

SPECIAL VILLAGE BOARD MEETING
JANUARY 20, 2014

A special meeting of the Board of Trustees was called to order by Mayor Heather McKeever at 6:00 p.m. at the Village of Gowanda Municipal Hall. The pledge of allegiance was recited.

Present: Mayor Heather McKeever
 Trustee Carol Sheibley
 Trustee Dale DeCarlo
 Trustee Paul Zimmermann
 Trustee Pete Sisti

Village Employees: Village Clerk Kathy Mohawk, Building Inspector Gary Brecker, Officer Dave Hock

Media Present: Phil Palen, Cable Channel 22
 Samatha McDonnell, Observer
 Susan Chiappone, Buffalo News

Public Present: Tim Greenan of Savarino Companies, Rob Gaylord, John Walgus, John Girome, Pauline Murphy, Dennis Regan, Charity Sweda, Ann Clabeaux, Janet and Joe Vogtli, Dorothy and Lou Selan, Tom Povhe, Robert Heichberger, John and Judy Weider, Nick Hodak, Bill Fedor, John Gibbs, Roseann Haynoski, Kenneth Lee

Motion 244-13. Motion by Trustee DeCarlo, seconded by Trustee Zimmermann to go into Executive Session for purposes of legal discussion at 6:00 p.m. Motion carried 5-0.

Motion 245-13. Motion by Trustee Zimmermann, seconded by Trustee Sheibley to come out of Executive Session at 6:10 p.m. Motion carried 5-0.

Mayor McKeever advised that the Village received a late submission from Savarino Companies at 4:32 p.m. this afternoon regarding information that was requested by the Village Board. She advised that the Erie County Supreme Court ordered the Village to make a decision regarding the proposed project at 42 Jamestown Street no later than January 20th.

Mayor McKeever read the following resolution into the record:

**“A RESOLUTION OF THE VILLAGE OF GOWANDA BOARD OF TRUSTEES
DENYING THE SITE PLAN APPLICATION OF 42 JAMESTOWN STREET,
LLC**

WHEREAS, on March 27, 2013 an application for site plan approval was submitted by 42 Jamestown Street, LLC (the “Applicant”) to the Building Inspector of the **VILLAGE OF GOWANDA**, a New York municipal corporation with a principal place of business at 27 East Main Street, Gowanda, New York 14070 (the “Village”), for the approval of the redevelopment of a parcel of land located on the east side of Jamestown Street in the

Village and the construction thereon of a 9,000 square foot mental health facility and associated paved parking (the "Project"). The Building Inspector forwarded the site plan application to the Village Planning Board (the "Planning Board") for review; and WHEREAS, on March 19, 2013 the Cattaraugus County Industrial Development Agency (the "IDA") passed a resolution declaring the Project would not have a 'significant effect on the environment' and authorized a 'lease/leaseback' transaction with the Applicant (the "IDA Resolutions"), the minutes of such meeting are attached hereto as "Exhibit A." The IDA did not conduct an environmental review and the IDA Resolutions were passed before the Planning Board completed its review; and

WHEREAS, on June 11, 2013 the Planning Board sent notice declaring itself "lead agency" for the environmental review of the Project as an "unlisted action" pursuant to the New York State Environmental Quality Review, codified at Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 (collectively referred to herein as 'SEQR'); and

WHEREAS, under SEQR, the authority to determine whether a given action will have a significant environmental impact is vested with the lead agency; and

WHEREAS, on July 22, 2013 the Planning Board adopted a proposed conditioned negative declaration pursuant to SEQR regarding the site plan for the Project but the Planning Board disbanded before publishing the proposed conditional negative declaration as required by SEQRA; and

WHEREAS, following the issuance of the conditioned negative declaration the Village Building Inspector reported to the Village Board and the Village Planning Board that the site plan application was incomplete because the Applicant had failed to deliver the following items: (1) a letter from the Project architect certifying that flood plain ordinances are not applicable to the Project; (2) a copy of the lease agreement for the extra lot upon which paved parking is to be built; and (3) a copy of the lease agreement between the Applicant and the Dormitory Authority of the State of New York on Behalf of the New York State Office of Mental Health, the proposed tenant of the Project; and WHEREAS, the Village Board and the Village Planning Board disagreed on the proper response to the Building Inspector's notice of incomplete application, the adequacy of the Planning Board's SEQRA review and whether such review properly complied with applicable laws and regulations; and

WHEREAS, on August 20, 2013 the Village Board of Trustees held a public hearing on the Project at which time attendees of such hearing expressed strong objections to the Project. Minutes of the hearing are annexed hereto as "Exhibit B"; and

WHEREAS, the Village received written opposition to the Project from the public, including petitions signed by a significant number of residents. Such petition(s) are annexed hereto as "Exhibit C"; and

WHEREAS, the public opposition to the Project expressed concerns regarding the location of the Project and whether the Project had been adequately reviewed in accordance with the applicable state and local laws; and

WHEREAS, the Village supports the intended use of the Project within the Village, namely the provision of mental health services to the public, but recognizes the significant public opposition to the intended location; and

WHEREAS, the Village suggested alternative sites for the Project which were not acceptable to the Applicant; and

WHEREAS, most of the members of the Village Planning Board have resigned. Three of the members and one alternate resigned, leaving only one member remaining, such that there is not currently a functional Planning Board in the Village; and

WHEREAS, since the public hearing on the Project a number of residents have commenced an Article 78 Proceeding in State Supreme Court challenging the Planning Board's SEQRA review of the Project, among other things, which matter is set for hearing on January 24, 2014; and

WHEREAS, at the same time local residents commenced the Article 78 Proceeding the Applicant of the Project also commenced an Article 78 Proceeding to compel the Village Board to render a decision on its application for site plan approval; and

WHEREAS, the Court has issued a decision in the Applicant's Article 78 Proceeding requiring the Village to render its determination on the site plan application no later than January 20, 2014, i.e., four days before the challenge to the Planning Board's actions are to be reviewed; and

WHEREAS, based on the Court order to render a decision and after review of all documents; transcripts, letters and application materials, the Village Board of Trustees upon careful consideration issues this determination, subject to any further court action or court orders.

NOW, THEREFORE, BE IT RESOLVED, that the Village of Gowanda Board of Trustees in special session duly convened, does hereby FIND AND DETERMINE AS FOLLOWS:

- (1) That the request for site plan approval by the Applicant is hereby denied for the following reasons:
 - a. The IDA application submitted by the Applicant did not accurately reflect job creation attributable to the Project, the IDA did not properly conduct an environmental review and the IDA Resolutions were issued prior to the completion of the SEQR review coordinated by the duly appointed lead agency. These matters are relevant because the Applicant has obtained a PILOT Agreement from the IDA reducing its real property tax obligations which will have a direct fiscal impact on the Village. Such property tax relief is justified under the statute when accompanied by economic stimulus to the community but such stimulus has been misrepresented by Applicant in this case. No new jobs are being created by this Project. An existing facility on one side of the county line is being moved to the other side of the county line. Thus the loss of tax revenue is not off-set by the creation of new jobs or other fiscal stimulus. The Project will still need the usual municipal services, the cost of which will have to be subsidized by Villa
 - b. There is significant, strong public opposition to the Project's proposed location and significant public concern regarding the adequacy of the review of the Project. The public hearing held for the Project attracted the largest community turnout the Village has had on a site plan application. The turnout was overwhelming opposed to the Project at the location proposed by the Applicant.

- c. The site plan application cannot be acted upon yet as it is incomplete under local law because the following items have been requested and not supplied;
 - i. A letter from the Project Architect certifying that certain flood zone ordinances do not apply to the Project as required by local and state law;
 - ii. A copy of the lease agreement covering the vacant lot upon which all required parking for the Project will be constructed. Without this leased land the Applicant cannot meet parking requirements under state and local law. The review of this lease is also required because if the lot lease expires or can be cancelled during the operation of the facility, the building becomes un-useable as it will not comply with zoning law because there will be no parking available to it. Further, if both the building lease and the lot lease for the parking lot expire in 10 years, and the Applicant having obtained his profit from the Project than abandons the building, the Village will face the same problem of having a building on a lot that consumes all the land area without any parking as required by law. This is a significant concern and despite repeated requests for copies of the relevant leases the Applicant has refused to provide them.
 - iii. A copy of the lease agreement between the Applicant and the Dormitory Authority of the State of New York on Behalf of the New York State Office of Mental Health, the proposed tenant of the Project. A copy of this lease was requested for the reasons described in paragraph "ii" above and because the Village was under the impression based on conversations with state officials and its experience with similar facilities in and near the Village, that the State required an available bus route for projects of the type proposed. There is no bus route available to prospective clients of this Project. The Applicant has refused to provide a copy of the agreement or provide evidence, other than its own oral representations, that a bus route is not now required and will not be required in the future, for this Project.
- d. The intended use of the Project will adversely affect the creation and growth of a Village center commercial district.
- e. The Project requires a variance and/or special use permit that the Applicant refuses to apply for.
- f. The Planning Board did not comply with its duties under the applicable state and local laws.
- g. The Village Board should not approve the Project until after the hearing on the pending Article 78 Proceeding since the Court's determination will ultimately direct whether the Project's SEQRA review was adequate or whether it must be begin do novo.

(2) That the Village Board will work with the Applicant in the absence of a constituted Planning Board, to address the issues set forth herein and the

Applicant may remedy the deficiencies noted, at which time the Village Board will re-consider the application.

BY ORDER OF THE BOARD OF TRUSTEES OF THE VILLAGE OF GOWANDA,
NEW YORK

Motion 246-13. Motion by Trustee DeCarlo, seconded by Trustee Zimmermann to adopt the Resolution of the Village of Gowanda Board of Trustees denying the site plan application of 42 Jamestown Street, LLC. Village Clerk Mohawk polled the Board members:

Trustee Sheibley – yes

Trustee DeCarlo – yes

Trustee Zimmermann – yes

Trustee Sisti - yes

Mayor McKeever – yes

Motion carried 5-0.

Motion 247-13. Motion by Trustee Zimmermann, seconded by Trustee Sisto to adjourn the Special Village Board meeting at 6:25 p.m. Motion carried 5-0.

The next Village of Gowanda board meeting is January 28, 2014 at 7:00 p.m.

Respectfully submitted,

Kathleen V. Mohawk

Village Clerk