up the fact that you have the waiver/variance or you are in progress or you need to go to the ZBA for a waiver.

Mr. Spitzer: What you are looking for is to have them specifically delineate which turbines are not in compliance and which waivers are still needed for them to come into compliance to avoid having to go to the ZBA.

Mr. Brazell: In terms of the figure itself, I could create an inset that blows up that one area down in Knapps Creek.

Mr. Phillips: Ben, I want you to fully identify it so I know what the situation is. When you give us documentation that says you have taken care of it, I can compare and agree. Right now it is just twelve dots and I am assuming that two of those dots are participating and I would like to know who is and who isn't.

Mr. Hellier: Your tower 18E and 8W. If they were relocated, they would eliminate all the houses that don't meet compliance.

Mr. Brazell: I can assure you we have looked at just about every option there is to eliminate non-compliance issues. We need proper spacing in between turbines for the wind to flow around them. Plus the topography makes moving a tower even a little bit not possible.

Mr. Spitzer: One of the things the Zoning Board has to look at is the possibility that a tower could be moved. Put some language in the FEIS that addresses the reasons why you can't move them and also address Pete's question as another comment on these two particular turbines, although the Planning Board can't approve anything that isn't in compliance, it would complete the FEIS to the extent you may go to the ZBA.

Mr. Hellier: If the ZBA turns you down on those two turbines because they are out of compliance, is the project dead?

Mr. Brazell: No, the first thought is that we are negotiating waivers of that sound area. After that we will look at zoning board of appeals and beyond that we will look at other methods for getting the project in compliance. If a resident is in an area that is not in compliance, that resident may actually present a waiver that waives the right to be out of compliance.

Mr. Spitzer: The law works where the Planning Board looks at participating residents versus non-

participating residents. Anyone who gives you a waiver is a participating resident. Any standards you set measure a non-participating resident and are based on protection of people who are not participating in the project. They would only need a ZBA variance if the Planning Board turned down the turbine.

Mr. Phillips also brought up the following, stating he was uncomfortable with the generalization of the statements:

**Page 25, 2nd paragraph, *The Project Complies the Noise Standards set forth in the Town Law at Section 5.25(C)(2)(a) with some minor exceptions. The long-term level, average project sound level will slightly exceed the 45dBA threshold established in Section 5.25(C)(2)(a)(i) at a few of the boundary lines of abutting non-participating properties located.... This sound level range of 45 to 48 dBA is characterized in the DEC guidance as "very quiet" to "quiet" and is anticipated to occur in remote forested parts of the properties far from any dwellings. In fact, as depicted on FEIS Figure 2, some of these parcels are land locked and/or do not have any known residential structures on them, and project sound levels at any dwellings on these properties would generally not exceed 40dBA.***

**Page 26, paragraph 2, *It is anticipated that nearly all residences surrounding the Project will not experience long-term sound levels exceeding 40 dBA due to the Project. There are only a handful of residences where a negligibly higher level of 41 dBA is predicted.***

**Page 30, response to written comment 39B: *However, according to the evaluation provided in DEIS Appendix N, there are approximately 8 non-participating residences modeled to experience slightly more than 40 dBA (in no case higher than 42 dBA). The Applicant will attempt to obtain easements with these non-participants.***

Mr. Spitzer: We would like EverPower to eliminate words like generally and mostly and tell us specifically who and what towers are not in compliance.

Mr. Sheen: I could very easily clear up the less than specific language and identify which towers are causing non-compliance issues and at what residences. I can have the entire revised FEIS document to the Planning Board by the end of the week.

Mr. Phillips asked Mr. Britton to discuss the issue of the difference between daytime and nighttime sound levels.

Mr. Britton: CRA's noise staff looked at this issue in detail, and determined that Hessler's analysis, that there was no difference in average sound from daytime to nighttime, was reasonable.

Questions by townspeople:

Gary Abraham. There is a requirement by the SEQR that the FEIS be posted on the Internet on the sponsor's website. Currently the DEIS is up there but none of this new stuff is up there. When will that be up there?

Mr. Spitzer: It isn't required until after it is issued; however, it is available at the Town Hall for anyone to see.

Mr. Hellier: If I am at the 40dB mark, what am I hearing?

Mr. Britton: Mostly background noise such as trees, birds, normal sounds. You might have an occasional whish, whish, whish that occurs when you have wind conditions that are different across the blade, from top to the bottom. That could occur occasionally but not something that you would hear continually.

Mr. Spitzer: The nearest house on this project is 2800 feet so we have been more concerned about the aesthetic effect than the noise factor.

## **Letter from Gary Abraham**

Mr. Phillips: I would say there are a lot of erroneous statements to it. First sentence, he expresses serious concerns about the Board's abandonment of the town zoning limit on increased noise from wind farms—we added to the town's ordinance.

Mr. Spitzer: He certainly has a right to petition the Board for any action it wants in terms of changing the law; however, his letter is disappointing at best and frankly utterly erroneous at most.

Mr. Spitzer quoted from the minutes of March 8, 2010 regarding the purpose of designating sensitive receptors for study purposes only.

Mr. Britton: CRA did two assessments—noise impact modeling at residences and ambient noise assessment. Their assessment was used to validate that Hessler's study was reasonable and could be used for the project.

Mr. Koebelin: Will the updated information that you are asking be inclusive of where they stand on each of the parcels required improvements?

Mr. Spitzer: They have given us either provisions or easements for all physical improvements. We have received either leased agreements or letters of approval giving permission to file the application for each actual physical improvement. The only thing we don't have is the actual potential noise setback parcels.

Mr. Phillips: There will be a special meeting April 27, 2011 at 7 p.m. to possibly issue FEIS and call for a public hearing. The Planning Board will go over the revised FEIS document before the meeting. If the FEIS is approved, the standard public hearing on the special use permit will be May 16, 2011. If any Board member has any questions before the meeting, please get them to Carol Horowitz immediately.

***Mr. Kavanagh made a motion to have a special meeting on Wednesday, April 27, 2011 at 7 p.m. here at the Allegany Senior Center for the Allegany Wind Project. 2<sup>nd</sup> by Mr. Hellier. Ayes all. Carried.***

***Mr. Hellier made a motion to adjourn the meeting. 2<sup>nd</sup> by Mr. DeFiore. Ayes all. Carried.***

The meeting was adjourned at 9:20 p.m.