

Town of Allegany Planning Board
Meeting Minutes
June 29, 2011 at 7:00 PM Allegany Senior Center

Present:

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

APPROVED July 11, 2011

Also Present:

Carol Horowitz, Town Planner; Daniel Spitzer, Esq. Charles Malcolm, Esq., Camie McGraw, CRA; John Hare; Patrick Eaton; Donald Sue; Nick Pircio; Lynette Semsel, Secretary; Allegany Wind, LLC Representatives: Kevin Sheen, Ben Brazell, Bill Spencer; Town People

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

Mr. Phillips felt there was confusion to the procedure regarding responding to the public at public hearings. In terms of requirements, when there are public comments, the Board has to respond officially if it is a draft or final EIS. When there is a public hearing, there is no requirement to formally respond. When the Board receives public comment, they take all those comments into consideration even though there is not an official response.

Mrs. Horowitz clarified the Board conducts the Environmental Review for the SEQR. There is a public hearing and the Board uses all the information that comes out to reach a decision. There will be a formal written record that will incorporate the comments that people have made. All the concerns that people expressed get folded into the process and into the Board's determination but no individuals will get a letter with specific responses to their questions.

Draft SEQR Findings Statement

3.0, page 10 – The last complete sentence of the page should have the blank filled in to read: “The closest residence is located approximately 2500 feet from the turbines.”

Comment 1, page 10 - Leave visual impact analysis where it is.

Comment 2, page 12 - Include ag land that is not in a district. Mr. Spitzer and Mrs. Horowitz will draft a statement to be added.

Comment 3, page 12 - Correct all references to NYSDAM.

3.2, page 13 – First sentence indicates the “transmission line will be installed to a minimum depth of 4 feet in such fields.” When it is not an ag and market regulated field, it is 3.5 feet; but when they are in an ag and market regulated field, the rule is 4 feet. The Board wants all references changed to a minimum depth of 4 feet to make it uniform. (This should also be changed on page 8, 1st paragraph: “cable installed to a minimum depth of 3.5 feet”)

3.4, page 18 – Last line of 1st paragraph, delete sentence, “These results dispel the proposition that effects...” and move quotation mark to the end of the previous statement. The purpose of the section

is to show that the Board looked at the studies, one that was criticized and two other studies, and they all find no negative impact on property values.

Comment 5, page 20 – The state is not giving any permits for this project.

3.5.3, page 22 – 2nd paragraph, for clarity, add the word visual to first sentence to read, “To offset unavoidable visual impacts” and last line add visual to read “to address the unavoidable visual impacts...”

This section is referencing the cultural impact and the statement, 1st sentence, 2nd paragraph, is referring to whether the unavoidable impact at the historic site will interfere with the public’s use of that resource. Change 1st sentence, last paragraph of section to: “The Planning Board finds that the offset project will mitigate the unavoidable visual impact to the maximum extent practicable; therefore the project will not have a significant impact on the public’s use of the resources.”

3.7, page 28 – Mr. Phillips spoke with Kevin Sheen before the meeting regarding road use agreement (middle of page). Since the original primary route has been taken out, the new primary route will be Route 219 from Bradford, Pa. to Nichols Run. Mr. Sheen stated, as a part of the DEIS, they studied all possible routes. As they moved forward in the project, they refined their thoughts on where they should go. They spoke with the Town on a road use agreement and they are working on finding appropriate routes both for construction related materials as well as project related components.

3.9.1, page 32 – 1st paragraph under bullet should read, “the remote location of the substation (1200 ft. from the nearest dwelling);”.

3.9.2, page 32 - It is not a common occurrence to have ice on the blades; however, it can happen and ice could fall. The minimum setback distance of 758 feet is greater than the expected shedding distance. Any ice shedding is expected to occur within this space. Discussion on ice flinging off the turbines and hitting snowmobilers, walkers, etc. resulted in the decision, wherever snowmobile trails come within 500 feet of the tower, have signage warning of possible ice shed. Add this as a condition right after the last sentence, 1st paragraph.

3.9.6, page 35 - Second last sentence change to read "at least four feet deep."

Comment 10, page 38 – Add a sentence that addresses post construction runoff and the issue of permanent localized changes to runoff patterns.

Comment 11, page 38 - Correct all references to Spill Prevention, Containment and Countermeasure (SPCC) Plan.

3.11, page 40 - Mr. Kavanagh asked if there would be any problems with the removal and moving of ash trees due to the possibility of the invasion of ash borer. Everpower would need to dispose of the ash trees per the DEC requirements. Mrs. Horowitz said there was a construction impact reference in the DEIS that states any tree and vegetative debris will be disposed according to DEC regulations. Mr. Brazell stated they would not be transporting any logs. Mr. Spitzer will use some of the language from the DEIS to cover the comments.

Comment 13, page 47 - Add back in the actual numbers for the cumulative impacts of bird/bat fatalities.

3.11.3, page 48, Wildlife impacts - Mr. Spitzer noted that the text finds that the Planning Board is relying on the studies that have been done. Mr. Brazell stated that there is ongoing research for a way to protect wildlife from the turbines. Many species are adapting with no problem. There is more mortality with bats.

Comment 14, page 52 - Change the first line to "Allegany Wind will pay landowners who consented".

Comments 15 & 16, page 54 - Mr. Spitzer went over the table that was prepared to show the turbines and how each would comply with the 45dBA and the 40 dBA standards. Only Turbine 4E does not comply and the recommendation is to not run it at full power. There will still be a post construction noise study and enforcement by the community. There was discussion on the possibility of eliminating Turbine 4E. It is 150 feet from the extreme back edge of the parcel, on top of a ridge. It is not near the parcel where the residence is. The post construction testing would be done by the Town's Zoning CEO using a simplified handheld meter provided to him. If he should find a problem, CRA suggests the Town would then hire an acoustical firm to do a full scale test. Mr. Spitzer suggested a fund be set up by Allegany Wind so that, if a complaint is made, the Town can send out an acoustical team if necessary. This would be done instead of Allegany Wind paying for a study and the post construction study should be done through the Town Board.

3.13, page 55, Sound - 2nd paragraph - Insert language proposed by CRA, the Town's consultant, regarding the work they performed to verify Allegany Wind's revised sound power levels..

3.14, page 57 - 3rd paragraph, first sentence, change the word significantly to partially.

3.14, Page 59 - Mr. Phillips questioned whether the two sentences starting "The Rating Panel" are contradictory. Change the first reference (1st paragraph, last sentence) to read: "A Rating Panel noted, in their opinion, that, although the turbines may be perceived to have an adverse impact by area residents, the turbines do not have a significant....."

Comment 17, Page 63, Shadow Flicker - Make sure the two documents are consistent regarding the complaint resolution process.

3.14.1, page 67 - 2nd paragraph, last sentence, remove the word "mitigating" before "the potential environmental....."

3.14.1, page 68 - Mr. Hellier felt the first sentence on the page to be untrue. Mr. Spitzer said the sentence does not state negative impact but *unacceptable* negative impact. Decision was made to change the first sentence to read "The turbines will be visible and that is a negative impact." Mr. Spitzer reminded that Board that they must not get away from making value judgments.

4.1.1, page 74 - 1st paragraph, last sentence, change to read "As a first point, the Board notes that wind farms are an allowable special use in the Ag/Forestry (A-F) district of the Town".

4.1.1, page 75 - Section 4.1.1- last paragraph of section, remove the numbers (bullets).

4.1.3, page 76 - Mr. Hellier questioned the word "neighborhood." Mrs. Horowitz referred the Planning Board back to page 10, for a discussion of the project area and the neighborhood. Mr. Spitzer stated that there is a difference between the Board's responsibilities for SEQRA purposes, where the Board evaluates the widespread environmental impact, and the Board's responsibilities under the zoning ordinance for consideration of the special use permit and site plan. For Zoning ordinance, the concept of the neighborhood is narrower. Mr. Spitzer reminded the Planning Board they have done, as lead agency for the SEQRA, the environmental review for every involved agency. The Planning Board has to decide this project meets the requirements of the site plan approval and the special use permit.

Mr. Phillips stated, "In terms of the ordinance, we have different districts and I say the character of the district is what is allowable in it, even though it may not be in it at the time. Our ordinance says the wind turbines can be in ag/forest as a special use. That means that, even though they are not there, they are part of the character of the neighborhood." Mr. Spitzer responded, "Even though they are allowed, that doesn't mean they are appropriate in that location."

4.3, page 81 - Typo in last sentence, top section. Should be (*See* Section. 3.12 of this Statement....)

4.3, page 82 - Second paragraph - Insert language proposed by CRA, the Town's consultant.

4.3, page 84 - Sub paragraph (9), Section 3.12 should be Section 3.16 (Second sentence and last sentence of paragraph.)

Certification, page 87 - Mr. Spitzer stated Items 1 through 4 have to do with the Board's opinion of the review and not the Project, Number 5 is the final SEQRA conclusion. It states that, though all negative impacts have not been eliminated, the negative impacts have been eliminated to the maximum extent practicable.

Typo also in the last sentence, 1st paragraph. Make school districts singular.

Mr. Phillips mentioned that the City of Olean is not referenced in this document as Allegany Wind will not be going through Olean. Mr. Spitzer stated the City of Olean was included in the DEIS and in the environmental study.

Mr. Spitzer will have the corrected and edited document back to the Board for review at the July 11, 2011 regular meeting.

Special Use Permit and Site Plan Applications

Decommissioning Security

Allegany Wind is required by the Zoning Ordinance to have a decommissioning security. They submitted a study which was rejected by CRA. CRA will make a recommendation to the Town Board of what they think the amount should be.

Mr. Phillips stated the salvage value should not be included as part of the decommissioning plan. Mr. Spitzer stated that CRA agrees with that, and that the Town Board will determine the amount of the bond. The Planning Board is requiring that the bond be provided.

8.0, page 6 - Add construction traffic time to 7 am to 7 pm.

9.6, page 8 - Add a condition that states line of sight will be maintained on all roads. Mr. Kavanagh would like it made apparent that a resident could ask for an area to be cleared if they feel their line of sight is impaired. Mr. Spitzer stated that the Board could not bind the applicant to do work on private property that they did not own.

Mr. Kavanagh moved to adjourn the meeting. 2nd by Mr. Hellier. Ayes all. Carried.

The meeting was adjourned at 9:20 PM.