

**DRAFT ENVIRONMENTAL IMPACT STATEMENT
VOLUME I**

LOWE'S HOME IMPROVEMENT CENTER

**SOUTHWESTERN BOULEVARD (US ROUTE 20)
TOWN OF HAMBURG
ERIE COUNTY
NEW YORK**

JUNE 2007

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DATE OF ACCEPTANCE OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT _____

DATE FOR SUBMISSION OF COMMENTS _____

Table of Contents

Volume I

- 1.0 Executive Summary
 - 1.1 Project Overview
 - 1.2 Natural backdrop
 - 1.3 Summary of the DEIS
 - 1.4 Proposed Town Approvals
 - 1.5 Potential Impacts
 - 1.6 Mitigation Measures
 - 1.7 Alternatives to the Proposed Action
 - 1.8 Approvals and Permits
 - 1.9 Tables and Figures
 - 1.10 Involved Agencies
 - 1.11 Interested Agencies
 - 1.12 Town Representatives
 - 1.13 Applicant's Consultants
- 2.0 Introduction
 - 2.1 Description of the Proposed Action
 - 2.2 Project Location and Setting
 - 2.3 Conformance with the Comprehensive Plan
 - 2.4 Purpose and Objective of the Proposed Project
 - 2.5 Public Benefits and Need for the Proposed Project
- 3.0 State Environmental Quality Review Act Process and Chronology
 - 3.1 Background
 - 3.2 Project Classification and Lead Agency Determination
 - 3.3 Scoping Process
 - 3.4 Draft Environmental Impact Statement
 - 3.5 Acceptance of the DEIS
 - 3.6 Public Comment
 - 3.7 Final Environmental Impact Statement
 - 3.8 SEQR Findings
- 4.0 Project Description
 - 4.1 Design and Layout
 - 4.2 Architectural Design
 - 4.3 Site Design and Infrastructure
 - 4.4 Landscaping, Signage and Parking
 - 4.5 Required Permits and Approvals

5.0 General Environmental Setting of the Project Site and Study Area

- 5.1 Local and Regional Geographic and Topographic Setting
- 5.2 Localized Land Use
- 5.3 Zoning Requirements and other Land Use Regulations
- 5.4 Socio-economic Conditions
- 5.5 Public Utilities
- 5.6 Site Drainage and Stormwater Management
- 5.7 Traffic, Transportation and Pedestrian Circulation
- 5.8 Community Services
- 5.9 Aesthetic Resources
- 5.10 Noise and Air Quality
- 5.11 Solid Waste Management
- 5.12 Ecology
- 5.13 Cultural and Archeological
- 5.14 Surface Water

6.0 Assessment of Significant Environmental Impacts

- 6.1 Impacts to Land
- 6.2 Impacts to Water
- 6.3 Impacts to Air
- 6.4 Impact to Aesthetic Resources
- 6.5 Impacts to Transportation
- 6.6 Impacts on Energy
- 6.7 Noise and Odor Impacts
- 6.8 Impacts to Public Health and Safety
- 6.9 Impacts to the Growth and Character of the Community or Neighborhood

7.0 Proposed Mitigation Measures

- 7.1 Mitigation to Land
- 7.2 Mitigation to Water Resources
- 7.3 Mitigation of Air Impacts
- 7.4 Mitigation for Aesthetic Resources
- 7.5 Mitigation for Transportation Impacts
- 7.6 Mitigation for Energy Resources
- 7.7 Mitigation for Noise and Odor Impacts
- 7.8 Mitigation for Public Health and Safety
- 7.9 Mitigations for Growth and Character of the Community or Neighborhood.

8.0 Project Alternatives

- 8.1 No Action
- 8.2 Alternative Development
 - 8.2.1 Development As Zoned
 - 8.2.2 Alternate Mix of Uses
 - 8.2.3 Alternative Sites

- 9.0 Temporary and Short-term Impacts
- 10.0 Cumulative Impacts
- 11.0 Adverse Environmental Impacts that Cannot be Avoided
- 12.0 Irreversible and Irretrievable Commitment of Resources
- 13.0 Growth Inducing Impacts
- 14.0 References
- 15.0 Appendices

Appendix A – Site Development Plans (Reduced 11” x17”)

Appendix B - Full Environmental Assessment Form
Positive Declaration
Scoping Document - Draft Environmental Impact Statement
Compendium of Meeting Minutes and Correspondence
Excerpts from the Code of the Town of Hamburg

Appendix C – Geotechnical Information

Volume II

Appendix D – Alternative Sites

Appendix E – Excerpts form the Water Supply Report

Appendix F - Lowe's Storm Water Pollution Prevention Program
Drainage Report

Appendix G – Traffic Impact Study

Appendix H – Visual Assessment Study
Photos of Other Existing Lowe's Building Elevations

Volume III

Appendix I – Air Quality Impact
Noise Impact Assessment

Appendix J – Endangered Species
Plant Survey and Assessment

Appendix K – Phase I Cultural Resource Report and SHPO response

Appendix L – Wetland Report, Application and Mitigation Plan

Appendix M – Excerpts from the Modified Phase I Environmental Site Assessment

Appendix N – Real Estate Market Assessment (Informational Only)

1.0 Executive Summary

1.1 Project Overview

Division 6 of the New York State Codes Rules and Regulations Part 617, describes the State Environmental Quality Review Act (SEQRA). SEQRA provides for a process in which an assessment of any potential environmental impact, that may be associated with an action, be considered prior to the decision making process of the state, regional or local agencies.

The Town of Hamburg Town Board, the Lead Agency, directed Morada Bay Associates, the project sponsor, to prepare a Draft Environmental Impact Statement (DEIS). The DEIS will be used by the Town Board for their review prior to making a determination regarding the rezoning of the site associated with this project.

The site is situated at the northeast corner of Southwestern Boulevard, US Route 20, and Sowles Road immediately east of Oregon Road. This site is attractive to retail uses due to the highly traveled five lanes of Southwestern Boulevard. Access to the site will be from Southwestern Boulevard by means of two driveways, one controlled by a traffic signal and one controlled by a stop sign. The proposed use of the site is for retail sales. A potential of two smaller outparcel buildings are proposed for the area immediately along the frontage of the development. The project will provide for the construction of a Lowe's Home Improvement Center of 139,410 square feet with an accessory outside garden display area of 31,659 square feet. The south end of the property will allow for the development of additional commercial uses such as banks, restaurants, shops, etc., that could total approximately 15,000 square feet. The total building area would comprise a total of 154,410 square feet.

The land area involved in the project is comprised of five properties totaling 36.9 acres of land. All of the properties are under a purchase contract to Morada Bay Associates. There are four major structures on the property two of which are being used as commercial businesses and two buildings are being used as single family residential uses. The present zoning of the property includes General Business (C-2), Residential Multi-Family (R-3) and Single Family Residential - Attached (R-2). The project will require the rezoning of the property to General Commercial (C-2). The development of this project will meet the Town of Hamburg 2010 Comprehensive Plan. *Note: The*

initial application misinterpreted the zoning district boundary line. The initial application stated that the commercial zoning on the property was C-1 when it is actually C-2.

The site is located within the Southwestern Boulevard Overlay District. The purpose of the overlay district is to provide for excellence in design and aesthetics along the Southwestern Boulevard corridor. This DEIS will discuss the design considerations that have been incorporated into the project that have been tailored to meet this objective.

The Lowe's Home Improvement Center project is a two-phased development with the first and primary phase being the construction of the Lowe's Home Improvement Center and associated site improvements. Phase II would follow and would include the construction of the smaller commercial frontage building(s). Construction of Phase II would proceed as market conditions permit.

Site Design

The positions of the structures, on the property, were planned to minimize the impacts to the adjacent residential properties. The Lowe's building was located towards the center of the lot to maximize the distance from the building to adjacent dwellings. During preliminary review of the project there were comments received from neighbors and the public that requested that the Lowe's building be located on the property at a position that would minimize the disruption to the emerging growth trees at the site. The site has been designed to take these recommendations into account. The Lowe's building is located in such a manner as to provide a minimum distance of 260 feet from the property line to the building line. This will provide a substantial forever-wild landscaped buffer between the commercial and the residential land use.

The smaller commercial buildings are located along the front of the property or closer to Southwestern Boulevard, US Route 20. The smaller commercial businesses in the front of the property will have better visibility to the motorists along Southwestern Boulevard. The proposed two 7,500 square foot buildings will provide a barrier between the highway to the south and the residential districts to the north.

Access to the site will be from Southwestern Boulevard with the construction of two driveways, one to the west side of the site which is designed as a right in right out driveway and the eastern

driveway which is proposed to be a fully actuated signalized intersection. The two access driveways will continue northerly, along the east and west sides of the Lowe's building for access. The north-south driveways on either side of the building will be interconnected behind the Lowe's store, along front of the Lowe's store and between the southerly end of the Lowe's store and the proposed out parcels. Emergency and delivery vehicles will have adequate room to maneuver throughout the property. There would be no interconnection with the adjacent subdivision streets. Utility services are readily available to the development. All utilities are adjoining to the project site. All extensions and connections will be constructed within the specifications of the Town of Hamburg and the governing authorities.

Needs and Benefits

The project will fill a need for a competitive, comprehensive, retail home improvement center in the Town of Hamburg. Presently, the Town of Hamburg and southern Erie County has limited options available for a full line home improvement center of greater than 100,000 square feet. This project will help fill the competitive need for shoppers in southern Erie County and the surrounding counties of Cattaraugus, Chautauqua and Wyoming counties.

The development of the Lowe's Home Improvement Center will provide considerable fiscal benefits to the state, county, town and local school districts. The project will continue to advance retail and commercial growth in the Town of Hamburg and Erie County. This will promote the long-term fiscal viability of the Town with added employment opportunities, sales and property tax revenues.

Economic

The Town of Hamburg will obtain a return of approximately \$719,000 in one year and more than \$3.2 million collectively over the first five years. The Town will also receive over \$50,000 in fees assessed for building permits for the construction of Lowe's Home Improvement Center.

The potential for this particular project to be unsettling to other Lowe's Home Improvement stores or competing stores such as Home Depot is not believed to be significant. These stores are very strong regionally and nationally and the market competition should not be a factor in that these stores regularly compete with each other.

1.2 Natural Backdrop

Site Location

The site is situated at the northeast corner of Southwestern Boulevard, US Route 20, and Sowles Road immediately east of Oregon Road. This site is attractive to retail uses due to the highly traveled five lanes of Southwestern Boulevard. Access to the site will be from Southwestern Boulevard by means of two driveways, one controlled by a traffic signal and one controlled by a stop sign. The proposed use of the site is for retail sales. A potential of two smaller outparcel buildings are proposed for the area immediately along the frontage of the development.

Neighboring Locale

The surrounding area of the Town of Hamburg includes a mixture of uses including: commercial business (existing on site), single-family residential, multi-family residential, vacant land, recreational, industrial and community facilities. The land uses abutting the properties are described as follows: single family residential and state and town highway right-of-ways.

The site is located in an area of multiple land uses in the Town of Hamburg. Southwestern Boulevard parallels the New York State Thruway, Interstate 90 and provides local traffic an alternative to the interstate toll road. The site is one of the few properties along the corridor that provides the depth necessary for the development of a full service home improvement center. The combination of close proximity to a Thruway interchange and immediate access to an improved arterial highway make this particular property a very desirable area for this development. The interchange, Exit 57, is approximately 1.4 miles southwest of the site. Commercial use within one half mile of the site include Mobil Gas, Tim Horton's Restaurant, Sugar Creek store, West Herr Automotive Group, Michael's Restaurant, Joe's Diner, Blasdell Pizza, Guillo Garden Center, professional offices and others. Creekview Subdivision (Heatherwood Drive and Pineview Drive), Roundtree Village Subdivision (Cumberland Lane) and Howard Road Subdivision (Dogwood Lane) are single-family residential developments that border the project on the west, north and east respectively. Access to the developments is provided through Howard Road, which interconnects Camp Road and Southwestern Boulevard. Other homes adjacent to the property are along Southwestern Boulevard (#4828 to #4888) and Oregon Road (#4912 and #4922). The average sales price of the homes in the area varies between \$136,600 and \$197, 100.

The following area development projects have applications pending or approval before the Town Planning Board:

- Wellington Woods Subdivision (54 single family homes)
- Treehaven Subdivision (90 single family and 43 patio homes)
- Woodstream Estates (85 single family homes)
- Wal-Mart store Southwestern Boulevard west of Camp Road

Traffic volumes and distributions for all four of these developments were included in the Traffic Impact Study. (See Appendix "G")

Other developments included the proposed North Forest Office Providers on Southwestern Boulevard near Maplewood Apartments. This development included 171,500 square feet of office space with 624 parking spaces.

The status of these applications varies and there is no guarantee that these projects would be constructed as proposed.

Present Location Attributes

The site is presently occupied by two single-family homes (#4946 Southwestern Blvd.- Serblic and #4960 Southwestern Blvd. - Singer) and two commercial establishments ("Reid Tire"- #4940 Southwestern Blvd. and "Music Exchange" - #4934 Southwestern Blvd.) The vast majority of the site is an emerging wooded area with under story shrubs giving way to higher growing pine, maple and ash. Areas along the outer edges near the property limits have sufficient sunlight to allow the lower plants to thrive.

Bisecting the site in an east to west direction from the middle of the property along Southwestern Boulevard to a point approximately 525 feet north of the southwest corner of the lot is an unmarked tributary to Lake Erie otherwise known as Waterfalls Village Creek. Portions of the creek have been piped and filled. Drainage for the site is primarily overland with a considerable area (48%) draining to the north and west. The remaining portions of the site drain towards the creek. An existing box culvert under Southwestern Boulevard has recently extended during the widening of the pavement by the New York State Department of Transportation. The concrete box culvert across Southwestern Boulevard is approximately 58" high by 144" wide. Wetland areas exist in

four separate areas of the site. One area of about 0.54 acres is totally within the banks of the existing creek and is on the western side of the site. A second wetland area is adjacent to the east property line and is approximately 700 feet north of the southeast property corner. This wetland is approximately 0.25 acres. Wetland number three is located in the southwest corner of the site just north of the creek and encompasses an area of approximately 0.07 acres. The final wetland is in the southeast corner of the site and is about 1.5 acres in size. Approximately 1.2 acres of the wetlands will be filled with appropriate mitigation. A detailed wetlands delineation report, including soils, vegetation, size, and type was prepared by Earth Dimensions, Inc. A copy of their report is included in Appendix "L". The tributary to Waterfalls Village Creek is a very low flow tributary that does not provide a habitat to any significant aquatic life.

1.3 Summary of the DEIS

Morada Bay Associates submitted an application, including a Full Environmental Assessment Form (EAF Appendix "B"), for rezoning and site plan approval to the Town of Hamburg Town Board. The Town Board declared themselves as the Lead Agency for this action and also determined that the project may have a significant impact on the environment and approved a positive declaration on October 23, 2006.

The applicant, Morada Bay Associates, LLC has prepared this Draft Environmental Impact Statement (DEIS), with the Lead Agency's endorsement. The authority under which this process is proceeding is described under New York State Codes Rules and Regulations (NYSCRR) Environmental Conservation Law Sections 3-0301(1), 3-0301(2)(M) and 8-01113. The deductions found in this document are the beliefs of the Applicant.

The Draft Environmental Impact Statement (DEIS) addresses the environmental issues associated with the Lowe's Home Improvement Center Project on Southwestern Boulevard. The State Environmental Quality Review Act (SEQRA) requires all state, regional, and local governments to consider in their decisions the environmental factors in their decision-making process. The Full Environmental Assessment Form (EAF) initiates the review of proposed actions and their impact on the environment. 6 NYCRR Part 617 "State Environmental Quality Review" provides the basis of the environmental review. Under section 617.4 the criteria for determining a Type I action is listed. This project meets three (3) of the thresholds for a Type I action.

- The granting of a zoning change, at the request of an applicant, for an action that exceeds one or more of the following thresholds given elsewhere on the list;
- A project or action that involves the physical alteration of 10 acres;
- In a city, town or village having a population of 150,000 persons or less, a facility with more than 100,000 square feet of gross floor area

Even though this project exceeds these thresholds, this doesn't necessarily mean that an Environmental Impact Statement is required. A thorough review of the environmental issues associated with the project is conducted by all involved agencies. The Full Environmental Assessment Form is included in Appendix of this report. Primary environmental issues are fully discussed in the in the following sections of this report. The report comprises three separate volumes. The first portion, Volume I, contains the narrative of the DEIS with appendices A-C and Volume II and III contain the remaining appendices of the report.

The potentially major environmental impacts that were identified by the Town of Hamburg Planning Board and were noted under Part 2 of the EAF. The following topics were determined to have potentially large environmental impacts:

- Land; more than one phase over more than one year
- Water; site contains a protected water body, action will require a discharge permit
- Aesthetic resources; project components different that surrounding land uses, project components visible to users of aesthetic resources, project will eliminate scenic views important to the area.
- Transportation; alteration of present patterns of movement, major traffic problems
- Growth and Character of Community or Neighborhood; conflict with officially adopted plans or goals, change in the density of land use, demand for additional community services, important precedent for future projects, create or eliminate employment.

A copy of the Environmental Assessment Form Part 2 – Project Impacts and Their Magnitude, is included in Appendix “B”. After a group of public meetings, workshop sessions and public hearings the Town of Hamburg Planning Board recommended to the Town Board a Scoping Document in November 22,2006 A copy of this outline is included in Appendix “B”.

1.4 Proposed Town Approvals:

The project will require the following approvals from the Town:

- Amendments - Rezoning
- Site Plan Approval
- Special Use Permit
- Subdivision
- Area Variances (off street parking, building height and signs)

(Applicable sections of the Code of the Town of Hamburg are included in Appendix "B")

Rezoning

The site is presently within three separate zoning districts, C-2 general Commercial, R-2 Single Family Residence Attached and R-3 Multi-Family Residence. The proposed Lowe's Home Improvement Center requires that it be located in a General Commercial zone. Therefore, this proposal includes a request to rezone all of the properties to C-2, General Commercial. The Applicant has submitted an application to the Town Board requesting an amendment to the zoning district boundaries of the properties to be rezoned. The SEQRA process will continue along with the rezoning application culminating in a decision by the Town Board in weather or not to rezone the property.

Site Plan

Site plan approval (Article XLIV Site Plan Review) is required of all uses, buildings and structures that require a building permit or a certificate of occupancy. The Applicant would proceed with Site Plan approval for the Lowe's Home Improvement Center immediately following the rezoning of the property by the Town Board. The application would consist of the following materials: survey of the property, site plan showing the building location, traffic circulation, landscaping, grading, street improvements, storm drainage, water supply, sanitary sewer extensions, outdoor lighting, architectural drawings of the building, and construction sequence or schedule.

Site plan approval for the outparcels would be submitted as the details for their development become more distinct.

Special Use Permit

A Special Use Permit is required for all buildings greater than 100,000 square feet in a C-2 zone. The Lowe's Home Improvement Center building encompasses an area, which is greater than 100,000 square feet; therefore a Special Use Permit will be required. Plans for the proposed development will be submitted as part of the Special Use Permit application.

Special Use Permits are granted prior to proceeding with site plan approvals. Therefore this would most likely be the first step after the rezoning of the property by the Town Board.

Subdivision

The Applicant will seek to combine the five (5) properties comprising a site area of 36.8 acres. The properties will be combined in order to provide for the Lowe's Home Improvement Center. The Town of Hamburg Planning Board approves the subdivision of all land. Subdivision requirements are described in Chapter 230 – Subdivision of Land in Appendix “B”.

The subdivision approval would occur concurrently with the site plan review by the Planning Board.

Area Variances

Zoning area variances from the Zoning Board of Appeals may be required for the project. This proposal may not meet the requirements of all of the regulations within the Town of Hamburg Town Code. The Applicant will then request interpretations by the Town Building Department to determine the extent of the variance requests. Some of the potential area variances include:

- Off Street Parking
- Building Height
- Signs

The Applicant is unaware of the exact details for the development of the outparcels at this juncture. Once the design details are known, the Applicant will apply for any variances that may be required. The project lies within the Southwestern Boulevard Overlay District (Article XXIII). The project will comply with the additional requirements as of the overlay district.

1.5 Potential Impacts

On November 22, 2006 the Town of Hamburg Planning Board prepared a DEIS Scoping Outline. This outline was reviewed and discussed at various meetings and public hearings. The Town Board affirmed the Scoping Outline on January 22, 2007. The potential impacts are summarized below; mitigation measures are summarized in the following Section 1.06 Mitigation Measures

Impacts to Land

The site is generally flat to rolling in nature and extends from a high point in the northeast corner of the site to the southwest corner of the site near the stream. The topography will be changed slightly to provide for a level pad in the north central portion of the site with a parking lot to be graded towards the stream. Outparcels buildings and their associated parking lot will also drain towards the stream. Grading on the site will disturb about 37,000 cubic yards of soil. The total site encompasses approximately 36.8 acres. Construction for this development has been designed to minimize disruption to the existing trees and bush to maximize the buffering characteristics of the site. Therefore, it is anticipated that only about 18.8 acres be transformed during this development and 18.0 acres or about 48 % would continue to remain as a natural setting. Demolition and disposal of the existing structures on the site will occur during the first phases of the site construction. The project will increase the potential for soil erosion during construction activities. Soft deteriorated rock may be encountered during utility installation, four to seven feet below the surface in some areas of the site. Groundwater has been measured four to six feet below the ground surface.

Impacts to Water

Lowe's Home Improvement Center project is located within a tributary watershed of Lake Erie. Stormwater runoff from the site drains from four distinct and different subareas. The construction of buildings and pavements will increase the overall imperviousness of the area and the total water runoff from the site. Approximately 1.2 acres of delineated wetlands will be impacted and filled to provide access to the site. A very small portion of a 100-year floodplain will be filled to provide access to the project.

The typical Lowe's store utilizes approximately 2,500 gallons of water per day, 750 gallons for domestic purposes and 1,750 gallons for seasonal garden center irrigation. Water demand for fire

suppression purposes will be increased for the Center. The proposed outparcel buildings are conservatively estimated to utilize approximately 10,500 gallons per day. Sanitary sewer flow of up to 11, 250 gallons per day is anticipated for the project. Domestic water and sanitary sewer flows will have minimum impact on the existing utility infrastructure.

Impacts to Air

Vehicular traffic drawn to the project site will impact the air quality indirectly, while the heating, ventilation and air conditioning systems for the building environments will directly impact the air quality. Truck traffic to the site will average 10 trucks per day. The number of trucks varies throughout the year.

Impacts to Aesthetic Resources

The existing site is in the middle of reforestation and shrubs giving way to higher growing trees. The interior 52% of the site will be developed with the outer ring of between 175 to over 300 feet of existing vegetation to remain. Impacts to the existing vegetation and buffering will be minimized.

Three internally lit, individual letters, white plastic covered wall mounted signs are proposed for the front building façade. A freestanding sign is proposed for the frontage along Southwestern Boulevard. The Lowe's building is located between 475 feet to over 800 feet at the buildings southwest corner from Southwestern Boulevard. Visual impacts of the signage to the neighboring properties public along Southwestern Boulevard will be negligible.

Lowe's Home Improvement Center is approximately 456 feet wide by 356 feet deep. A multitude of exterior materials, textures, and colors comprise the exterior treatment of the building. The visual impact of the building will not be significant.

A visual assessment study was conducted for the project. Views from adjacent properties to the proposed building location were taken and assessed. The project will have limited visual impacts on the nearby residential subdivisions.

Site lighting for the project will be provided from full cutoff metal halide light fixtures mounted on 35-foot poles spaced roughly at 130 by 190 foot intervals. A photometric study of the site lighting is provided under Section 6.0 – Assessment of Significant Environmental Impacts, of the DEIS.

Impacts to the Transportation System

The project will have a minimal impact on the recently improved adjacent Southwestern Boulevard corridor. The development of the property will slightly increase traffic along Southwestern Boulevard and through some of the adjacent intersections. Mitigation measures are proposed for the development that will offset the effects of the additional traffic and the proposed driveway access. A detailed traffic impact study has been conducted and is included in Appendix “G”.

Truck traffic, pedestrian movements, bicycle safety, parking and Oregon Avenue impacts are also included as part of this report.

Impacts on Energy

The proposed development will place additional demands on the local electric and natural gas utility suppliers.

Noise and Odor Impacts

Noise levels from the proposed development were reviewed in a Noise Impact Assessment, which was prepared for this project, a copy of which is included in Appendix “I”. Odor impacts associated with the Lowe’s development will be insignificant. The odor impacts of the project are included in the Air Quality Impact Assessment included in Appendix “I”.

Impacts to Public Health and Safety

Potential impacts to the local residents include a perceived potential for additional rodents and insects that may be associated with this development. Two stormwater detention ponds are proposed and the likely-hood that the ponds become a haven for mosquitoes is a concern. The designs of the stormwater management areas have included the design particulars that minimize any potential for the breeding of mosquitoes.

Impacts Growth and Character of the Community or Neighborhood

The project is consistent with the goals, guidelines and precedents of the Town of Hamburg’s 2010 Comprehensive Plan (1997 Master Plan Update). The project will help boost the Town of

Hamburg's employment opportunities, and tax revenues. It is unlikely that this project will spur additional retail development primarily because there are very few viable commercial sites of this size available in the Town of Hamburg.

1.6 Mitigation Measures

Mitigation Measures for Land

The design of the site has taken into account the existing soils and topography in order to limit the area of disturbance while at the same time attempting to balance the cuts and fills on site. It is the intent for the construction of this development to maintain equilibrium during the earth moving operations, with all excavations utilized on site.

The requirements of the Town of Hamburg, Erie County Soil and Water Conservation District, and the New York State Department of Environmental Conservation will be implemented to minimize any soil erosion or dust generation. All efforts will be taken to incorporate construction techniques to limit the impacts of the construction onto adjacent lands. A copy of Lowe's National Storm Water Pollution Prevention Program is included under Appendix "F", which details some of the mitigation measures to be implemented during construction.

Mitigation to Water Resources

Stormwater management basins and facilities will be constructed to detain the additional runoff and to provide an area for water quality improvement. The rate of stormwater that will be discharged offsite will actually be reduced and will provide improvements from the sporadic rear yard flooding that occurs today.

Wetland areas that will be impacted by this project and will be mitigated offsite. The Applicant has chosen to alleviate the impacted wetlands at the Town of Hamburg's Nike Base site; The replacement of the wetlands offsite will help preserve the densely treed buffer around the proposed Lowe's building.

Floodplains will be marginally impacted. The excavation that will take place for the stormwater basins will offset the filling of the floodplain. All construction will comply with the requirements

of Chapter 115 - Flood Damage Prevention of the Code of the Town of Hamburg (See Appendix "B")

Water supplied by the Erie County Water Authority through the existing facilities has enough capacity for the domestic uses associated with the project. Additional flow capacity is needed for fire suppression purposes. To meet this demand, the Applicant has proposed to make off-site improvements to the County system along Southwestern Boulevard.

The sanitary wastewater to be generated from this development will not be large. The existing sanitary sewers and wastewater treatment plant have adequate capacity for this project.

Stormwater management facilities will provide a facility to trap and contain pollutants associated with urban stormwater runoff, while at the same time the facilities will limit the rate that stormwater enters the creek. The improvements to both the water quality and quantity will mitigate against water quality and flooding concerns downstream of the project.

Mitigation for Air

An "Air Quality Impact Assessment" was prepared by F-E-S Associates and is included under Appendix "I". The conclusion was that the... "Lowe's retail site development will not result in any significant air quality impacts." Tractor-trailer truck idling will be minimized and enforced as part of the stores' standard operations and procedures.

Mitigation of Aesthetic Resources

The trees and shrubs that will encompass the north, west and east sides of the proposed Lowe's Home Improvement Center will continue to provide a sufficient buffer from unwanted noise, and lighting. A detailed analysis of the "Plant Survey and Assessment of Buffer Zone Surrounding the Proposed Southwestern Boulevard Lowe's" by John Heinike is attached in Appendix "J".

Three building mounted signs are proposed for the Lowe's Home Improvement Center. The building mounted signs will face Southwestern Boulevard and are setback more than 475 feet. A freestanding sign will be proposed to be constructed and installed along the eastern access road with individual sign panels. The structure for the free-standing sign will be enclosed in brick with to

provide a more aesthetically pleasing structure. There will not be any significant visual impacts caused by the building or free-standing signs proposed for this development.

The architectural style of the proposed Lowe's Home Improvement Center will help in breaking up the look and style of the walls of the building. A variety of colors, materials, detailing and rooflines will mitigate any adverse visual impact. The building itself will have little visual impact to the surrounding neighborhoods.

A photographic study of the views that the adjacent neighbors would have on the proposed Lowe's was completed Costich Engineering. The photographs illustrate that the Lowe's Home Improvement Center building would have little visual impacts from the adjacent neighborhood. The vegetation that encompasses the building would provide a substantial buffer for the adjacent properties.

Site lighting has been designed using computer software that is accepted by the Illuminating Engineering Society (IES). Results of the design software shows that the lighting levels at ground level along the north, west and east sides of property will be zero. Use of cut-off lighting fixtures, which block light from spilling onto adjacent surfaces is one of the factors that can be attributed to the inconsequential result that the site lighting will have on adjacent properties

Mitigation to the Transportation System

The following recommendations were made as part of the mitigation plan for the traffic impacts associated with this development.

- Traffic signal timing adjustments at Route 20/ Route 75 intersection. (Southwestern Boulevard and Camp Road)
- A easterly site driveway with one lane entering and two lanes exiting
- An exclusive left turn lane of 275 feet long eastbound at the easterly site driveway.
- Install a new multi-phase three-color traffic signal at the easterly site driveway.
- Construct a westerly right turn lane at the easterly site driveway with 350 feet of storage and a 75-foot taper section.
- Construct a westerly site driveway allowing right –in and right-out only.

All improvements are subject to the review and approval of the New York State Department of Transportation.

Mitigation for Energy

The proposed project will utilize natural gas consumption from National Fuel for heating and emergency electrical generation. Gas service will be provided as required in the available tariffs.

Electrical service is required for heating, ventilation, air conditioning and lighting and is provided by National Grid. Electrical service will be provided underground to the building from Southwestern Boulevard.

Conversations with the local utility companies, has confirmed that there is adequate capacity in the existing distribution system.

Mitigation efforts include an intensive energy conservation program that is implemented as part of the store operations including automated thermostats and lighting controls.

Mitigating Noise and Odor Impacts

Noise impacts will be mitigated through the use of structural measures and of operational restrictions. Permanent measures include the construction of berms and sound barrier walls at the northwest and northeast rear corners of the building.

Operational restrictions include the following:

- Prohibit discretionary use of truck horns along the rear of the building.
- Schedule a majority of the deliveries during normal business hours.
- Equip forklifts and Lowe's delivery trucks with backup alarms suitable for low noise environments.

Neither direct nor indirect air emissions from building systems or vehicular traffic accessing the site will result in a significant degradation in the ambient air quality.

Mitigation Measures for Public Health and Safety

Highway improvements including pavement widening, driveways and traffic control signals are proposed to be constructed as part of this project's mitigation efforts. These improvements will provide a safe and efficient access to the proposed development.

Mitigating Growth and Character of the Community or Neighborhood

The Lowe's Home Improvement Center and the associated outparcel development will enhance the exiting commercial base in the neighborhood. Significant secondary development or growth is not anticipated. Retail development such as the Lowe's Home Improvement Center typically increases the demand in for restaurants, banking or service businesses. The Southwestern Boulevard corridor is an excellent area for these types of uses. Impacts to the community or neighborhood will be minimized through the design of the project. Sewer and water service is not being extended to any non-serviced area, which could spur additional growth.

1.7 Alternatives to the Proposed Action

No Action

If the properties are left as they presently exist, then the public would lose the benefits associated with a loss of shopping opportunities, tax revenues and employment prospects.

*Alternative Development**Developed within Existing Zoning Requirements*

The zoning district boundaries bisect the proposed redeveloped property in to three separate districts/uses, single-family residential, multi-family residential and neighborhood commercial. Developing the property in this manner would provide less of a traffic impact, but it would increase the land area impact to the property including stormwater runoff, loss of vegetation and erosion and sedimentation impacts.

Alternative Mix of Uses

A Lowe's building limited to 100,000 square feet, could be built without the need of a Special Permit, This size of store of this size would not be economically feasible for this area or for Lowe's Home Improvement Center.

Alternate Sites

The Applicant has looked into alternative sites for this proposed development and reviewed eight potential sites for the proposed Lowe's Home Improvement Center. The proposed site at Southwestern Boulevard and Sowles Road was the only site, which was viable.

1.8 Approvals and Permits

<u>Agency</u>	<u>Description</u>	<u>Reference Chapter</u>
Town Board	Rezoning	§280-338 to §280-340
Town Planning Board	Subdivision	§230-1 to §230-31
	Site Plan Review	§280-301 to §280-308
	Special Use Permit	§280-312, 313, 327 and 328
Town Zoning Board of Appeals	Area Variance	
	Off Street Parking	§280-219(E)
	Building Height	§280-83
	Sign Regulations	§280-261(A), (B)(1)(a), (B)(2)(a), (F)(2), (F)(4)
Town Building and Code Enforcement	Floodplain Development Permit	§115-1 to §115-13
	Building Permits-Certificate of Occupancy	§76-1 to §76-28
Town Engineering Department	Sewer Extension/Connection	
Town Highway Department	Site Plan Review	
Erie County Health Department	Water and Sewer Extensions	
Erie County Division of Sewerage Management	Sanitary Sewer Connection Review	
Erie County Water Authority	Water Supply Improvements and Connection	
New York State Department of Transportation	Highway Work Permit	
New York State Department of Environmental Conservation	Water Quality Certification (Wetlands)	

State Pollutant Discharge Elimination System Permit
United States Army Corps of Engineers
Waters of the United States (Wetlands)

1.9 Tables and Figures

Tables

<u>No.</u>	<u>Description</u>
2-1	Estimated Financial Return to the Town of Hamburg
4-1	Project Scale (Zoning Requirements v. Proposal)
5-1	Groundwater Elevations
5-2	Zoning Requirements
5-3	Summary of Accidents and Comparison of Rates
6-1	Existing vs. Developed Peak Stormwater Flow Rates
6-2	Intersection Capacity Results
8-1	Trip Generation Rates

Figures

<u>No.</u>	<u>Description</u>
2.01	Vicinity Map
2.02	Pictometry Overlay Site Plan
4.01	Site and Pavement Marking Plan
4.02	Photosimulation Photo 111
5.01	Boring Location Plan
5.02	Boring Section A-A
5.03	Boring Section B-B
5.04	Existing Land Use
5.05	Existing Zoning Site Plan
5.06	Existing Peak Hour Volumes
5.07	Flood Insurance Rate Map
6.01	Line of Sight Plan
6.02	Landscape Plan
6.03	Building Elevations

- 8.01 Alternative Development – Developed As Zoned
- 8.02 Alternative Development – Alternate Mix of Uses

1.10 Involved Agencies

- United States Army Corps of Engineers
- New York State Department of Environmental Conservation
- New York State Department of Transportation
- Erie County Health Department
- Erie County Department of Public Works
- Erie County Sewer District
- Erie County Water Authority
- Town of Hamburg Highway Superintendent
- Town of Hamburg Water and Sewer Department
- Town of Hamburg Building Inspector
- Hamburg Planning Board
- Hamburg Zoning Board of Appeals
- Hamburg Town Board

1.11 Interested Agencies

- Erie County Department of Environment and Planning
- Scranton Volunteer Fire Company – Station 2
- Hamburg Traffic Safety Advisory Board
- Hamburg Conservation Advisory Board

1.12 Town Representatives

Town Board

- Steven Walters – Supervisor
- Mark Cavalcoli
- Kathleen Courtney Hochul
- Thomas Quatroche, Jr.
- Joan Kesner

Planning Board

Gerald Koenig – Chairman
David Phillips
Paul Eustace
Karen Rogers
Richard Taber
Aleksandra Yerovich
Steve McCabe
Donald McKenna –Attorney
Michael Fruth – Assistant. Attorney

Town Planning Consultant

Andrew C. Reilly

Zoning Board of Appeals

Peter Blaauboer – Chairman
Shawn Connolly
Jack Rahill
Michael Chiacchia
James Sortisio
Vincent Gugliuzza
Brad Rybzyński
Joesph Shaw –Attorney
Timothy Quinlivan – Assistant Attorney

1.13 Applicant's Consultants

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2. James Baker

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Fax: 716-655-2915
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2. Scott Livingstone

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Fax: 716-849-9420
Contact: Bonnie Locking

Air: F-E-S Associates
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Fax: 585-461-9794
Contact: Frank Sciremammano, Jr

Noise: Resource Systems Group, Inc.
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Contact: Edward Duncan

Landscape: John Heinike
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Contact: John Heinike

Environmental Site Assessment:

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P.O. Box 482
Orchard Park, New York 14127
Phone: 716-649-9474
Fax: 716-648-3521
Contact: Donald Abrams

Real Estate: GAR Associates, Inc.
2399 Sweet Home Road
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Phone: 716-691-7100
Fax: 716-691-7770
Contact: Ronald Rubino

Traffic: SRF Associates
3495 Winton Place
Building E, Suite 110
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Phone: 585-272-4660
Fax: 585-272-4662
Contact: 1. Steven Ferranti
2. Cory Greene

Water Supply Schirmer Engineering
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Deerfield Illinois 60015
Phone: 847-272-8340
Fax: 847-272-2639
Contact: Peter Kingsley

2.0 Introduction

2.1 Description of the Proposed Action

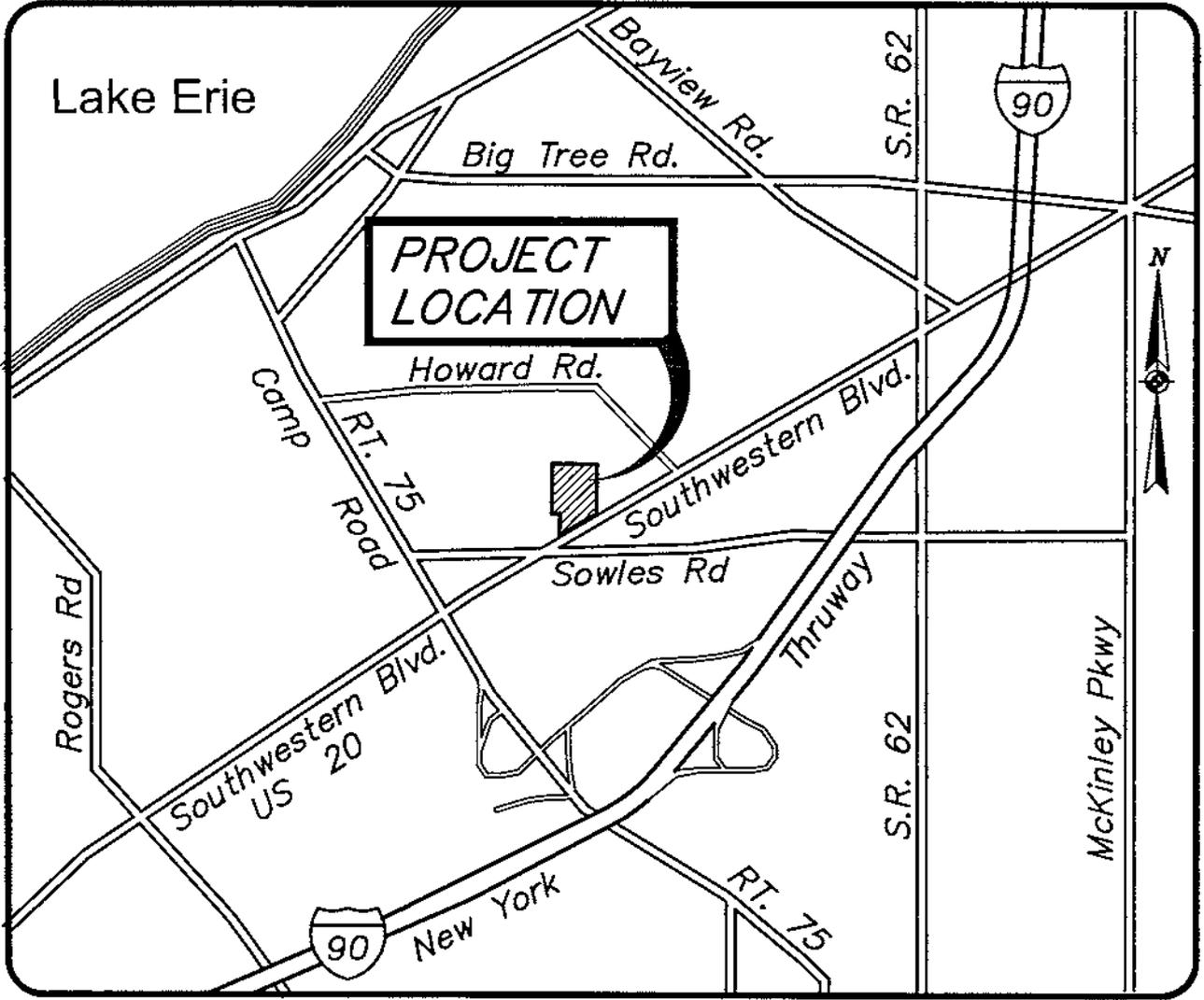
This project involves the redevelopment of approximately 36.8 acres of land located in the northeast quadrant of Southwestern Boulevard and Sowles Road in the Town of Hamburg, Erie County New York. (See Figure 2.1). Construction of a 139, 410 square feet Lowe's Home Improvement Center and the development of two 7,500 square feet outparcels for retail development will effect approximately 18 acres of the site. The development includes site lighting, landscaping, parking for approximately 787 vehicles, water system improvements, highway access and roadway improvements, utility connections, sound barrier walls, and a stormwater management facility to be developed on-site to limit peak runoff rates. Prior to construction, all necessary approvals must be obtained for the Town of Hamburg. These approvals include:

Approvals from the Town of Hamburg

Rezoning. The Applicant requested a rezoning from the Town Board for the development of the Lowe's Home Improvement Center in July 2006. The site is presently within three separate zoning districts, C-2 General Commercial, R-2 Single Family Residence Attached and R-3 Multi-Family Residence. The proposed Lowe's Home Improvement Center will require a change to C-2 General Commercial zoning district. Therefore, Morada Bay Associates, LLC has petitioned the Hamburg Town Board to rezone the subject properties to allow for the development of the project (Article XLVIII Amendments) Appendix "B". The Town Board has requested input from the Town Planning Board and other involved agencies. It is intended that the rezoning process would move concurrently with the SEQR process. The Town Board will make a decision on the rezoning petition following the issuance of SEQRA findings. The Town Board must make a decision on weather or not to approve an action within 30 calendar days of the filing of the Final Environmental Impact Statement (FEIS). (Reference 6 NYCRR 617.11).

The site is composed of five properties. Four of the properties are split between all three existing zoning districts. Singer, No. 4960 Southwestern Boulevard (9.9 acres); Serbuc, No. 4946 Southwestern Boulevard (8.5 acres); Reid No. 4940 Southwestern Boulevard (12.2 acres); and Rogenmoser No. 4934 Southwestern Boulevard (1.2 acres); are all zoned local retail business for the first 150 +/- feet from Southwestern Boulevard. Multi-family residence is triangular in shape

VICINITY MAP - NOT TO SCALE



and generally follows the line of the stream that passes through the property. This district line lies immediately north of the retail zone limits and is approximately 350 feet deep at the Singer property and then it tapers to a point by the time it reaches the Rogenmoser property. The remaining portions of the properties including all of vacant Rauch property (5.1 acres) are in the Single-Family Residential Attached district. (See Figure 4.01 for the project Site Plan).

General Commercial (C-2) zoning districts allow for the larger scale regional type operations and typically have access to major roads and highways providing transportation routes to and from surrounding communities. Retail sales is a permitted use under this district with a size limitation for structures of 100,000 square feet. The Town Planning Board must authorize a Special Use Permit if the building exceeds 100,000 square feet. The Applicant has petitioned the Town Board to rezone all of the aforementioned properties to General Commercial, which will allow for the development of the Lowe's Home Improvement Center. Appendix "B" includes a boundary description of the proposed limits of the C-2 General Commercial district. The total parcel encompasses 36.8 acres.

Site Plan. (Article XLIV Site Plan Review) is required of all uses, buildings and structures that require a building permit or a certificate of occupancy. The Planning Board conducts site plan review and approval. Criteria for review and approval of by the Planning Board include "harmonious use between existing and proposed uses; safe vehicular circulation between the adjoining street and the site; interior parking, loading and traffic circulation; and adequacy of setbacks and landscaping. "

The Applicant would proceed with Site Plan approval for the Lowe's Home Improvement Center immediately following the rezoning of the property by the Town Board. The application would consist of the following materials: survey of the property, site plan showing the building location, traffic circulation, landscaping, grading, street improvements, storm drainage, water supply, sanitary sewer extensions, outdoor lighting, architectural drawings of the building, and construction sequence or schedule. Site plan approval for the outparcels would be submitted as the details for their development become more distinct.

Concurrently, the Planning Board would consider subdivision approval, and area variance recommendations as part of their review and approval of the Lowe's site plans.

Special Use Permit Article XLVI Special Use Permits are acted on by the Town of Hamburg Planning Board after a public hearing. A Special Use Permit is required due to the fact that the Lowe's Home Improvement Center building encompasses an area, which is greater than 100,000 square feet. Plans for the proposed development will be submitted as part of the Special Use Permit application. The application will demonstrate that the project "will be in general harmony and purposes of the code; will not create a hazard to health, safety or the general welfare; it will not alter the essential character of the neighborhood nor be detrimental to the residents thereof and will not be detrimental to the public convenience and welfare." It is not anticipated at this time that the outparcels will need a Special Use Permit.

Special Use Permits are granted prior to proceeding with site plan approvals. Therefore this would most likely be the first step after the rezoning of the property by the Town Board.

Subdivision The Applicant will seek to combine the five (5) properties comprising a site area of 36.8 acres into one parcel. The Town of Hamburg Planning Board has jurisdiction on the subdivision of all land within the Town of Hamburg. General provisions, administration, definitions, approval procedure, required improvements, and final plan requirements are described in Chapter 230 – Subdivision of Land.

The subdivision approval would occur concurrently with the site plan review and approval by the Planning Board.

Area Variances There is the potential for zoning area variances or code interpretations from the Zoning Board of Appeals to allow for the implementation of some of the design details for this action. A preliminary review includes the following:

- Off-Street Parking (Article XXXII)

Off street parking spaces for community or regional shopping centers require one space for every 200 square feet, local shopping centers require one space for every 150 square feet and individual retail stores require one space for every 175 square feet of gross floor area. We have obtained a preliminary interpretation from the Building Department and their initial review of this action, places the parking space rate at one space per 200 square feet. The project proposes approximately 154,410 total square feet of building area, which would equate to a total of 773 parking spaces for

the project. The parking spaces that are presently shown total 787 spaces, therefore an area variance would not be required. If there is a change in the interpretation of the code or if the parking requirements of the outparcels change, then the applicant would proceed with an area variance application to the Zoning Board of Appeals.

- Building Height (Article XIV C-2 General Commercial District § 280-83)

This section states that the maximum height of buildings in the C-2 District shall be a maximum of 35 feet. The definition of the building height is the vertical distance measured from average elevation of the proposed finished grade at the front of the building to the highest point of the roof. In the case of the Lowe's Home Improvement Center, the roof line extends to an elevation of approximately 28'-10" which is the elevation of the roof truss, parapet walls extend to an elevation of 31'-8" and the main vestibule entryway peak reaches an elevation of approximately 49' +/- . It is the Applicant's interpretation that the building meets the height restrictions of the zoning requirements. The Town of Hamburg Building Department may have a different interpretation. If a clarification or a variance is required then the Applicant will proceed with a variance application.

- Sign Regulations (Article XXXVI)

The Town of Hamburg requires that a sign permit be obtained prior to the erection of any sign. The following requirements are listed for business wall signs in a commercial district. Some of these requirements are; one sign for each establishment fronting a public street, an aggregate area of no more than 120 square feet for wall signs, and the sign shall be mounted no more than 18 feet above ground level. The standard Lowe's Home Improvement Center building sign installation package infringes on some of these requirements. The relative mass of the building along with the substantial setback and location justifies the relaxation of some of these requirements. Detached or freestanding signs are allowed as long as they are 40 feet or more from the street line, five feet from the front property line and 20 feet from any other line, have a maximum area of 40 square feet or by increasing the setback to a maximum area of 100 square feet, and be no higher than 18 feet above the ground. A Lowe's Home Improvement Center typically includes a freestanding sign and a freestanding sign is proposed for this development.

The exact detail of all of the signage for the Lowe's has not yet been finalized. If there are any infringements of the sign design requirements by the Applicant, a petition to the Zoning Board of Appeals will be made. The Applicant is unaware of the exact details for the development of the outparcels at this juncture. Once the design details are known, the Applicant will apply for any variances that may be warranted.

The project lies within the Southwestern Boulevard Overlay District (Article XXIII). Under the purpose of this section the Code states:

“ The purpose of this district is to provide an excellence of design and aesthetics along Southwestern Boulevard, the main transportation corridor of the Town of Hamburg, through the application of an overlay district. ...”

The Applicant concurs with this goal and will review the site design conditions and standards of this article with the Planning Board while the project passes through the approval process.

2.2 Project Location and Setting

Site Location

The project site is located along Southwestern Boulevard U.S. Route 20 in the Town of Hamburg, Erie County New York. Primary access to the site is from Southwestern Boulevard from two proposed driveways. The eastern driveway would be a full access with a traffic signal; the second driveway would be on the western portion of the site and be a right in right-out only. The site is located in the northeast quadrant of the Camp Road, Sowles Road, and Southwestern Boulevard intersection. This makes this area attractive to commercial uses due to the highly traveled arterial highways. The proposed development is within a densely wooded area, which provides an excellent buffer between the residential and commercial uses.

Surrounding Area

The property presently includes two residential Homes and two commercial businesses. A portion of the property remains undeveloped. The surrounding area of the Town of Hamburg is a mixture of uses including commercial businesses, State highways, offices, utility buildings, recreational opportunities, motels, high density residential and single family homes. Residential uses make up approximately 78% of the project boundary.

The site is located along one of the major highways within the Town of Hamburg. To the east along Southwestern Boulevard is a combination of uses including restaurants, offices, hair salons, auto accessory stores, driving ranges, etc. Westerly along Southwestern Boulevard are uses that

include fast food, auto retail establishments, gas stations, auto repair and a golf equipment supply, cemetery and industrial use.

Residential developments immediately adjacent to the project site include:

- Creekview Subdivision (Heatherwood Dr. and Pineview Dr.)
- Roundtree Village Subdivision (Cumberland La.)
- Howard Road Subdivision (Dogwood La.)

The frontage of the subject property has been commercially zoned for quite some time. A majority of the property has remained undeveloped and vacant. (See Figure 2.02)

Existing Site Features

The proposed Lowe's Home Improvement Center site presently contains four main structures, two residential homes at #4960 Southwestern Boulevard (Singer) and #4946 Southwestern Boulevard (Serblic) and two commercial businesses at #4940 Southwestern Boulevard (Reid Tires) and the 'Music Exchange' at #4934 Southwestern Boulevard. The vast majority of the site is an emerging forested area with under brush and tress including pine, maple and ash.

Bisecting the site in an east to west direction from the middle of the property along Southwestern Boulevard to a point approximately 525 feet north of the southwest corner of the lot is an unmarked tributary to Lake Erie otherwise known as Waterfalls Village Creek. Portions of the creek have been piped and filled.

Wetland areas exist in four separate areas of the site. One area of about 0.54 acres is totally within the banks of the existing creek and is on the western side of the site. A second wetland area is adjacent to the east property line and is approximately 700 feet north of the southeast property corner. This wetland is approximately 0.25 acres. Wetland number three is located in the southwest corner of the site just north of the creek and encompasses an area of approximately 0.07 acres. The final wetland is in the southeast corner of the site and is about 1.5 acres in size. Approximately 1.2 acres of the wetlands will be filled with appropriate mitigation.

Existing features are shown on the applicable site plans. Discussions on vegetation can be found in Section 5.12 – Ecology. Surface water is explained under Section 5.14 Surface Water. Geology and soils are described under 5.01 Geographic, Geologic and Topography.

2.3 Conformance with the Comprehensive Plan

The Lowe's Home Improvement Center project will conform to the goals and objectives of the Town of Hamburg Comprehensive Plan. The Goals and Objectives include:

- ***The Town of Hamburg possesses excellent open space lands and conservation areas that should be preserved and protected as part of future development:***

- identify important open space areas in the Town and protect them from suburban growth
- preserve prime open space/conservation lands in designated districts.

Lowe's Home Improvement Center development on Southwestern Boulevard will not impact any designated open space or conservation areas in the Town of Hamburg. Open space areas designated by the Town as significantly important are not located in the area of this project. Nor is the site located in a designated district that preserves open space or conservation lands in the Town.

The site is located along north side of Southwestern Boulevard just east of the Sowles Road intersection. The properties comprising the site are presently developed and utilized for residential and commercial purposes. The 2010 Comprehensive Plan calls for this particular area to be utilized as commercial uses along the Southwestern Boulevard frontage and residential uses both high density and mixed uses in the back portion of these properties as shown in the potential Future Land Use Map, Map Number 15, of the Comprehensive Plan. The project site is not within a designated open space or conservation zone, therefore this proposed action will not impact the goals and objectives of the Comprehensive Plan as it relates to the preserving and protecting open space lands and conservation areas.

- ***The Town will encourage balanced growth to provide for a diverse living environment for its people, at all income levels, that builds upon the past development and creates a safe environment for the future:***

- protect existing residential neighborhoods from encroachment by incompatible uses;

- provide adequate buffering of future development;
- accommodate a variety of residential housing types in the community
- identify appropriate areas of prime commercial uses that serve the local residential, community-wide and regional needs of the community;
- encourage the consolidation of future commercial development for safety and convenience, and discourage “strip” development along major highways;
- retain commercial business through adaptive re-use of existing commercial areas;
- maintain existing industrial development to accommodate Town needs as well as adaptive re-use and expansion of existing industrial areas.

This project will promote reasonable commercial escalation and offer a varied atmosphere for the citizens of the Town that extends the existing commercial land use while minimizing impacts to the neighborhood. Deep and expansive landscaped buffers will provide significant protection to the existing neighborhoods from the proposed Lowe's development. The green space barrier will protect the adjacent neighborhoods from noise, and visual impacts. This project will seek approval and permitting by the Town of Hamburg as depicted on the proposed site plans. No additional development will be able to be completed within the buffer areas and therefore adequate protection will be in place for the surrounding properties from encroachment and future development.

Lowe's Home Improvement Center is a regional retail commercial operation. This proposal does not provide a diverse category of residential housing types for the community. It does provide an alternative and varied commercial opportunity for the consumer in the region. The existing R-1 zoning district is consistent with the surrounding developed area. Therefore, if the property was developed as zoned, it would not provide a more diverse residential housing type, just more of the existing housing types.

The compiled properties, which are part of this proposal, provide a parcel large enough for the development of the Lowe's Home Improvement Center. Southwestern Boulevard is a major five lane suburban arterial in the southern portion of Erie County. This highway provides a passage between many of the southern towns of Erie County. This highway is a prime location for commercial type uses. Lowe's Home Improvement Center will help in fulfilling the commercial demands of the community.

The site is located in an area that has been targeted for commercial development. The Comprehensive Plan of the Town of Hamburg has suggested that this area of Southwestern Boulevard be considered for commercial development. Commercial development along Route 20 is appropriate because it provides a safe, well-situated and unified location for commercial uses. Therefore this project will meet the goals and objectives of the Comprehensive Plan.

The Applicant has reviewed other potential commercial sites in the area for this development. Resulting investigations have resulted in the conclusion that there are no suitable commercial sites available for this project. This topic is more fully discussed under the Alternative Sites. Section 8.0 of the DEIS. Industrial land use is not associated with this proposal. The development associated with the Lowe's Home Improvement Center will not reduce the existing zoned industrial land nor will this development hinder the expansion of industrial uses in the Town. The Lowe's development will maintain a significant portion of the existing environment while at the same time offers the citizenry a varied shopping experience that is an extension of the existing retail establishments along Southwestern Boulevard.

• ***The Town will promote the full utilization of public facilities and services through the orderly development of future growth:***

- encourage the "in-filling" of appropriate vacant, developable areas by directing future growth into lands with adequate public services;
- discourage urban development in areas without utilities (water and especially sewer);
- promote the fiscal viability of land development based on the costs of service provisions and the revenues generated from new growth
- upgrade public sewer/water availability in existing service areas and provide new facilities consistent with orderly growth and development;
- critically review utility extensions into prime open space/environmentally restrictive areas.

Lowe's Home Improvement Center will advance the use of existing public amenities and facilities providing a methodical expansion to the Southwestern Boulevard corridor. The applicant has assembled five separate properties that when combined will provide an appropriate developable area for this proposal. Public services and utilities are immediately available at this location. Water and sewer service is directly accessible along

Southwestern Boulevard. The development of the Lowe's Home Improvement Center at this location will fill in the existing commercial properties in the Sowle Road /Camp Road/ Southwestern Boulevard area. The project will foster economic feasibility based on the revenues gained from the project verses the services provided. The project will provide upgrades to the water supply system in the area, which will offer the ability for future growth, and development in the vicinity. Public service improvements will not extend into unserved, significant or essential areas.

• ***The natural resources of the Town will be protected by respecting the development limitations of environmentally sensitive areas and preserving their integrity:***

- protect streams and flood plains from encroachment as natural drainage channels for storm water;
- restrict development in designated wetlands in accordance with State and Federal regulations;
- identify major natural resources (creeks and streams, woodlands, wildlife habitats, beach areas, etc.) and critically review from encroachment by future development;
- identify poor soil and drainage characteristics that would limit the type or intensity of future growth.

The natural assets of the project site will be shielded by limiting the intensity of the development and by minimizing encroachment into sensitive areas. Waterfalls Village Creek, which bisects the property along the south, will be minimally impacted by the development at the site. The stream is being protected and will be maintained for storm drainage. The floodplain that follows along the creek will be minimally impacted. The construction of storm water management facilities will help to mitigate against flooding events. Wetland encroachment has been reduced and is being mitigated in accordance with State and Federal regulations. The majority of the natural resources on the project site will not be impacted by future development. Future impacts to the wetlands, floodplains, creeks, and wooded areas will be protected through the layout and design of this project. Buffer areas will remain untouched and unimproved. The characteristics of the soils and distinctiveness of the existing drainage areas have minimal impact on the development of the project. The development intensity of this project has been limited which in turn has preserved a significant portion of the natural resources on the site.

- ***The open character of the Town will be encouraged to ensure the construction of community resources for future generations:***

- continue to reference and use the Open Space/Recreation Plan as a guide for future preservation and conservation;
- coordinate planning policies and techniques between legislative and community boards (i.e. Planning Board, Town Board, Conservation Advisory Board, Traffic Safety Advisory Board, Shoreline Revitalization Committee, Recreation Advisory Board, Zoning Board of Appeals, etc.);
- preserve existing open space/recreation and conservation areas for future use;
- identify appropriate areas for adequate open space/recreation development for new growth;
- provide for local and community needs in the development of future public and semi-public uses.

The undeveloped nature of the Town is to be promoted for future users. This site is not part of the Open Space/Recreation areas scheduled for preservation or conservation in the Town of Hamburg Comprehensive Plan. The project has been or will be coordinated with most of the community and legislative boards of the Town. The Town Board, Planning Board, and the Conservation Advisory Board all have had a preliminary review of this development. The project is not within an existing designated open space/recreation area nor is this area an appropriate area for open space/recreation area for future development. This area has been zoned for residential and commercial uses. The Lowe's Home Improvement Center development provides for the future needs of the community by providing shopping opportunities and eternally green space buffering the adjacent residential uses. This Lowe's project will provide wooded open spaces for the enjoyment of future generations, which promotes the open character of the Town of Hamburg.

- ***The Town will strive to improve an integrated transportation system to provide for the movement of residents, workers, visitors, and goods, in a safe and efficient manner:***

- promote the adequate design of the road system to assure efficient access to development and adequate movements of traffic;
- encourage the expansion of public transportation to adequately serve the Town's needs;
- support the retention of rail rights-of-way for the movement of goods and passengers in the Town;

- encourage the future development of land in accordance with the availability of adequate access and consistent with the objectives of the transportation system;
- coordinate multi-modal (auto, transit, pedestrian, bicycle, rail) conditions and future plans between town, county, regional, and state agencies.

Lowe's Home Improvement Center will incorporate access driveways and highway improvements that will provide for the safe and effective movement of people and goods. Recent improvements to Southwestern Boulevard have provided an arterial that has additional capacity on an enhanced riding surface. The Lowe's development will further improve the transportation system by adding traffic signals, turning lanes and access driveways. Bus service is not presently available to the site, but Lowe's fully encourages the extension of service along Southwestern Boulevard. There are no railroads in the vicinity of the project site that would be impacted by this development. Southwestern Boulevard is the premier arterial in the Town, therefore growth along this corridor would be in harmony with goals to develop land in accordance with the availability of adequate access to efficient transportation systems. Sidewalks have been included on portions of the project to allow for pedestrian or bicycle access to the commercial uses. The Lowe's Home Improvement Center project will provide an all encompassing access and transportation system that will be efficient and protect people and property.

2.4 Purpose and Objective of the Proposed Action

The Town Board has the ability to amend, supplement or repeal the regulations, provisions, or boundaries of the requirements found in the Zoning chapter of Code of the Town of Hamburg. Article XLVII, Amendments, provides the authority to the Town Board to make reclassifications of zoning district boundaries, after careful consideration of a proposed development plan. Morada Bay Associates has filed a petition and a development plan, which showed the extent, location and character of the proposed uses and structures for the Lowe's development. Public hearings have been conducted to allow for comments to be received and adjustments to be made on the development plan. The goal for the Applicant and Lowe's Home Improvement Center is for the Town Board to reclassify the area that encompasses the proposed development from a mixture of commercial and residential zoning districts to a General Commercial district. The change of zoning classification will allow the Applicant to continue the permitting and approval process, which will culminate with the construction of the Lowe's Home Improvement Center.

2.5 Public Benefits and Need for the Proposed Project

The project will result in significant economic benefits for the Town of Hamburg and its residents. The development of the Lowe's will foster retail and commercial growth in the Town of Hamburg including tax returns and employment opportunities. Currently the Town of Hamburg has limited opportunities to shop a full line commercial home improvement center. The development of this project will allow shoppers the opportunity to comparison shop national home improvement retailers.

The project will generate significant revenues for the Town of Hamburg in the form of sales taxes, during and after construction, and real property taxes.

TABLE – 2-1
Estimated Financial Return to the Town of Hamburg
Lowe's Home Improvement Center

	Year One		After 5 Years
	Total	Town of Hamburg	Town of Hamburg
Sales Tax from Construction	\$812,917	\$4,234	\$4,234
Sales Tax from Retail Sales	\$3,139,063	\$16,365	\$81,825
Property Tax Revenues	\$198,932	\$86,112	\$430,560
School Tax Revenues ¹	\$611,854	\$611,854	\$2,736,247
TOTAL	\$4,762,766	\$718,565	\$3,252,866

¹ Revenues include both sales tax and property tax disbursements

This Lowe's store project will also provide the following estimated results:

Construction employment positions (9 months)	400 people
Store operations employment (75% FT, 25% PT)	175 people
Annual payroll	\$ 5.9 million
Benefits (15-30%)	\$ 1.3 million
Local Contract Services (snow, landscape, etc.)\$/year	\$90, 000

3.0 State Environmental Quality Review Act Process and Chronology

3.1 Background

The New York State Environmental Quality Review Act (SEQRA) provides a process for agencies to consider potential environmental impacts during the initial stages of proposed actions. Impacts are identified and projects or actions can be modified or adjusted to avoid or minimize potential adverse impacts to the environment.

Any elective actions or approvals by any state, regional or local agency to approve, fund or undertake an act that may affect the environment are subject to review under SEQRA. The statute requires that consideration of environmental factors be considered to balance the social, economic and environmental factors in the decision making process. The implementation of the process is described under the New York State Codes Rules and Regulations under 6 NYCRR Part 617.

3.2 Project Classification and Lead Agency Designation

The initial application by Morada Bay Associates was to the Town Board of the Town of Hamburg for the change of zone for the project. The Town Board determined that this project should be classified as a Type I action based on the criteria described under 6 NYCRR 617.4(b) some of the limits that would be exceeded under this project include:

- The granting of a zoning change, at the request of an applicant, for an action that exceeds one or more of the following thresholds given elsewhere on the list;
- A project or action that involves the physical alteration of 10 acres;
- In a city, town or village having a population of 150,000 persons or less, a facility with more than 100,000 square feet of gross floor area.

The Town Board also initiated a coordinated review by many different agencies concerned with the project, and requested that the Town of Hamburg be designated as the Lead Agency for this project. Comments were received from involved and interested agencies. There were no objections to the Town acting as Lead Agency for this project. The Town Board then reviewed all of the agency comments, the Environmental Assessment Form, and other materials submitted by the Applicant, and determined that the project may result in a significant impact to the environment

and that a Draft Environmental Impact Statement (DEIS) should be prepared for the Town to adequately assess the impacts of the Lowe's Home Improvement Center development. On October 23, 2006 the Town Board declared that they be designated as the Lead Agency and issued a Positive Declaration that this project could have a significant impact on the environment and therefore a DEIS is warranted. (Appendix "B")

3.3 Scoping Process

The scoping process is a step in the SEQRA process for the Lead Agency to identify and quantify the significant environmental issues that need to be addressed in the Draft Environmental Impact Statement. Input into the issues to be addressed in the DEIS was obtained from a review of the Environmental Assessment Form Parts I and II, site plans and application, the Positive Declaration, and comments from the public, involved and interested agencies. The intent of project scoping is to:

- Identify/confirm significant environmental issues
- Eliminate insignificant or irrelevant issues
- Identify limits or extents of the impact analysis
- Identify the range of reasonable alternatives to be addressed
- Identify potential mitigation measures

The Applicant submitted a draft scoping document on November 1, 2006 to the Town. The Town Planning Board and Town Board conducted a Public Scoping Meeting on November 15, 2006. The Town received comments and questions and they were considered in the development of the Final Scoping Document. The scoping sessions were conducted in order to complete a complete and concise document for all Involved Agencies could base their individual decisions regarding the proposed project. Through the scoping process the Town Board can obtain additional information and specialized knowledge that will reduce the likelihood that additional issues will arise during the public review period for the DEIS. The Town Board as Lead Agent accepted and ratified the Final Scoping Document on January 22, 2007. (Appendix "B")

3.4 Draft Environmental Impact Statement

The Applicant is required to submit a Draft Environmental Impact Statement that is based upon the Final Scoping Document for the project. Once the DEIS is submitted the Town has the ability to

review the document to be assured that all of the topics have been adequately addressed. If the DEIS does not adequately deal with the issues outlined in the Final Scoping Document, then the Applicant is requested to revise and resubmit the DEIS. This document is the DEIS.

3.5 Acceptance of the DEIS

Once the Lead Agency accepts the DEIS as being adequate, it issues a Notice of Completion which is distributed and filed as stipulated in section 617.12. At this stage of the process, the Draft Environmental Impact Statement is published and available for comment. A Notice of Completion is prepared, filed and published as prescribed in section 617.12. The Town then accepts comments on the accepted Environmental Impact Statement from involved agencies, interested agencies, and the public.

3.6 Public Comment

The public comment period runs for a minimum of 30 days in which the lead agency accepts comments from the public. If a public hearing is conducted then the comments are received at least ten days after the close of the public hearing.

3.7 Final Environmental Impact Statement

The Final Environmental Impact Statement is prepared within 45 days of the closing of the Public Hearing or within 60 days of the filing of the DEIS, whichever comes last. The Final Environmental Impact Statement consists of the Draft Environmental Impact Statement plus any necessary revisions, and supplements, substantive comments received and the lead agency's response to the comments. Notice of Completion of the Final EIS must be filed and distributed as described in section 617.12.

3.8 SEQR Findings

Each involved agency must prepare its own findings statement on the FEIS. A positive findings statement signifies that the project or action is approvable and that the action chosen is one that minimizes adverse environmental impacts and balances them with the social, economic and other

essential considerations. The findings must be made within 30 days of the FEIS filing date. Findings and a decision may be made simultaneously. This would complete the SEQR process.

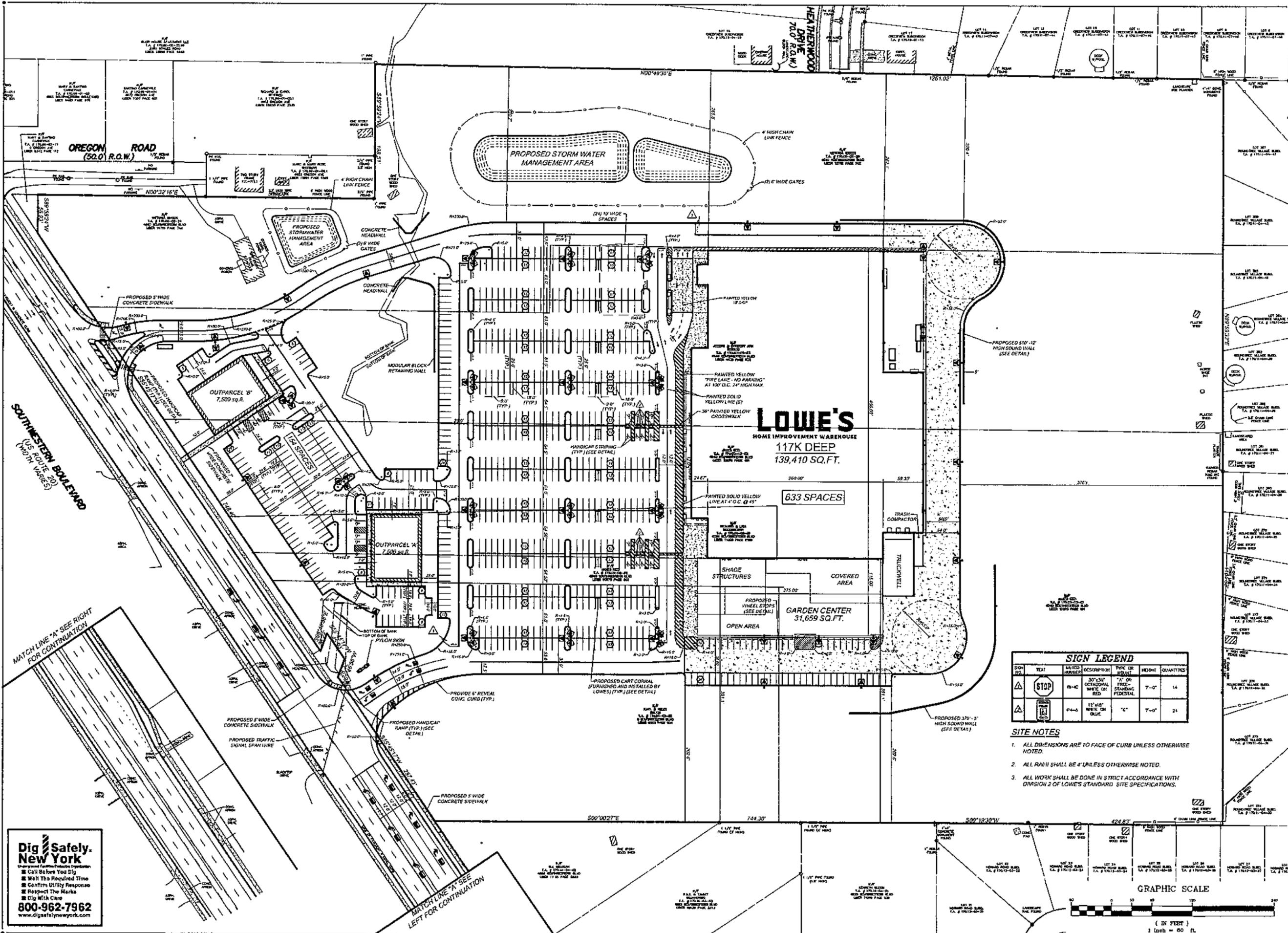
4.0 Project Description

4.1 Design and Layout

The project consists of three buildings, a Lowe's Home Improvement Warehouse which is 139,410 square feet and potentially two 7,500 square feet outparcel buildings. The Lowe's will be the primary commercial use of this development. The access to the site will be from Southwestern Boulevard, US Route 20, at a new signalized intersection along the east side of the property. A secondary access will be available along the western side of the property, which will allow right turns in and right turns out. A freestanding brick enclosed freestanding sign surrounded with vibrant, colorful shrubs and foundation plantings will be placed at the eastern entrance to provide a warm, welcoming entry point to the development. (Figure 4.01 – Site Plan)

Existing vegetation found on the site is in the middle of reforestation with under story shrubs giving way to higher growing pine, maples, and ash. Scotch Pine, Red Maple and Green Ash dominate the eastern edge of the site. The northern portion of the site extending down to the midpoint of the eastern boundary is dominated by under story shrubs with younger maple, ash and pine. Species of bushes found on the site include Grey and Red Twig, Dogwood, Nannyberry, Arrow-wood Viburnum, and Chockcherry. The overall health of the plants is classified as good and they should continue to prosper. A detailed description of the existing vegetation and their location is included in the "Plant Survey and Assessment of Buffer Zone Surrounding the Proposed Southwestern Boulevard Lowe's" by John Heinike in Appendix "J"

Four primary structures exist on the site, two single-family homes and two commercial uses. The Singer home at # 4960 Southwestern Boulevard is a one-story wood frame structure of approximately 1600 square feet. Driveway access to the Singer home is from Oregon Road. The Serblic residence at #4946 Southwestern Boulevard is a 1800 +/- square foot brick structure. Reid Tire, an automotive service center, at #4940 Southwestern Blvd. is a two-story concrete block slab on grade building, which comprises about 6700 square feet. The Music Exchange, instrument sales and rental, at #4934 Southwestern Blvd is a 1200 square foot two-story wood frame building with a partial basement. The Serblic home, Reid Tires and the Music Exchange all have individual driveway access from Southwestern Boulevard. All three of these driveways will be closed as part of this redevelopment project. All of the existing uses will be relocated and the existing buildings



REVISIONS	DATE	DESCRIPTION
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		



CITY ENGINEERING
LAND PLANNING
SURVEYING
217 LAKE AVENUE
ROCKSETT, NEW YORK
(608) 469-3000

COSTICH ENGINEERING

LOWE'S HOME CENTERS, INC.
HWY. 268 EAST, EAST DOCK
N. WILKESBORO, NC 28659
336.658.4000 (M) 336.658.3257 (F)

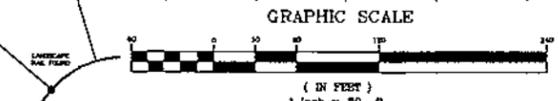


SITE AND PAVEMENT MARKING PLAN
LOWE'S OF HAMBURG, NY
SOUTHWESTERN BOULEVARD
HAMBURG, NEW YORK
PROJECT NO. 3717 (DRAWN BY: GEL) (CHECKED BY: RP)

ORIGINAL
ISSUE DATE: JUNE 2007
PERMIT SET
ISSUE DATE:
CONSTRUCTION SET
ISSUE DATE:
DRAWING NUMBER:
FIG 4.01

SIGN LEGEND						
SYMBOL	TEXT	UNITED NUMBER	DESCRIPTION	TYPE OR MOUNT	HEIGHT	QUANTITIES
	STOP	R-1C	30" x 30" OCTAGONAL WHITE OR RED	"A" OR FREE-STANDING PEDESTAL	7'-0"	14
		P-4-A	12" x 18" WHITE ON BLUE	"C"	7'-0"	24

- SITE NOTES**
- ALL DIMENSIONS ARE TO FACE OF CURB UNLESS OTHERWISE NOTED.
 - ALL RADIUS SHALL BE 4' UNLESS OTHERWISE NOTED.
 - ALL WORK SHALL BE DONE IN STRICT ACCORDANCE WITH DIVISION 2 OF LOWE'S STANDARD SITE SPECIFICATIONS.



Dig Safely. New York
Underground Facilities Protection Corporation
Call Before You Dig
Wait The Required Time
Confirm Utility Response
Respect The Marks
Dig With Care
800-962-7962
www.digsafelynewyork.com

will be demolished. The property and structures have been researched; none of the properties or buildings has been listed as historic. (Appendix "K") A Phase I environmental investigation has also been completed and it was found that there are no significant environmental issues associated with any of the properties. (Appendix "M") The Singer residence has a lifelong use exemption that will allow Mrs. Singer to remain in her home. The site plans have taken this into account, so that the development of the Lowe's facility and the Singer residence may be able to coexist concurrently.

The westerly, northerly and easterly boundaries of the site provide a tranquil, undeveloped, forested, view from the adjacent properties. The existing mixture of canopy trees (maple, ash, pine, elm, cherry, hickory, cottonwood, etc.) and under story shrubs (twig, dogwood, chokecherry, nannyberry and viburnum) provides an impressive vegetative buffer between the proposed commercial development and the surrounding residential subdivisions. The mixture of deciduous and evergreen species allows this buffer to be consistent throughout the year. Appendix "H" includes a photographic record of the views from the surrounding properties looking towards the proposed Lowe's Home Improvement Center. The conclusion of the photographic study was that the even with the development of the Lowe's building, the existing vegetation will provide a substantial buffer for the surrounding properties. The view from the south, or Southwestern Boulevard, looking towards the proposed Lowe's store will not be as thick as the other views towards the building. There will be landscaping included throughout the parking lot and along the street frontage in conformance with Town Code. While the structure is set back more than 450 feet from Southwestern Boulevard, it is important that the Lowe's building be visible from the road. The success of the facility is directly dependant on the visibility of the store to the vehicles that passes by. Figure 4.02 depicts the view of the store from Southwestern Boulevard.

The proposed Lowe's Home Improvement Center is approximately 456 feet wide and 356 feet deep. The front of the building is setback approximately 550 feet from Southwestern Boulevard. The 139,410 square feet store is set on 36.8 acres with side yards of 262 feet or more. Relating these details to the C-2 General Commercial zoning requirements, we have the following:



Photosimulation
Looking North from Parking Lot off Southwestern
600' from site

Lowes Hamburg
Photo Taken 11-22-2006
Lens: Digital ~50mm

Photo 111
Simulation
CE# 3717

Fig. 4.02

Table 4-1

PROJECT SCALE (ZONING REQUIREMENTS VS. PROPOSAL)

ZONING REQUIREMENT	AMOUNT	PROPOSAL	SCALE FACTOR
Lot Width at Building Line	100 feet	1036 feet	10.4
Height of Building	35 feet	32 feet	0.9
Lot Coverage	85%	38%	0.4
Front Yard	40 feet	550 feet	13.8
Side Yard	25 feet	262 feet	10.5
Rear Yard	10 feet	430 feet	43.0

Lot width, building height, and yard requirements taken from the proposed Lowe's building

The dimensions of the lot and the setbacks are in the neighborhood of 10 times larger for this proposal. The lot coverage value is less than half of what it could be while the height of the building is as required. The development of this building, on this particular lot, is much less intensive than what could be developed under a General Commercial zone.

Building coverage for this project is approximately 154,410 square feet of building area on a 36.8-acre lot or about 10%. Lot coverage including all impervious surfaces is 38%. These ratios are very small for commercial uses, or even residential type uses. It would be like placing a 2,000 square foot home on a one-half acre lot.

The Lowe's Home Improvement Center includes areas for offices, customer service, employee training, lockers, break rooms, utilities and service areas. The vast majority of the store is committed to sales floor area, which includes

Appliances,

 Cooking equipment, dishwasher, small appliances, washers and dryers, water heaters, freezers, refrigerators

Indoor improvements

 Bath, cabinets and countertops, ceiling fans, faucets and fixtures, flooring, furniture, heating and cooling, home décor, closets and organization, ladders and scaffolding, lighting, paint and stain, rugs, safety and security

Outdoor Improvements

Awnings, garden center, greenhouses, grills, mailboxes, lighting, outdoor furniture, lawn and garden, paint and stain, patio furniture

Building Products

Cement and masonry, decking materials, doors, driveway sealers, electrical equipment, fencing, flashing, gutters, house siding, insulation, wall panels, lumber, masonry, moldings, plumbing, shingles, shutters, suspended ceilings, underlayment, ventilation, skylights

Tools

Air tools, electrical tools, hand tools, power tools, protective and safety equipment, shop equipment, vacuums, tool storage and workbenches, torches and welding supplies, wood working tools

The hours of operation for a Lowe's Home Improvement Center located are typically 6:00 am to 10:00 pm, Monday through Saturday. Sunday's the Lowe's Home Improvement Center is open 8:00 am to 8:00 pm. The store remains closed during most major holidays.

The access drives provide an outer horseshoe ring around the buildings and associated parking lots. This main driveway is set back from the adjacent properties by more than 200 feet to maintain the existing wooded areas as a buffer between the development and the adjacent properties. The first phase of the development would be the construction of the Lowe's Home Improvement Warehouse and it's associated parking lot and site improvements. The development of the outparcel will be done as established by the market.

The potential uses for outparcel development would be consistent with the proposed General Commercial zoning classification. The permitted uses available under the General Commercial zoning classification is described under Article XIV C-2 General Commercial District, § 280-81 Permitted uses and structures, of the Code of the Town of Hamburg, New York. Some of the uses that are listed include retail sales, eating or drinking establishments, custom shops, warehouses, entertainment facilities, wholesale sales and distribution, theaters, and principal uses permitted in a C-1 district. Building material supplies, utility storage, small animal hospitals, machine sales, rentals and service, storage and sale of solid fuel and sales of feed for livestock need to be conducted in an enclosed building, wall or fence. Residential buildings and private rental storage facilities are prohibited in this district. Buildings greater than 100,000 square feet, nursery or day-

care facilities, motor vehicle sales, trucking facilities, car washes, gasoline filling stations, and public garages all would need a special permit as authorized by the Planning Board.

Site lighting will be provided by metal-halide fixtures mounted on 35' poles that are spaced at approximately 130 feet by 190 feet. The bronze colored poles will support shoebox style fixtures with flat lenses. Many of the fixtures are cutoff style that limits the amount of light spilling outside the parking areas. Large setbacks from the adjacent properties and dense wooded buffers, assures that there will be no light spilling onto adjacent properties.

4.2 Architectural Design

The Applicant and Lowe's Home Center's Inc. are sensitive to the fact that the property is located adjacent to residential subdivisions and are willing to provide building facades that are compatible with the surrounding commercial corridor and the residential homes. Parapet walls will hide rooftop mounted heating ventilating and air conditioning (HVAC) units.

The details for the façade treatment of the outparcel buildings has not yet been determined. Once a potential user has been determined the architectural elevations for the buildings will be made available for Town and the general public review and comment.

The Lowe's Home Improvement Warehouse building façade consists of a multitude of materials, finishes and textures, which gives the building a feeling of warmth and comfort. Materials that are utilized in the exterior treatment of the building include metal fascia; standing seam architectural metal roof; exterior insulation and finish system (EIFS); aluminum and glass storefront systems; concrete masonry units (CMU); metal gutter and downspouts; steel bollards; and other miscellaneous materials. Finishes include black coated chain link fence; light, medium and dark grays and blues; "Lowe's" red and blue, red trim and white accents. Textures are made available by pre-finished metal coping; EIFS that is scored and textured; smooth, single scored, and split faced CMU; smooth metal panels and accent bands; standing seam metal canopies; and glazing.

Additional discussions and options are discussed under Section 5.9, 6.4 and 7.4.

4.3 Site Design and Infrastructure

There are presently three driveway connections from the existing properties to US Route 20. This proposal eliminates these driveways and installs two new driveways. One driveway to the west side of the site which is designed as a right in right out driveway and the eastern driveway which is proposed to be a fully actuated signalized intersection. The two access driveways will continue northerly, along the east and west sides of the Lowe's building for access. The north-south driveways on either side of the building will be interconnected behind the Lowe's store, along front of the Lowe's store and between the southerly end of the Lowe's store and the proposed out parcels. Truck traffic enters through one of the two driveways from Southwestern Boulevard and proceeds directly to the northeast loading docks for delivery. The trucks would then exit the site from the western driveway if they were continuing west or the easterly driveway if they were heading east. The same movements would apply to vehicle traffic only vehicles would be parking in the main parking field in the front of the store. Generally there are very few customers who visit a Lowe's who do not arrive by car. Most of the pedestrian traffic are customers traveling from their car to the store and back. A sidewalk connection is planned between the outparcels and the buildings.

There are two separate stormwater management systems proposed for the project. The main system around the Lowe's building will consist of drainage basins along the east, north and west sides of the Lowe's store. A second set of basins will be placed at the southern edge of the main parking field that would be interconnected to drain to the west. Once these two storm sewer systems reach the westside of the parking lot they will combine to discharge into a stormwater management facility, which will detain the water and gradually discharge at a predetermined rate. A secondary stormwater management facility will be constructed for the outparcels. The concept is similar in that basins will collect the stormwater from the parking lots and drain towards the west where they will combine to discharge into a secondary stormwater management area in the southwest corner of the site. The discharge rates from these facilities will be at a rate that is less than the existing discharge rate.

4.4 Landscaping and Parking

Parking is provided along the south and eastside of the store. The main parking field provides parking for 583 vehicles. The parking rows run in a north south direction with 9 feet by 18 feet spaces and 25 feet wide drive isles. Auxiliary parking exists along the east side of the building adjacent to the Garden Center or 50 vehicles, for a total of 633 spaces for the Lowe's area. The parking field for the outparcel area totals 154 spaces. Twenty-four (24) handicap accessible spaces are provided in this design. Loading areas are located in the northeast and northwest corners of the building. Access to these areas is from the main ring road around the perimeter of the improvement area. A lumber pick-up area is located in the southwest corner of the building for the loading of large merchandise under a protective canopy.

The proposed landscaping includes a broad mixture of deciduous, evergreen and flowering trees and shrubs throughout the project site. The location of the plantings will be spread throughout the proposed development. A mixture of deciduous and evergreen trees and bushes will be placed around the perimeter of the stormwater management basins. A mixture of evergreen shrubs and flowering trees are proposed for placement in interior curbed islands within the main parking field. And finally, a mixture of pines, spruce and maples will be planted around the perimeter of the disturbed area. The design, placement and plant species selection were made to provide an aesthetically pleasing experience while at the same supplementing the landscaped buffers. The perimeter greenspace area averages approximately 30 feet wide. The total greenspace for the development is approximately 62% or 22.7 acres. Approximately 18 acres would be undisturbed, wooded areas around the perimeter of the site. Landscape plans have been developed and are included in this DEIS under Figure 6.02 and as drawing No. 3717-11 in Appendix "A".

4.5 Required Permits and Approvals

The approvals needed from the Town of Hamburg include Rezoning by the Town Board; Subdivision, Site Plan, Special Use Permits from the Planning Board; and Area Variances from the Zoning Board of Appeals. Additional details on these required approvals and variances are included in Section 2.1 of this DEIS.

5.0 General Environmental Setting of the Project Site and Study Area

5.1 Local and Regional Geographic and Topographic Setting

Geology

Most of western New York is influenced by the Great Lakes and their geological history. The lakes were formed from the glaciers from the Ice Age. Erie County is in two physiographic regions. The southern region is located in the Allegheny Plateau region and the north and west side of edge of the county are in the Erie-Ontario lake plain region. The Erie-Ontario Lake Plain region encompasses the Town of Hamburg. Old glacial lake beaches formed the Erie-Ontario Lake Plain region. The elevation of the Erie-Ontario Lake Plain region ranges from 569 at Lake Erie to approximately elevation 1000 at the northern edge of the Allegheny Plateau in southern Erie County.

The Great Lakes Area comprises the largest area of inland seas on the planet. Generally the lakes were formed 7,000 to 32,000 years ago during the Ice Age or the Pleistocene Epoch. The earth's temperature during this period remained very low and layers of snow built up. With the tremendous weight of the upper layers, the lower layers were compressed into ice sheets, or glaciers thousands of feet thick.

The glaciers moved southward and they carved deeply into the soils and rock along the earth's surface. The glaciers advanced to what is now the southern most part of Wisconsin. Eventually the earth's temperature began to rise and as the temperature rose, the glaciers began to recede towards the north. The ice melted and the residual water began to fill the basins formed by the glaciers. The first of these basins to be developed was Lake Erie, the southernmost of the Great Lakes.

Lake Erie varies in depth from an average of over 120 feet at the eastern end to an average of only about 35 feet at its western end this is primarily due to the underlying rock which comprises the basin of the lake. The western side of the lake is composed of hard resistant limestone while the eastern end is composed of softer shale. When the glaciers receded from this area, the erosive forces carved deeper into the softer shale at the eastern edge of the lake near Buffalo.

Erie County is underlain by bedrock from the Upper Silurian and the Middle and Upper Devonian periods. The rock has been formed in bands in an east-west orientation. The youngest rock has been formed in the southern portion of the county and the oldest formations are in the northern portion of the county. The Town of Hamburg lies within an area located in the Java and West Falls Group of bedrock. This rock is composed with a mixture of sandstones and shales. Bedrock within the county is fairly flat but it does tilt very slightly, towards the southwest.

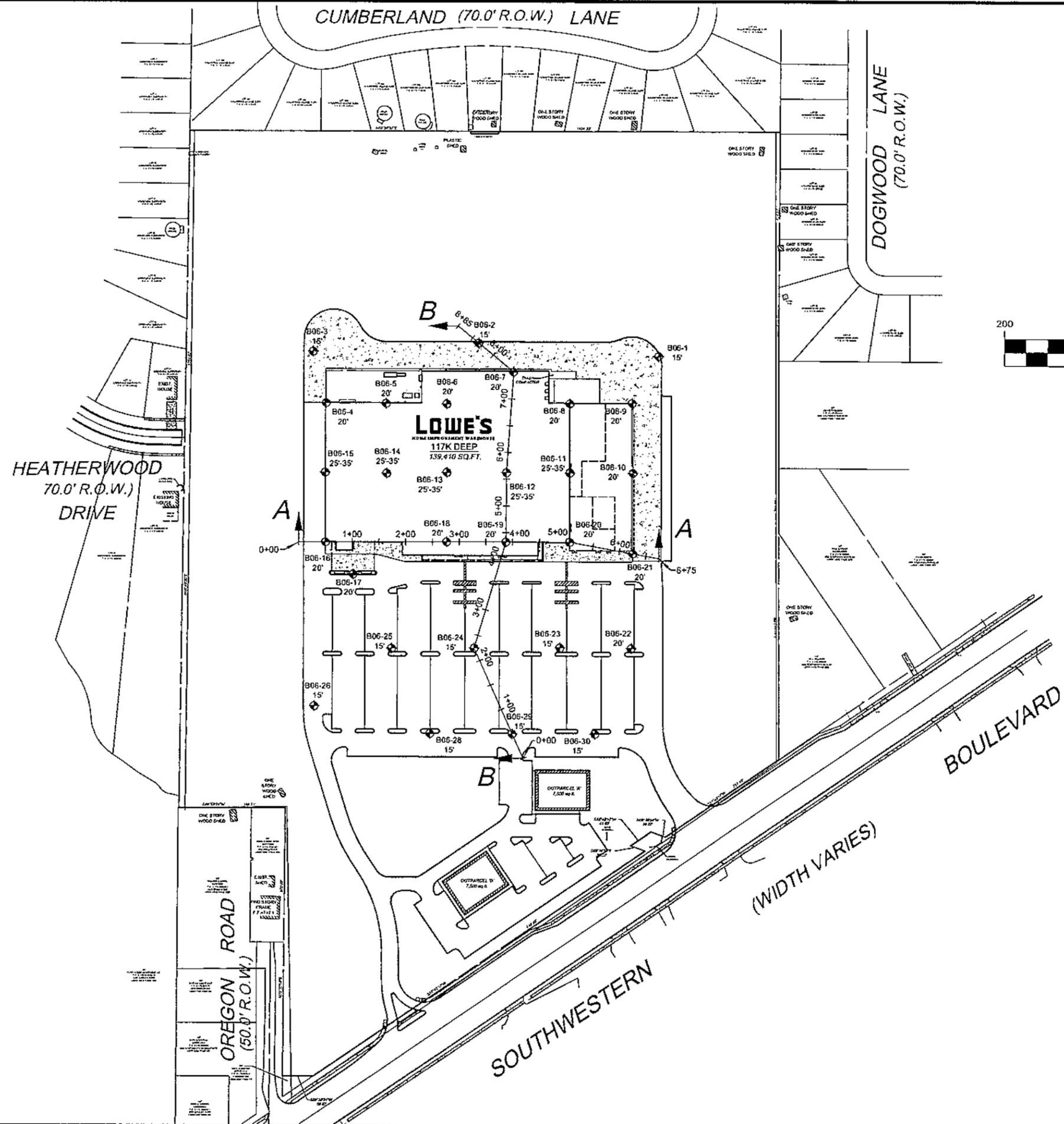
Foundation Design, P.C., of Rochester New York and Earth Dimensions, Inc of Elba, New York has conducted geotechnical investigations for the project. The investigations included soil borings; the locations of the borings are shown in Figure 5.01. The results of their investigations have shown that weathered shale bedrock exists 4 to 7 feet below the surface. This soft shale rock is easily etched and crushed in your fingers into a soil material with some effort. The more intact rock formations were encountered between 7 to 20 feet below the surface. The boring logs are included in Attachment "C"

Soils

Erie County was covered and uncovered by several advances and retreats of glacial ice during the ice age that started approximately 300,000 years ago and ended approximately 10,000 years ago. As the ice moved back and forth it picked up soil material and pieces of bedrock and ultimately redeposited a mixture of unconsolidated material known glacial till. Soils such as the Mardin and the Danley soils formed in these glacial till deposits.

The Soil Survey of Erie County, New York by the United States Department of Agriculture Soil Conservation Service has identified the following soil units within the site boundaries (See Drawing 3717-9 in Appendix "A"):

Collamer silt loam, till substratum (CtB) is a gently sloping soil, which is deep and moderately well drained. It was formed in glacial lake sediments, underlain by loamy glacial till deposits. This soil is typically found on lowland lake plains and in some valleys. The surface layer consists of brown silt loam about 8 inches thick. The subsurface is mottled, pale brown silt loam about 2 inches thick. The remaining depth of about 48 to 50 inches consists of silt loam and silty clay loam deposits. Seasonal ground water rises into this subsoil during the spring. Permeability of the soil is moderate in the upper stratum and moderately slow to slow in the lower stratum. Runoff from



GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.



- CIVIL ENGINEERING
- LAND PLANNING
- SURVEYING

COSTICH ENGINEERING

217 LAKE AVENUE
ROCHESTER, NEW YORK
14608
(585) 458-3020



BORING LOCATION PLAN

JUNE 2007

FIG 5.01

LOWES OF HAMBURG, NY
SOUTHWESTERN BOULEVARD
HAMBURG, NEW YORK

PROJECT No: 3717 DRAWN BY: D.J.L. CHECKED BY: R.P.

this soil is medium while the available water capacity is high. The surface layer of the soil is strongly acid to neutral and the subsoil is medium acid to mildly alkaline. This soil is suited for farming and has some limitations for urban uses. The major management concern for this soil is its erosion. This soil group is located within the southeast and southwest corners of the project and it covers approximately 13 % or 4.8 acres of the site.

Danley silt loam (DaD) is a steep soil, which is moderately well drained. The soil was formed in shaly glacial till deposits. This soil is typically found on hillsides and on some valley side slopes. The surface layer consists of dark grayest brown silt loam layer, about 5 inches thick. The subsurface layer is yellowish brown silt loam about 5 inches thick. The subsoil is 26 inches thick and consists of dark brown silty clay loam and brown shaly clay loam in the lower layers of the subsoil. In the spring the Danley soil has perched seasonal high water table in the lower part of the subsoil. Permeability is moderately slow in the subsoil and slow in the substratum. Available water capacity is moderate to high and runoff is rapid. The soil is acidic in the surface layers and medium acidic to neutral in the subsoil layers. The soil group is typically found on steep slopes, perched water table and the slow permeability makes this a poor soil for many uses. Most of its acreage is presently woodland or idle. A few areas are being utilized as hay crops or pasture. This Danley group is poorly suited for agricultural uses due to its moderately steep slopes and erosion hazards. The slope, seasonally high ground water table and slow permeability limits this soil for most uses. Frost action could be a potential hazard for roads and basements could become difficult to keep dry in an urban environment. The largest concern for managing the soil is its tendency to erode. The soil group is located along the stream corridor in the southern quadrant of the site and it encompasses approximately 17 % of the site or 6.2 acres.

Remsen silty clay loam (RfA, RfB) are soils formed from glacial till deposits, which have somewhat poorly drained. These soils are predominately found in the north-central and southwestern portions of the county. The surface layer of these soils consists of dark grayish brown silty clay loam approximately 7 inches thick with a mottled grayish brown silty clay loam approximately 2 inches thick. The subsoil extends to approximately 36 inches deep, below this layer to approximately 60 inches deep, is a layer of dark grayish brown clay. The Remsen soil has a seasonally perched high ground water table from December through May. Permeability is very slow while the available water capacity is moderate and the runoff is medium. The soils tend to be strongly acidic to slightly acid in the surface layers. Some of this soil area are in residential developments but most of the

area of this soil group is farmed, idle or in woodland. This soil group is moderately suitable for many farm and urban uses. With adequate drainage this soil can be used for many crops grown in the county. The perched seasonably high ground water table, clayey texture, poor soil compaction and very slow permeability are limitations for the urban use of this soil group. Interceptor drains and foundation drains are recommended to divert surface drainage and seepage. The largest concern for this soil is its propensity to be wet most of the time. This soil group is generally located on the northern portion of the properties and it covers approximately 70% of the properties or 28.8 acres.

During the geotechnical investigations for the project, it was found that the soils consisted of topsoil, which averages 7 to 12 inches thick with an average of 7 inches. The underlying soils are silty clays to clayey silts typical of a glacial till deposit. The till is medium to very dense. Sections of the till contain small amounts of sand, gravel and small pieces of weathered shale. Profiles of the observed soil profiles are attached as Figures 5.02 and 5.03. Groundwater elevations were measured during the investigation at boring B-7 and B-17. The following table reflects the groundwater elevations:

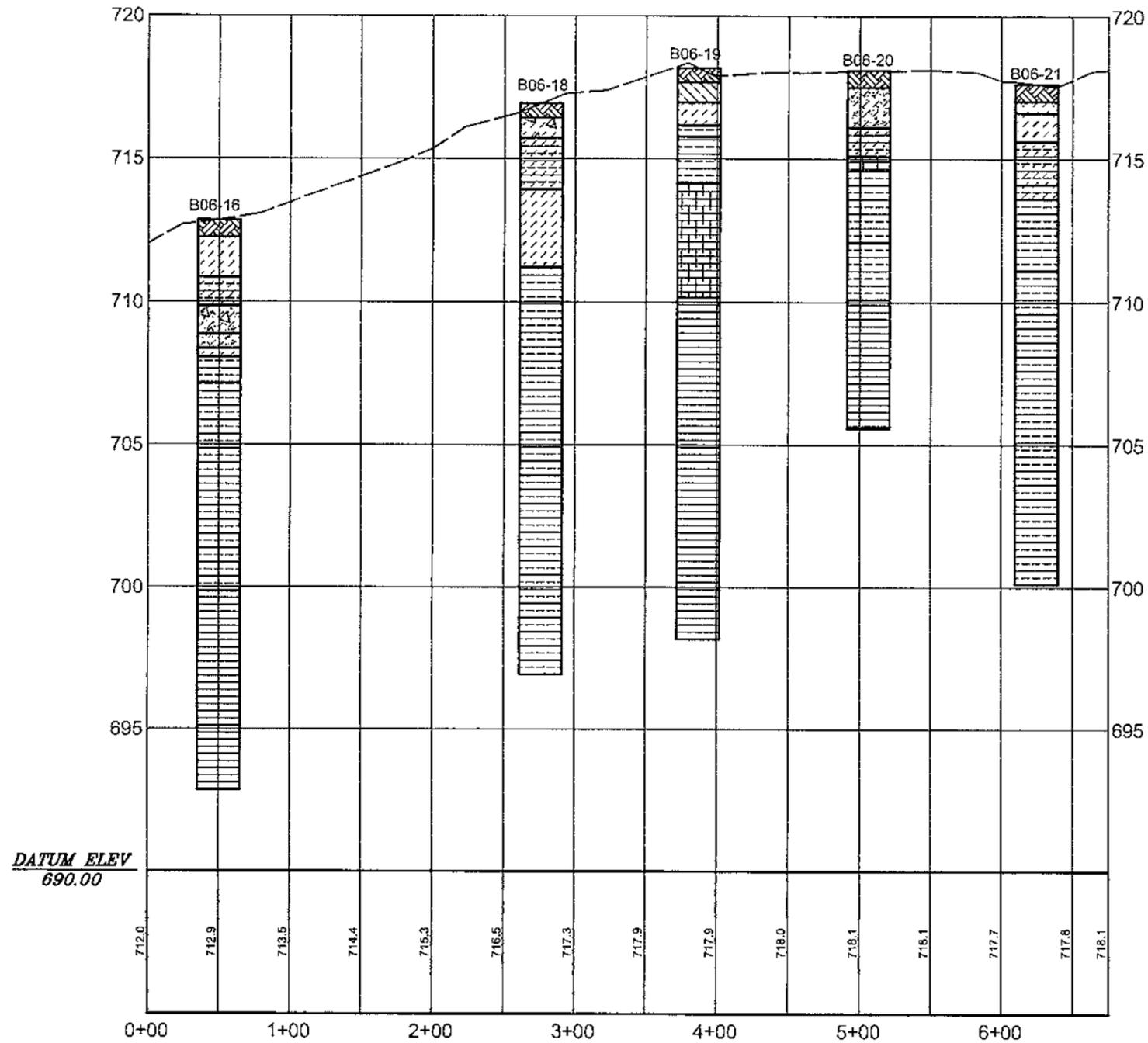
Table 5-1
Groundwater Elevations

Boring Number	Surface Elevation	July 25,2006	August 2, 2006	August 30, 2006	October 23, 2006
B-7	720.5	715.5	716.5	715.5	716.8
B-17	713.5	707.8	709.4	708.1	709.6

Laboratory testing of the soil samples were conducted. These tests included moisture content, sieve analysis, liquid and plastic limits, Modified Proctor Tests, California Bearing Ratio (CBR) tests, expansive index, swell tests, and Ductile Iron Pipe Research Association (DIPRA) soil analysis. The laboratory test results are included in Appendix "C".

Topography

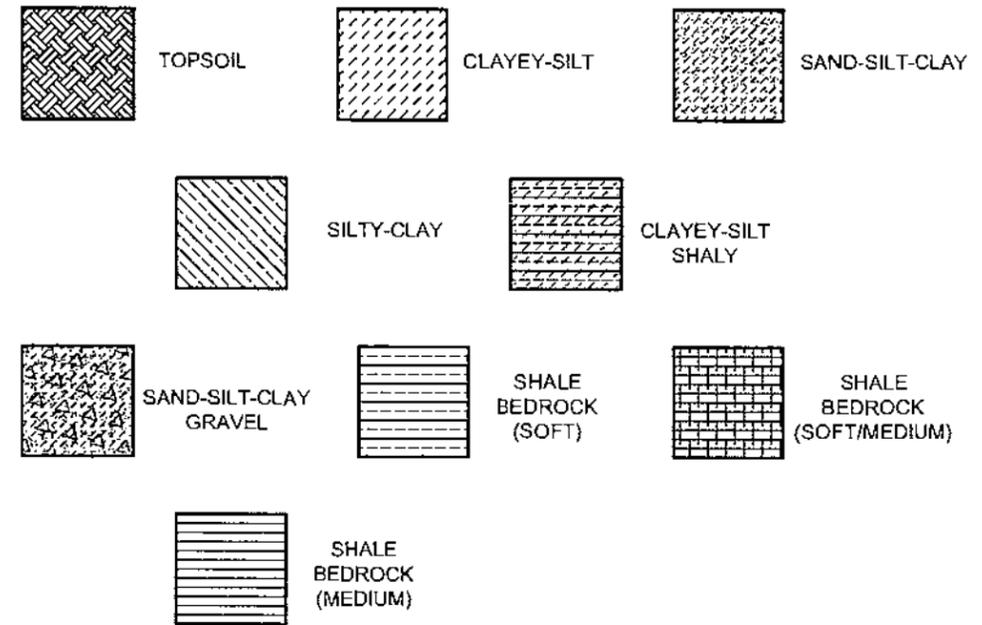
A generally rolling and flat landscape exists in the area surrounding the proposed site. The area generally grades to the northwest towards Lake Erie at a one to three per cent slope.



SECTION A-A

SCALE:
HORIZ.: 1"=100'
VERT.: 1"=5'

LEGEND



SECTION A-A

JUNE 2007

FIG 5.02

LOWES OF HAMBURG, NY
SOUTHWESTERN BOULEVARD
HAMBURG, NEW YORK

PROJECT No: 3717

DRAWN BY: D.J.L. CHECKED BY: R.P.

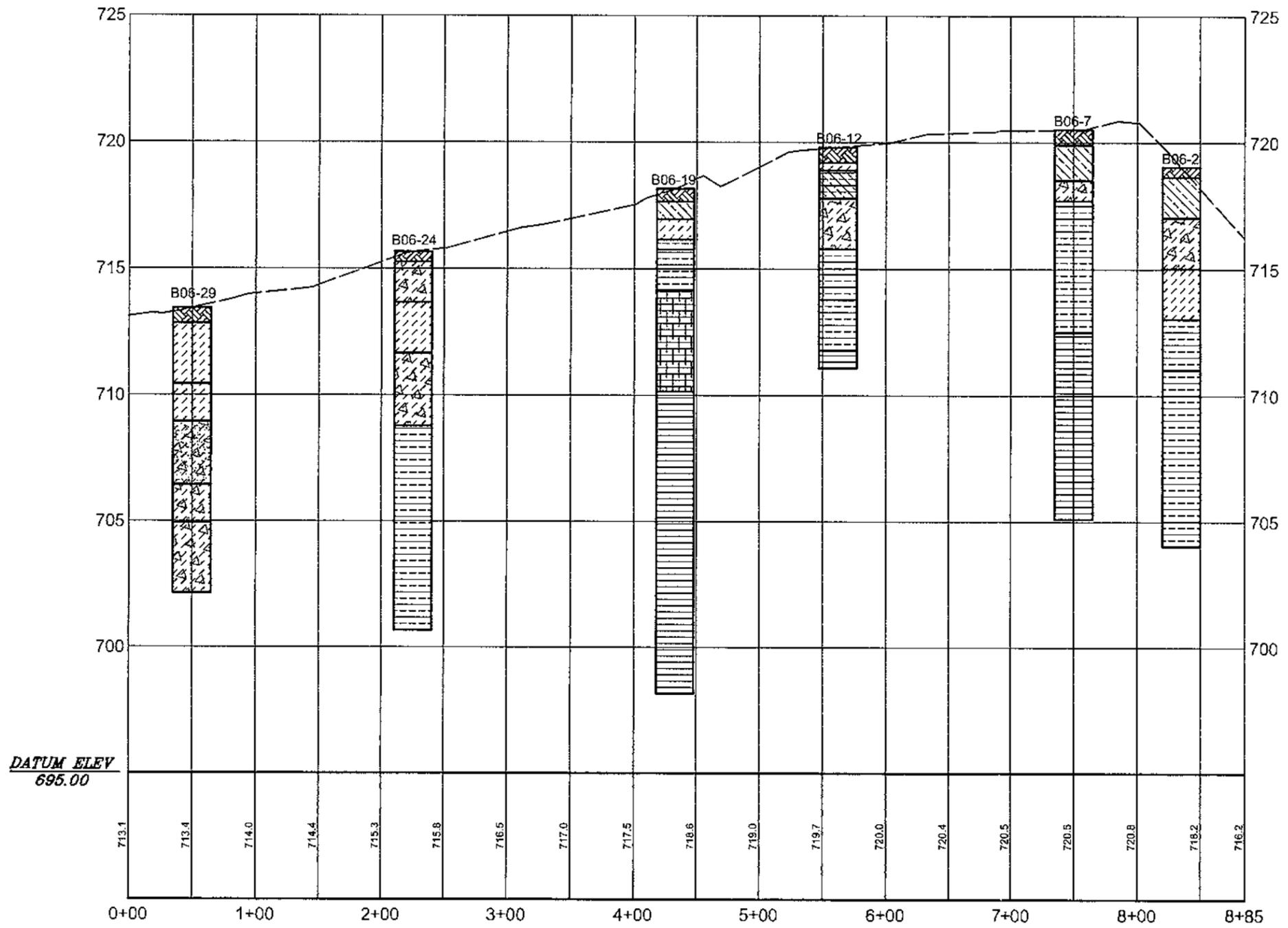


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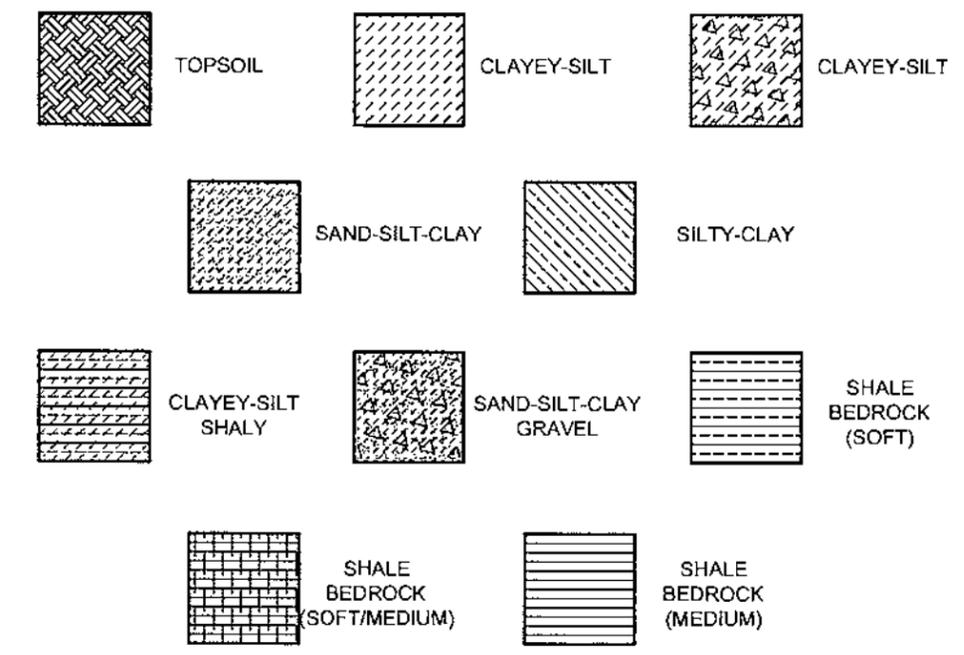
COSTICH ENGINEERING

217 LAKE AVENUE
ROCHESTER, NEW YORK
14608
(585) 458-3020





LEGEND



SECTION B-B

SCALE:
HORIZ.: 1"=100'
VERT.: 1"=5'

SECTION B-B

JUNE 2007 FIG 5.03
 LOWES OF HAMBURG, NY
 SOUTHWESTERN BOULEVARD
 HAMBURG, NEW YORK

PROJECT No: 3717 DRAWN BY: D.J.L. CHECKED BY: R.P.



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 14808
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The proposed site involved in this report is generally shaped as a trapezoid with the longer north-south dimension averaging approximately 1,500 feet in depth and the width of the property averaging approximately 1,100 feet. (See Figure 4.01)

Four structures are located along the road frontage of the property. Two of the structures are being used as residential uses and two of the structures are being utilized as commercial enterprises. Three of the buildings are one story and the fourth building is two stories. All of the structures are located south of the stream that bisects the property. The majority of the site, north of the stream is comprised of shrubs and emerging growth trees.

The site is generally flat to rolling in nature and extends from an elevation of 729 in the northeast corner to 694.5 in the southwest corner of the property, near the stream bottom. A ridgeline extends from the northeast corner towards the southwest corner of the property, and isolates the site into two major drainage divisions. An area that encompasses approximately 17.7 acres that is north and west of the ridgeline generally slopes to the north and west at an average gradient of one to four percent.

The gradient of the property along the eastern side of the site slopes in a southerly direction at inclines of one to five percent towards a stream that bisects the property. This area encompasses approximately 14.2 acres. The area south of the stream drains in a northwesterly direction towards the stream at an approximate grade of two percent, from elevation 729 to elevation 697. The area includes approximately 4.9 acres.

Southwestern Boulevard, US Route 20 provides the southerly boundary of the property. This major arterial highway through the Town of Hamburg has been recently improved by the State of New York. The pavement section consists of a five-lane section with two lanes in both the eastbound and westbound direction with a shared center left turn lane. The profile of the road slopes in both in an east to west and a west to east direction culminating at the low point which is located near a concrete box culvert that crosses the highway. The low point is approximately 275 feet west of the southeast corner of the property. The center of the roadway at this point is at elevation 708.5 +/- . The gradient of Southwestern Boulevard rises to the east at a 0.6 % +/- grade and to the west at a 1.5 % +/- grade.

An intermittent stream tributary (E-5) of Lake Erie bisects the property and drains from the southeast corner of the site to a point approximately 500 feet north of the southwest corner of the site. The cross section of the stream varies from a 4.8' x 12' wide concrete box culvert at Southwestern Boulevard; to a wide winding stream with pools, shoals, plants, weeds and stones along the site's western boundary. A 250-foot portion of the stream has been piped and filled. The stream drains across the site from southeast to northwest for a distance of approximately 900 feet. The bottom of the stream varies from an elevation of 697.5 to 694.5, a slope of approximately 0.3%. The top of the bank of the stream varies from elevation 705 to 710 and the top width varies from 35 to 150 feet wide.

5.2 Localized Land Use

Three different land uses comprise the existing project site. These uses include single-family residential, commercial business and vacant or undeveloped property. The Singer property, #4960 Southwestern Boulevard, and the Serblic property, #4946 Southwestern Boulevard, are residential homes. The Reid property at #4940 Southwestern Boulevard is an auto service center and #4934 Southwestern Boulevard, Rogenmoser property is known as the Music Exchange, a music instrument sales and rental business. The Rauch property is an undeveloped vacant property in the southeast corner of the total parcel.

Uses in the general vicinity of the site include a mixture of commercial uses, residential (single, two family and three family homes) vacant property and community services. A considerable amount of these uses have gone under a transformation from a residential home to a commercial use along Southwestern Boulevard and Camp Road. The majority of the commercial uses are located along Southwestern Boulevard (Route 20) and Camp Road (Route 75). Residential use is concentrated on secondary streets beyond the main arterials. Vacant property is intermixed throughout the immediate area, while community services primarily on the main highways. Figure 5.04 illustrates the existing land use in the areas of the proposed Lowe's development.

5.3 Zoning Requirements and other Land Use Regulations

The existing zoning of the property consists of R-2 Single Family Residential Attached, Multi-Family R-3 and General Commercial C-2. The original application for rezoning included C-1



LOWE'S HOME CENTERS, INC.
 1300 TULLY RD. WESTBOROUGH, MA 01581

REVISIONS	
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LAND USE LEGEND

	RESIDENCE SINGLE FAMILY - RS
	RESIDENCE MULTI FAMILY - RM
	COMMERCIAL
	RECREATIONAL
	VACANT - V
	OTHER - O



NOTE: LAND USE DATA TAKEN FROM ERIE COUNTY, GIS WEBSITE

EXISTING LAND USE

LOWES OF HAMBURG, NY
 SOUTHWESTERN BOULEVARD
 HAMBURG, NEW YORK

PROJECT NO. 1111 | DRAWN BY: D.J.L. | CHECKED BY: H.P.

ORIGINAL	ISSUE DATE: JUNE 2007
PERMIT SET	ISSUE DATE:
CONSTRUCTION SET	ISSUE DATE:
DRAWING NUMBER:	FIG 5.04

Neighborhood Commercial instead of C-2 General Commercial. This was an error in the reading of the zoning district map boundaries. (See Figure 5.05)

Proposed zoning for the total site is C-2 General Commercial. This would allow for the development for the Lowe's Home Improvement Center. Some of the requirements under a General Commercial zone and the proposed development compliance include the following:

Table 5-2

ZONING REQUIREMENTS

ZONING REQUIREMENT	AMOUNT	PROPOSAL
Permitted Use	Retail sales	Retail sales
Lot Width at Building Line	100 feet	1036 feet
Height of Building	35 feet	32 feet
Lot Coverage	85%	38%
Front Yard	40 feet	550 feet
Side Yard	25 feet	262 feet
Rear Yard	10 feet	430 feet

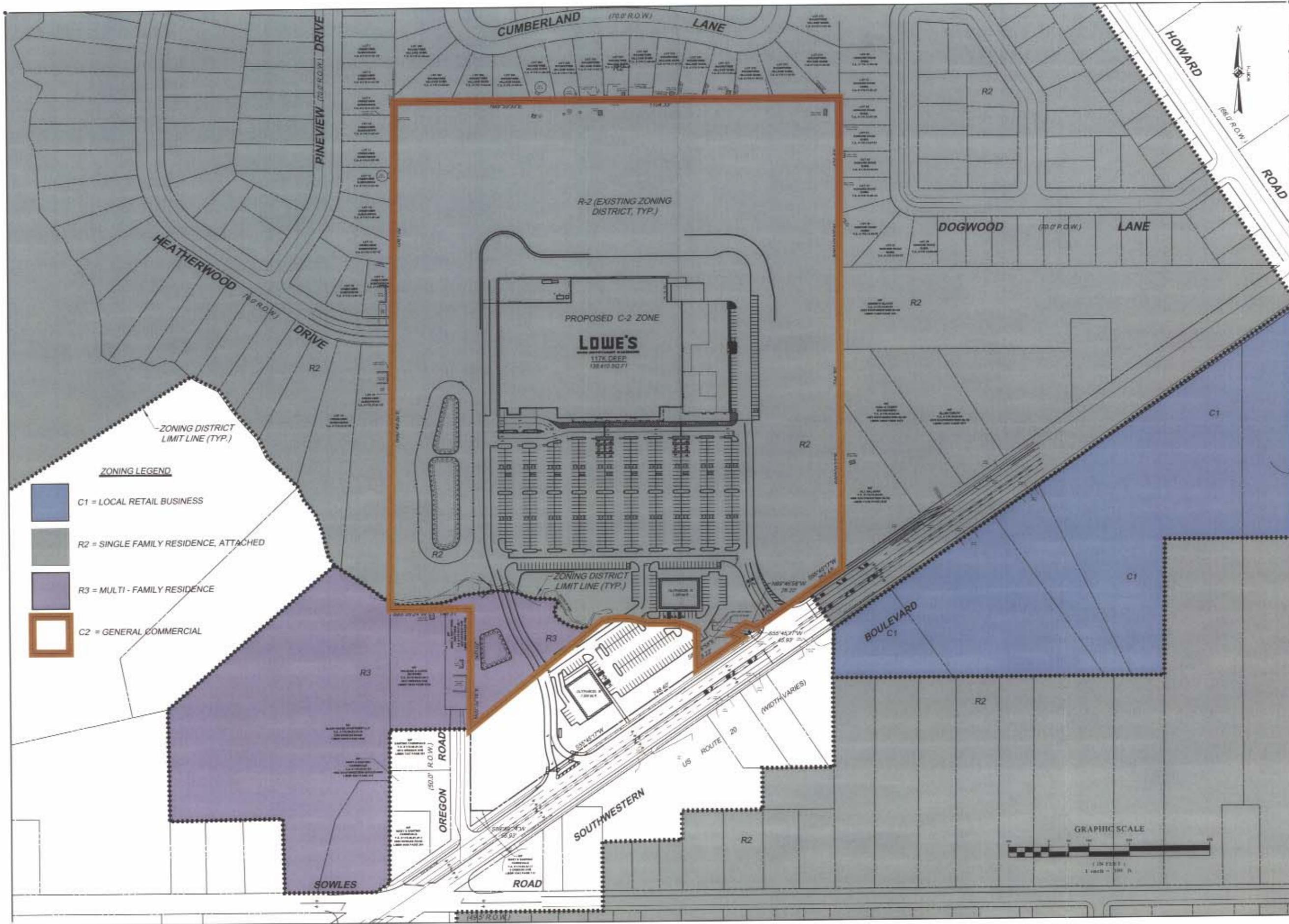
Lot width, building height, and yard requirements taken from the proposed Lowe's building

A Special Use Permit is required for any buildings that exceed 100,000 square feet in a C-2 zone.

A Special Permit will not be issued unless the Town finds:

- That the permit will be in the harmony with the purposes and intent of the zoning chapter
- Will not create a hazard to health, safety or general welfare
- Will not alter the essential character of the neighborhood or be detrimental to the neighbors thereof
- Will not be otherwise be detrimental to the public convenience and welfare

A portion of the Code of the Town of Hamburg applicable for this project is included in Appendix "B".



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HOME CENTERS, INC.
P.O. BOX 11111, WILMINGTON, NC 28409

REVISIONS	
DATE	DESCRIPTION

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LOWE'S

ZONING SITE PLAN
LOWE'S OF HAMBURG, NY
SOUTHWESTERN BOULEVARD
HAMBURG, NEW YORK
PROJECT NO. 3111 DRAWN BY: B.J.L. CHECKED BY: B.A.P.

ORIGINAL	ISSUE DATE	JUNE 2007
PERMIT SET	ISSUE DATE	
CONSTRUCTION SET	ISSUE DATE	
DRAWING NUMBER		

FIG 5.05

5.4 Socio-economic Conditions

The Town of Hamburg has gone a steady continuing increase in population from 1960 to 1990 the Town's population grew at a 36% rate. The population increase has slowed in the 1980's and 1990's to the point where the projected population in 2010 is anticipated to be around 44,992.

There has been a modest but consistent increase in the number of housing units in the Town since 1990 when there were 15,094 housing units and there is a projected 18,500 housing units in the Town by 2010.

School enrolment has varied considerably the past few decades. In 1990 the census bottomed out at 8,265 pupils. Estimated enrollment for 2010 is 19,323 students.

Even though there has been a consistent loss of population and students at the County level, the Town of Hamburg has constantly shown an increase in population, housing units and student enrollment.

The Applicant has made a considerable effort in searching for available properties within the Town. The Applicant looked at seven other potential sites. These sites included:

- Leisure Land – Camp Road
- South Shore Golf Course
- Camp Road North of Southwestern Boulevard
- South Park Avenue – Vacant Retail Plaza
- Camp Road Across from the Holiday Inn
- Camp Road at Scranton Road
- Briarwood Plaza – Southshore Plaza

All of these sites were eliminated for the potential Lowe's Home Improvement Center development for one or more of the following reasons: access, safety, environmental concerns, not willing to sell, size (acreage), frontage, visibility, rezoning, infrastructure, adjacent uses, road capacity, wetlands, demographics, traffic counts, etc. The detailed analysis of this research is included in Appendix "D".

5.5 Public Utilities

Public utilities that service the site include:

- Water supply Erie County Water Authority
- Wastewater Town of Hamburg Sewer District
- Electricity National Grid
- Telephone: Verizon Telephone
- Cable: Time Warner Cable
- Natural Gas: National Fuel Gas

All utilities have been contacted and there is adequate capacity in their utility to service for the proposed Lowe's Home Improvement Center.

5.6 Site Drainage and Stormwater Management

Site drainage is primarily overland flow that discharges into either an underground piped storm drainage system or to Waterfalls Village Creek, which bisects the property from east to west. There are four distinct drainage sub-areas within the proposed development. Sub-area E-1 consists of approximately 10.5 acres, which drains by overland flow to an underground piped storm drainage system to the western portions of the property. Sub-area E-2 encompasses approximately 1.7 acres and drains by overland flow to an underground piped storm drainage system to the northern portions of the property. An underground storm sewer system at the end of Heatherwood Drive collects overland flow from approximately 5.6 acres. The last drainage sub-area is area E-4 that covers 19.1 acres and flows overland to Waterfalls Village Creek.

There have been some concerns brought up by some of the adjacent neighbors regarding nuisance flooding that has occurred periodically. Areas of particular concern were in the northeast corner of the property along Cumberland Lane and in the southwest corner just west of end of Oregon Road. The Town of Hamburg Engineering Department had no record of any persistent flooding in the area.

5.7 Traffic, Transportation and Pedestrian Circulation

A Traffic Impact analysis has been completed by SRF and Associates and updated through April 2007. The report is included under Appendix "G". The report analyzed existing and proposed traffic conditions during the weekday PM peak and the Saturday midday peak hours. Traffic counts were conducted at Route 75/Sowles Road, Route 20/Oregon Ave. and Route 75/Howard Road. Existing peak hour volumes are included in Figure 5.06. Accident data was obtained from the New York State Department of Transportation and the Town of Hamburg Police Department, a summary of the accident rates is included below:

Table 5-3

SUMMARY OF ACCIDENTS AND COMPARISON OF RATES

INTERSECTION	TOTAL NUMBER OF ACCIDENTS	ACTUAL PROJECT RATE	STATE WIDE AVERAGE RATE
NYS Route 75/Sowles Road	7	0.27	0.16
NYS Route 75/Howard Road	5	0.23	0.27
Segment on NYS Route 75 between Route 20 and Sowles Road	12	4.46	2.94

Rates are listed in accidents per million vehicle miles traveled (Acc/MVM)

No public transportation currently services the project site.

5.8 Community Services

Scranton Volunteer Fire Company – Station No.2

5123 College Avenue

Hamburg, New York 14075

716-648-2800

Hamburg Police Department

6100 South Park Avenue

Hamburg, New York 14075



FIGURE 3
PEAK HOUR VOLUMES
EXISTING CONDITIONS

PROPOSED LOWES
STORE

TOWN OF HAMBURG,
ERIE COUNTY, NEW YORK

REV. 03/07

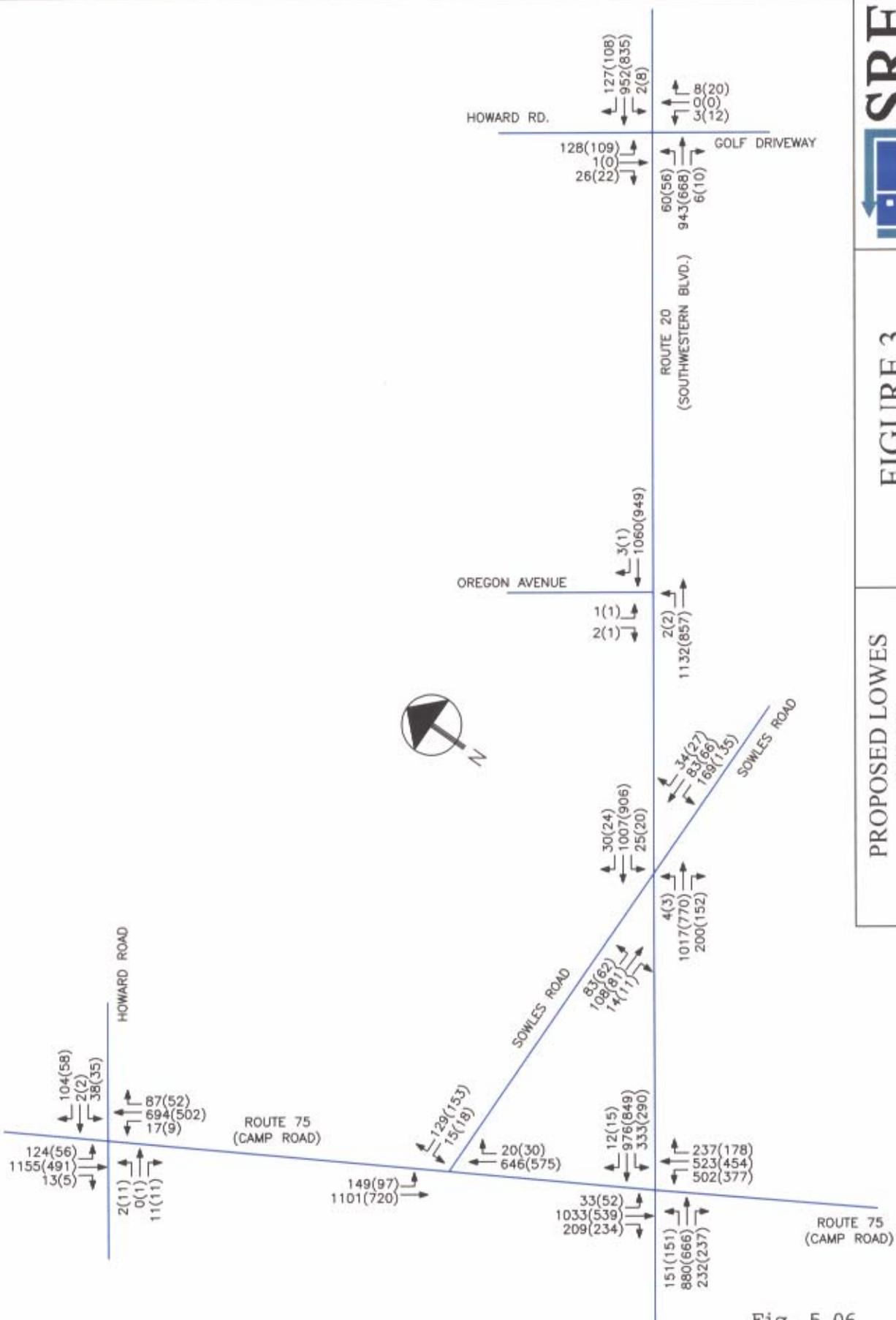


Fig. 5.06

716-649-6111

Rural Metro Medical Services (Ambulance)

481 William L. Gaiter Parkway

Buffalo, New York

716-882-8400

Sheehan Memorial Hospital

425 Michigan Avenue

Buffalo, New York 14203

716-891-5077

5.9 Aesthetic Resources

The setting of the project site consists of a mixture of emerging wooded vacant property surrounded by residential homes and major suburban traffic arterials. The topography is fairly flat and there are no scenic viewsheds in the area. The site is located among various small retail/service businesses and residential structures.

A detailed photographic assessment study was conducted to determine the existing views that were presently available to the surrounding neighborhood. Balloons were placed at the corners of the building, and set at the proposed elevation of the top of the proposed building. Photographs were then taken to determine if the balloons were visible from the surrounding neighborhood. The results of the study showed that only in one instance would the building be visible from the neighboring properties. The photographic study is included in Appendix "H" Further discussions on the aesthetic resources study can be found in Sections 6.4 and 7.4 of this report.

5.10 Noise and Air Quality

A noise and air quality study has been conducted for the study area. Both of the studies and report took into account the existing conditions of the project site. The noise analysis recorded the sound levels for a 24-hour period at two separate locations at the project site. Predominate background noise source came from Southwestern Boulevard, with average sound pressure readings of 48dBA.

The existing air quality of the project site was determined from information obtained from a continuous monitoring station in the City of Buffalo operated by the New York State Department of Environmental Conservation (NYSDEC). Generally, the measured air quality is very good, with most constituent concentrations within applicable ambient air quality standards.

Further discussions on air quality can be reviewed under Sections 6.3 and 7.3 and noise and odor impacts and mitigation are discussed under Sections 6.7 and 7.7. Copies of the full reports are available in Appendix "I".

5.11 Solid Waste Management

Solid waste for the site and surrounding area is handled through independent refuse haulers who pick up totes, dumpsters and other containers and deposit their contents into a refuse truck. Solid waste is then deposited at permitted sanitary landfills. Special recycle trucks that pick up totes from the generators also collect recyclable materials. The recyclables are then transferred to a material reclamation facility for sorting, distribution, and finally recycling. Lowe's typically disposes of 40 tons/month of solid waste.

5.12 Ecology

This portion of the DEIS will discuss the issues related to the interrelationship of organisms and their environment and more specifically the areas of vegetation and wildlife.

Vegetation

Morada Bay Associates has retained the services of John Heinike to review the plant life at the project site. A report entitled "Plant Survey and Assessment of Buffer Zone Surrounding the Proposed Southwestern Boulevard Lowe's" is included in Appendix "J". In this report John Heinike surveyed the existing vegetation and found that the site is in the middle of reforestation with under story shrubs giving way to higher growing pine, maples, and ash. Scotch Pine, Red Maple and Green Ash dominate the eastern edge of the site. The northern portion of the site extending down to the midpoint of the eastern boundary is dominated by under story shrubs with younger maple, ash and pine. Species of bushes found on the site include Grey and Red Twig,

Dogwood, Nannyberry, Arrow-wood Viburnum, and Chockberry. The overall health of the plants is classified as good and they should continue to prosper. A detailed description of the existing vegetation and their location is included in the "Plant Survey and Assessment of Buffer Zone Surrounding the Proposed Southwestern Boulevard Lowe's"

Earth Dimensions Incorporated also provided a field investigation of the site to assess the endangered and protected flora and fauna on the site. (See Appendix "J") As a result of their investigation, they have determined that there are no protected species within or adjacent to the proposed site. Collaboration from the New York Natural Heritage Program and the U.S. Fish and Wildlife has been received. In the response from the New York Natural Heritage Program dated February 1, 2006 states that there are "*no records of known occurrences of rare or state listed animals or plants, significant natural communities, or other significant habitats, on or in the immediate vicinity of the site.*" The U.S Fish and Wildlife Service responded by stating, "*except for a few transient individuals, no Federally-listed or proposed endangered or threatened species under [their] jurisdiction are known to exist within the project impact area.*" This was acknowledged in their letter of January 19, 2006. Finally, in the opinion of Earth Dimensions Incorporated, there are no protected species or critical habitats located within or adjacent to the site.

Wildlife

There have been numerous investigations at the site throughout all times of the year. Wildlife that has been encountered included birds, squirrels, skunks, possums, woodchucks, toads, frogs, crickets, beetles, butterflies, bees, flies, mosquitoes, spiders, and other similar classes of wildlife. Generally, even though there is a considerable amount of wooded areas there is surprisingly few large animals present on the site. The reason for this is that populated and developed areas surround the site. Southwestern Boulevard is a heavily traveled suburban arterial that also acts as a barrier for transient animals.

Investigations have been conducted to determine if the site or the surrounding areas are the habitats for threatened or endangered species. It has been determined that there are no protected species or critical habitats located within or adjacent to the site.

5.13 Cultural and Archeological Resources

The New York State Historic Preservation Office lists a portion of the northern project site as an archeological sensitive area. (SHPO) The Applicant has retained the services of Northern Ecological Associates, Inc. (NES) to prepare a Phase I Cultural Resources Report and investigation for the project. The research showed that Native American groups preferred to locate along streams, rivers, and marsh locations. This placed the Waterfalls Village Creek bed as a sensitive area. SUNY Buffalo, Archaeological Survey, previously tested a portion of the site in 2003 as part of the recent widening of Route 20, no cultural material was recovered.

After reviewing the research information for the project site, and conducting 615 individual shovel tests, NES concluded that there were no adverse effects on prehistoric or historic archaeological resources anticipated for the project. This report was submitted to SHPO and they concurred that there would be no effect upon historic properties. (See Appendix "K")

5.14 Surface Water

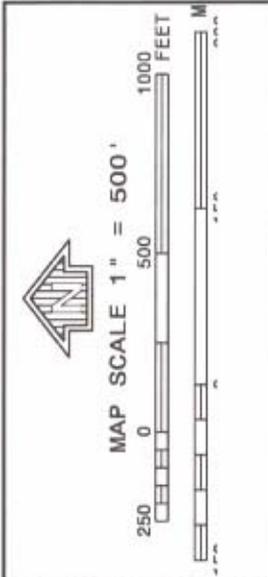
The proposed development site does contain floodplains and wetlands. These areas have been classified and delineated.

Floodplains

The site includes an area, which has been designated as Zone A on the FIRM or Flood Insurance Rate Map by the Federal Emergency Management Agency (FEMA), (Map Number 3602440005 Panel 0005 D and revised December 20, 2001, Town of Hamburg, Panel 5 of 21). A copy of a portion of the Flood Insurance Rate Map is attached as Figure 5.07.

The flood area is located along the centerline an unlisted stream, a.k.a. Waterfalls Village Creek and it encompasses an area, estimated at approximately 300 feet wide, and extents from western property line to the culvert under Southwestern Boulevard.

Flood Zone A signifies an area subject to a one percent annual chance of flooding in any given year. Because no detailed hydraulic analysis has been performed on these areas, no base flood elevations are shown. There has been a detailed hydraulic analysis conducted for the area



NATIONAL FLOOD INSURANCE PROGRAM

FIRM FLOOD INSURANCE RATE MAP

TOWN OF
HAMBURG,
NEW YORK
ERIE COUNTY

PANEL 5 OF 21

FIRM INDEX FOR FIRM PANEL LAYOUT:

CONTAINS:	NUMBER	PANEL	SUFFIX
COMMUNITY	360244	0005	D
HAMBURG TOWN OF			

MAP NUMBER 3602440005 D
MAP REVISED DECEMBER 20, 2001
 Federal Emergency Management Agency

Notice to User: The Map Number shown below should be used when extracting information from this map. The information shown above should be used in insurance applications for the subject community.

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT CH-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

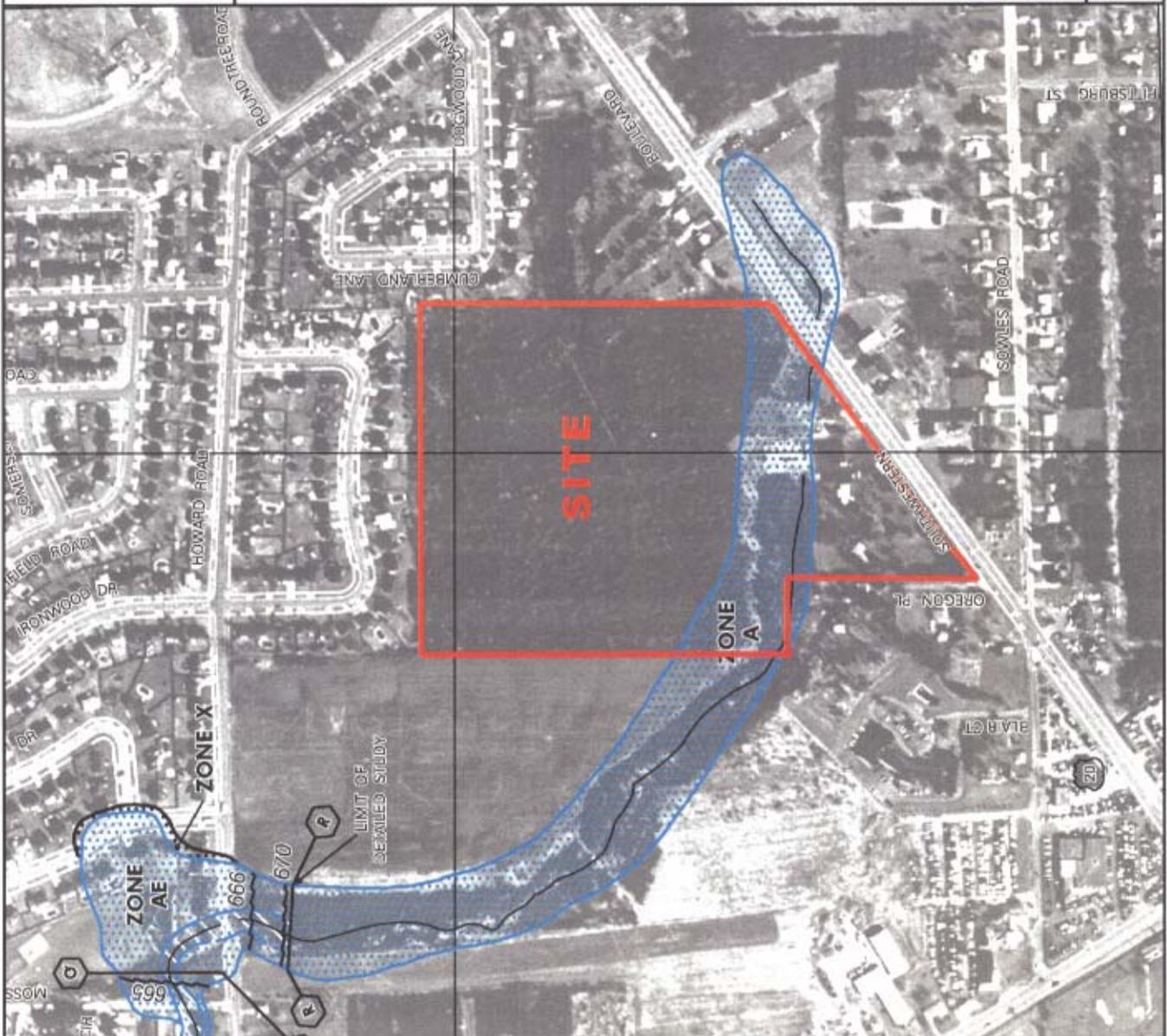


Fig. 5.07

downstream of the project site to a point approximately 200 feet south of Howard Road. The flood elevation at this location has been determined to be at elevation 670. In areas designated as approximate Zone A, where BFE's (Base Flood Elevation) have not been provided by FEMA, communities must apply the following provisions:

“ Obtain, review and reasonably utilize any base flood elevation and floodway data available from Federal, State or other source....”

This data is to be used as a criterion for requiring that new construction, substantial improvements, and other development within all approximate Zone A areas have their lowest floors elevated to or above the BFE for non-residential structures. If we interpolate the mapped floodplain width onto the existing topography we could approximate a base flood elevation (BFE) of 705 +/- at the western property line and an elevation of 709 +/- at Southwestern Boulevard.

The existing structures on the site are constructed with finished floor elevation set at elevation 712 +/- . Neighboring structures are constructed with finished floors ranging from elevation 702 +/- to 714 +/- . The proposed buildings will be design with finished floors above the 709 elevation.

Wetlands

Earth Dimensions, Inc. of Elma New York completed a “Wetlands Delineation Report for Hamburg Lowe's dated July 20, 2006. (EDI Project Code: W12L05b). Appendix “L” contains a copy of this report. Earth Dimensions, Inc. followed the Guidelines and Routines of a Level 2 Routine Determination as specified in the “Corps of Engineers Wetlands Delineation Manual” dated January 1987. Fieldwork for the report was conducted during May 25th and 31st, 2006. The results of the study resulted in the following:

New York State Department of Environmental Conservation (NYSDEC) does not have jurisdiction on the wetlands for this proposed development. They will have jurisdiction under the provisions of Water Quality Certification for Federal wetland permitting.

Four (4) wetland areas totaling 2.341 +/- acres were identified based upon vegetation, soils and hydrology at the site. Wetland Area 1 is located in the southwest quadrant of the site within the banks of an intermittent stream that bisects the southern portion of the property. The vegetation

could be classified as floodplain forest and comprises approximately 0.540 acres (23,522 square feet). Wetland 2 is located up gradient of the stream on the southeastern quadrant of the site, which encompasses approximately 1.483 acres (64,600 square feet). This wetland could be classified as a shrub swamp that could have been developed during the time in which the stream was piped and filled, trapping water from entering the streambed. An isolated wetland, Wetland 3, is located along the western side of the site about 820 feet north of Southwestern Boulevard and 225 feet east of the west property line. This wetland of 0.072 acres (3,136 square feet) is also classified as a shrub swamp area. The last wetland, Wetland 4, exists on the eastern boundary line about 700 feet north of the Southwestern Boulevard right-of-way. This shrub swamp area encompasses approximately 0.246 acres (10,716 square feet).

It is the opinion of Earth Dimensions Inc. that Wetland 1 would meet the definition of a jurisdictional wetland under the current interpretation of a federally jurisdictional wetland.

The Army Corps of Engineers (ACOE) and NYSDEC will first consider avoidance and minimization of wetland losses before they consider any other alternative.

If wetland impacts are proposed for greater than 0.10 acre, then a Joint Application for Permit will be submitted to the Army Corps of Engineers. This process has already begun.

6.0 Assessment of Significant Environmental Impacts

6.1 Impacts to Land

The developed site has been designed to follow the existing topography wherever possible and to limit the area of disturbance to only those areas needed for the establishment of building pads and parking lots. The topography will be changed slightly with cuts in the northeast quadrant and fills in the northwest quadrant. The parking lots will be graded to slope towards the south, towards the creek. Outparcel parking lots will also drain towards the creek. Grading on the site will disturb about 37,000 cubic yards of soil. The soil is intended to remain on site with the excavated soils being used for filling low areas and for the construction of landscaped berms. The maximum cuts and fills on the site are estimated at approximately six to eight feet. The total site encompasses approximately 36.8 acres. It is anticipated that only about 18.8 acres be disturbed during this development and that 18.0 acres or about 48 % would continue to remain as a natural buffer. Buildings would cover approximately 4.3 acres of the developed site and pavements would envelop approximately 9.7 acres. Approximately 4.8 acres would be developed as perimeter landscape areas. Demolition and disposal of the existing structures on the site will occur during the first phases of the site construction. The project will increase the potential for soil erosion during the construction phase, extensive soil erosion and sediment plan has been developed to mitigate any adverse effects. Soft deteriorated rock may be encountered during utility installation, at depths of four to seven feet below the surface. No blasting is anticipated due to the soft and deteriorated state of the rock. The grading of the site is illustrated on the Grading and Drainage Plan attached in Appendix "A"

6.2 Impacts to Water

Storm Drainage

Lowe's Home Improvement Center project is located within a tributary watershed of Lake Erie. Stormwater runoff from the site drains from four distinct and different sub-areas. Two of the drainage areas discharge to the north along Cumberland Lane, one of the drainage area drains to the west or Heatherdale Drive. The fourth sub-area drains to the creek along the south end of the project. The construction of buildings and pavements will increase the overall imperviousness of the area and the total water runoff volume from the site. The construction of the Lowe's and the

associated parking lots and driveways will actually decrease or maintain the present runoff rates to the north and west.

The storm sewer system will be constructed to collect and transport the stormwater from the pavements and roof areas to a stormwater management facility. In doing so, the amount of storm water traveling to the north and west will be diminished, facilitating improvements to downstream drainage conditions.

The stormwater management facilities has been designed to retain stormwater during peak events and then discharge at rate that is less than the existing pre-developed runoff rate.

The design of the storm drainage system and the stormwater management facilities are in conformance with the New York State Department of Environmental Conservation Phase II criteria and to also comply with the "NYS Stormwater Management Design Manual". The Town of Hamburg was also contacted and the design requirements of the Town have also been met.

Table 6-1

EXISTING VS. DEVELOPED PEAK STORMWATER FLOW RATES

Discharge Point 1 Storm Frequency	Q _{EXISTING} (cfs)	Q _{PROPOSED} (cfs)	% Reduction	% Area Reduction
1	2.92	2.13	27	29%
2	4.35	3.18	27	
5	6.72	4.92	27	
10	8.83	6.46	27	
25	10.59	7.73	27	
50	12.84	9.37	27	
100	14.67	10.70	27	
Discharge Point 2 Storm Frequency	Q _{EXISTING} (cfs)	Q _{PROPOSED} (cfs)	% Reduction/Increase	% Area Reduction
1	0.46	0.46	0.00	0%
2	0.69	0.69	0.00	
5	1.07	1.07	0.00	
10	1.40	1.40	0.00	
25	1.68	1.68	0.00	
50	2.04	2.04	0.00	
100	2.33	2.33	0.00	
Discharge Point 3 Storm Frequency	Q _{EXISTING} (cfs)	Q _{PROPOSED} (cfs)	% Reduction	% Area Reduction
1	1.09	0.72	34	70%
2	1.62	1.07	34	
5	2.51	1.64	35	
10	3.30	2.15	35	
25	3.96	2.57	35	
50	4.80	3.11	35	
100	5.49	3.55	35	

Discharge Point 4 Storm Frequency	Q_{EXISTING} (cfs)	Q_{PROPOSED} (cfs)	% Reduction	% Area Reduction
1	4.18	3.43	18	N/A
2	6.63	6.06	9	
5	10.78	8.91	17	
10	14.55	11.40	22	
25	17.72	13.45	24	
50	21.85	16.07	26	
100	25.23	18.19	28	

Wetlands

Portions of Wetlands No 1 and 3 and all of wetland No. 3 will be filled as part of this development. The area is approximately 1.2 acres, which will be filled to provide access to the site. (See Drawing 3717-8 in Appendix "A")

Floodplains

A portion of a 100-year floodplain will be filled to provide access to the project along the site driveways. These areas will be offset with the construction of the stormwater management areas.

Water Supply

The typical Lowe's store utilizes approximately 2,500 gallons of water per day, 750 gallons for domestic purposes and 1,750 gallons for seasonal garden center irrigation. The proposed outparcel buildings are conservatively estimated to utilize approximately 10,500 gallons per day. The existing water supply system has adequate capacity to supply this domestic demand. Service extensions will be made from the watermains along Southwestern Boulevard to the buildings.

The fire suppression demands for the Lowe's Home Improvement Center are fairly extensive due to the nature of the materials that they inventory and store. Flows of 2250 gallons per minute are required for the fire suppression system. The existing water distribution system cannot meet these fire suppression demands without some minor improvements.

Wastewater

Wastewater from the development will for the total development is approximately 13,000 gallons a day, or about the same as 30- 40 homes. An existing sanitary trunk sewer that parallels the northside of the creek has adequate capacity to handle this project.

6.3 Impacts to Air

Potential impacts to the air quality associated with this development include emissions for vehicles, heating, ventilating and air conditioning (HVAC) equipment and soil particles or dust during the construction process. Vehicle emissions can be from automobiles or heavy trucks.

An Air Quality Impact Assessment has been conducted by F-E-S Associates and is included in Appendix "I". As part of their analysis they took into account the background air quality, which is very good, the potential peak hour of traffic at the site, and the peak direct emission rates from the venting of natural gas combustion. The analysis also took into account the worst meteorological conditions, which include temperature, wind speed, direction and stability.

Based on the analysis that was completed it was determined that the Lowe's retail site development will not result in any significant air quality impacts.

There is an increased potential for dust being introduced into the air during the construction process. Mitigation efforts will be employed to minimize the creation of dust during construction.

6.4 Impacts to Aesthetic Resources

Landscaping/Buffers

The proposed landscaping includes a broad mixture of deciduous, evergreen and flowering trees and shrubs throughout the project site. The location of the plantings will be spread throughout the proposed development. A mixture of deciduous and evergreen trees and bushes will be placed around the perimeter of the stormwater management basins. A mixture of evergreen shrubs and flowering trees are proposed for placement in interior curbed islands within the main parking field. And finally, a mixture of pines, spruce and maples will be planted around the perimeter of the disturbed area. The design, placement and plant species selection were made to provide an

aesthetically pleasing experience while at the same supplementing the landscaped buffers. Greenspace areas are areas that are not developed for building construction or parking areas. This greenspace area will be around the perimeter of the parking area and will encompass an area of averaging approximately 30 feet wide. The total greenspace for the development is approximately 62% or 22.7 acres. Approximately 18 acres would be undisturbed, wooded areas around the perimeter of the site. Landscape plans have been developed and are included in this DEIS under Figure 6.02 and as drawing No. 3717-11 in Appendix "A".

One of the requirements for a General Commercial zoned property is that the maximum lot coverage cannot exceed 85%. This development proposal will result in a lot coverage percentage of 38% or less than half of what is allowed by code. Therefore, a considerable amount of the developable property will remain as greenspace.

The amount of land that will be preserved as a buffer for the adjacent residences encompasses approximately 18 acres. There are no plans to develop the buffer area in the future. To maintain this area as a permanent buffer, the applicant has proposed the area be placed under a conservation easement to municipal authorities. Another option would be for the Town to place a condition of approval for the operators to maintain the buffer. The Applicant will work with the Town to come up with a method that would be agreeable to all. Any disturbance of the buffer will require approvals and permits from the Town and State authorities.

The buffer area size was a result of some initial investigations to provide a property with adequate width for the placement of the Lowe's building while at the same time maximizing the setbacks from adjacent properties. The proposed site has the additional benefit of having a substantial wooded area. There was no magical number of acres necessary for a buffer for the project. There are many instances where a Lowe's is immediately adjacent to residential uses and there are many different mitigation measures that can be taken to minimize impacts. The proposed buffer in this particular case is adequate with the implementation of mitigation efforts that are described in Section 7. A Line of Sight Plan is attached as Figure 6.01.

The buffer areas are 200 feet wide on the eastside of the Lowe's building, 375 feet wide along the north side of the building and 220 feet wide along the western side of the building. The building

DATE	DESCRIPTION

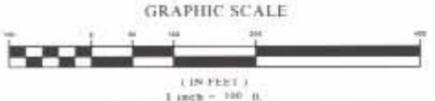
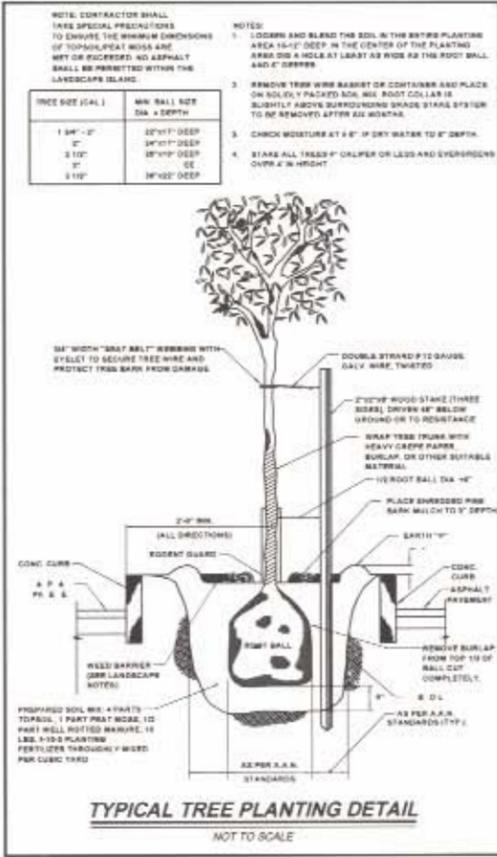
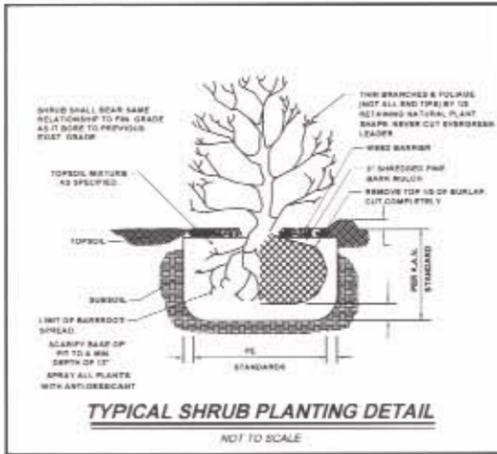
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LANDSCAPE PLAN
LOWE'S OF HAMBURG, NY
SOUTHWESTERN BOULEVARD
HAMBURG, NEW YORK
PROJECT NO. 3177
DRAWN BY: D.L.L. CHECKED BY: R.P.

ORIGINAL
ISSUE DATE: JUNE 2007
PERMIT SET
ISSUE DATE
CONSTRUCTION SET
ISSUE DATE
DRAWING NUMBER



WM PRICE Design
Land Planning
Site Design &
Development
Strategists

William M. Price
Landscape Architect

305 Sylvan Road
Rockwell, NY 14018
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c. 585.732.8807

PLANT SCHEDULE

KEY	BOTANICAL NAME	COMMON NAME	SIZE	ROOT NOTE
DECIDUOUS SHADE TREES				
M	ACER S. FREEMANII	CELEBRATION MAPLE	2.5" CAL.	BB
Fa	FRAXINUS AMERICANA	AUTUMN PLUMBLE ASH	2.5" CAL.	BB
Ta	TILIA AMERICANA 'TEARDROP'	FRONZOWED LINDEN	2.5" CAL.	BB
Ja	ULMUS AMERICANA 'DELEWARE'	DELEWARE ELM	2.5" CAL.	BB
FLOWERING TREES				
Pc	PRUNUS SARICENTICA 'COLUMARIAN'	COLUMARIAN SARICENTICA CHERRY	2" CAL.	BB
Pc	PRUNUS C. 'CHARITABLEAR'	CHARITABLEAR FLOWERING PEAR	2" CAL.	BB
EVERGREEN TREES				
Fa	PICEA ABIES	NORWAY SPRUCE	8'-7'	BB
Fa	PICEA PARSONSII	COLORADO BLUE SPRUCE	8'-7'	BB
Fa	PICEA CILICYSTRI	SCOTCH PINE	8'-7'	BB
DECIDUOUS SHRUBS				
Ca	CORNUS ALBA	RED STEM DOGWOOD	34" HT.	BB
Ci	CORNUS RACEMOSA	GRAY DOGWOOD	38" HT.	BB
Sc	SPirea x.B. COCCINIA	DWARF RED SPIREA	15" HT.	CONT.
Sm	SYRINGA MEYERI 'PALIBIN'	DWARF SCURF LILAC	24" SH.	CONT.
Vt	VIBURNUM TRILBUM	AMERICAN CHERRYBERRY BUSH	20" SP.	BB
Vd	VIBURNUM DENTATUM	ARROW WOOD VIBURNUM	20" SP.	BB
EVERGREEN SHRUBS				
Jc	ILEX M. 'BLUE BOY' ORL.	BLUE BOY HOLLY	24" SP.	95 CONT.
Jc	JUNIPERUS SABINA 'BROADMOOR'	BROADMOOR JUNIPER	18" SP.	95 CONT.
Jc	TAXUS M. 'DENSOPHORMIS'	DENSE SPREADING YEW	20"	BB

ABBREVIATION:
BB-BALLED & BURLAPPED
CAL-CALIPER IN INCHES
EP-SPREAD
HT-HEIGHT
NO-B-BALLON SIZE
CONT-CONTAINER
SH-SHARE ROOT

peaks will not be visible from the adjacent properties. This area will protect the neighbors from negative views and sounds through the following measures:

- Maintaining and supplementing the existing vegetation
- Provide an aesthetically pleasing building design
- Minimizing noise impacts during store operations
- Installation of berms and sound barriers

Outdoor Display

Lowe's incorporates an outdoor Garden Center area for their store. This area immediately east of the building and is a fenced in enclosed area with racking, and shade structures. Displayed in this area are plants, fertilizer, and other bagged goods, topsoil, fencing, stone, mulch, sheds, pavers, grass seed, playground equipment, pipe and other exterior type materials. The vegetation is set in the center area with bagged goods around the perimeter. The rear portion of the Garden Center displays fencing and other similar products. Screening is accomplished by enclosing the area with a black chain link and decorative aluminum fencing. There are times when products or materials are displayed outside. These areas are under the canopies or immediately in front of the Garden Center. The sidewalk in these areas is wide enough to allow for the display of plants, pavers, lawn equipment, and other similar materials without infringing upon the pedestrian access, vehicle access and the fire lane around the building.

Signage

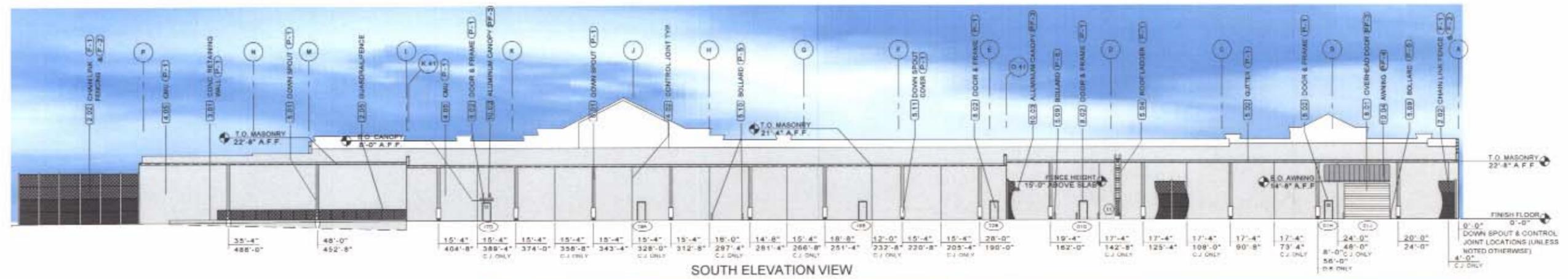
Signage for the proposed Lowe's Home Improvement Center includes both building mounted wall signs and a freestanding pylon sign. There are three building mounted signs along the southern or front building face of the building, one signifies the main entrance the other two directs customers to the garden center and lumber yard. The freestanding sign is located along the Route 20 frontage at the eastern most driveway. This will be brick encased with a Lowe's logo placed at the peak. Details for the proposed signage are shown on Figure 6.03 and on drawing 3717-15 in Appendix "A" The size and location of the proposed signage will have no significant visual impact.

Building Aesthetics

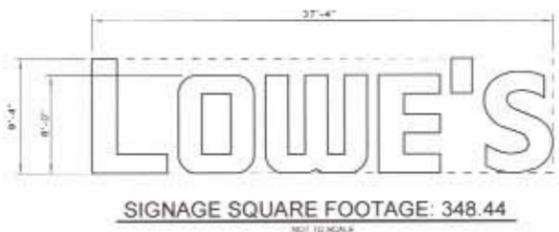
The applicant is aware of the fact that the project is located adjacent to residential neighborhoods to the west, north and east of the property and is willingly providing building facades that are compatible to both the surrounding commercial corridor and the residential neighborhood. To that



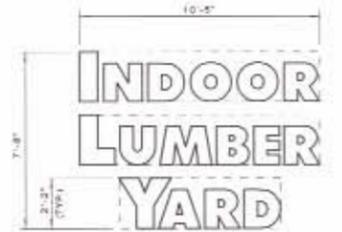
NORTH ELEVATION VIEW



SOUTH ELEVATION VIEW



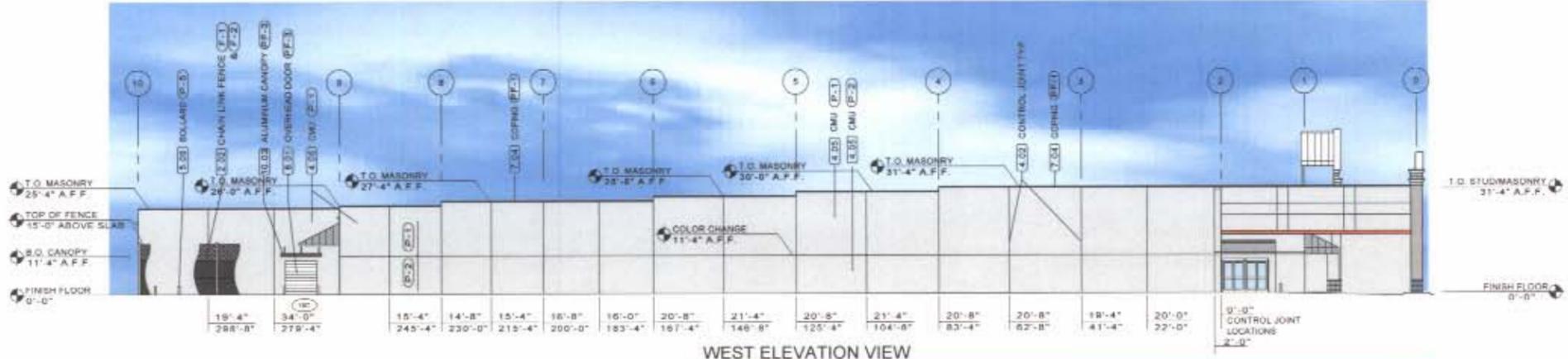
SIGNAGE SQUARE FOOTAGE: 348.44



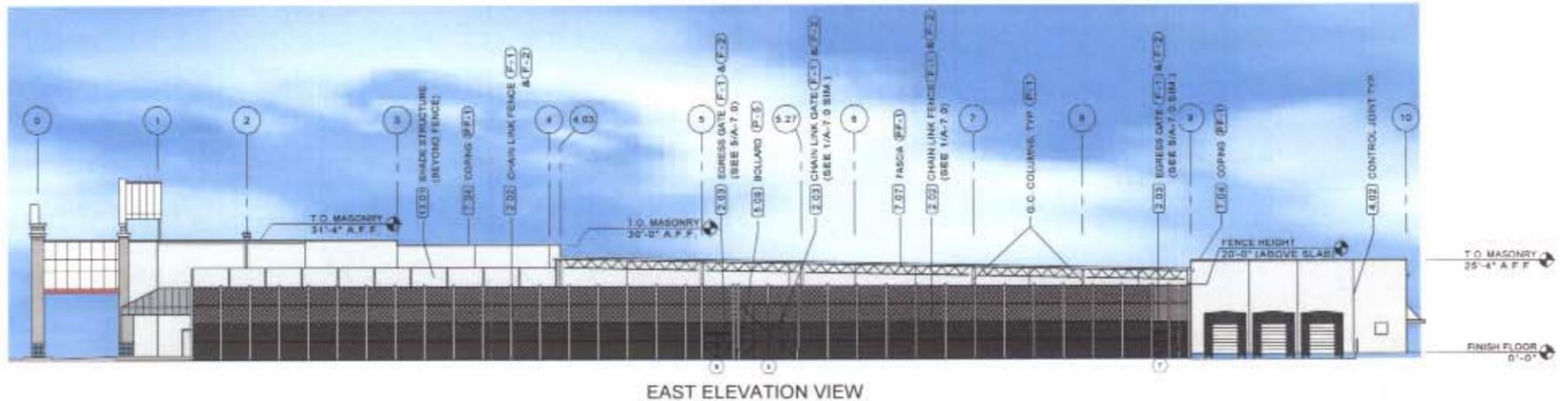
SIGNAGE SQUARE FOOTAGE: 60.11



SIGNAGE SQUARE FOOTAGE: 44.06



WEST ELEVATION VIEW



EAST ELEVATION VIEW

LOWE'S
HOME CENTERS, INC.
P.O. BOX 111717 • HUNTSVILLE, TN 38411

REVISIONS	
DATE	DESCRIPTION

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BUILDING ELEVATIONS
LOWE'S OF HAMBURG, NY
SOUTHWESTERN BOULEVARD
HAMBURG, NEW YORK

PROJECT NO. 3717 DRAWN BY: D.L. CHECKED BY: J.P.P.

ORIGINAL
ISSUE DATE: JUNE 2007
PERMIT SET
ISSUE DATE
CONSTRUCTION SET
ISSUE DATE
DRAWING NUMBER

FIG 6.03

end, the applicant has proposed that the buildings be constructed of masonry facades with parapet walls to hide rooftop air handling units. See Figure 6.03 for detailed elevations of the proposed Lowe's Home Improvement Center of Hamburg New York.

Lowe's Home Improvement Warehouse for the Town of Hamburg is a one-story masonry building with overall dimensions of approximately 456 feet wide and 356 feet deep. A Garden Center area which is approximately 115 feet wide by 275 feet deep and is immediately along to the easterly side of the building. The building height varies from approximately 31 feet the top of the masonry along the front corner to 25 feet at the rear corner of the building. Gabled peaks are evident over the major entrances to the facility and reach to a maximum height of 48 feet at the main entrance. Materials comprising the exterior of the proposed Lowe's building include, black coated chain link fence; scored, split faced, and smooth concrete masonry units; steel tubes; metal gutters, fascia and standing seam roof systems; medallions, cornice moldings and architectural elements composed of exterior insulation and finish system; metal overhead doors; and aluminum and glass store front systems. Colors include a variety of grays, beige, tan, white and black; with red and blues intermixed for accenting and detailing. Black chain link fencing will enclose a portion of the Garden Center.

As part of this DEIS, the applicant has looked at multiple options for the appearance of the Lowe's building. Attached are photos and elevations of some design alternatives. (See Appendix H) The photos depict the most recent stores to open in the northeast including Littleton, New Hampshire, Gilford New Hampshire and Cicero New York. The elevations depicted represent options that could be considered during future reviews for this development.

The applicant has also included photos of the Lowe's of Gaithersburg Maryland. The Gaithersburg store was part of a larger shopping center complex, which had a unifying theme for all of the stores within the shopping center. The installation of the columns gives the building a colonial look. It should be noted that this store also has visibility on both front and rear. The Hamburg location will be difficult to see from any view except from the south or Southwestern Boulevard. (See Appendix "H")

The proposed development will include additional buildings along the frontage of Southwestern Boulevard. The buildings along the frontage will comply with the Town of Hamburg's Zoning

Code requirements for building size and height. These buildings are likely to be sold or leased to regional or national chains that may have a specific façade and look. Specific architectural and site layout details for the out parcels will be submitted to the Planning Board for review and discussion as they become available.

Morada Bay Associates and Lowe's Home Centers, Inc. are willing to work with the Town of Hamburg to come up with the architecture and materials that work functionally with the operational needs of Lowe's and mimic the predominate styles of other architecture found along Southwestern Boulevard while maintaining the Lowe's façade and trademark.

Certainly if written code design guidelines existed, the applicant would comply. The applicant will work in a collaborative manner to come up with materials and designs that are both acceptable to Lowe's and the Town so as to blend with the existing architectural examples that are in existence in the corridor.

Views

The views along all sides of the property were investigated and assessed. A Visual Assessment Study (Appendix "H") was conducted in which large brilliant balloons were placed at the corners and at the highpoints of the proposed Lowe's building. The balloons were raised to the proposed building height and then anchored in place. Photos were taken at various locations around the perimeter of the property. There was only one instance in which a balloon was visible. A marker balloon set 20 feet higher than the highest point of the Lowe's building and was visible from Southwestern Boulevard. Therefore the proposed Lowe's building should not have a significant impact on the views from the residential neighborhood. A photo simulation of the building from Route 20 is attached as Figure 4.02.

Lighting

A photographic lighting plan has been developed for the project. The lighting consists of 35-foot poles with 1000-watt metal halide fixtures. The analysis shows that the light levels at ground level will not spill over onto adjacent residential properties. The lighting plan is shown on drawing 3717-12 in Appendix "A".

6.5 Impacts to Transportation

A report entitled "Traffic Impact Study for the Proposed Lowe's, Town of Hamburg, New York" revised as of April 2007 was completed by SRF Associates and is attached under Appendix "G". The purpose of this report was to identify the potential traffic impact associated with this project. Included in the study is correspondence with the New York State Department of Transportation, projections from the Institute of Transportation Engineers (ITE), existing traffic counts from existing Lowe's stores, trip generation and distribution, intersection operations, site access and cross access, and pedestrian safety. Traffic counts were conducted and intersections have been studied. The following table summarizes the existing, proposed development and proposed development with mitigation levels of service for the studied intersections

**Table 6-2
INTERSECTION CAPACITY RESULTS**

Intersection	Existing		Full Development		Development w/ Mitigation	
	PM	SAT	PM	SAT	PM	SAT
Sowles/Route 75 (Westbound)	D	C	D	D	N/A	N/A
Route 20/Route 75	E	D	E	D	E	D
Route 20/Howard Road	B	A	B	B	N/A	N/A
Sowles Road/Route 20	B	A	B	B	N/A	N/A
Lowe's Main Dr./Route 20	N/A	N/A	-	-	B	B
Lowe's RIRO/Route 20	N/A	N/A	C	C	N/A	N/A
Route 75/Howard Road (Eastbound Left)	F	F	F	F	N/A	N/A
Route 20/Oregon Ave (Southbound Left)	C	D	F	F	C	C

Reference Table IV page 10 "Traffic Impact Study for the Proposed Lowe's, Town of Hamburg, New York" – SRF Assoc.
Levels of Service (Delays per vehicle in seconds): A (<10), B (10-20), C (20-35), D (35-55), E (55-80), F (>80)

Summary comments:

Sowles Road/Route 75: The increase in the level of service is less than three seconds. This is characteristic and no mitigation is recommended.

Route 20/Route 75: There are some decreased levels of service on some approaches. Traffic signal timings may need adjustment.

Route 20/Howard Road: Minor increases in the delay, still above LOS "C", therefore no mitigation.

Sowles Rd/Route 20: Minor increases in the delay, still above LOS "C", therefore no mitigation.

Lowe's Main Dr/Route 20: Long delays for southbound lefts, mitigation necessary.

Lowe's RIRO/Route 20: Operates at level of service "C", no mitigation necessary.

Route 75/Howard Road: Both eastbound and westbound lefts at LOC "F", NYSDOT - "Signal warrants not met"

Route 20/Oregon Ave: Improvement after mitigation, gaps created along Route 20.

A full explanation of the analysis is included in the traffic report in Appendix "G".

Truck traffic for the Lowe's Home Improvement Center averages approximately 10 trucks per day. There would be four FedEx/UPS type trucks, three 6-10 wheeler local deliveries and three over the road 18-wheeler trucks on any given day. Access will be from the main driveway on the eastern side of the site. Trucks sometimes stay overnight and do park on the site. There are no provisions for any type of long-term stay. If transient trucks are using the parking lot as a long-term truck stop, the store manager will kindly ask that the truck be removed. If there are no immediate results, then the manager will contact the Hamburg Police Department. The location of the driveways, on the outer perimeter, and the positioning of the loading docks, in the rear of the store, minimizes any potential conflicts with the internal circulation patterns.

There is adequate parking for the facility. The project includes parking for 787 vehicles. The required parking for the site including the outparcels is 773 vehicles (139,410 sf Lowe's + 15,000 sf outparcels = 154,410 sf x 1 space/200 sf = 773 spaces). The required parking space under Article XXXIII of the Town Code is 9 feet wide by 18 feet long. This is the minimum size in the proposed parking lot. Some parking spaces are 10 feet wide near the lumber sales area. Handicap spaces will be ADA compliant. Driving isles are a minimum 25 feet wide in the main parking field and 35 feet along the primary truck access routes around the perimeter of the property. There are many areas available for snow storage including the areas immediately adjacent to the parking lots and the stormwater management areas. Trucks will generally enter through the eastern driveway and proceed directly to the northeast loading docks for delivery. The trucks would then exit the site from the western driveway if they were continuing west or the easterly driveway if they were heading east. The same movements would apply to vehicle traffic only vehicles would be parking in the main parking field in the front of the store. Generally there are very few customers who visit

a Lowe's who do not arrive by car. Most of the pedestrian traffic are customers traveling from their car to the store and back.

6.6 Impacts on Energy

Representatives from National Grid, the local electrical energy supplier and National Fuel, the natural gas supplier have been contacted and they have confirmed that their facilities have adequate capacity for the development.

6.7 Noise and Odor Impacts

A full and complete noise study has been completed for the project, "Noise Impact Assessment for Lowe's Home Improvement Warehouse Hamburg New York" dated 11 December 2006 was prepared by Resource Systems Group, Inc. and is included in Appendix "I" of the DEIS. The noise analysis was patterned after Chapter 175 of the Town Code of the Town of Hamburg and NYSDEC Program Policy "Assessing and Mitigating Noise Impacts" (DEP-00-01). Background noise levels were recorded at the site October 18 and 19, 2006. These levels were added to known noise levels generated by a Lowe's store. The modeling results showed that some of the Lowe's operational sources met the 60dBA maximum threshold, which could impair sleeping. Therefore, mitigation is necessary. The construction of sound walls and/or earthen berms is the preferred mitigation approach.

Odor impacts from dumpster locations are not significant. Dumpsters used at the Lowe's facility are self-contained and are not open to the atmosphere. Generally foul odors are associated with emissions from organic compounds such as food waste. Due to the nature of the waste materials and the use of sealed compactor/storage units, there is no potential for significant odor impacts from Lowe's. Impacts from trucks idling will be minimized because the source of the odor is well away from the surrounding residential area and any odors will be diluted to very low levels by natural dispersion before impacting residential areas. Additional discussions on this topic are included in "Air Quality Impact Assessment" prepared by F-E-S Associates in Appendix "I"

If a restaurant becomes a potential use of the outparcels a through review of their waste handling procedures will be conducted.

6.8 Impacts to Public Health and Safety

The development of the Lowe's Home Improvement Center will not pose a threat to the public health and safety. Similar to the odors emanating from dumpster locations, rodents will not be a significant detrimental issue at the Lowe's store. Rodents are typically associated with food waste. Lowe's waste materials are typically inorganic waste materials. These wastes are placed in sealed compactor/storage units, therefore the potential for rodents presenting a significant impact are very remote.

Stormwater management areas will be constructed on-site. These areas will retain stormwater to provide adequate water quality volumes as recommended by the New York State Stormwater Management Guidelines. Mosquitoes are prevalent in shallow stagnant water sources. The stormwater management areas that are proposed will be a minimum of four feet deep. This will provide a natural habitat for predators. The storm sewers will have steep slopes that will prevent ponding in pipes and emergent vegetation will be removed from the management areas annually to prevent the establishment of breeding areas. Mosquitoes will be controlled with the implementation of these activities.

6.9 Impacts to the Growth and Character of the Community

Excerpts from the Town of Hamburg 2010 Comprehensive Plan 1997 Master Plan Update:

Regional Commercial Areas

Page 78: "The commercial corridor is expanding onto Southwestern Boulevard (U.S. Route 20) to the east and west of its intersection with Camp Road (NYS Route 75). A large part of this expansion is moving easterly toward the intersection of Howard Road..."

"This commercial base is very important to the Town, and a steady growth is necessary to stabilize part of the tax base of the Town"

Recommendations

Page 87: "To keep pace with the needs of an aging infrastructure, federal and state mandates, needs and demands for services, and inflation, the town will need steady, quality growth.

"Residential development itself cannot increase the Town's assessment to keep pace of inflation and other increased costs. A well balanced mix of residential, commercial, and industrial growth is essential to help stabilize taxes."

Page 95: "Southwestern Boulevard/Sowles Road, Careful consideration to rezoning land on the northside of Southwestern Boulevard (U.S. Route 20) from Camp Road (NYS Route 75) east to Howard Road to commercial uses (conform with existing uses and zoning on the south side of Southwestern Boulevard)"

Based on the above excerpts and the review of the Goals and Objectives of the Comprehensive Plan in Section 2 of this DEIS – Conformance with the Master Plan, this proposal fits the Town's Comprehensive Plan.

Additional transformation from residential to commercial uses could be expected along the Southwestern Boulevard corridor. The transformation of sporadic residential use to service or retail type uses has already been identified in the Comprehensive Plan. The change of this particular property from a mix of residential and commercial uses to strictly a commercial use will not effect the residential uses immediately adjacent to the site. The large buffer area and the access to the residential properties along Cumberland, Heatherwood and Dogwood would not make these properties attractive for commercial use. Therefore a substantial change in the surrounding neighborhood would not be anticipated.

The Lowe's building has been located on the site to minimize any potential adverse impacts to their neighbors. There are substantial buffers on all sides of the building. Truck delivery areas are located in the northeast corner of the building and earthen berms and sound barrier walls will surround the dock area. Impacts to the residences from odors and noise are addressed previously in this Section. The perimeter of the site will remain undisturbed. Vegetation will be placed around the perimeter of the disturbed areas to supplement the existing trees and shrubs.

The proposed project is consistent with the existing zoning. A portion of the project site is presently zoned C-2 General Commercial. One could make the argument that this proposal is an extension of the existing district to encompass the whole property. The present commercial use on the property also makes this proposal very feasible. Relief from some of the zoning requirements will be necessary for this project. A full discussion of these requirements are described in Section 2 of this DEIS. Relief from parking and building height requirements are contingent upon a decision from the Town Building Department. Relief from some of the conditions of the sign ordinance will be based on the scale of the development and the large setbacks. The request for a Special Permit will be based on the scale of the building, the need to remain competitive and the nature of the business. Home improvement retailers store, display, inventory materials and products that are typically larger than most products. Therefore a larger building is needed to enclose the products. A gallon of milk takes up less space than a bag of topsoil.

This project will have minimal effect on the neighborhood and future development in the area after taking into account the Comprehensive Plan, zoning and existing land use. The extensive wooded buffers along with the scale of the project, makes this development very attractive for a commercial use. There exists many smaller commercial buildings on smaller lots with little or no buffering that will appear much more intense than this proposal. The project is in general conformance with the Comprehensive Plan, is an extension of an adjacent zoning district, and the project is consistent with existing land uses in the area; for these reasons, this proposal is a good one. Detailed discussions on the potential growth for other developments are included in Section 13 - Growth Inducing Impacts.

Community services will be impacted only slightly after the development of the Lowe's Home Improvement Center. Police and other emergency services will have slightly greater demands due to the additional traffic that would be associated with the project. There would be one additional motor vehicle accident every three years associated with this proposal. Emergency vehicles will have adequate access to the site with sufficient room to maneuver. At the time of publication of this DEIS, contact has been made to the ambulance company and they have concurred that they possess adequate capacity to serve this development.

Employment associated with the Lowe's Home Improvement Center will consist of:

400 +/- people during the construction of the facility for 9 months

175 positions for store operations (75% full time, 25% part time)

Annual payroll \$5.9 million

Benefits (15-30%) \$1.3 million

It is anticipated that local labor would be filling these positions.

7.0 Proposed Mitigation Measures

The following mitigation measures will be implemented by the Applicant to mitigate against any detrimental environmental impacts.

7.1 Mitigation to Land

Mitigation to the land disturbance will be from construction measures including:

- Disturbing only those areas needed for the construction of the building and parking lots
- Balancing the cuts and fills on site to limit hauling or importing soil
- Reestablishment of vegetation as soon as possible
- Implementation of Lowe's National Storm Water Pollution Prevention program, which including silt fence, diversion swales, slope drains, inlet protection, sedimentation ponds, permanent and temporary stabilization measures, and permanent and temporary structural practices. Details of the program are included in Appendix "F" and illustrated on the drawings 3717-9, 10, 17 of the drawings in Appendix "A"
- There are no archeological resources anticipated for the project. Therefore, no mitigation is necessary. See "Phase I Cultural Resources Report" by NEA in Appendix "K"
- There are no major environmental concerns with the properties as reported as part of the Modified Phase I Environmental Site Assessment by Evergreen Consulting in Appendix "M"

7.2 Mitigation to Water Resources

- Storm drainage mitigation measures include: (Appendix "K")
 - Storm sewer system to control drainage of the parking lots, buildings and impermeable surfaces
 - Stormwater management areas to control water quantity and quality discharged downstream. Discharge rates are less than the existing discharge rates
 - Reduction of runoff volumes to residential properties to the north and west of the site
- Wetland mitigation measures
 - Minimize the wetland area impacted by the proposed construction
 - Provide an off-site wetland mitigation replacement area
- Floodplains
 - Minimize the floodplain area impacted by the proposed construction

- Provide on-site floodplain replacement areas
- Set building grades above the estimated base flood elevation
- Water Supply
 - Construct improvements to the water supply system by replacing a watermain along Southwestern Boulevard from Sowles Road to the site and construct a 200' bypass main just west of Sowles Road at a meter location.
- Wastewater
 - Adequate capacity exists, relocation is necessary for a portion of the sewer that parallels Waterfalls Village Creek

7.3 Mitigation of Air Impacts

- Limit the idling of trucks
- Dust control during construction including watering and stabilized construction entrances

7.4 Mitigation for Aesthetic Resources

- Landscaping and Buffers
 - Provide vegetation replacement including trees, shrubs, berms and ground covers
 - Maintain the undeveloped condition of the side and rear buffer areas
 - Minimize any incursions into the wooded buffer areas
 - Provide an easement, or any other agreeable device to maintain the buffer areas for perpetuity
- Outdoor Display
 - Minimize outdoor storage of materials
 - Maintain a visual screen around any materials stored outside
- Signage
 - No significant visual impact, no mitigation proposed
- Building Aesthetics
 - Applicant will work with the Town to come up with a design that is acceptable to all
 - Maintain a variety of textures, shapes, materials and colors to break up the façade
- Views
 - No significant visual impact, no mitigation proposed
- Lighting

- Utilize cutoff fixtures to keep light from spilling onto adjacent properties

7.5 Mitigation for Transportation Impacts

- Traffic signal timing adjustments at Route 20/ Route 75 intersection. (Southwestern Boulevard and Camp Road)
- A easterly site driveway with one lane entering and two lanes exiting
- An exclusive left turn lane of 275 feet long eastbound at the easterly site driveway.
- Install a new multi-phase three-color traffic signal at the easterly site driveway.
- Construct a westerly right turn lane at the easterly site driveway with 350 feet of storage and a 75-foot taper section.
- Construct a westerly site driveway allowing right –in and right-out only.
- Install a sidewalk connection between the existing sidewalk along Southwestern Boulevard and the outparcels

7.6 Mitigation for Energy Resources

- No significant impact, no mitigation proposed

7.7 Mitigation for Noise and Odor Impacts

- Construction of sound barrier walls and earthen berms
- Prohibit the discretionary use of truck horns
- Limit deliveries to between 5:00 am and 11:00 pm.
- Provide adjustable back-up alarms for trucks and forklifts
- Provide no truck idling areas
- Use sealed compactor/storage devices

7.8 Mitigation for Public Health and Safety

- Implement transportation mitigation measures to limit motor vehicle accidents
- Construct stormwater management areas to discourage the breeding of mosquitoes
- Use sealed compactor/storage devices

7.9 Mitigations for Growth and Character of the Community or Neighborhood

- No significant impact, no mitigation proposed

8.0 Project Alternatives

This section of the DEIS is intended to describe reasonable alternatives to the proposed action that are feasible considering the objectives and the capabilities of the project sponsor. The description and evaluation of these alternatives are provided for the reviewer to make a reasonable comparative assessment.

8.1 No Action

The discussion of the "No Action" alternative is intended to appraise the adverse or beneficial changes that are likely to occur in the foreseeable future if the proposed action was not undertaken.

Leaving the site in its present condition will result in the loss of benefits to the public. The loss would include the loss of a broader range of goods and services, property and sales tax revenues, short term and long-term employment opportunities. There will also be a loss in revenues to the present owners and the Applicant in the selling, leasing and/or renting the property. The property owners will also have to continue to expend their resources in paying property taxes on underdeveloped property.

If the site were to stay in its present condition, there would be no adverse environmental impacts. Benefits would include the absence of additional traffic, retention of undeveloped sites, retention of vegetation, and avoidance of potential erosion during construction on the site, and no increase in the noise, illumination or energy/fuel demand.

8.2 Alternative Developments

The scoping outline adopted by the Town Board has required that the DEIS evaluate alternative developments including, if the property were to be developed as presently zoned, and a development of an alternative size and mix of uses.

8.2.1 Developed "As Zoned"

Existing zoning of the project boundary consists of three separate zoning districts single-family residential, multifamily residential and general commercial. If the property were to be developed

as zoned, the project site could consist of approximately 80 single-family residences, 3 multi-family residences and commercial development estimated of up to 25,000 square feet. A conceptual site plan of this proposed development has been included as Figure 8.01.

Potential impacts to the land if this alternative were to be employed will include additional streets, buildings, driveways and parking lots that will eliminate most if not all, of the proposed wooded landscaped buffer around the perimeter of the site and increase the imperviousness of the land surface. Erosion control measures and other construction techniques would be implemented to mitigate against impacts during the construction process.

Stormwater management designs will need to be developed to address the additional runoff that would be associated with this alternative layout. Additional stormwater detention would be necessary to mitigate the increased amount of stormwater. Water consumption and wastewater generated by the residential uses would be much greater than what is associated with the Lowe's development. The municipally owned and operated water and wastewater systems would need to be extended to adequately supply these uses.

Air quality degradation would not be considered significant with the "As-Zoned" alternative.

Impacts to aesthetic resources will be considerable. The landscaping requirements for residential uses are not specifically spelled out in the Code of the Town of Hamburg. The side yard buffers that are associated with a residential attached zoning district allow for the building setbacks of 10 ten feet, which is noticeably much less than the Lowe's building setback of more than 262 feet. The smaller side yard setback and the associated elimination of a wooded buffer area will have a dramatic negative impact to the neighbors from views of adjacent homes and the associated sounds, lighting and traffic from driveways and streets. The neighbors will not be impacted by the outdoor storage of materials building mounted signs and building elevations from the commercial development and site lighting associated with the Lowe's Home Improvement Center.

Analysis shows that new trips would be less with the "As Zoned" alternative. Weekday peak hour traffic would be about 50 vehicles less and 190 trips during the Saturday peak hour. (See Appendix "G") The primary difference between the current proposal and the "As Zoned" proposal would be that any proposed connection to Route 20 would not likely meet the warrants for a traffic signal.

The "As Zoned" alternative could add additional driveways access points to Route 20 which would be a detriment to the traffic operations in the area. Traffic impacts for the "As Zoned" alternative would not be considered significant and mitigation would not be necessary.

Energy, noise and odor impacts associated with the "As Zoned" alternative would be consistent with residential development. Existing gas and electric systems should have adequate capacity for the "As Zoned" alternative. Noise and odors effects for this alternative would be similar to what one may expect from other residential uses.

Public health and safety would not be deteriorating appreciably, under this alternative. Mitigation would not be necessary.

Negative impacts to the growth and character of the community or the neighborhood if implementation of the "As Zoned" alternative were to occur, would not be substantial. The "As-Zoned" proposal generally follows the Town of Hamburg Comprehensive Plan, which suggests that this area remain a mixture of residential and commercial uses.

The scoping document asked if there were a size of Lowe's that would fit without the need of a Special Permit. The Lowe's Home Improvement Warehouse that has been proposed is approximately 139,410 square feet. A Special Permit is needed for any building over 100,000 square feet. The smallest prototype store that Lowe's builds is approximately 111,348 square feet. Therefore the Applicant cannot reduce the size of the building that would be below the limits as set by the Special Permit requirements, while still maintaining the Lowe's Home Improvement Warehouse as part of the development. The 139,410 square foot store was chosen by Lowe's Home Improvement Centers, Inc. based upon the infrastructure, demographics, trade area, region, market, projected sales, site area and competition. Any other size store would not be feasible or as successful.

Morada Bay Associates, LLC. has never managed or developed a primarily residential use property. Further, this alternative does not meet the objectives of the Applicant. Therefore for these reasons this alternative development would not be a feasible for this proposal.

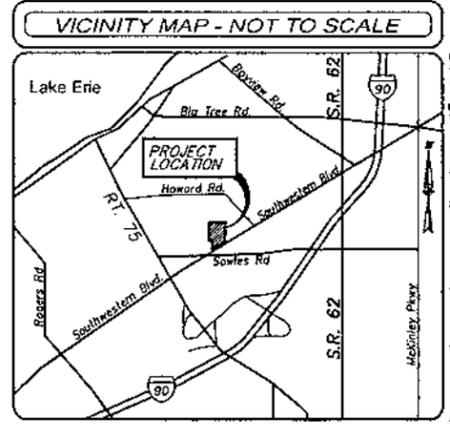
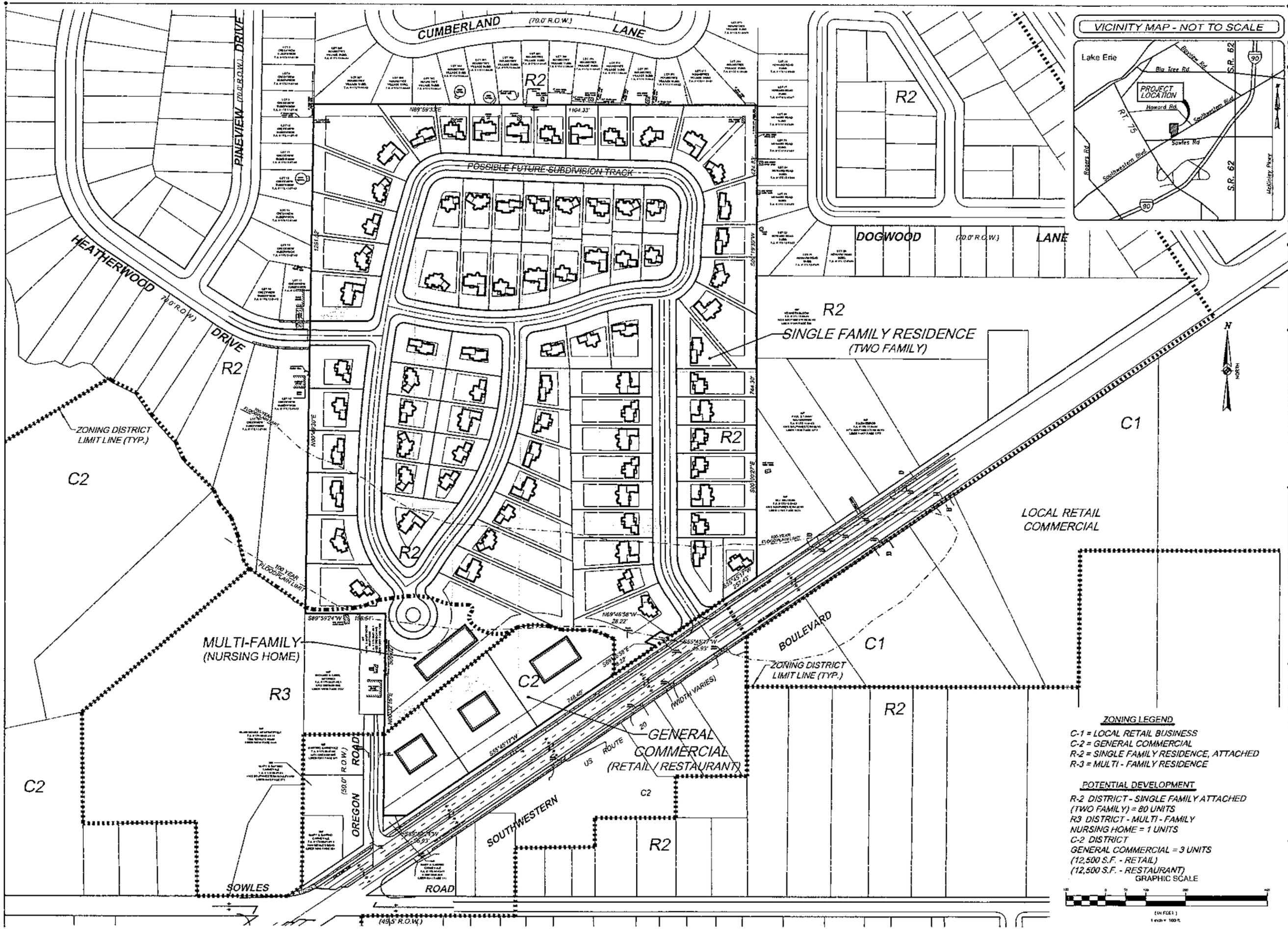
8.2.2 Alternate Mix of Uses

It should be pointed out that a development that does not include a prototypical Lowe's Home Improvement Warehouse would not meet the objectives of the Applicant. Thus, according to SEQRA, the Applicant is not required to consider such a use of the property.

The existing zoning allows for other uses that could be undertaken on the site. The R-2 zoning classification also allows uses that are permitted in an R-1 district, two-family dwellings, and attached single-family dwellings. The R-3 classification allows uses that are permitted in the R-2 classification, multifamily dwellings or condominiums, dwelling groups, hospitals or religious institutions, nursing homes, dormitories and nursery schools when issued a special permit. General commercial districts allow for uses allowed in the C-1 neighborhood commercial district, retail sales, eating or drinking establishments, boats or marine sales, laundry plants, custom shops, warehouses, billiards, dairies, wholesale sales, commercial swimming pools, drive-in restaurants, theaters, golf driving ranges, building material supply, utility storage, small animal hospitals, machine sales, storage and sales of solid fuel, storage and sale of feed for livestock, private rental facilities, and the following uses after issuance of a special permit; permitted uses greater than 100,000 square feet, nursery schools, new or used motor vehicle sales, terminals for local trucking operations, commercial car washes, filling stations, public garages.

The "Mix of Use" alternative provides for the other types of development within the existing zoning classifications on the site. The "As Zoned" alternative assumed that the R-2 area would be developed as single family dwellings, the "Mix of Use" alternative would change this assumption to a two family dwelling. In the "As Zoned" alternative it was assumed that the R-3 district area were to be developed as multi-family dwelling units, under the "Mix of Use" alternative a nursing home was used as a potential different use. In the existing C-2 district, we have modified the use from strictly retail to a mix of smaller retail and restaurants. Based upon these changes in the types of use, the following impacts and mitigation measures would be anticipated. (See Figure 8.02)

Impacts to the land if this alternative were to be employed would include additional streets; two-family, restaurant and nursing home buildings; driveways; and parking lots which will eliminate most, if not all, of the proposed wooded landscaped buffer around the perimeter of the site and



LOWE'S HOME CENTERS, INC.
 P.O. BOX 1111 | HAMBURG, NY 14094

REVISIONS		DATE	DESCRIPTION
1	PRELIMINARY		
2	ISSUE DATE		
3	POST BID SET		
4	ISSUE DATE		

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ALTERNATIVE DEVELOPMENT
 ALTERNATE MIX OF USES
 LOWE'S OF HAMBURG, NY
 SOUTHWESTERN BOULEVARD
 HAMBURG, NEW YORK

PROJECT NO. 3011 | DRAWN BY: D.J.L. | CHECKED BY: R.P.

ZONING LEGEND
 C-1 = LOCAL RETAIL BUSINESS
 C-2 = GENERAL COMMERCIAL
 R-2 = SINGLE FAMILY RESIDENCE, ATTACHED
 R-3 = MULTI-FAMILY RESIDENCE

POTENTIAL DEVELOPMENT
 R-2 DISTRICT - SINGLE FAMILY ATTACHED (TWO FAMILY) = 60 UNITS
 R3 DISTRICT - MULTI-FAMILY NURSING HOME = 1 UNITS
 C-2 DISTRICT GENERAL COMMERCIAL = 3 UNITS (12,500 S.F. - RETAIL) (12,500 S.F. - RESTAURANT)
 GRAPHIC SCALE

1" = 100 FT.

ORIGINAL
 ISSUE DATE: JUNE 2007
 PERMIT SET
 ISSUE DATE:
 CONSTRUCTION SET
 ISSUE DATE:
 DRAWING NUMBER:
FIG 8.02

increase the imperviousness of the land surface. Erosion control measures and other construction techniques would be implemented to mitigate against impacts during the construction process. Stormwater management designs will need to be developed to address the additional runoff that would be associated with this alternative layout. The more intense development under the "Mixed Use" alternative would require that even more stormwater detention volumes to mitigate the increased amount of stormwater. Water consumption and wastewater generated by the two-family residential uses would be much greater than a single-family dwelling. The municipally owned and operated water and wastewater systems would need to be extended to adequately supply these uses. Additional capacity would be needed in the water and wastewater systems to service these more intense uses.

Air quality degradation would not be considered significant with the "Mix of Use" alternative.

Impacts to aesthetic resources will be considerable. The side yard buffers that are associated with a residential attached zoning district allow building setbacks of 10 (ten) feet, even for two-family homes. The relatively small side yard setback and the associated elimination of a wooded buffer area will have a dramatic negative impact to the neighbors from views of adjacent homes and the associated sounds, lighting and traffic from driveways and streets.

Traffic impacts will vary on the time of day (weekday, Saturday, Sunday, peak hour) and the type of facility. (retail, specialty retail, sit down restaurant, high end restaurant, drive-up restaurant) Additional new trips would be expected with the "Mix of Use" alternative, but still somewhat lower than the Lowe's development. Trip Generation rates are as follows:

Table 8-1

TRIP GENERATION RATES

Land Use (Code)	Weekday Trips	Saturday Trips
Single Family Residence (210)	1.01/unit	0.94/unit
Residential Condominium/Townhome (230)	0.52/unit	0.47/unit
Congregate Care Facility (253)	0.17/unit	Not Available
Specialty Retail (814)	2.71/1000 sf	42.04/1000 sf
Restaurant, High Turnover Sit Down (932)	10.92/1000 sf	20.00/1000 sf

"Trip Generation" (7th Edition) Institute of Traffic Engineers

Energy, noise and odor impacts associated with the "Mix of Use" alternative would be consistent with residential development. Existing gas and electric systems should have adequate capacity for the "Mix of Use" alternative. Noise and odors effects for this alternative would be similar to what one may expect from other residential uses. Restaurant uses may have an impact on the odors experienced by the neighbors.

Public health and safety would not be deteriorating appreciably, under this alternative. Mitigation would not be necessary.

No substantial negative impacts to the growth and character of the community or the neighborhood, if implementation of the "Mix of Use" alternative were to occur. The "Mix of Use" proposal generally follows the Town of Hamburg Comprehensive Plan, which suggests that this area remain a mixture of residential and commercial uses.

8.2.3 Alternate Sites

The scoping document asked that the Applicant consider alternative sites for the proposed development. The Applicant responded in a letter to the Town Board on November 28, 2006. (Appendix "D")

The Applicant looked at seven other potential sites as requested by the Town. These sites included:

- Leisure Land – Camp Road
- South Shore Golf Course
- Camp Road North of Southwestern Boulevard
- South Park Avenue – Vacant Retail Plaza
- Camp Road Across from the Holiday Inn
- Camp Road at Scranton Road
- Briarwood Plaza – Southshore Plaza

All of these sites were eliminated for the potential Lowe's Home Improvement Warehouse development for one or more of the following reasons: access, safety, environmental concerns, not

willing to sell, size (acreage), frontage, visibility, rezoning, infrastructure, adjacent uses, road capacity, wetlands, demographics, traffic counts, etc.

Paragraph 617.14(f)(5) specifically states that for private applicants, alternatives may be limited to sites, which they own or have under option. None of the above referenced sites are owned or are under option by the Applicant.

Conclusion

The development of the Lowe's Home Improvement Warehouse at this site is an acceptable proposal based upon the other alternatives that are available. There are many alternatives for the development of the site including "No Action", "As Zoned" and other "Mix of Uses". The "No Action" alternative will result in the loss of tax revenues and employment opportunities. The "As Zoned" and the "Mix of Uses" alternatives will seriously impact the wooded buffer and increase the imperviousness of the land surface. The proposal for the Lowe's project minimizes the environmental effects of the development while mitigating any adverse impacts.

9.0 Temporary and Short-term Impacts

Temporary and short-term impacts associated with the Lowe's Home Improvement Warehouse project are primarily associated with the construction phase of the project. During the construction phase of site development projects, impacts occur to the land, water and air. Vegetation removal and earthmoving activities affect the land, erosion affects the water resources and stormwater management systems, and dust generation impacts air quality.

In order to mitigate against these short-term impacts the following activities will be implemented during construction:

- Stabilized construction entrances
- Construction barriers around features to be preserved
- Stormwater and erosion control measures to be installed
- Control dust by watering, vegetation cover and mulch
- Prepare a staging area
- Clear and grub for water diversion and sediment basins
- Continue clearing and grubbing
- Stockpile topsoil
- Grade the site
- Install utilities
- Stabilize pavement areas with stone or gravel subbase
- Construct buildings
- Fine grade pavement areas, topsoil and seed grass areas, install plants and landscape materials
- Paving the site
- Remove sediment from the basin

The Lowe's National Stormwater Pollution Prevention Program is included in Appendix "F" and describes the activities to be undertaken to mitigate impacts during the construction phase. Also see the Erosion and Sediment Control Plan (Sheets 3717- 9 and 10) of the drawing set in Appendix "A".

10.0 Cumulative Impacts

The scoping document included that an analysis be completed on the cumulative impacts associated with this and other proposed developments in the area. An analysis of the traffic impacts between the proposed Wal-Mart and the Lowe's Home Improvement Warehouse should be discussed.

The developments that are currently under review or previously approved by the Town of Hamburg in the area of this development included:

- Wellington Woods Subdivision (54 single family homes)
- Treehaven Subdivision (90 single family and 43 patio homes)
- Woodstream Estates (85 single family homes)
- Wal-Mart store Southwestern Boulevard west of Camp Road

Traffic volumes and distributions for all four of these developments were included in the Traffic Impact Study conducted for this development. (See Appendix "G")

Other developments included the proposed North Forest Office Providers on Southwestern Boulevard near the Maplewood Apartments. This development included 171,500 square feet of office space with 624 parking spaces.

The accumulation of all of the impacts associated with these developments along with the proposed Lowe's will have little environmental impact on the land, water, air, aesthetic resources, energy, noise and odor, public health and safety, and growth and character of the community or neighborhood. The primary impact would be the cumulative traffic impacts of the Wal-Mart and the Lowe's. This impact has been taken into account and the proposed transportation improvements under this project will mitigate against any adverse impacts. Refer to Sections 6.5 and 7.5 for transportation impact analysis and mitigation.

11.0 Adverse Environmental Impacts that Cannot be Avoided

Extensive thought and effort has gone into the design and planning of the proposed project. Exhaustive studies and detailed analysis have been completed to identify and mitigate the potential impacts associated with this project. The development team will make every effort to avoid or mitigate the potential impacts identified in this DEIS. These impacts and their potential mitigation were carefully considered. However, some potential adverse impacts cannot be avoided by use of reasonable, prudent mitigation measures. Included in this category are:

- Consumption of resources such as energy, building materials, fuel, and labor
- Removal of vegetation and the potential of soil erosion in the development area
- Altered site appearance
- Loss of on-site wetlands
- Increased traffic volumes on nearby roadways
- Illumination of the project site during hours of operation
- Loss of some under developed, residentially zoned property

Refer to the following DEIS sections for more details regarding unavoidable impacts:

Vegetation and Erosion Control

Information on the existing vegetation is discussed under Section 5.12 Ecology. Where possible, the existing vegetation will be left in its natural state. The landscaped buffers around the perimeter of the site will extend to a minimum of 200 feet. Erosion control is an integral portion of the Lowe's Stormwater Pollution Prevention Plan. Specifics of the erosion control plan are described in Section 7.1

Wetlands

Full assessments of the existing wetlands are described under Section 5.14 Surface Waters. The loss of on-site wetlands will be mitigated by the replacement of wetlands off-site at the Town Nike Base site. The Applicant is working with the Town Conservation Board and the Army Corps of Engineers on determining the jurisdiction determination on the delineated wetlands along with the desired wetland mitigation. The proposed wetland creation and mitigation will provide for an improved wetland environment over what currently exists today.

Traffic

The mitigation measures include lane widening, installation of a traffic signal and pavement marking modifications, which will compensate for the additional traffic, associated with the project. Discussion on the traffic impacts is explained in Section 6.5.

Illumination

Site lighting is discussed under Section 6.4. A photometric study has been completed and it has determined that through the use of cutoff light fixtures, the parking lot lights will not spill out onto adjoining residential areas.

12.0 Irreversible and Irretrievable Commitment of Resources

Even though the development of the Lowe's Home Improvement Warehouse will bring benefits to the Town of Hamburg and the surrounding community, some non-renewable, natural, or man-made resources be consumed or committed during the lifetime of the proposed project. These resources are considered irrevocable and permanently committed since their reuse for purposes other than the proposed development is either not possible or highly unreasonable.

The development of underutilized land would commit this area to their development uses. Some materials and energy consumed in the anticipated construction are irreversible and irretrievable obligations. Materials that may be permanently committed include steel, concrete, asphalt, block, brick, glass and other construction materials used to construct the buildings and the site improvements. The fuels used by the construction equipment will also be lost as well as the energy consumed by the facilities during the operation and maintenance of the Lowe's and outparcel buildings. The utilities and services that will be furnished for this development are opportunity costs that are dedicated and lost from being utilized for other projects or programs.

The capital expended for this development and the labor involved in the construction and maintenance of the proposed development are resources that are irreversible and irretrievable.

13.0 Growth Inducing Impacts

A project such as the Lowe's Home Improvement Center on Southwestern Boulevard will have a significant positive impact to the Town of Hamburg. The development of this project will greatly enhance the tax base for the Town of Hamburg. The property would be one of the few General Commercial properties large enough to support a major commercial retailer in the central portion of the Town.

The development of this home improvement center may stimulate the development of secondary associated uses such as banks, restaurants, coffee shops, pharmacies and other smaller commercial retail uses. It is unlikely that the project would provide a stimulus for additional retail development such as other centers and large stores, as most of the major retailers will be in the market after the project's completion. A Tractor Supply store has just recently opened near the northwest corner of South Park Avenue and Southwestern Boulevard.

Southwestern Boulevard is one of the foremost transportation arterials in the Town. The primary retail area in the Town is the McKinley Parkway/McKinley Mall area. Though it is not anticipated that the Applicant's development will induce development, it would not be unreasonable to assume that a small amount of accessory type users would continue to occur along Route 20.

It could be assumed that some residential growth could occur with the additional employment opportunities that would be generated by the Lowe's Home Improvement Center. Some of the store managers may be promoted from within the company and they may decide to relocate to the Town. This growth is considered minimal.

Water system off-site improvements are proposed for this project. These watermain improvements will not provide any new service to unserved lands. Therefore the enticement for additional development caused by the watermain improvements is not significant.

14.0 List of References

Code of the Town of Hamburg New York

6 NYCRR Part 617

The SEQR Handbook – New York State Department of Conservation

Town of Hamburg 2010 Comprehensive Plan (1997 Master Plan Update)

National Park Service, United States Department of the Interior
<http://www.nps.gov/archive/pevi/HTML/geology.html>

Soil Survey of Erie County, New York, United States Department of Agriculture, Soil Conservation Service (1978)

Site Plan Requirements – Town of Hamburg

Trip Generation (7th edition) - Institute of Traffic Engineers

APPENDIX A

Appendix A

Site Plans

3717-1	Cover Sheet
3717-2	General Notes Sheet
3717-3	Existing Survey
3717-4	Subdivision Plat
3717-5	Demolition Plan
3717-6	Site Plan
3717-7	Utility Plan
3717-8	Grading and Drainage Plan
3717-9	Erosion Control Plan - Phase I
3717-10	Erosion Control Plan - Phase II
3717-11	Landscape Plan
3717-12	Lighting Plan
3717-13	Lighting Schedule and Detail Sheet
3717-14	Detail Sheet
3717-15	Detail Sheet
3717-16	Detail Sheet
3717-17	Detail Sheet
3717-18	Detail Sheet

By: Costich Engineering
217 Lake Ave.
Rochester, New York 14608

Dated: March 23, 2007



HOME IMPROVEMENT CENTER SITE DEVELOPMENT PLANS

**TOWN OF HAMBURG
COUNTY OF ERIE
STATE OF NEW YORK**

INDEX OF DRAWINGS

<u>DRAWING NO.</u>	<u>DRAWING TITLE</u>
3717-1	COVER SHEET (SHEET 1 OF 18)
3717-2	GENERAL NOTES SHEET (SHEET 2 OF 18)
3717-3	EXISTING SURVEY (SHEET 3 OF 18)
3717-4	SUBDIVISION PLAT (SHEET 4 OF 18)
3717-5	DEMOLITION PLAN (SHEET 5 OF 18)
3717-6	SITE PLAN (SHEET 6 OF 18)
3717-7	UTILITY PLAN (SHEET 7 OF 18)
3717-8	GRADING AND DRAINAGE PLAN (SHEET 8 OF 18)
3717-9	EROSION CONTROL PLAN - PHASE I (SHEET 9 OF 18)
3717-10	EROSION CONTROL PLAN - PHASE II (SHEET 10 OF 18)
3717-11	LANDSCAPE PLAN (SHEET 11 OF 18)
3717-12	LIGHTING PLAN (SHEET 12 OF 18)
3717-13	LIGHTING SCHEDULE AND DETAIL SHEET (SHEET 13 OF 18)
3717-14	DETAIL SHEET (SHEET 14 OF 18)
3717-15	DETAIL SHEET (SHEET 15 OF 18)
3717-16	DETAIL SHEET (SHEET 16 OF 18)
3717-17	DETAIL SHEET (SHEET 17 OF 18)
3717-18	DETAIL SHEET (SHEET 18 OF 18)

VICINITY MAP - NOT TO SCALE



PREPARED FOR:
LOWE'S HOME CENTERS, INC.
HWY. 268 EAST, EAST DOCK
N. WILKESBORO, NC 28659
336.658.4000 (V) 336.658.3257 (F)



CIVIL ENGINEERING
LAND PLANNING
SURVEYING
217 LAKE AVENUE
ROCHESTER, NEW YORK 14609
(845) 459-3020



DATE
March 23, 2007

JOB NUMBER
3717-1 (SHEET 1 OF 18)

GRADING AND DRAINAGE NOTES

- 1. ALL EXISTING STRUCTURES, UNLESS OTHERWISE NOTED TO REMAIN, FENCES, TREES, ETC., WITHIN CONSTRUCTION AREA SHALL BE REMOVED...
2. ALL DRAINAGE STRUCTURES SHALL BE PRECAST.
3. ALL DRAINAGE STRUCTURES AND STORM SEWER PIPES SHALL MEET HEAVY DUTY TRAFFIC REQUIREMENTS AND BE INSTALLED ACCORDINGLY.
4. GENERAL CONTRACTOR SHALL NOTIFY ALL UTILITY COMPANIES HAVING UNDERGROUND UTILITIES ON SITE PRIOR TO ANY EXCAVATION...
5. SITE GRADING SHALL NOT PROCEED UNTIL APPROPRIATE EROSION CONTROL MEASURES HAVE BEEN INSTALLED.
6. AFTER PERMITS HAVE BEEN OBTAINED AND EROSION CONTROL MEASURES INSTALLED, THE CONTRACTOR SHALL GRADE SURROUNDING PAD, GARDEN CENTER & APPROX. TO +/- OF SUBGRADE AS PER SECTION 0200 DIVISION 2 OF LOWE'S STANDARD SPECIFICATIONS.
7. IMMEDIATELY APPLY A CONTACT STONE BASIC FOR BUILDING PAD TO +/- OF FLOOR TO ENCASEMENT INTERIOR & PERIMETER FOOTING.
8. FRESH GRADE SHALL BE INSTALLED & DIRECTED BY THE GEOTECHNICAL ENGINEER OR AS SHOWN ON PLANS.
9. GENERAL CONTRACTOR SHALL PROVIDE 2" x 8" BRICK CONCRETE APRON AT ALL CLEARANCES OUTSIDE OF BUILDING.
10. ALL WORK SHALL BE DONE IN STRICT ACCORDANCE WITH DIVISION 2 OF LOWE'S STANDARD SITE SPECIFICATIONS.
11. ALL ROOF DRAINS TO BE REMOVED SHALL END & DISCHARGE THE WASTEWATER AS SHOWN ON PLAN AND SHALL BE PROVIDED WITH A REMOVABLE PLUG AT THE END.

EROSION CONTROL NOTES

- 1. LAND DISTURBANCE ACTIVITIES SHALL NOT COMMENCE UNTIL APPROVAL TO DO SO HAS BEEN RECEIVED BY THE EROSION CONTROL AUTHORITY.
2. THE GENERAL CONTRACTOR SHALL STRICTLY ADHERE TO THE STORAGE AND EROSION PREVENTION PLAN (SWPPP) AND CONSTRUCTION EROSION CONTROL PLAN.
3. NO LAND CLEARING OR GRADING SHALL BEGIN UNTIL ALL PERMITS AND STORAGE AND EROSION CONTROL MEASURES HAVE BEEN INSTALLED.
4. ALL EXPOSED AREAS SHALL BE SEED OR SPECIFIED WITHIN 14 DAYS OF FINAL GRADING.
5. SHOULD CONSTRUCTION STOP FOR LONGER THAN 14 DAYS, THE SITE SHALL BE KEPT AS SPECIFIED.
6. SEEDING AND EROSION CONTROL MEASURES SHALL BE PERFORMED AT LEAST EVERY SEVEN (7) DAYS AND WITHIN 14 HOURS OF A RAINFALL EXCEEDING 0.5 INCHES DURING A 24-HOUR PERIOD OR DURING A RAINFALL OF 0.5 INCHES OR MORE.
7. THIS PLAN SHALL NOT BE CONSIDERED AS INCLUSIVE AS THE GENERAL CONTRACTOR SHALL FURNISH ALL NECESSARY PRECAUTIONS TO PREVENT SOIL SEEDMENT FROM LEAVING THE SITE.
8. GENERAL CONTRACTOR SHALL COMPLY WITH ALL STATE AND LOCAL ORDINANCES THAT APPLY.
9. ADDITIONAL EROSION AND SEDIMENT CONTROL MEASURES WILL BE INSTALLED IF NEEDED - NOTED AS BY ON SITE INSPECTION.
10. IF INSTALLATION OF STORM DRAINAGE SYSTEM SHOULD BE INTERRUPTED BY WEATHER OR OTHERWISE, THE PIPE ENDS SHALL BE COVERED WITH FILTER FABRIC.
11. CONFORM TO A MINIMUM 25 WIDE DRIVE FROM ACCESS ROAD TO 30 ON E.P. LAYDOWN AREA.
12. GENERAL CONTRACTOR SHALL BE RESPONSIBLE TO TAKE WASTEWATER MEASURES NECESSARY TO ESTABLISH PERMANENT SOIL STABILIZATION.
13. SEEDING SHALL BE REMOVED FROM THE SEEDMENT BASIN BEFORE IT IS SOIL FILL AND FROM SALT FENCE BEFORE IT IS SOIL FILL.
14. ALL WORK TO BE DONE IN STRICT ACCORDANCE WITH DIVISION 200 LOWE'S STANDARD SITE SPECIFICATIONS.

SITE UTILITY NOTES

- 1. LOCATION OF SITE UTILITIES SHALL BE VERIFIED BY OTHER CONTRACTOR. THE PROPERTY UTILITY COMPANY PROVIDING SERVICE.
2. GENERAL CONTRACTOR SHALL PROVIDE 2" x 8" BRICK CONCRETE APRON AT ALL CLEARANCES, VALVES AND METERS OUTSIDE OF BUILDING.
3. GENERAL CONTRACTOR WILL BE RESPONSIBLE FOR ALL TAP AND/OR CONNECTIONS AS WELL AS COST OF UNDERGROUND SERVICE CONNECTIONS TO THE BUILDING.
4. ELECTRICAL SERVICE TO PUMP/FAUCET TRANSFORMER SHALL BE UNDERGROUND, FROM ROAD RIGHT-OF-WAY TO TRANSFORMER LOCATION ASSOCIATED COST BY GENERAL CONTRACTOR.
5. GENERAL CONTRACTOR SHALL FURNISH (1) TELEPHONE COORDINATES AS SHOWN ON PLAN, FLANK VERTICALLY TO THE END OF TELEPHONE COMPANY'S SERVICE LINE, PROVIDE MAXIMUM 18" CLEARANCE FROM CONDUIT.
6. FRESH WATER SHALL BE PROVIDED AT ALL BENCHES, TRENCHES, AND FIRE HYDRANTS.
7. DRINKING WATER SHALL BE PROVIDED TO ALL BENCHES, TRENCHES, AND FIRE HYDRANTS.
8. ALL WATER AND SANITARY LEADS TO BUILDING SHALL END OUTSIDE THE BUILDING LIMITS AS SHOWN ON PLAN AND SHALL BE PROVIDED WITH A TEMPORARY PLUG AT THE END.
9. ALL FIRE HYDRANTS SHALL BE PROVIDED WITH AN APPROVED GATE VALVE A MINIMUM OF 10" FROM BUILDING.
10. ALL TRENCHES, PIPE LAYING, AND BACKFILLING SHALL BE IN STRICT ACCORDANCE WITH FEDERAL OSHA REGULATIONS.
11. GENERAL CONTRACTOR SHALL HAVE APPROVAL OF ALL EXISTING UTILITIES HAVING JURISDICTION OVER THE SITE PRIOR TO INSTALLATION.
12. ALL WORK SHALL BE DONE IN STRICT ACCORDANCE WITH DIVISION 2 OF LOWE'S STANDARD SITE SPECIFICATIONS.
13. REFER TO FIRE PROTECTION SHEETS FOR LOCATION AND DETAIL OF FIRE LINE LEAD IN.
14. FIRE LINE SHALL BE STUCCO UP 1' ABOVE FIRE EXTINGUISHER HOSE.
15. REFER TO PLUMBING SHEETS FOR LOCATION AND DETAIL OF SANITARY AND IRRIGATION CONNECTIONS.

WATERMAIN NOTES

- 1. ALL WATERMAIN NOTES AND MATERIALS SHALL CONFORM TO THE ERIE COUNTY WATER AUTHORITY PROCEDURES AND SPECIFICATIONS, LATEST EDITION WITH ALL ADDENDA.
2. DUCTILE IRON PIPE SHALL BE PROVIDED BY THE GENERAL CONTRACTOR AND SHALL BE CLASSIFIED AS 48" CLASS 3000 DUCTILE IRON PIPE (DIP) WITH 150 LB. FLANGE AND 150 LB. END CONNECTIONS.
3. FITTINGS SHALL BE DUCTILE IRON FULL BODY (CLASS 300) AND CONFORM TO AWWA C111 (CLASS 300).
4. ALL DUCTILE IRON FITTINGS SHALL BE PROVIDED WITH 150 LB. FLANGE AND 150 LB. END CONNECTIONS.
5. ALL FITTINGS SHALL HAVE MECHANICAL JOINT ENDS. ALL FITTINGS TO THE BOLT FOR FITTINGS SHALL BE DUCTILE IRON AND HAVE A FRICTION LOCKING JOINT.
6. PUSH ON COUPLER FOR DUCTILE IRON PIPE SHALL CONFORM TO AWWA C111 (CLASS 300).
7. DATE VALVE (IF AND WHEN) SHALL BE FULL BODY, BRONZE MOUNTED DOUBLE DOG WITH PARALLEL SEAS AND SHALL CONFORM WITH AWWA C111 (CLASS 300).
8. HYDRANT SHALL CONFORM TO AWWA C500-93 STANDARD FOR 4.5" BOLLER HYDRANT.
9. TESTING & APPROVAL SHALL BE IN ACCORDANCE WITH AWWA C500-93 SECTION 4 HYDRANT TESTING AND APPROVAL.
10. IDENTIFICATION SHALL BE COMPLETED IN ACCORDANCE WITH AWWA C500-93 SECTION 5.
11. THE ERIE COUNTY WATER AUTHORITY SHALL OPERATE ALL VALVES OF EXISTING DEMONSTRATED SYSTEMS. NEW VALVES SHALL BE INSTALLED AT NEWLY CONSTRUCTED WATERMAINS. THEY ARE TO BE IDENTIFIED AT LEAST 48 HOURS BEFORE THE START OF CONSTRUCTION.
12. ONLY ONE CONNECTION MAY BE MADE TO ANY EXISTING WATERMAIN PRIOR TO DISSECTION AND HEALTH DEPARTMENT APPROVAL OF COMPLETED WORK. AFTER APPROVAL, PERMANENT CONNECTIONS MAY BE MADE.
13. CONNECTIONS TO EXISTING WATERMAINS SHALL CONFORM TO AWWA C500-93 SECTION 6.
14. BACTERIOLOGICAL SAMPLES SHALL BE TAKEN FROM SAMPLE POINTS LOCATED AT APPROXIMATELY 100 FOOT INTERVALS THROUGHOUT AND AT THE END OF EACH SECTION.
15. POLYETHYLENE BULK HEADINGS FOR DUCTILE IRON SHALL BE USED.
16. POLYETHYLENE BULK HEADINGS SHALL CONFORM WITH THE APPROVED REQUIREMENTS OF THE AMERICAN NATIONAL STANDARD FOR POLYETHYLENE BULK HEADINGS AND DUCTILE CAST IRON PIPE FOR WATER AND OTHER LIQUIDS. AWWA C900-03.
17. THE POLYETHYLENE MATERIAL SHALL MEET THE FOLLOWING STANDARDS:
A. DIMENSIONS: 8 INCH (MINIMUM) CLASS 150
B. FIBRE FIBRE
1. MATERIAL: WHITE EXPOSURE TO ULTRAVIOLET LIGHT (EXAMPLE WILL BE OF SHORT DURATION LESS THAN 4 HOURS)
2. BLACK: 2.0% TO 2.5% WET WEIGHT OF CARBON BLACK WITH STABILIZERS WHICH EXPOSURE TO ULTRAVIOLET LIGHT EXPOSURE WILL BE PROLONGED (IN DAYS)
C. QUALITY: THE POLYETHYLENE MATERIAL SHALL BE OF HIGH POLYMER TYPE MATERIAL PRODUCED FROM DUPONT ALATHON RESIN OR US PETROTHENE RESIN OR EQUAL.
18. POLYETHYLENE MATERIAL SHALL BE OF THE EXTRUDED FIBRE FORM WITH FIBRE CUT, AND QUALLY PREPARED SHOULD BE APPROX. 1/2" (1/4" TO 3/8") OR IN LENGTH, CONTINUOUS LENGTHS FOUR FEET OR MORE IN LENGTH WITH 150 LB. END CONNECTIONS.

SITE ZONING DATA

Table with 3 columns: ANALYSIS FOR PROPOSED ZONING, REQUIRED, PROPOSED. Rows include: MIN. FRONT YARD (48 FT), MIN. SIDE YARD (20 FT), MIN. REAR YARD (20 FT), MIN. LOT WIDTH (MIN. 124 FT), MIN. BUILDING HEIGHT (33 FT), MIN. COVERAGE (MAX. 15%), MIN. FRONT YARD (48 FT), MIN. SIDE YARD (20 FT), MIN. REAR YARD (20 FT), MIN. LOT WIDTH (MIN. 124 FT), MIN. BUILDING HEIGHT (33 FT).

GENERAL NOTES

- 1. THE CONTRACTOR SHALL COMPLY WITH THE ERIE COUNTY STANDARD SPECIFICATIONS AND REQUIREMENTS.
2. THE CONTRACTOR SHALL COMPLY IN ALL RESPECTS TO THE PROVISIONS OF THE ERIE COUNTY STANDARD SPECIFICATIONS AND REQUIREMENTS.
3. THE CONTRACTOR SHALL COMPLY WITH ALL LOCAL ORDINANCES AND REGULATIONS.
4. THE CONTRACTOR SHALL COMPLY WITH ALL STATE AND LOCAL ORDINANCES THAT APPLY.
5. THE CONTRACTOR SHALL COMPLY WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS.
6. THE CONTRACTOR SHALL COMPLY WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS.
7. THE CONTRACTOR SHALL COMPLY WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS.
8. THE CONTRACTOR SHALL COMPLY WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS.
9. THE CONTRACTOR SHALL COMPLY WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS.
10. THE CONTRACTOR SHALL COMPLY WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS.

REFERENCES

- 1. AWWA C111 (CLASS 300) DUCTILE IRON PIPE (DIP) WITH 150 LB. FLANGE AND 150 LB. END CONNECTIONS.
2. AWWA C111 (CLASS 300) DUCTILE IRON PIPE (DIP) WITH 150 LB. FLANGE AND 150 LB. END CONNECTIONS.
3. AWWA C111 (CLASS 300) DUCTILE IRON PIPE (DIP) WITH 150 LB. FLANGE AND 150 LB. END CONNECTIONS.
4. AWWA C111 (CLASS 300) DUCTILE IRON PIPE (DIP) WITH 150 LB. FLANGE AND 150 LB. END CONNECTIONS.
5. AWWA C111 (CLASS 300) DUCTILE IRON PIPE (DIP) WITH 150 LB. FLANGE AND 150 LB. END CONNECTIONS.

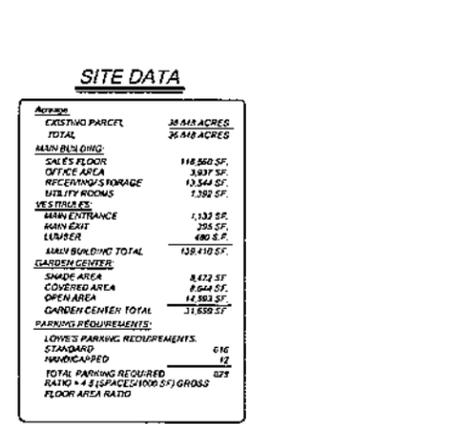
PARKING CALCULATIONS

Table with 2 columns: EXISTING, PROPOSED. Rows include: TOTAL SQUARE FOOTAGE, PARKING SPACES, PARKING SPACES, PARKING SPACES, PARKING SPACES, PARKING SPACES.

SITE DATA

Table with 2 columns: EXISTING, PROPOSED. Rows include: TOTAL SQUARE FOOTAGE, PARKING SPACES, PARKING SPACES, PARKING SPACES, PARKING SPACES, PARKING SPACES.

LEGEND



SANITARY & STORM NOTES

- 1. SEWERS SHALL BE LAID AT LEAST 18 INCH DIAMETER FROM ANY EXISTING OR PROPOSED WATERMAIN. THE DISTANCE SHALL BE MEASURED EDGE TO EDGE.
2. SEWERS SHALL BE LAID AT LEAST 18 INCH DIAMETER FROM ANY EXISTING OR PROPOSED WATERMAIN. THE DISTANCE SHALL BE MEASURED EDGE TO EDGE.
3. SEWERS SHALL BE LAID AT LEAST 18 INCH DIAMETER FROM ANY EXISTING OR PROPOSED WATERMAIN. THE DISTANCE SHALL BE MEASURED EDGE TO EDGE.
4. SEWERS SHALL BE LAID AT LEAST 18 INCH DIAMETER FROM ANY EXISTING OR PROPOSED WATERMAIN. THE DISTANCE SHALL BE MEASURED EDGE TO EDGE.
5. SEWERS SHALL BE LAID AT LEAST 18 INCH DIAMETER FROM ANY EXISTING OR PROPOSED WATERMAIN. THE DISTANCE SHALL BE MEASURED EDGE TO EDGE.

SANITARY SEWER TESTING METHODS

- (A) LEAKAGE TESTS
1. THE TEST PERIOD WHEREIN THE MEASUREMENTS ARE TAKEN SHALL NOT BE LESS THAN 24 HOURS.
2. THE TOTAL LEAKAGE OF ANY PIPE SHALL BE TESTED BY ANY TEST METHOD NOT EXCEEDING THE RATE OF 50 GALLONS PER MILE OF PIPE PER 24 HOURS PER INCH OF PIPE DIAMETER.
3. MANHOLES SHALL BE COVERED AS SECTIONS OF PIPE BEING TESTED AND AN EQUIVALENT LEAKAGE ALLOWANCE SHALL BE ESTABLISHED PER MILE (AS 1/2" W/100) THE DUCTILE IRON PIPE MANHOLE AS THE LEAKAGE.
4. WHEN MANHOLES ARE TESTED SEPARATELY, ALL PIPE OPENINGS SHALL BE PLUGGED AND THE TEST PERIOD ON A COMBINATION OF THE MANHOLES.
(B) INFILTRATION TEST (CONCRETE PIPES)
1. THIS TEST METHOD MAY ONLY BE USED WHEN DUCTILE IRON PIPE IS USED AT LEAST TWO FEET ABOVE THE TOP OF THE PIPE FOR THE ENTIRE LENGTH OF THE SECTION TO BE TESTED DURING THE ENTIRE PERIOD OF THE TEST.
2. GROUND WATER LEVELS MAY BE MEASURED BY AN OPEN TRENCH OR STANDPIPE PLACED IN PROTECTED TRENCHES SURROUNDING THE PIPE.
3. THE NUMBER OF STANDPIPES TO BE USED AND LOCATION OF THE SAME ARE TO BE AS DETERMINED BY THE ENGINEER.
4. STANDPIPES ARE TO BE USED TO MEASURE THE LOSS OF WATER TO GROUND WATER TO BE DETERMINED BY THE TEST OF THE SECTION.
5. IN THE EVENT OF STANDPIPES, THE TRENCH OR BE LEFT OPEN OR GROUND WATER LEVELS ARE TO BE MEASURED BY A WATERMETER OR OTHER MEANS AT ANY ONE TIME THAT HAS BEEN INSTALLED FOR TESTING OF THE SECTION.
(C) DEFLECTION TEST (CONCRETE PIPES)
1. THIS TEST COMBINES OF PLUMBING THE PIPE WITH WATER TO PROVIDE AHEAD OF AT LEAST TWO FEET ABOVE THE TOP OF THE PIPE OR ABOVE GROUND WATER WHICHEVER IS DEEPER AT THE POINT OF THE PIPE UNDER TEST AND THEIR HEADS TO BE MEASURED THE LOSS OF WATER TO GROUND WATER TO BE DETERMINED BY THE TEST OF THE SECTION.
2. THE TEST PERIOD SHALL BE 24 HOURS.
3. THE DEFLECTION TEST SHALL BE COMPLETED AFTER THIRTY DAYS OF PLACEMENT OF THE PIPE IN PLACE. THE TEST SHALL ALSO BE DONE WITHIN SEVEN DAYS OF THE END OF THE TEST PERIOD.

REVISIONS table with columns: DATE, DESCRIPTION, ISSUE DATE, ISSUE DATE.



COSTICH ENGINEERING logo and contact information: CIVIL ENGINEERING, LAND PLANNING, SURVEYING, 100 WEST 10TH STREET, SUITE 200, HAMBURG, NY 14075, (716) 438-2800.

LOWE'S HOME CENTERS, INC. HWY. 284 EAST, EAST DOCK N. WILKESBORO, NC 28659

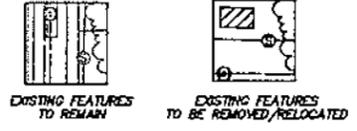
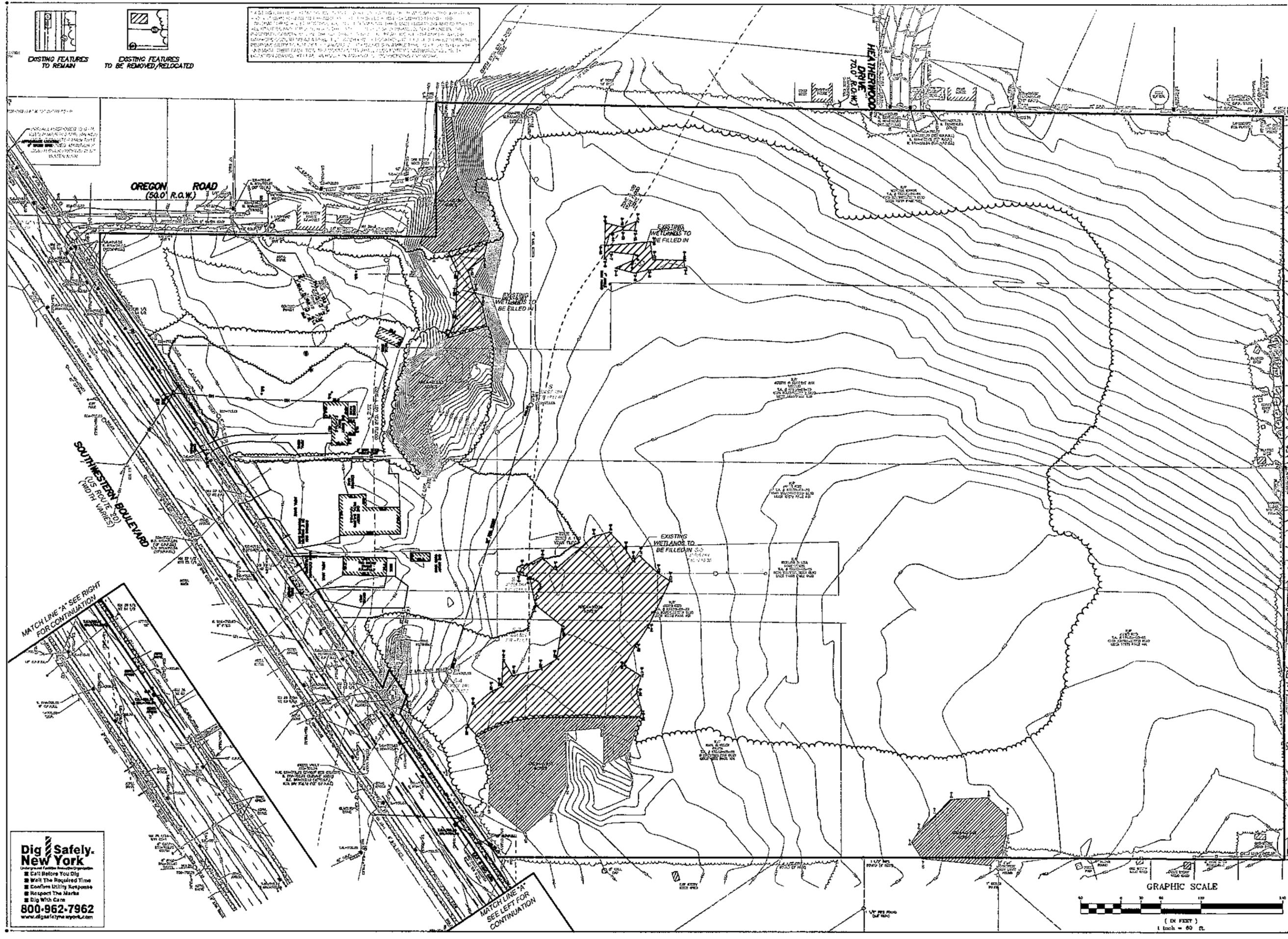
338-658-4900 (F) 338-658-3257 (M) 338-658-3257 (T) 338-658-3257 (F)

LOWE'S logo.

GENERAL NOTES AND LEGEND SHEET, LOWE'S OF HAMBURG, NY, SOUTHWESTERN BOULEVARD, HAMBURG, NEW YORK, PROJECT NO. 3717, DRAWN BY: DKL, CHECKED BY: GY.

ORIGINAL ISSUE DATE: 7/28/2006, PERMIT SET ISSUE DATE, CONSTRUCTION SET ISSUE DATE, DRAWING NUMBER 3717-2 (SHEET 2 of 18)

T:\j0013\1705-3\17 Demolition Plot.dwg, 6/11/2007 11:04:03 AM, ESS



ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO ANY EXCAVATION OR CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND PUBLIC ROADS AT ALL TIMES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING THE SITE TO ORIGINAL OR BETTER CONDITION AFTER COMPLETION OF THE PROJECT.

REVISIONS	
DATE	DESCRIPTION



CIVIL ENGINEERING
LAND PLANNING
SURVEYING
217 LAKE AVENUE
ROCHESTER, NEW YORK
(800) 408-3600

COSTICH ENGINEERING

LOWE'S HOME CENTERS, INC.
HWY. 268 EAST, EAST DOCK
N. WILKESBORO, NC 28659
336.658.4069 (V) 336.658.3257 (F)



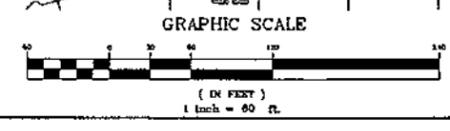
DEMOLITION PLAN
LOWE'S OF HAMBURG, NY
SOUTHWESTERN BOULEVARD
HAMBURG, NEW YORK
PROJECT No. 3717 DRAWN BY: DEL CHECKED BY: RP

ORIGINAL ISSUE DATE: 1/23/2007
PERMIT SET ISSUE DATE:
CONSTRUCTION SET ISSUE DATE:
DRAWING NUMBER:
3717-5
SHEET 5 of 18

MATCH LINE "A" SEE RIGHT FOR CONTINUATION

MATCH LINE "A" SEE LEFT FOR CONTINUATION

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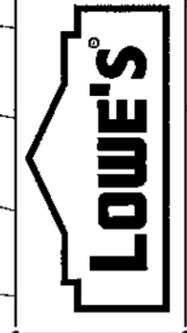
NOTE
SEE DRAWING NO. 3717-19 FOR WATER MAIN
IMPROVEMENTS AT THE BUS TIME WATER
METER STATION ON SOUTHWESTERN BLVD

REVISIONS	
DATE	DESCRIPTION



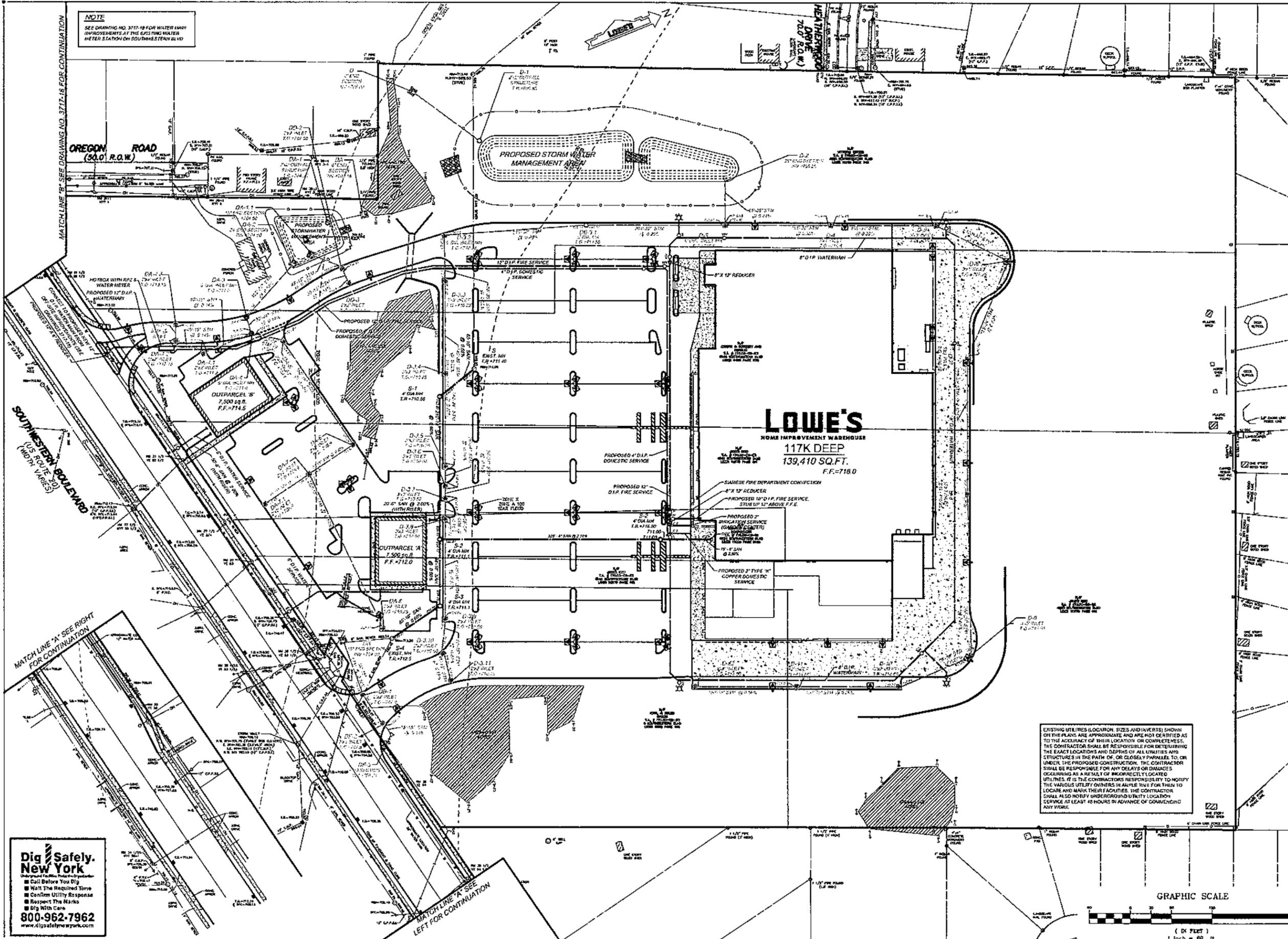
CASTICH ENGINEERING
 117 K DEEP
 139,410 SQ. FT.
 F.F. = 718.0

LOWE'S HOME CENTERS, INC.
 HWY. 248 EAST, EAST DOCK
 W. WALKERSBORO, NC 27859
 336.656.4000 (V) 336.858.3257 (F)

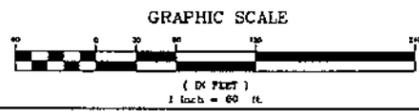


UTILITY PLAN
 LOWE'S OF HANBURG, NY
 SOUTHWESTERN BOULEVARD
 HANBURG, NEW YORK
 PROJECT NO. 3717 DRAWN BY: DEL CHECKED BY: RP

ORIGINAL
 ISSUE DATE: 3/23/2007
 PERMIT SET
 ISSUE DATE:
 CONSTRUCTION SET
 ISSUE DATE:
 DRAWING NUMBER:
3717-7
 SHEET 7 of 19



EXISTING UTILITIES (LOCATION, SIZES AND INVERTS) SHOWN
 ON THIS PLAN ARE APPROXIMATE AND ARE NOT GUARANTEED AS
 TO THE ACCURACY OF THEIR LOCATION OR COMPLETENESS.
 THE CONTRACTOR SHALL BE RESPONSIBLE FOR DETERMINING
 THE EXACT LOCATION AND DEPTHS OF ALL UTILITIES AND
 STRUCTURES IN THE PATH OF, OR CLOSELY PARALLEL TO, OR
 UNDER THE PROPOSED CONSTRUCTION. THE CONTRACTOR
 SHALL BE RESPONSIBLE FOR ANY DELAYS OR DAMAGES
 OCCURRING AS A RESULT OF INCORRECTLY LOCATED
 UTILITIES. IT IS THE CONTRACTOR'S RESPONSIBILITY TO NOTIFY
 THE VARIOUS UTILITY OWNERS IN ADVANCE TIME FOR THEM TO
 LOCATE AND MARK THEIR FACILITIES. THE CONTRACTOR
 SHALL ALSO NOTIFY UNDERGROUND UTILITY LOCATION
 SERVICE AT LEAST 48 HOURS IN ADVANCE OF COMMENCING
 ANY WORK.



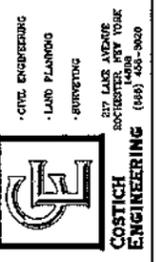
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PAVEMENT LEGEND



SEE 18 D.I.P. GAGE TRENCH IN PLAN THAT INDICATES SPACED 12" WAYS

REVISIONS	
DATE	DESCRIPTION

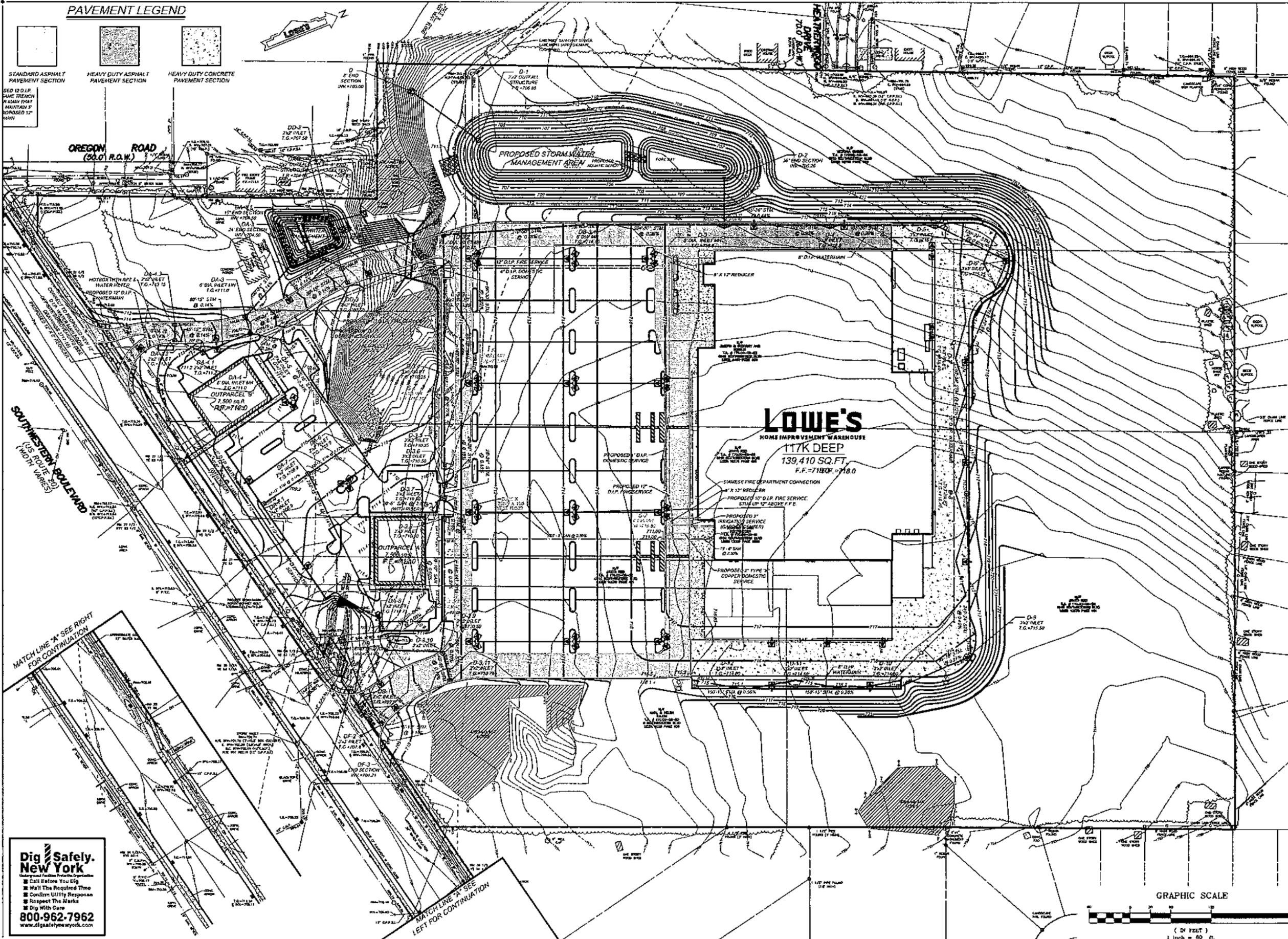


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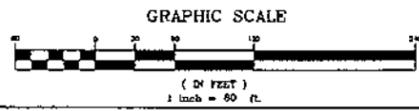


GRADING AND DRAINAGE PLAN
LOWE'S OF HAMBURG, NY
SOUTHWESTERN BOULEVARD
HAMBURG, NEW YORK
PROJECT NO. 3717 (DRAWN BY: DEL, CHECKED BY: RP)

ORIGINAL
ISSUE DATE: 3/23/2007
PERMIT SET
ISSUE DATE:
CONSTRUCTION SET
ISSUE DATE:
DRAWING NUMBER:
3717-8
SHEET 8 of 16

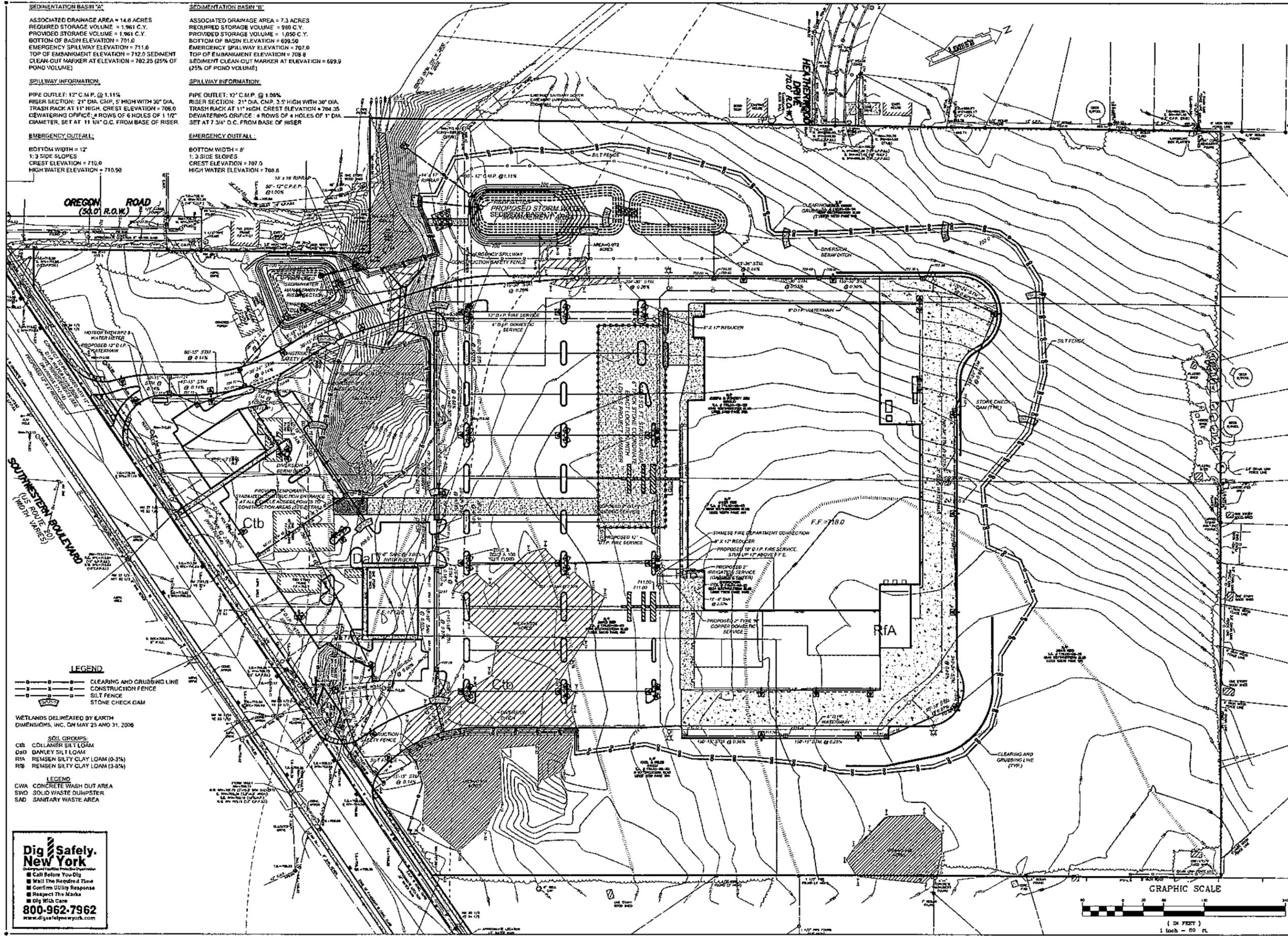


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SEDIMENTATION BASIN "A"
 ASSOCIATED DRAINAGE AREA = 14.8 ACRES
 REQUIRED STORAGE VOLUME = 1,961 C.Y.
 PROVIDED STORAGE VOLUME = 1,961 C.Y.
 BOTTOM OF BASIN ELEVATION = 701.0
 EMERGENCY SPILLWAY ELEVATION = 711.0
 TOP OF EMBANKMENT ELEVATION = 712.0 SEDIMENT CLEAN-OUT MARKER AT ELEVATION = 702.25 (25% OF POND VOLUME)

SPILLWAY INFORMATION:
 PIPE OUTLET: 12" C.M.P. @ 1.11%
 RISER SECTION: 21" DIA. C.M.P. 5' HIGH WITH 30" DIA. TRASH RACK AT 11" HIGH. CREST ELEVATION = 706.0
 DEWATERING ORIFICE: 4 ROWS OF 6 HOLES OF 1 1/2" DIAMETER, SET AT 11 1/4" O.C. FROM BASE OF RISER

EMERGENCY OUTFALL:
 BOTTOM WIDTH = 12'
 1:3 SIDE SLOPES
 CREST ELEVATION = 710.0
 HIGH WATER ELEVATION = 710.50

SEDIMENTATION BASIN "B"
 ASSOCIATED DRAINAGE AREA = 7.3 ACRES
 REQUIRED STORAGE VOLUME = 980 C.Y.
 PROVIDED STORAGE VOLUME = 1,050 C.Y.
 BOTTOM OF BASIN ELEVATION = 699.50
 EMERGENCY SPILLWAY ELEVATION = 707.0
 TOP OF EMBANKMENT ELEVATION = 708.8
 SEDIMENT CLEAN-OUT MARKER AT ELEVATION = 699.5 (25% OF POND VOLUME)

SPILLWAY INFORMATION:
 PIPE OUTLET: 12" C.M.P. @ 1.08%
 RISER SECTION: 21" DIA. C.M.P. 3.5' HIGH WITH 30" DIA. TRASH RACK AT 11" HIGH. CREST ELEVATION = 704.35
 DEWATERING ORIFICE: 4 ROWS OF 4 HOLES OF 1" DIA. SET AT 7 3/4" O.C. FROM BASE OF RISER

EMERGENCY OUTFALL:
 BOTTOM WIDTH = 8'
 1:3 SIDE SLOPES
 CREST ELEVATION = 707.0
 HIGH WATER ELEVATION = 708.8

LEGEND

- CLEARING AND GRUBBING LINE
- CONSTRUCTION FENCE
- SILT FENCE
- STONE CHECK DAM

WETLANDS DELINEATED BY EARTH DIMENSIONS, INC. ON MAY 25 AND 31, 2006

SOIL GROUPS:
 C1B COLLAMER SILT LOAM
 D2D DANLEY SILT LOAM
 R1A REMSEN SILTY CLAY LOAM (0-3%)
 R1B REMSEN SILTY CLAY LOAM (3-5%)

LEGEND:
 CWA CONCRETE WASH OUT AREA
 SWD SOLID WASTE DUMPSTER
 SAD SANITARY WASTE AREA

Dig Safely. New York
 Call Before You Dig
 Wait The Required Time
 Confirm Utility Response
 Respect The Marks
 Dig With Care
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REVISIONS

DATE	DESCRIPTION

STATE OF NEW YORK
 SEAL OF STATE ENGINEER
 No. 003371
 Licensed Professional Engineer

CITY ENGINEERING
 LAND PLANNING
 SURVEYING
 417 EAST AUSTIN
 ROCKY HILL, NEW YORK 14880
 (815) 468-3000

COSTICH ENGINEERING

LOWE'S HOME CENTERS, INC.
 HWY. 288 EAST, EAST DOCK
 H. WILKESBORO, NC 28656
 336.658.4900 (V) 336.656.3257 (F)

EROSION CONTROL PLAN
 PHASE I
 LOWE'S OF HAMBURG, NY
 SOUTHWESTERN BOULEVARD
 HAMBURG, NEW YORK

PROJECT NO. 3717 DRAWN BY: DEL. CHECKED BY: RP

ORIGINAL ISSUE DATE: 3/23/2007
 PERMIT SET ISSUE DATE:
 CONSTRUCTION SET ISSUE DATE:

DRAWING NUMBER:
3717-9
 SHEET 9 of 13

GRAPHIC SCALE
 (IN FEET)
 1 inch = 60 ft.

APPENDIX B

Appendix B

1. Lowe's Hamburg Description of Lands to be Re-Zoned.....B-1

- By: Costich Engineering
217 Lake Ave.
Rochester, New York 14608

- Dated: July 17, 2006

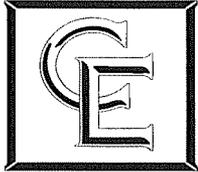
2. Full Environmental Assessment Form.....B-2 to B-18

3. SEQR Lead Agency and Positive Declaration.....B-19 to B-27

4. Scoping Document Draft Environmental Impact Statement.....B-28 to B-43

5. Miscellaneous Correspondence and Meeting Minutes.....B-44 to B-76

6. Excerpts from the Town Code of the Town of Hamburg.....B-77 to B-149



**COSTICH
ENGINEERING**

Project No. 3717

July 17, 2006

Page 1 of 1

LOWE'S HAMBURG DESCRIPTION OF LANDS TO BE RE-ZONED

All that tract or parcel of land situate in part of Town Lot 14, Township 9, Range 8, of the Holland Land Company's Survey, Town of Hamburg, County of Erie, State of New York, and being more particularly bounded and described as follows:

Beginning at a point on the easterly right-of-way line of Oregon Avenue (50.0' R.O.W.) at the northwest corner of lands now or formerly owned by Santino & Mary Carnevale having Tax Account # 170.66-02-17; thence

1. N00°32'16"E, a distance of 500.02 feet to a point; thence
2. S89°59'24"W, a distance of 198.51 feet to a point; thence
3. N00°49'30"E, a distance of 1,261.02 feet to a point; thence
4. N89°59'33"E, a distance of 1,104.33 feet to a point; thence
5. S00°19'30"W, a distance of 424.83 feet to a point; thence
6. S00°00'27"E, a distance of 744.30 feet to a point; thence
7. S55°45'17"W, a distance of 257.43 feet to a point; thence
8. N69°46'58"W, a distance of 28.22 feet to a point; thence
9. S55°45'17"W, a distance of 45.93 feet to a point; thence
10. S69°46'58"E, a distance of 28.22 feet to a point; thence
11. S55°45'17"W, a distance of 748.40 feet to a point; thence
12. S89°59'24"W, a distance of 56.93 feet to the point and place of beginning. Containing 36.848 acres of land, more or less.

\\F:/jobs/3717/3717rezone.doc

617.20
Appendix A
State Environmental Quality Review
FULL ENVIRONMENTAL ASSESSMENT FORM

Purpose: The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

Full EAF Components: The full EAF is comprised of three parts:

- Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3:** If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

THIS AREA FOR LEAD AGENCY USE ONLY

DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions

Identify the Portions of EAF completed for this project: Part 1 Part 2 Part 3
Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- A. The project will not result in any large and important impact(s) and, therefore, is one which **will not** have a significant impact on the environment, therefore **a negative declaration will be prepared.**
- B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore **a CONDITIONED negative declaration will be prepared.***
- C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore **a positive declaration will be prepared.**

*A Conditioned Negative Declaration is only valid for Unlisted Actions

Lowe's Home Improvement Center

Name of Action

Name of Lead Agency

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (If different from responsible officer)

Date

PART 1--PROJECT INFORMATION
Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action Lowe's Home Improvement Center

Location of Action (include Street Address, Municipality and County)

Southwestern Boulevard, Town of Hamburg, Erie County

Name of Applicant/Sponsor Lowe's Home Centers, Inc.

Address 1605 Curtis Bridge Road

City / PO Wilkesboro State NC Zip Code 28697

Business Telephone (518) 371-1480

Name of Owner (if different) Singer, Stevens, Reid, Rogenmoser, Rauch

Address 4934,4940, 4946, 4960 Southwestern Boulevard

City / PO Hamburg State NY Zip Code 14075

Business Telephone _____

Description of Action:

Construct a 139,410± square foot Home Improvement Center and a 31, 659± square foot Garden Center on 36.8± acres located on the north side of Southeastern Boulevard (NYS Route 20) between Sowles Road and Howard Road. Two outparcels are anticipated but not yet determined for size and use. To estimate the impacts of the outparcels we are assuming a 7,500 SF sit down restaurant and a 7,500 SF retail space.

Please Complete Each Question--Indicate N.A. if not applicable

A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: Urban Industrial Commercial Residential (suburban) Rural (non-farm)
 Forest Agriculture Other _____

2. Total acreage of project area: 36.8± acres.

APPROXIMATE ACREAGE	PRESENTLY	AFTER COMPLETION
Meadow or Brushland (Non-agricultural)	<u>4.4±</u> acres	<u>4.0</u> acres
Forested	<u>29.2±</u> acres	<u>14.8</u> acres
Agricultural (Includes orchards, cropland, pasture, etc.)	_____ acres	_____ acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	<u>2.3±</u> acres	<u>1.0</u> acres
Water Surface Area	_____ acres	_____ acres
Unvegetated (Rock, earth or fill)	_____ acres	_____ acres
Roads, buildings and other paved surfaces	<u>0.9±</u> acres	<u>14±*</u> acres
Other (Indicate type) <u>Landscape</u>	_____ acres	<u>3.0</u> acres

*Lowe's plus outparcels-7500SF restaurant w/200 seats. Parking equals: 200 seatsx1 space/2 seats=100 spaces (restaurant). Retail 7500 SF x 1space/175 SF=43 spaces. 143 spacesx350 SF/space = 50,050 SF. Total impervious area for outparcels equals (7500+7500+50,050)/43560=1.49 Acres

3. What is predominant soil type(s) on project site? Collamer (Ctb)
- a. Soil drainage: Well drained _____% of site Moderately well drained 100% of site.
 Poorly drained _____% of site
- b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? _____ acres (see 1 NYCRR 370).
4. Are there bedrock outcroppings on project site? Yes No
- a. What is depth to bedrock 2-10 (in feet)
5. Approximate percentage of proposed project site with slopes:
 0-10% 96.7% 10- 15% 1.1% 15% or greater 2.1%
6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? Yes No
7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? Yes No
8. What is the depth of the water table? ~4 (in feet)
9. Is site located over a primary, principal, or sole source aquifer? Yes No
10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? Yes No

B-4

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? Yes No

According to:

Per NYSDEC determination

Identify each species:

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

Yes No

Describe:

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

Yes No

If yes, explain:

14. Does the present site include scenic views known to be important to the community? Yes No

15. Streams within or contiguous to project area:

Unnamed tributary to Lake Erie

a. Name of Stream and name of River to which it is tributary

Lake Erie

16. Lakes, ponds, wetland areas within or contiguous to project area:

Possible Federal Jurisdiction Wetlands, Possible Non-Jurisdictional Wetlands

b. Size (in acres):

2.3± acres

17. Is the site served by existing public utilities? Yes No
- a. If YES, does sufficient capacity exist to allow connection? Yes No
- b. If YES, will improvements be necessary to allow connection? Yes No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? Yes No To be determined, the site falls within an archeo sensitive area per the "circles and squares map" downloaded from the OPRHP website. Further investigation is warranted.
20. Has the site ever been used for the disposal of solid or hazardous wastes? Yes No

B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate).
- a. Total contiguous acreage owned or controlled by project sponsor: 36.8± acres.
- b. Project acreage to be developed: 15.5± acres initially; 17.0± acres ultimately.
- c. Project acreage to remain undeveloped: 19.8± acres.
- d. Length of project, in miles: N/A (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. N/A %
- f. Number of off-street parking spaces existing 13 ; proposed 629 +outparcels estimated 143=772±
- g. Maximum vehicular trips generated per hour: 678** (upon completion of project)? 928 (with 2 outparcels)
- h. If residential: Number and type of housing units: N/A
- | | One Family | Two Family | Multiple Family | Condominium |
|------------|------------|------------|-----------------|-------------|
| Initially | _____ | _____ | _____ | _____ |
| Ultimately | _____ | _____ | _____ | _____ |
- i. Dimensions (in feet) of largest proposed structure: 52± height; 319± width; 571± length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? 1107± ft. ingress/egress easement
2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? 14,000 tons/cubic yards. (Topsoil)
3. Will disturbed areas be reclaimed Yes No N/A
- a. If yes, for what intended purpose is the site being reclaimed?
- Commercial Business
- b. Will topsoil be stockpiled for reclamation? Yes No
- c. Will upper subsoil be stockpiled for reclamation? Yes No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? 17± acres.

**Saturday Peak, completion w/ 7500 SF sit down restaurant and 7500 retail space.

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?
 Yes No

6. If single phase project: Anticipated period of construction: _____ months, (including demolition)

7. If multi-phased: N/A

a. Total number of phases anticipated 2 (number)

b. Anticipated date of commencement phase 1: 4 month 2007 year, (including demolition)

c. Approximate completion date of final phase: 9 month 2008 year.

d. Is phase 1 functionally dependent on subsequent phases? Yes No

8. Will blasting occur during construction? Yes No

9. Number of jobs generated: during construction 130 ; after project is complete 220

10. Number of jobs eliminated by this project 0 .

11. Will project require relocation of any projects or facilities? Yes No

If yes, explain:

12. Is surface liquid waste disposal involved? Yes No

a. If yes, indicate type of waste (sewage, industrial, etc) and amount _____

b. Name of water body into which effluent will be discharged _____

13. Is subsurface liquid waste disposal involved? Yes No Type _____

14. Will surface area of an existing water body increase or decrease by proposal? Yes No

If yes, explain:

15. Is project or any portion of project located in a 100 year flood plain? Yes No

16. Will the project generate solid waste? Yes No

a. If yes, what is the amount per month? 40 tons

b. If yes, will an existing solid waste facility be used? Yes No

c. If yes, give name NYSDEC Approved Landfill ; location TBD

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? Yes No

e. If yes, explain:

Appropriate materials will be recycled including paper, plastic, cardboard and pallets.

17. Will the project involve the disposal of solid waste? Yes No

a. If yes, what is the anticipated rate of disposal? 40 tons/month.

b. If yes, what is the anticipated site life? N/A years.

18. Will project use herbicides or pesticides? Yes No Landscape purposes only

19. Will project routinely produce odors (more than one hour per day)? Yes No

20. Will project produce operating noise exceeding the local ambient noise levels? Yes No

21. Will project result in an increase in energy use? Yes No

If yes, indicate type(s)

Gas & Electric

22. If water supply is from wells, indicate pumping capacity N/A gallons/minute.

23. Total anticipated water usage per day 9000± gallons/day.

24. Does project involve Local, State or Federal funding? Yes No

If yes, explain:

25. Approvals Required:

			Type	Submittal Date
City, Town, Village Board	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Re-Zone</u>	_____
			_____	_____
			_____	_____
City, Town, Village Planning Board	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Site Plan</u>	_____
			<u>Special Permit</u>	_____
			_____	_____
			_____	_____
City, Town Zoning Board	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Variance (Possible)</u>	_____
			_____	_____
			_____	_____
City, County Health Department	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Water</u>	_____
			<u>Sewer</u>	_____
			_____	_____
			_____	_____
Other Local Agencies	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>ECWA</u>	_____
			_____	_____
			_____	_____
Other Regional Agencies	<input type="checkbox"/> Yes	<input type="checkbox"/> No	_____	_____
			_____	_____
			_____	_____
State Agencies	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>NYSDOT</u>	_____
			<u>NYSDEC-SPDES</u>	_____
			_____	_____
			_____	_____
Federal Agencies	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Wetlands</u>	_____
			_____	_____
			_____	_____

C. Zoning and Planning Information

1. Does proposed action involve a planning or zoning decision? Yes No

If Yes, indicate decision required:

- | | | | |
|--|--|--|---|
| <input checked="" type="checkbox"/> Zoning amendment | <input checked="" type="checkbox"/> Zoning variance | <input type="checkbox"/> New/revision of master plan | <input checked="" type="checkbox"/> Subdivision |
| <input checked="" type="checkbox"/> Site plan | <input checked="" type="checkbox"/> Special use permit | <input type="checkbox"/> Resource management plan | <input type="checkbox"/> Other |

2. What is the zoning classification(s) of the site?

R2- Single Family, R3- Multi-Family, C1- Local Retail Business

3. What is the maximum potential development of the site if developed as permitted by the present zoning?

65+ Units

4. What is the proposed zoning of the site?

C2-General Commercial

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?

$(.85)(36.15)(43,560)=1,388,000$ SF

6. Is the proposed action consistent with the recommended uses in adopted local land use plans? Yes No

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action?

Commercial and Residential

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? Yes No

9. If the proposed action is the subdivision of land, how many lots are proposed? 1 to 3 lots when complete

a. What is the minimum lot size proposed? 0.5 ± Acres

10. Will proposed action require any authorization(s) for the formation of sewer or water districts? Yes No

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?

Yes No

a. If yes, is existing capacity sufficient to handle projected demand? Yes No

Police and Fire

12. Will the proposed action result in the generation of traffic significantly above present levels? Yes No

a. If yes, is the existing road network adequate to handle the additional traffic. Yes No

D. Informational Details

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

E. Verification

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name Lowe's Home Centers, Inc. Date _____

Signature *Mark R. Caswell* AGENT FOR APPLICANT

Title *Engineer For Applicant*

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

Supplement to Full Environmental Assessment Form

The following studies are currently being performed to evaluate the environmental impacts associated with this site:

- 1.) A Traffic Study to be provided as prepared by SRF & Associates. The following intersections are being analyzed:
 - NYS Route 20/Route 75 (Signalized)
 - NYS Route 20/Sowles Road (Signalized)
 - NYS Route 20/Howard Road (Signalized)
 - NYS Route 75/Sowles Road (Unsignalized)
- 2.) A Wetland Study by Earth Dimensions
- 3.) A Noise Analysis by Resource Systems Group, Inc.
- 4.) A Visual Assessment by Costich Engineering/Lowes and Paradigm Development.
- 5.) A Market Assessment to be prepared by a licensed real estate appraiser.

PART 2 - PROJECT IMPACTS AND THEIR MAGNITUDE

Responsibility of Lead Agency

General Information (Read Carefully)

In completing the form the reviewer should be guided by the question: Have my responses and conclusions been reasonable? The reviewer is not expected to be an expert environmental analyst.

The Examples provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.

The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.

The number of examples per question does not indicate the importance of each question.

In identifying impacts, consider long term, short term and cumulative effects.

Instructions (Read carefully)

- a. Answer each of the 20 questions in Part 2. Answer Yes if there will be any impact.
- b. Maybe answers should be considered as Yes answers.
- c. If answering Yes to a question then check the appropriate box (column 1 or 2) to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1. Identifying that an impact will be potentially large (column 2) does not mean that it is also necessarily significant. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- d. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- e. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the Yes box in column 3. A No response indicates that such a reduction is not possible. This must be explained in Part 3.

IMPACT ON LAND		1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
1.	Will the proposed action result in a physical change to the project site? <div style="text-align: right;"> <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes </div> Examples that would apply to column 2:			<input type="checkbox"/> Yes <input type="checkbox"/> No
	Any construction on slopes of 15% or greater, (15 foot rise per 100 feet of length), or where the general slopes in the project area exceed 10%.	<input type="checkbox"/> <input checked="" type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No
	Construction on land where the depth to the water table is less than 3 feet.	<input type="checkbox"/> <input checked="" type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No
	Construction of paved parking area for 1,000 or more vehicles.	<input type="checkbox"/> <input checked="" type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No
	Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface.	<input type="checkbox"/> <input checked="" type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No
	Construction that will continue for more than 1 year or involve more than one phase or stage.		<input checked="" type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year.	<input checked="" type="checkbox"/> <input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No
	Construction or expansion of a sanitary landfill.	N/A		<input type="checkbox"/> Yes <input type="checkbox"/> No
	Construction in a designated floodway.	<input checked="" type="checkbox"/> <input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No
	Other impacts: _____	<input type="checkbox"/> <input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.) <div style="text-align: right;"> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes </div> Specific land forms: _____			<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON WATER

1. Will proposed action affect any water body designated as protected? (Under Articles 15, 21, 23 of the Environmental Conservation Law, ECL)
 No Yes

Examples that would apply to column 2:

- Development area of site contains protected water body.
- Dredging more than 100 cubic yards of material from channel of a protected stream.
- Extension of utility distribution facilities through a protected water body.
- Construction in a designated wastewater or tidal wetland.
- Other impacts: _____

2. Will proposed action affect any non-protected existing or new body of water?
 No Yes

Examples that would apply to column 2:

- A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.
- Construction of a body of water that exceeds 10 acres of surface area.
- Other impacts: _____

3. Will proposed action affect surface or groundwater quality or quantity?
 No Yes

Examples that would apply to column 2:

- Proposed Action will require a discharge permit.
- Proposed Action requires use of a source of water that does not have approval to serve proposed (project) action.
- Proposed Action requires water supply from wells with greater than 45 gallons per minute pumping capacity.
- Construction or operation causing any contamination of a water supply system.
- Proposed Action will adversely affect groundwater.
- Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity.
- Proposed Action would use water in excess of 20,000 gallons per day.
- Proposed Action will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions.
- Proposed Action will require the storage of petroleum or other oil products greater than 1,100 gallons.
- Proposed Action will allow residential uses in areas without water and/or sewer services.
- Proposed Action locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities.

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change	
			Yes	No
1. Will proposed action affect any water body designated as protected? (Under Articles 15, 21, 23 of the Environmental Conservation Law, ECL) No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Examples that would apply to column 2:				
- Development area of site contains protected water body.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Dredging more than 100 cubic yards of material from channel of a protected stream.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Extension of utility distribution facilities through a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Construction in a designated wastewater or tidal wetland.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Other impacts: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Will proposed action affect any non-protected existing or new body of water? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Examples that would apply to column 2:				
- A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Construction of a body of water that exceeds 10 acres of surface area.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Other impacts: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Will proposed action affect surface or groundwater quality or quantity? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Examples that would apply to column 2:				
- Proposed Action will require a discharge permit.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Proposed Action requires use of a source of water that does not have approval to serve proposed (project) action.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Proposed Action requires water supply from wells with greater than 45 gallons per minute pumping capacity.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Construction or operation causing any contamination of a water supply system.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Proposed Action will adversely affect groundwater.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Proposed Action would use water in excess of 20,000 gallons per day.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Proposed Action will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Proposed Action will require the storage of petroleum or other oil products greater than 1,100 gallons.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Proposed Action will allow residential uses in areas without water and/or sewer services.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Proposed Action locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

IMPACT ON WATER (cont'd)

6. Will proposed action alter drainage flow or patterns or surface water runs? No Yes

Examples that would apply to column 2

- Proposed Action would change flood water flows.
- Proposed Action may cause substantial erosion.
- Proposed Action is incompatible with existing drainage patterns.
- Other impacts: _____

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change	
----------------------------------	--------------------------------	--	--

2	<input checked="" type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/>		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/>		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

IMPACT ON AIR

7. Will proposed action affect air quality? No Yes

Examples that would apply to column 2

- Proposed Action will exceed 1,000 or more vehicle trips per day per hour.
- Proposed action will result in the incineration of more than 1 ton of refuse per hour.
- Emission rate of total particulates will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour.
- Proposed action will allow an increase in the amount of land committed to industrial use.
- Proposed action will allow an increase in the density of industrial development within existing industrial areas.
- Other impacts: _____

<input checked="" type="checkbox"/>		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

IMPACT ON PLANTS AND ANIMALS

8. Will Proposed Action affect any threatened or endangered species? No Yes

Examples that would apply to column 2

- Reduction of one or more species listed on the New York or Federal List, using the site, over or near the site or found on the site.
- Removal of any portion of a critical or significant wildlife habitat.
- Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.
- Other impacts: _____

2	<input checked="" type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

9. Will Proposed Action substantially affect non-threatened or non-endangered species? No Yes

Examples that would apply to column 2

- Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.
- Proposed Action requires the removal of more than 10 acres of masts (forest over 100 years of age) or other locally important vegetation.
- Other impacts: _____

		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/>		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

PART 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS

Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

Instructions

Discuss the following for each impact identified in Column 2 of Part 2.

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is important. To answer the question of importance, consider:
 - The probability of the impact occurring
 - The duration of the impact
 - Its irreversibility, including permanently lost resources or value
 - Whether the impact can or will be controlled
 - The regional consequence of the impact
 - Its potential divergence from local needs and goals
 - Whether known objections to the project relate to this impact.

(Continue on attachments)

For: Work Session -
September 25th, 2006

Passed

Whereas, the Town of Hamburg has received a request from Morado Bay Associates to rezone 36.15 acres of vacant land located on the north side of Southwestern Boulevard between Sowles Road and Howard Road from R-2, R-3, & C-1 to C-2, General Commercial, and

Whereas, it is the intent of the applicant to construct a 139,410 s.f. Lowe's store, and

Whereas, in compliance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act - SEQRA) of the Environmental Conservation Law, the Town of Hamburg has reviewed the application,

Now, Be It Resolved, that the Town Board of the Town of Hamburg will seek Lead Agency status and initiate a Coordinated review of this application.

TOWN OF HAMBURG

6-6100 SOUTH PARK AVENUE • HAMBURG, NEW YORK 14075 • (716) 649-6111 • FAX (716) 649-4087



Supervisor
STEVEN J. WALTERS

Town Attorney
VINCENT J. SORRENTINO

Town Clerk
CATHERINE A. RYBCZYNSKI

Councilmen
D. MARK CAVALCOLI
KATHLEEN COURTNEY HOCHUL
JOAN A. KESNER
THOMAS J. QUATROCHE, JR.

Supt. of Highways
JAMES F. CONNOLLY

NOTICE SEQR: LEAD AGENCY DESIGNATION

TOWN OF HAMBURG

Town Board
Planning Board

date September 26, 2006

This notice is filed pursuant to Part 617 6NYCRR, Article 8 of the Environmental Conservation Law (SEQRA)

The Hamburg Town Board has received a complete application from:

Name: (submitting) Morada Bay Associates, LLC
(address) Southwestern Blvd. & Sowles Rd.
(city state zip) Hamburg, NY 14075

Contact Person: Town of Hamburg Planning Department

Phone: 649-2023

Regarding: Construction of a Lowe's on a 36 acre site on the

Description & Location of Action: North side of Southwestern between Sowles

As the most local agency with permitting authority, the Town Board wishes to declare Lead Agency and conduct a coordinated review of the proposal.

Rezoning required from R-2 to C-2 General Commercial

Other potential permitting agencies identified are:

(check each)

- Town Board
- Planning Board
- Zoning Board of Appeals
- Highway Department, Superintendent
- Building Department, Building Inspector
- Water District
- Sewer District
- County Highway Department, Commissioner of Public Works
- County Health Department
- State Department of Environmental Conservation
- State Department of Transportation
- State Department of Health
- Army Corps of Engineers
- Others: Dept. Env. & Planning
Traffic Safety

Other interested agencies may be:

- County Planning Board
- School District
- Fire Company
- Others (Federal, State, County): _____

A preliminary review of the proposed action indicates that it is a SEQR Type:

- Unlisted Action
- Type I Action (justification)

The attached long form Environmental Assessment has been filed by the applicant.

Please notify us within thirty (30) days, by Nov 8 '06 if your agency objects to our acting as lead agency, otherwise we will proceed with our review and determination of significance. Any information or concerns should be mailed to the below address. If no response is received by this date, we will assume your agency has no specific concerns about the action.

The Town Board will be considering this application at its regular meeting on (date) Sometime in December

For further information please contact:

Our contact person

Drew Kelly - Planning Dept. 8-6100 S. Park Ave.
Hamburg N.Y. 14075

Copies: (See Mailing List)

The attached long form Environmental Assessment has been filed by the applicant.

Please notify us within twenty (20) days, by Oct. 24, 2006, if your agency objects to our acting as lead agency, otherwise we will proceed with our review and determination of significance. Any information or concerns should be mailed to the address below by (30 days) Nov. 9, 2006. If no response is received by this date, we will assume your agency has no specific concerns about the action.

For further information, please contact:

Andrew C. Reilly, P.E.
Town of Hamburg Planning Department
S-6100 South Park Avenue
Hamburg, NY 14075
Phone: 716 649-2023
Fax: 716 648-0151

Town
By order of the Town of Hamburg Planning Board

Town of Hamburg
Supervisor Steve Walters
S-6100 South Park Avenue
Hamburg, NY 14075

On a motion of Councilman Cavalcoli, seconded by Supervisor Walters, the following resolution was

ADOPTED Ayes 5 Walters, Cavalcoli, Hochul, Kesner, Quatroche
 Noes 0

WHEREAS, the Town of Hamburg has received a rezoning application from Morado Bay Associates of Colden New York to rezone 36.15 acres of land located on the north side of Southwestern Blvd. Between Sowles Road and Howard Road from R-2, R-3, and C-1 to C-2, General Commercial, and

WHEREAS, it is the intent of Morado Bay Associates to construct a 139,410 sq. ft. Lowe's Home Improvement Store and develop an out parcel at the front of the site, and,

WHEREAS, the Hamburg Town Board referred this application to the Planning Board on August 4, 2006 for their review and investigation of the issues associated with this rezoning and subsequent development, and

WHEREAS, the Hamburg Town Board has declared itself lead agency, pursuant to Part 617 NYCRR Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act, (SEQRA), and

WHEREAS, the Town Board and Planning Board have reviewed the rezoning application and associated materials submitted to date, including but not limited to, site plans and full Environmental Assessment Form, Part I, and,

WHEREAS, certain significant adverse environmental impacts have been identified and are likely to occur as a result of the proposed rezoning and development, and

WHEREAS, the Planning Board has recommended that a Determination of Significance be made for a Positive Declaration, requiring that an Environmental Impact Statement be prepared, in conformance with the SEQR regulations to fully evaluate the potential large and important impacts,

NOW THEREFORE BE IT RESOLVED, that the Hamburg Town Board hereby issues a Positive Declaration in accordance with the SEQR regulations, and

BE IT FURTHER RESOLVED, that a public scoping meeting be scheduled for November 15th at 7:00 p.m. at Hamburg Town Hall.

Councilwoman Kesner comments that this does mean that they support the project, it just means that they are looking at the environmental impacts of the project.

Councilman Cavalcoli responds that this does not show support or rejection of the project, it is just a procedural process that says that the Town Board and Planning Board recognizes that there are serious environmental impacts that could be associated with this rezoning. Something that will be brought up is did the applicants consider alternate sites. The Town Board does not want to rezone property that is not already commercial when there are commercial sites available. There are also many other issues such as traffic, impacts on the neighborhood, drainage issues, etc.

5.

~~On a motion of Councilwoman Hochul, seconded by Councilman Quatroche, the following resolution was~~

~~ADOPTED Ayes 5 Walters, Cavalcoli, Hochul, Kesner, Quatroche
 Noes 0~~

~~**RESOLVED**, that the Town Board approve authorizing the Recreation Department to issue alcohol waivers for the following November 2006 Taylor Road rentals:~~

~~11/01/06 11/03/06 11/04/06 11/05/06
11/11/06 11/12/06 11/18/06 11/19/06
11/22/06 11/23/06 11/24/06 11/25/06
11/26/06~~

6.

On a motion of Councilman Quatroche, seconded by Councilwoman Hochul, the following resolution was

ADOPTED Ayes 5 Walters, Cavalcoli, Hochul, Kesner, Quatroche
 Noes 0

BE IT RESOLVED, that the Town Board grant permission for Supervisor Walters to sign a Maintenance Agreement with United Business Systems in the amount of \$795.00. Money is available in account B3620.409. This is for the copy machine in the Building Inspection Department.

7.

On a motion of Supervisor Walters, seconded by Councilman Cavalcoli, the following resolution was

SEQR

State Environmental Quality Review POSITIVE DECLARATION

Notice of Intent to Prepare a Draft EIS
Determination of Significance

Date Oct.23,2006

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act of the Environmental Conservation Law.

The Town of Hamburg Town Board as lead agency, has determined that the proposed action described below may have a significant effect on the environment and that a Draft Environmental Impact Statement will be prepared.

Name of Action: Lowe's Home Improvement Center

SEQR Status: Type 1
Unlisted

Description of Action:

The rezoning of 36.15 acres of land from R-2, R-3 and C-1 ^{to} and C-2 and subsequent site plan approval in order to construct a 139,410 s.f. Lowe's Home Improvement Center and develop out parcel(s) in the front of the site.

Location: North side of Southwestern Blvd. between Sowles Road and Howard Road, Town of Hamburg, Erie County

Reasons Supporting this Determination:

- impact on traffic
- impact on wetlands/flood plain
- impact on potentially archeologically sensitive areas on site
- impact on the character of the community

For Further Information:

Contact Person: Andrew C. Reilly, Planning Consultant

Address: Town of Hamburg Planning Department, S-6100 S. Park Ave.
Hamburg, NY 14075

Telephone Number: 716 649-2023

**A Copy of this Notice Sent to: Planning Board, Erie County Water, Erie County
Sewer District, Erie County Dept. of Env. & Planning, NY State Dept. of Env.
Consv., NY State Dept. of Transportation, Erie County Health Dept.**

**SCOPING DOCUMENT
DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Proposed Project:

Lowe's of Hamburg, NY

Project Location:

Hamburg, Erie County, New York

Project Sponsor / Applicant:

Lowe's

Lead Agency:

**Town of Hamburg Town Board
Town of Hamburg Town Hall
56100 S Park Ave
Hamburg, New York**

November 22, 2006

SCOPING DOCUMENT
DRAFT ENVIRONMENTAL IMPACT STATEMENT

PROPOSED LOWE'S OF HAMBURG
TOWN OF HAMBURG, ERIE COUNTY, NEW YORK

Positive Declaration Issued: 10/23/06

Public Scoping Session Held: 11/15/06

Comments Accepted Through: 1/03/07

Final Scope Accepted: 1/22/07

Contact Person: Andrew C. Reilly, P.E., AICP
Hamburg Planning Dept.

SCOPING DOCUMENT
 DRAFT ENVIRONMENTAL IMPACT STATEMENT
 PROPOSED LOWE'S PROJECT

TABLE OF CONTENTS

Description	Page
1.0 Introduction	1
2.0 Site Location and Description of the Proposed Action	1
3.0 State Environmental Quality Review (SEQR) Process	1
3.1 Project Classification and Lead Agency Designation	1
3.2 Purpose of the Scoping Process	2
3.3 SEQR Review Agencies	3
4.0 Content of the Draft Environmental Impact Statement	4
4.1 Project Description	5
4.2 General Environmental Setting of the Project Site and Study Area	5
4.3 Impact Assessment	6
4.3.1 Impact on Land	6
4.3.2 Impact on Water	7
4.3.3 Impact to Air	7
4.3.4 Impact on Aesthetic Resources	7
4.3.5 Impacts on Transportation	8
4.3.6 Impacts on Energy	10
4.3.7 Noise and Odor Impacts	10
4.3.8 Impacts on Public Health	10
4.3.9 Impacts on Growth and Character of Community or Neighborhood	10
4.4 Proposed Mitigation Measures	11
4.5 Project Alternatives	12
4.6 Cumulative Impacts	12
4.7 Growth Inducing Impacts	12
5.0 Information to be Included in the Appendix for the DEIS	12

Appendix Description

A Lead Agency Designation and Positive Declaration

1.0 INTRODUCTION

The Town of Hamburg Town Board, as Lead Agency, has required the preparation of a Draft Environmental Impact Statement (DEIS) pursuant to 6 NYCRR Part 617, State Environmental Quality Review (SEQR). The purpose of the DEIS is to evaluate the potential impacts of the proposed Lowe's.

This draft Scoping document has been prepared in accordance with the requirements of 6 NYCRR Part 617 and is intended for use by the Town of Hamburg Town Board, as SEQR Lead Agency for the environmental review of the pending action. This document provides a general description of the proposed action, an overview of the SEQR process, and an outline of the potential environmental impacts that have been identified through the scoping process and which must be addressed in the DEIS.

2.0 SITE LOCATION AND DESCRIPTION OF PROPOSED ACTION

The proposed project involves the rezoning of property and the construction of a new Lowe's store. The project site is located at Southwestern Boulevard, north of the intersection of Camp Road, in the Town of Hamburg, Erie County, New York. The proposed action involves the construction of a 139,410 +/- square-foot Lowe's and the creation of an out parcel for retail development on approximately 17.9 acres of the total 28-acre site. The proposed project includes highway access and roadway improvements, the creation of an on-site storm water management system, water system improvements, site lighting, landscaping and parking for 800 - 900 vehicles to support the proposed use. In addition, this action requires the rezoning of part of the site and the approval of a Special Use Permit due to the proposed building size, which exceeds the permitted building size allowed under the existing zoning.

3.0 STATE ENVIRONMENTAL QUALITY REVIEW (SEQR) PROCESS

When the State Environmental Quality Review Act (SEQR) became law in 1975, New York became the twenty-second state to enact an environmental review law. SEQR provides a process for the consideration of potential environmental impacts in the early planning stages of actions. By incorporating a systematic interdisciplinary approach to environmental review, impacts can be identified and projects can be modified, as needed, to avoid or minimize potential adverse impacts to the environment.

All discretionary decisions of a state, regional, or local agency to approve, fund, or directly undertake an action that may affect the environment are subject to review under the SEQR. SEQR, as implemented by 6 NYCRR Part 617, requires the consideration of environmental factors in the early stages of planning, review, and decision-making processes of state, regional, and local agencies. It is the intent of the SEQR that a balance of social, economic, and environmental factors is incorporated into the planning and decision-making process.

3.1 Project Classification and Lead Agency Designation

In accordance with 6 NYCRR, Part 617 of the SEQR implementing regulations, the Town of Hamburg Town Board (the Town) classified the Project as a Type 1 action, for the purposes of environmental review, based on a determination that the proposed action would involve the physical alteration of over ten acres of land. This threshold for a Type 1 action is set forth at 6 NYCRR Part 617.4(b). The SEQR regulations require the lead agency to conduct a Coordinated Environmental Review for all Type 1 actions.

Therefore, on September 26, 2006, the Hamburg Town Board initiated a Coordinated Review of the proposed action to request Lead Agency designation and to solicit comments from all Involved and Interested Agencies.

In accordance with Part 617.7, upon receipt and review of all agency comments, the Environmental Assessment Form and other application materials submitted by the project sponsor, the Town considered the potential environmental impacts of the proposed project and determined that this action may result in significant impacts to the environment and that a Draft Environmental Impact Statement (DEIS) must be prepared. The Town of Hamburg Town Board issued a Positive Declaration to this effect on October 23, 2006.

3.2 Purpose of the Scoping Process

It is the responsibility of the SEQR Lead Agency to organize and conduct scoping. The purpose of the scoping process is to identify the relevant environmental issues to be addressed in a Draft Environmental Impact Statement (DEIS). These issues are determined based on a full review of the Environmental Assessment Form (EAF), Parts 1 and 2, the Positive Declaration, the site plan application and accompanying site plan, and comments received from Involved and Interested Agencies and the general public.

The objectives of project scoping are to:

- Identify/confirm significant environmental issues;
- Eliminate insignificant or irrelevant issues;
- Identify limits or extent of impact analysis;
- Identify the range of reasonable alternatives to be addressed; and
- Identify potential mitigation measures.

On November 1, 2006, the project sponsor submitted a draft Scoping document to the Town. As part of the DEIS process, and in accordance with SEQR Part 617.8, the Town Planning Board and Town Board conducted a Public Scoping Meeting on November 15, 2006 at the Hamburg Town Hall. The Town received comments, as well as comment letters, related to the potential impacts of the proposed project. These comments were considered in the development of this Final Scoping Document.

The scoping session was conducted in order to gather public and agency input regarding the topics and methodology of study for the DEIS. The public scoping process ensures that the DEIS will be a concise, accurate and complete document upon which all Involved Agencies can base their individual decisions regarding the proposed project. By including the public, as well as other agencies in the scoping process, the SEQR Lead Agency can obtain additional information and specialized knowledge that may reduce the likelihood of additional issues arising during the public review period for the DEIS. It is the responsibility of the Town of Hamburg Town Board, as SEQR Lead Agency (with the assistance of the Planning Board), to complete the scoping process, issue the Final Scoping document, and oversee the completion of the DEIS.

3.3 SEQR Review Agencies

In the SEQR process, there are three types of agencies: the Lead Agency, Involved Agencies and Interested Agencies. The Lead Agency is the one agency among all of the Involved Agencies that has the responsibility under SEQR to coordinate the environmental review process for the proposed action. The Town of Hamburg Town Board was designated as the Lead Agency for this action because this Board has the primary jurisdiction over the rezoning of the site. Through the Coordinated Review process, other agencies, including the Hamburg Planning Board, were provided the opportunity to submit comments on the proposed action and concur with the designation of the Town Board as the Lead Agency.

Involved Agencies are agencies that have jurisdiction to fund, approve or directly undertake an action. Known Involved Agencies for the proposed action include:

- New York State Department of Environmental Conservation
- New York State Department of Transportation
- Erie County Health Department
- Erie County Department of Public Works
- Erie County Sewer District
- Erie County Water Authority
- Town of Hamburg Highway Superintendent
- Town of Hamburg Water and Sewer Department
- Town of Hamburg Building Inspector
- Hamburg Planning Board
- Town of Hamburg Zoning Board of Appeals

Interested Agencies are agencies that do not have (at the time of the environmental review) permitting, funding or approval jurisdiction directly related to the proposed action, but may desire to participate in the review process because of their expertise or concern regarding the action. Interested Agencies also include agencies that may have jurisdiction over a permit or approval related to the action in the future. For this project, Interested Agencies include, but may not be limited to:

- Erie County Department of Environment and Planning
- Big Tree Fire Company
- Hamburg Traffic Safety Advisory Board and Conservation Advisory Board

4.0 CONTENT OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS)

Section 671.9(b) of the SEQR implementing regulations outlines the minimum content that should be included in a Draft Environmental Impact Statement. The minimum subject areas expected to be included in the DEIS for this project are described below.

- Cover Sheet and Table of Contents
- Executive Summary
- Introduction
 - Description of the Proposed Action
 - Project Location and Setting
 - Conformance with the Comprehensive Plan

- Purpose and Objectives of the Proposed Project
- Public Benefits and Need for the Proposed Projects
- SEQR Process and Chronology
- Project Description
 - Design and Layout
 - Architectural Design
 - Site Design and Infrastructure
 - Landscaping, Signage and Parking
 - Required Permits and Approvals
- General Environmental Setting of the Project Site and Study Area
 - Local and Regional Geographic and Topographic Setting
 - Localized Land Use
 - Zoning Requirements and other Land Use Regulations
 - Socio-economic Conditions
 - Community Character
 - Public Utilities
 - Site Drainage and Stormwater Management
 - Traffic, Transportation and Pedestrian Circulation
 - Community Services
 - Aesthetic Resources
 - Noise and Air Quality
 - Solid Waste Management
 - Surface Hydrology
 - Soil and Vegetative conditions
- Assessment of Significant Environmental Impacts
 - Potential Impacts on Each of the Elements examined under the Existing Conditions Section
 - Impacts of the Proposed Action on the Use and Conservation of Energy
- Proposed Mitigation Measures
- Project Alternatives
 - No Action
 - Project Design in Conformance with all Existing Zoning Requirements
 - Reduced Size and Scale of Development
 - Alternative Sites for the Proposed Action
- Temporary and Short-term impacts
- Cumulative Impacts
- Adverse Environmental Impacts That Cannot Be Avoided
- Irreversible and Irretrievable Commitment of Resources
- Growth Inducing Impacts
- References

- Appendix

4.1 Project Description

This section of the DEIS should include a detailed description of what is being proposed for development on the project site. This description should be detailed enough to provide reference and sufficient project understanding for the reader for the review of subsequent sections of the DEIS. All aspects of site development should be discussed, including:

- Existing conditions of the site (vegetation, structures, etc.)
- Existing views in the area
- What will be done with the existing uses on the site?
- Proposed building and lot coverage
- Building size and scale
- Potential uses on the out parcel(s)
- Internal uses to be included in the store
- Proposed operating hours and operations
- Site amenities
- Parking, loading and stacking areas
- On-site traffic and pedestrian circulation
- Storm water management facilities
- Roadway access (existing and proposed)
- Landscaping
- Approvals and variances needed

An 11" by 17" copy of the site plan should be included in this section of the DEIS to provide the reader with a visual interpretation of the project to enable a better understanding what is being proposed by the project sponsor.

4.2 General Environmental Setting of the Project Site and Study Area

The existing conditions section should present a detailed discussion of each subject area to provide for a sufficient understanding of the impacts of the proposed action and project alternatives and how they affect the environment. Emphasis should be placed on the following.

- Provide an overview of the general geographic, geologic and topographic setting in the study area.
- Describe the existing land uses on the site and land uses in, and community character of, the surrounding area.
- Provide an outline of the existing zoning, proposed zoning and zoning requirements for the project site. A description of the special use permit requirements should be included as well. Analysis should address compliance of proposed project with relevant zoning and subdivision requirements.
- Provide a description of the existing demographic and socio-economic conditions (including vacancy rates in existing retail areas) in the study area. Also include a description of the search for available properties in the area.

- Identify the various public utilities that are supplied to the site, including public water supply, wastewater disposal, electricity, telephone, cable and natural gas.
- Describe the existing means of site drainage and stormwater management on the project site. What are the existing drainage patterns in the area, and are there any flooding or drainage problems on the site or in the surrounding area at present?
- Provide a detailed description and full analysis of existing traffic patterns and transportation conditions, including pedestrian circulation patterns. Information on existing intersection operations, levels of service, existing vehicles trips to and from the site should be included in this analysis (use counts that are as recent as possible). Accident data should also be provided. Also, what sources of public transportation service this site? Contact the GBNRTC for all existing traffic data and studies completed for this area.
- Identify the various community and emergency services for this site, including police, fire, ambulance, and hospitals.
- Describe the existing visual setting for the study area and the project site. Existing photographs of the area should be included and existing views from surrounding residential areas and from Southwestern Blvd.
- Describe existing noise (existing Noise Conditions Study) and air quality conditions in the study area.
- Provide information on existing solid waste management and disposal practices and services for the site and surrounding area.
- Provide information on the existing Ecology of the site (Coordinate work with the Conservation Advisory Board of the Town).
- Information on the Cultural and Archeological Resources of the site.
- Surface Water information including Floodplains and wetlands.

4.3 Impact Assessment

4.3.1 Impact on Land

Describe the impacts to the project site (paved, building, and landscaped areas) compared to existing conditions of the property.

Describe construction procedures (demolition, disposal, blasting, etc.) and special conditions that will affect this construction (rock, groundwater, etc.).

Potential Mitigations: Construction techniques.

4.3.2 Impact on Water

Describe the project's impact to the drainage/stormwater management system in the area. Provide a plan and engineering report that meets the State's stormwater requirements (SPDES), and the Town of Hamburg's requirements. Contact the Town Engineer to discuss these issues. Address the impacts of the project on existing downstream drainage conditions (local problem areas).

Provide water demand figures and wastewater generation numbers, and describe the potential impacts to the existing water and sewer systems in the area. Do sufficient capacities exist in these systems to handle this project?

Illustrate all improvements to the site and offsite.

Potential Mitigations: Construction of stormwater facilities that will reduce the impact to downstream areas; improvements to downstream structures; alternative/new technology stormwater control structures; and improvements to water and sewer systems.

4.3.3 Impact to Air

Quantify all potential discharges to the air (traffic, equipment, other), and their potential impact to the air quality of the area. Will trucks be parked for extended periods of time?

Potential Mitigations: No "truck idling" areas.

4.3.4 Impact on Aesthetic Resources

Describe the potential impacts to the aesthetic quality of the project site and study area. Provide descriptions of proposed landscaping, including location, types of plantings and how the amount of greenspace corresponds to zoning requirements. How will site development, in terms of building placement and parking, impact aesthetic resources? How will the site be landscaped to improve visual quality? How much landscaping is being proposed (overall percentage of greenspace) and what type? Where will it be placed?

Quantify the amount of land that will be preserved as a buffer for the residents nearby and how will it be controlled so that it remains open space in perpetuity. Explain how the applicant arrived at the number of acres necessary to put aside in order to buffer the neighbors and why this number is adequate. Specifically describe where the buffer areas will be located and how they will help to safeguard the neighbors from any negative views or sounds from the building and parking areas.

Discuss what Lowe's plans are for an outside display area, as well as any planned outdoor storage. What, if anything, will be stored outside the building? Where will it be stored in relation to the location of the building and how will it be visually screened from view? What, if anything, will be displayed outside the building? Where will it be displayed in relation to the location of the building?

Describe proposed signage associated with the project. What type and how much signage is being proposed for this action? What are the visual impacts?

Options for the look of the building should be explored. As the proposed building is very large, what is being proposed to break up the monotony of the large expanse of walls? Consider alternative building design styles or features to the building. Provide photographic examples of design alternatives (for example, the Lowe's in Gaithersburg, Maryland).

Provide before and after views from not only Southwestern Blvd. but from all angles, including views to and from the surrounding residential areas.

Provide a photometric lighting plan, illustrating how light will not "spill" out onto adjoining residential areas (photometric study).

Potential Mitigations: Building location; landscaping (including landscaped berms); building architecture; extension and/or modifications of the existing walls; acquiring property; alternative signage; location of some parking behind the building; maintaining buffers to the surrounding residential uses, and other methodologies to improve the appearance of the site; and types of lighting and the use of shielded lighting. Installation of fencing or other restrictions to protect buffer areas. Provide different methodologies for control and maintenance of these buffer areas (Dedication, Conservation easements, etc.).

4.3.5 Impacts on Transportation

Provide a complete analysis of potential traffic and transportation impacts. The increased number of trucks and cars will likely result in greater impacts to the adjacent roadway system and local traffic patterns. Complete a Traffic Impact Study to New York State Department of Transportation standards (Contact NYSDOT). Provide projections from the ITE manual, but also provide counts from existing Lowe's stores. Provide information on proposed trip generation and distribution, intersection operations, site access and cross access (particularly any changes being proposed) and pedestrian safety. Roadways of concern include: Southwestern Blvd (NYS Rte 20), Sowles Rd, Camp Rd, and Howard Rd. All analysis should use most recent available traffic counts.

Intersections to be studied include the following:

- Camp Road: intersections with
 - Howard Road
 - Sowles Road

- Southwestern Boulevard: intersections with
 - Howard Road
 - Sowles Street
 - Camp Road
 - Oregon Ave.

Traffic impact analysis must also consider impacts to pedestrian and bicyclists' safety and access.

The impact of truck traffic to the site should be addressed. How many trucks will visit this site for deliveries on a daily/weekly basis? How will they access the site? Will trucks/tractor trailers be allowed to park on the site? If so, for how long? How will trucks

be prohibited from this area? Are there potential conflicts with internal circulation patterns between vehicular traffic and truck deliveries?

Look at different ways of improving traffic in the area, and consider the following in the analysis:

The analysis should include a full assessment of parking for the project. How much parking is proposed? Does it meet zoning requirements in terms of the number and size of parking spaces? How will traffic be managed on the site – where are driving aisles and how wide will they be? What are plans for snow storage? Illustrate how cars, trucks and people will move within the site

Potential Mitigations: Modifications to signage, signals and roadways (proposed and existing). Mitigations must address impacts to State, County, and local Town roadways. Special consideration should be given to Oregon Ave.

Pedestrian safety mitigations should not only include sidewalks (which may or may not be preferable in certain locations), but improved shoulders and the possibility of walkways or trails.

4.3.6 Impacts on Energy

Provide information illustrating that the existing electric and gas systems will have capacity for this proposed project.

4.3.7 Noise and Odor Impacts

Complete a noise study in accordance with NYSDEC program policy entitled Assessing and Mitigating Noise Impacts (DEP-00-01). Analysis of potential noise sources, such as vehicular activity, mechanical equipment such as HVAC units and trash compactors, and others, will be provided.

Assess the odor impacts of the proposed project from the dumpster locations and any truck idling areas.

Potential Mitigations: No truck idling areas; replacement of “back-up beepers” with flashing lights; location of noise and odor producing objects; equipment selection; technology; and limitation on the timing of certain activities, etc.

4.3.8 Impacts on Public Health and Safety

Describe how the safety of local residents in the surrounding areas will be affected by this project.

How will issues such as rodents and insects be addressed? If the stormwater detention ponds are located on site, how will mosquitoes be controlled?

Potential Mitigations: Transportation improvements, stormwater facility alternatives (remove from back of building), dumpster types and locations, etc.

4.3.9 Impacts on Growth and Character of Community or Neighborhood

Describe how the project fits into the Town of Hamburg's Comprehensive Plan.

Provide an analysis of potential impacts to existing and surrounding land uses in the study area. Describe how land use on the project site will change or be impacted and how that may affect the surrounding neighborhood.

Describe how activities on the project site, such as the location of the buildings, truck deliveries at loading docks, odors, noise, etc., will impact surrounding residences. How will the perimeter of the site be improved to lessen the impacts of site development?

Describe the consistency of the proposed project with the existing and proposed zoning requirements. A discussion of identified discrepancies and the need and justification for relief from the zoning requirements or Special Use Permits should be included.

Taking into consideration the Comprehensive Plan, zoning, and existing land use patterns, how does the project affect the surrounding neighborhood and future development in the area?

Describe how community services will be impacted by the proposed action. Will the redevelopment of the subject property create greater demands for police and other emergency services? Can the existing services handle this demand? Will fire trucks and other emergency vehicles have adequate access to the site and sufficient room to maneuver? The various emergency service agencies should be contacted to determine potential impacts and service capacity.

Fully describe the employment issues relating to the construction of the Lowe's.

Applicant must provide an assessment of the overall growth-inducing aspects of the project. This assessment may be provided in the separate section on Growth Inducing Impact (see 4.7, below).

Potential Mitigations: As discussed in this section and other sections.

4.4 Proposed Mitigation Measures

The proposed action may result in impacts to the surrounding community that could be mitigated through site design alterations or other mitigative measures. The DEIS should include a discussion of all anticipated impacts and how they will be mitigated to reduce or eliminate potential impacts to the surrounding community from site development. Mitigations are discussed in Section 4.3, but should be formalized in this section.

4.5 Project Alternatives

The following alternatives to the proposed action will be considered (site plans for each proposed alternative shall be provided):

- No Action Alternative – an evaluation of the potential adverse and beneficial impacts that would result in the reasonable, foreseeable future, if the proposed action was not undertaken.

- Project Design in Conformance with all Existing Zoning Requirements – provide an assessment of potential impacts if the site were developed in accordance with the existing zoning. Analyze what size Lowe’s would fit on the site with no special use permit required.
- Development of site with a different mix of uses – the existing zoning allows other reasonable uses that could be undertaken on this site. An evaluation of other potential development scenarios should be presented that include a mix of smaller retail and restaurant uses.
- Project design alternatives

The description and evaluation of the alternatives should be at a level of detail sufficient to permit a comparable assessment of potential impacts. All project alternatives should be analyzed in a fashion similar to the proposed action in terms of potential environmental impacts and mitigation.

A discussion of the use of another potential site for undertaking the proposed action should be provided (as offered by the applicant).

4.6 Cumulative Impacts

The impacts of the proposed action must be considered in relation to other projects proposed in the vicinity. An analysis of cumulative traffic impacts, at the very least, must be presented (include proposed Wal-Mart traffic into study).

4.7 Growth Inducing Impacts

This project could potentially result in significant impacts on the growth and character of the surrounding neighborhood and community as a whole. A careful and well reasoned analysis of the possible growth inducing aspects of this project must be presented.

5.0 INFORMATION TO BE INCLUDED IN THE APPENDIX FOR THE DEIS

The main body of the DEIS shall provide sufficient detail to enable the reader to understand, interpret and evaluate the existing conditions, potential impacts, mitigation measures and alternative project scenarios. The Appendix shall contain back-up studies and technical reports that supplement and support the narrative in the DEIS. The methodologies and results of the studies and technical reports shall be summarized and explained in the main body of the DEIS. The reader should not be forced to move from one section to another to understand the information being presented. Only site-specific documents that are not readily available to the public should be included as appendices to the DEIS. The following are examples of documents to be included in the Appendix:

- Environmental Assessment Form Parts 1 and 2, and Positive Declaration.
- Scoping Document.
- Site Plans for proposed action and each alternative being evaluated.

- Traffic Impact Study and Correspondence.
- Stormwater Management Report and Drainage Calculations.
- Correspondences with Involved and Interested Agencies.
- Other studies performed.

NOTE ON NON-RELEVANT INFORMATION

During the scoping session, the issue of need for the project was raised (Do we need another home improvement store in the area?). This issue will not be addressed in the DEIS, but may be discussed in the Rezoning consideration.

Another issue raised during scoping that will not be considered in the DEIS is the issue of the affect on surrounding property values. The SEQR handbook specifically states that the affect on property values is not a SEQR issue. The applicant though is providing information on the effect on property values for the Town Board to consider for the re-zoning.

16.

On a motion of Councilman Cavalcoli, seconded by Supervisor Walters, the following resolution was

ADOPTED	Ayes 5	Walters, Cavalcoli, Hochul, Kesner, Quatroche
	Noes 0	

WHEREAS, the Town of Hamburg received a rezoning application from Morado Bay Associates for 36.15 acres of land located on the north side of Southwestern Blvd. to be rezoned from R-2, R-3 and C-1 to C-2, to construct a Lowe’s retail site, and

WHEREAS, in compliance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act–SEQR) of the Environmental Conservation Law, the Town determined that the rezoning of this property and the development of a Lowe’s would have an impact on the environment and issued a Positive Declaration on October 23, 2006, and

WHEREAS, a Public Scoping Session was held on November 15, 2006 in order to identify the relevant environmental issues to be addressed in a Draft Environmental Impact Statement (DEIS) and to receive comments from the public related to these potential impacts, and

WHEREAS, a Final Scoping Document has been developed by the Town of Hamburg to insure that the DEIS will be a concise, accurate and complete document upon which all involved agencies can base their decisions regarding the proposed project, and

WHEREAS, the Planning Board has recommended that the Scoping document is adequate,.

NOW THEREFORE BE IT RESOLVED, that the Hamburg Town Board issues the Scoping Document dated 11-22-06 as the Final Scope for the EIS.

Councilwoman Kesner states that this does not indicate that they are in approval of this project.

Councilman Cavalcoli states that is correct. Morado Bay Associates applied for a rezoning in order to put in a Lowes project. After much investigation by the Planning and Town Board it was felt that this project would have a negative impact on the environment. After all the various meetings and public hearings they came up with what needs to be investigated and all those things are included in the Scoping Document. Now they need to review that to see what the impact is and if it is possible for them to mitigate and show that the environmental issues have been properly addressed to the satisfaction of the Town Board, the Planning Board and the residents, then the project could go to the next step which is site plan approve. If they can’t mitigate the problems then the project cannot go forward.

Jay A. Pohlman, Esq.

Attorney At Law

3993 South Park Avenue

Blasdell, New York 14219

Tel: (716) 825-2000

Fax: (716) 824-3920

Paradise

July 26, 2006

Town of Hamburg Planning Department
ATTN: Drew Reilly and/or Terry Dubey
S-6100 South Park Avenue
Hamburg, New York 14075

RE: Proposed rezoning
Southwestern Boulevard near
the intersection of Sowles Road
Hamburg, New York
Lowe's Store
Our File No. 21978

Dear Drew and/or Terry:

On Monday, July 24, 2006 I stopped by your office to drop off the necessary copies of the rezoning petition for Morada Bay Associates, LLC, my client, and to review same to insure that they were acceptable as to format.

Unfortunately neither of you were available so I paid the rezoning application fee of \$1,500.00 as demonstrated by the enclosed receipt photocopy and left one copy of the petition and the attachments with the Town Clerk.

Enclosed are three additional packets for the rezoning application which I would ask you to circulate to the appropriate parties so we might be placed on the Town Board agenda for referral to the Planning Board for initial review of the proposal.

Please let me know the dates for consideration by the Planning Board so that I might be in attendance. Thank you.

Very truly yours,



JAY A. POHLMAN

JAP:de
Enclosure

cc: Morada Bay Associates, LLC

Pre-file Cavalcoli

August 4, 2006

Whereas the Town of Hamburg has received a Rezoning application from Morado Bay Associates of Colden, NY for 36.15 acres of land located on the north side of Southwestern Blvd. Between Sowles Rd. And Howard from R-2 Residential to C-2, General commercial and

Whereas, the Code Review Committee, at its meeting of August 2nd reviewed the application and has found merit in the rezoning of this property.

Now, Therefore, Be It Resolved that the Hamburg Town Board hereby refers this application to the Planning Board for review and recommendation.

PASSED 3-2

Rezoning Petition for Lowe's - Southwestern Blvd.

Attorney Jay Pohlman introduced the Lowe's project to the Planning Board. This is a 36 acre parcel owned by several land owners; Victoria Singer (4960 Southwestern), Joseph Stevens, of 4946 Southwestern, James Reid of 4940 Southwestern, and Karl Rauch as well as Richard Rogenmoser of 4934 Southwestern. The project will back up to Cumberland Lane & Dogwood with a 300' buffer in the back and a 200' buffer on each side. The density towards the back of the property is quite thick. Some of the parcels are zoned R-2, R-3, and C-1. The request is for C-2, General Commercial. The proposed structure will be 139,410 s.f. Mr. Pohlman stated that they have arranged a meeting with the residents at Michael's at 4885 Southwestern Blvd. on September 19th at 6:30 p.m.

Mr. Reilly explained that the Town Board has referred the application to the Planning Board for a recommendation. He asked for a full EAF so that he can review it before the next meeting, to be reviewed at the Sept. 20th meeting by the Planning Board. A traffic study will be required, as well as the SEQR Coordinated review. This project will also require site plan review and a Special Use Permit because of the size of the building.

Board members asked why Lowe's couldn't go into places like the Town Hall Plaza, the truck stop on Camp Road, etc. Response given is that the used sites do not meet their needs. The applicant advised that the Brierwood site is too close to the Orchard Park site, and based on their marketing demographics, Southwestern Boulevard is their choice for growth purposes, and a higher traffic count. The retail corridor is changing, and the existing retail is becoming less desirable.

Other principles in attendance included Ron Bronstein of Paradigm Development, Mark Costitch of Costitch Engineering, & Taylor McDermott of Lowe's. A question was raised as to the aesthetics of the building. Item to be on for September 20th meeting.

Recap of Wal-Mart concerns from Public Hearing

Messrs. Neal Madden, Tony Battista, and Steve Cleason appeared before the Planning Board for a recap of the concerns from residents from the public hearing. The next step is to make a decision on the SEQR., either a negative or positive declaration.

Drew Reilly stated that Watts Engineers, have been hired as an independent traffic consultant to review the traffic studies that APD Engineering has prepared. He noted that it is up to the Planning Board to give the applicant direction as to what the Board needs to review in order to make their decision. Watts Engineering will be present at the next meeting, as well as someone from Wendel. A report has been received from the NYSDOT. Nothing as yet has been heard from the County. Also, the concern was raised as to Tim Rhodes property who will be greatly impacted with the Plaza.

Mr. Cleason reported that they will provide a fence along the property line. They have

TOWN OF HAMBURG

ENGINEERING DEPARTMENT

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e-mail: engineering@townofhamburgny.com



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STEVEN J. WALTERS

Councilmen
D. MARK CAVALCOLI
KATHLEEN COURTNEY HOCHUL
JOAN A. KESNER
THOMAS J. QUATROCHE, JR.

Town Engineer
GERARD M. KAPSIK, P.E.

Town Attorney
VINCENT J. SORRENTINO

Town Clerk
CATHERINE A. RYBCZYNSKI

Supt. of Highways
JAMES F. CONNOLLY

TO: Planning Board

FROM: Engineering Dept.

DATE: 9/20/06

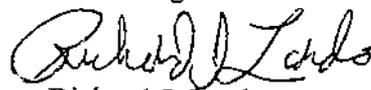
SUBJ: 9/20/06 PLANNING BOARD MEETING AGENDA
Lowe's Rezoning - Southwestern Blvd.

The following are review comments on a concept plan dated 7/13/06:

- (1) We have not received a copy of the rezoning application for the project.
- (2) We have not received a legal description for the project.
- (3) Public water service is available to the site. The Erie County Water Authority should be contacted to determine if there is adequate pressure and flow to service the site.
- (4) There is an existing sanitary sewer that crosses the site. The sewer easement location should be shown on the drawing.
- (5) The site is located within the Southwestern Overlay District.
- (6) Several of the nearby parcels are identified incorrectly. Oregon Place, a Town highway should also be labeled on the drawing.
- (7) The site is located within a 100 year flood plain. A Flood Plain Development Permit will be required for the site.


Gerard M. Kapsiak, P.E.

Town Engineer



Richard J. Lardo
Principal Engineer

Lowe's Rezoning Petition from R-2, R-3, C-1 to C-2 General Commercial - Southwestern Blvd.

Mr. Jay Pohlman, Attorney for the Lowe's project, appeared before the Planning Board on a rezoning petition to rezone approximately 36 acres of property owned by 5 landowners for a 139,000 s.f. building for Lowe's to be located on Southwestern Blvd. The front portion of the property is zoned Commercial and the remainder is R-2, R-3, and C-1. The Master Plan calls for commercial property up to Howard Road with protection for the adjoining residential area. The project was sent by the Town Board for recommendation with a split vote, thereby going thru the process. A recommendation will be required to the Town Board by the Planning Board and the Town Board will decide on the rezoning.

Mr. Reilly outlined some of the environmental issues that will need to be studied, as outlined in Part II of the EAF. Mr. Pohlman submitted a investigation study of what is being undertaken so far. (See attachment). The Town Board will be the lead agency for the project.

Attorney Pohlman stated that the applicant is willing to establish a nature conservancy or deed restrictions that the back portion will remain forever wild. There will be no development or destruction of the trees. There is to be a buffer of 350' in the back and 200' on the sides. Visual assessments are now in the process of being conducted to see how much of the height of the building can be seen by residents. The highest point of the building is 52' in height to the parapet and the rear of the building will be 26'4". The front of the roof surface that meets the parapet is 31'8" and the top of the parapet will be 33'8" with a cornice of 36'4". The features of the building are the peak in a flat surface. The building materials will be block face with medallions.

Investigation is being made on the downstream sewers. There is a flood plain along the front portion of the property, and they are avoiding that. Mr. Ron Bronstein noted that the buffer will remain in tact as outlined to be forever green.

Mr. Reilly stated that the problem with buffers is that we see residents putting sheds on it to extend their yards and some residents have been known to remove trees. The Town tries to enforce the buffers as much as they can. Sometimes the only way this can be accomplished is by deeding property to a third party.

The garden center will consist of covered areas to include patio blocks and fencing materials.

Chairman Koenig opened up the discussion to residents:

Terry Sketter of Breckenridge asked if this is a done deal. I was led to believe that Southwestern Boulevard was being expanded for safety purposes. Now, it appears that it is being renovated to support large commercial development.

Councilman Cavalcoli responded that the State Dept. Of Transportation decided to expand Southwestern Boulevard for safety concerns. However, this is a linking corridor, and a number of developers have come to the Town asking for rezonings for the last 23 years. We have been getting pressure for development to come in. An applicant has a right to come in and ask, and adjustments can be made to protect surrounding residents. This is due process and the Town Board voted 3-2 to send it to the Planning Board to look at the plan. This is being done according to law. This is not a done deal. At the present time we have established a Master Plan Committee consisting of 15 individuals from all aspects of the Town to determine what changes need to be made to the Master Plan to suit the residents.

Karen Aquiline of 3460 Heatherwood noted that four years ago, the land behind them was to be rezoned to commercial, and inquired as to the zoning next to this property.

Michael Torcello of 4775 Pinewood stated that he is in favor of the Lowe's locating on Southwestern Boulevard. He realizes that there will be future development on Southwestern. This is a good first step.

A resident of Oregon, a small street behind this property, noted that there is no buffer for them.

Richard Seyfried, of 4912 Oregon, stated that with the traffic, it will be impossible for them to get in and out of their street. We also have drainage and flooding in our back yards. This will affect our property values.

Mary Philbin, resident of 4002 Nottingham Terrace, noted that Lowe's will force Home Depot out of business, and we will have another vacant building. It was explained that Home Depot corners 35% of the market. They have more than their market share. Lowe's will use local businesses as sub-contractors which will help the local community. This is a 60 year old company and there have been no Lowe's closings. They have a good track record.

Mrs. Patricia Ahrens, of Amsdell Road, noted that we have so many vacant commercial areas now in the Town. Why can't Lowe's settle in one of these vacant buildings? Response given is that Lowe's spent 3 days looking for sites. They discarded other areas because of size. There was no site available that didn't have environmental issues.

In closing, Mr. Reilly stated that the Town Board will be the lead agency for this project. This proposal may warrant an environmental impact study.

Motion was made by Mr. McCabe, seconded by Mr. Taber to Table. Carried.

B.W. Barbecue Addition - Lake Avenue

Attorney Jay Pohlman, and Bruce Will, proprietor of B.W. Barbecue appeared before the Planning Board on a 55' x 80' building addition, 4,440 s.f., for food processing and catering for his business on Lake Avenue. This is an M2 zoning. Mr. Pohlman noted that prior corrections will be

TOWN OF HAMBURG

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Town Attorney
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Councilmen
D. MARK CAVALCOLI
KATHLEEN COURTNEY HOCHUL
JOAN A. KESNER
THOMAS J. QUATROCHE, JR.

Town Clerk
CATHERINE A. RYBCZYNSKI

Supt. of Highways
JAMES F. CONNOLLY

September 28, 2006

Tom Dearing
Dept. Of Environment & Planning
95 Franklin Street
Buffalo, NY 14202

Subject: Rezoning Petition and Lead Agency for Lowe's - Town of Hamburg

Dear Tom:

Enclosed is the resolution and a new sheet for Lead Agency for the Town Board for a proposed Lowe's to be located on Southwestern Blvd. near Sowles Road. It seems that the original which was mailed on September 26, 2006 has caused confusion to your staff.

Very truly yours,

Town of Hamburg Planning Dept.

Terry Dubey
Terry Dubey,
Sr. Clerk Stenographer

TD:me

Attachment

Jay A. Pohlman, Esq.

Attorney At Law

3993 South Park Avenue

Blasdell, New York 14219

Tel: (716) 825-2000

Fax: (716) 824-3920

COPY

August 29, 2006

Town of Hamburg
ATTN: Steve Walters, Supervisor
D. Mark Cavalcoli
Kathleen Courtney Hochul
Joan A. Kesner
Thomas J. Quatroche, Jr.
S-6100 South Park Avenue
Hamburg, New York 14075

RE: Proposed Lowe's Store
Southwestern Boulevard, Hamburg, NY
Our File No. 21978

Dear Supervisor and Councilmen:

As you are aware, I am assisting the Lowe's Corporation and Paradigm Development, Inc., the local developer, in the proposed rezoning and site plan approval for a Lowe's on 36+ acres on Southwestern Boulevard across from Michael's Banquet Facility.

We've committed to you previously to keep you fully informed as we proceed with the project and there two upcoming Planning Board Meetings in September to consider the rezoning as a result of your referral of the rezoning request to the Planning Board.

Accordingly, we have scheduled an information meeting for all of the neighbors and interested parties at Michael's Banquet Facility on September 19, 2006 at 6:30 p.m. Enclosed for your review and so that you might stay informed, please find a copy of the invitation letter that was sent to each neighbor within 500 feet and a copy of the current Lowe's site plan for the proposed project which includes a single out parcel in front of the store and a substantial green buffer between the existing store and the surrounding homeowners.

Town of Hamburg
ATTN: Steve Walters, Supervisor
D. Mark Cavalcoli
Kathleen Courtney Hochul
Joan A. Kesner
Thomas J. Quatroche, Jr.
August 29, 2006
Page Two

I would welcome any comments or questions you may have. Thank you for your continuing support.

Very truly yours,

JAY A. POHLMAN

JAP:de
Enclosure

cc: Paradigm Development

~~Drew Reilly~~

Terry Dubey

TOWN OF HAMBURG

ENGINEERING DEPARTMENT

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GERARD M. KAPSIK, P.E.



Town Attorney
VINCENT J. SORRENTINO

Town Clerk
CATHERINE A. RYBCZYNSKI

Supt. of Highways
JAMES F. CONNOLLY

TO: Planning Board

FROM: Engineering Dept.

DATE: 10/4/06

SUBJ: 10/4/06 PLANNING BOARD WORK SESSION AGENDA
Lowe's Rezoning - Southwestern Blvd.

The following are review comments on a concept plan dated 7/13/06:

- (1) We have not received a copy of the rezoning application for the project.
- (2) We have not received a legal description for the project.
- (3) Public water service is available to the site. The Erie County Water Authority should be contacted to determine if there is adequate pressure and flow to service the site.
- (4) There is an existing sanitary sewer that crosses the site. The sewer easement location should be shown on the drawing.
- (5) The site is located within the Southwestern Overlay District.
- (6) Several of the nearby parcels are identified incorrectly. Oregon Place, a Town highway should also be labeled on the drawing.
- (7) The site is located within a 100 year flood plain. A Flood Plain Development Permit will be required for the site.

Gerard M. Kapsiak, P.E.

Town Engineer

Richard J. Lardo

Principal Engineer

Lowe's Rezoning from R-2, 3, & C-1 to C-2, General Commercial - Southwestern Blvd.

Mr. Jay Pohlman, Attorney, appeared before the Planning Board on a proposed Lowe's to be located on Southwestern Blvd. near Oregon Avenue and Sowles Road. He presented a traffic study that was prepared by Costich Engineering as well as a Survey and Assessment of the Buffer zone surrounding the Lowe's. Nine studies are being prepared. The traffic study will be updated also when out parcels are built out.

The Town Board has issued the Lead Agency letter to various agencies with a return date of November 8th. Mr. Reilly explained the merits of doing an Environmental Impact Statement that will benefit all in the long run, as time lines will be established. Therefore, the Planning Board may recommend a Positive Declaration for the project, since this will have a great impact on residents. A question was raised by the County that since there are 3 large projects anticipated in this area, that a sewer investigation is also to be considered due to down stream flooding.

Mr. Pohlman stated that to protect the buffer, he is recommending a land conservancy for better control.

Motion was made by Mr. Phillips, seconded by Mrs. Yerkovich to forward a favorable recommendation to the Town Board for a Positive Declaration for the Lowe's project. Carried.

Mr. Phillips pointed out that Lowe's should work with the residents of Oregon Street as this will be a big change in their lives.

Motion was made by Mr. Phillips, seconded by Mrs. Yerkovich to Table. Item to be on Oct. 18th agenda. Carried.

Wal-Mart Super Center, site plan review, Special Use Permit on building, and Subdivision of parcels - Southwestern Blvd.

To proceed on the site plan review, the subdivision of parcels should now take place. This will be a subdivision of 3 parcels that will turn into five; to be advertised as the Wal-Mart Benderson 3 lot subdivision. The legal description for the parcels has been submitted by APD Engineering and a public hearing on the subdivision can be scheduled for October 18th, 2006. Since the building is over 100,000 s.f., a special use permit also is in order, which requires criteria on use.

As far as site plan review is concerned, the items that the board mentioned should be addressed such as no RV overnight parking, the turning lane is to be put in during the first phase of the construction, and if they are short on parking spaces, a variance will be required. Also, as to the problem with the Tim Rhodes property, mitigation should be given consideration, plus minimizing the cutting of trees. Additional landscaping is to be put in front, detail on the berm is to be shown on the drawing, as well as detail on the sound wall. There are to be no gas pump installations on the



County of Erie

JOEL A. GIAMBRA
COUNTY EXECUTIVE

DEPARTMENT OF ENVIRONMENT & PLANNING

ANDREW M. ESZAK, AICP
COMMISSIONER

THOMAS J. WHETHAM, P.E.
DEPUTY COMMISSIONER
SEWERAGE MANAGEMENT

October 4, 2006

Andrew C. Reilly, P.E., A.I.C.P.
Town Planning Consultant
Hamburg Town Hall
S. 6100 South Park Avenue
Hamburg, New York 14075

RE: Erie County Sewer District No. 3
(T) Hamburg Lowe's
SEQRA Review

Dear Mr. Reilly:

The Division of Sewerage Management (DSM) has reviewed the SEQRA submittal for the above referenced project and has the following comments:

1. The proposed sanitary sewer flows from this project are tributary to the Town of Hamburg sanitary sewer system, the Erie County Rogers Road Pumping Station, the Southwest Interceptor, and eventually to the Southtowns Sewage Treatment Plant.

At the present time there is no available capacity in the Rogers Road Pumping Station to accept the additional flows from this project, or any other proposed projects tributary to this pumping station.

2. These comments do not constitute DSM approval or disapproval of this project.

Should you have any questions, please call me at 858-6974.

Very truly yours,

Ronald J. Pontrello
Assistant Sanitary Engineer

C: M. Salah/3.2.5.SEQRA (w/enc)
M. Lee (DEP)

V:\Sewerage Management\Administration\Documents\Drozdown\wpdocs\vp\1561.3-Lowes-SEQRA.10.04.06.doc



County of Erie

JOEL A. GIAMBRA
COUNTY EXECUTIVE

DEPARTMENT OF ENVIRONMENT & PLANNING

ANDREW M. ESZAK, AICP
COMMISSIONER

THOMAS J. WHETHAM, P.E.
DEPUTY COMMISSIONER
SEWERAGE MANAGEMENT

October 4, 2006

*Ron - the proposed Lowes location will discharge to Town sewers which flow into the RT-1 Interceptor on Camp Road. This area is not tributary to the Rogers Road pump station. Please revise this letter accordingly.
- Gerry Kapasak*

Andrew C. Reilly, P.E., A.I.C.P.
Town Planning Consultant
Hamburg Town Hall
S. 6100 South Park Avenue
Hamburg, New York 14075

RE: Erie County Sewer District No. 3
(T) Hamburg Lowe's
SEQRA Review

Dear Mr. Reilly:

The Division of Sewerage Management (DSM) has reviewed the SEQRA submittal for the above referenced project and has the following comments:

1. The proposed sanitary sewer flows from this project are tributary to the Town of Hamburg sanitary sewer system, the Erie County Rogers Road Pumping Station, the Southwest Interceptor, and eventually to the Southtowns Sewage Treatment Plant.

At the present time there is no available capacity in the Rogers Road Pumping Station to accept the additional flows from this project, or any other proposed projects tributary to this pumping station.

2. These comments do not constitute DSM approval or disapproval of this project.

Should you have any questions, please call me at 858-6974.

Very truly yours,

Ronald J. Pantrello
Ronald J. Pantrello
Assistant Sanitary Engineer

File #	7871	Date	10/06/06
To	Pantrello	From	Gerry Kapasak
Co.	ECDEP	Co.	Hamburg Town Engineer
Phone #		Phone #	(716) 649-6111 ext. 2055
Fax #	858-6257	Fax #	(716) 649-2522

docs\7\1561.3-Lowe-SEQRA.10.04.06.doc

cc: Drew Reilly, Planning (FAX 648-0151)

7/10



County of Erie

JOEL A. GIAMBRA
COUNTY EXECUTIVE

ANDREW M. ESZAK, AICP
COMMISSIONER

DEPARTMENT OF ENVIRONMENT & PLANNING

THOMAS J. WHETHAM, P.E.
DEPUTY COMMISSIONER
SEWERAGE MANAGEMENT

October 11, 2006

Andrew C. Reilly, P.E., A.I.C.P.
Town Planning Consultant
Hamburg Town Hall
S. 6100 South Park Avenue
Hamburg, New York 14075

RE: Erie County Sewer District No. 3
(T) Hamburg Lowe's
SEQRA Review

Dear Mr. Reilly:

This letter supersedes the October 4, 2006 letter from this office which stated that there was no available downstream capacity for the sanitary flows from the proposed Lowe's project. Upon further review, it was found that the flows from this project were erroneously placed tributary to the Rogers Road Pumping Station. In actuality, the flows are tributary to the sewer system downstream of that pumping station. Evaluating this connection point, it is found that there is available downstream capacity in the Erie County sanitary sewer system for the sanitary sewage flows from this project.

It should be noted that the flows from this project are tributary to the Town of Hamburg sanitary sewer system before reaching the County system, and the developer must contact the Town engineering department for available capacity in its system.

These comments do not constitute DSM approval or disapproval of this project. A copy of this letter will be included in the Division of Planning SEQRA review comments for this project.

I apologize for any inconvenience my error may have caused you. Should you have any questions, please call me at 858-6974.

Very truly yours,

Ronald J. Pontrello
Assistant Sanitary Engineer

C: M. Salah/3.2.5.SEQRA (w/enc)
M. Lee (DEP)
J. Pohlman, Attorney

V:\Sewerage Management\Administration\Documents\Drozdown\wpdocs\vp\1562.3-Lowes-SEQRA 10.11.06.doc



County of Erie

JOEL A. GIAMBRA
COUNTY EXECUTIVE

DEPARTMENT OF ENVIRONMENT & PLANNING

ANDREW M. ESZAK, AICP
COMMISSIONER

October 17, 2006

Mr. Andrew Reilly, P.E., AICP
Town of Hamburg Planning Consultant
S-6100 South Park Avenue
Hamburg, New York 14075

RE: Lowe's Home Improvement Center – SEQR Review

Dear Mr. Reilly:

This is in response to the September 28, 2006 Request for Lead Agency Status relative to the rezoning action required for the Lowe's Home Improvement Center.

Since Erie County is an involved agency, please note the following:

1. Erie County has no objection to the Town of Hamburg acting as lead agency in the matter.
2. The information provided noted that a Traffic Study is underway. Erie County is desirous of reviewing said document upon its completion. Since information contained therein may reveal specific transportation impacts to Sowles Road, the Town should not issue a SEQR determination prior to Erie County review of the document.
3. The site layout submitted with the SEQR document shows a massive parking lot. It is suggested that the Town work with the developer to introduce periodic landscaping to soften the pavement impact and improve pedestrian flow.
4. It has come to the County's attention that two other projects are proposed for a less than two-mile stretch of Southwestern Boulevard: a Wal-Mart Supercenter, Benderson plaza development at Rogers Road; and a 150-unit planned unit development at Amsdell Road. In light of these two new projects, the County is

recommending that the Town complete an analysis of the cumulative impacts of all three projects on the Southwestern Boulevard corridor from Howard Road to south of Amsdell Road.

Please contact me at 858-6716 should you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Andrew M. Eszak', with a stylized flourish at the end.

Andrew M. Eszak, AICP
Commissioner

C: Mark R. Lee, Thomas J. Dearing; William M. Murray; Thomas J. Whetham

tjd2811.doc

TOWN OF HAMBURG

ENGINEERING DEPARTMENT

1100 South Park Avenue • Hamburg, New York 14075 • (716) 649-6111, Ext. 2350 • Fax (716) 649-2522
mail: engineering@townofhamburgny.com



Supervisor
STEVEN J. WALTERS

Councilmen
D. MARK CAVALCOLI
KATHLEEN COURTNEY HOCHUL
JOAN A. KESNER
THOMAS J. QUATROCHE, JR.

Town Engineer
GERARD M. KAPSIK, P.E.

Town Attorney
VINCENT J. SORRENTINO

Town Clerk
CATHERINE A. RYBCZYNSKI

Supt. of Highways
JAMES F. CONNOLLY

TO: Planning Board

FROM: Engineering Dept.

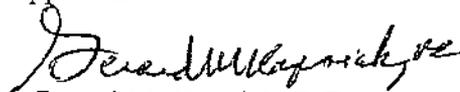
DATE: 10/16/06

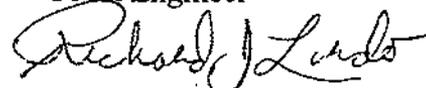
SUBJ: 10/18/06 PLANNING BOARD MEETING AGENDA
Lowe's Rezoning - Southwestern Blvd.

The following are review comments on a concept plan dated 7/13/06:

- (1) The survey and legal description are acceptable.
- (2) Public water service is available to the site. The Erie County Water Authority should be contacted to determine if there is adequate pressure and flow to service the site.
- (3) There is an existing sanitary sewer that crosses the site. The sewer easement location should be shown on the drawing.
- (4) The site is located within the Southwestern Overlay District.
- (5) Several of the nearby parcels are identified incorrectly. Oregon Place, a Town highway, should also be labeled on the drawing.
- (6) The site is located within a 100 year flood plain. A Flood Plain Development Permit will be required for the site. The location of Waterfalls Village Creek through the site should be shown.

All comments are to be satisfactorily addressed for approval.


Gerard M. Kapsiak, P.E.
Town Engineer


Richard J. Lardo
Principal Engineer

Lowe's Rezoning - Southwestern Blvd.

Attorney Jay Pohlman appeared before the Planning Board on a proposed Lowe's which is to be located on Southwestern Blvd.

Mr. Reilly explained that the Town Board was to issue a Positive Declaration on this proposal and require an Environmental Impact Statement. However, due to conditions in Western New York, the meeting was postponed. This process will take 4-6 months before approval can be granted. Input will be sought as to what issues should be scoped out. There are also two out parcels involved near the small street of Oregon Avenue.

Mr. Pohlman noted that a study on the berm and foliage has been requested. The County Sewer has advised that the sewer line is more than sufficient, and a traffic study has been prepared by Steven Foracci, Transportation Planners, from Rochester New York. The study area consists of four existing intersections. A comprehensive inventory of the existing roadway network operations was developed and peak period traffic volume data was collected. The roads studied are: Route 20/and 75 (signalized), Route 20/Sowles Rd. (Signalized); Route 20/Howard Road (signalized) and Route 75/Sowles Road (unsignalized). The small street of Oregon Avenue was also video-taped. It is difficult to get out of that street.

John Tarnish, from the Hamburg Traffic Safety Board, also had questions about this area.

A representative from Resource Systems Group addressed sound levels for adjacent neighbors. He will make recommendations for mitigation.

Mr. Reilly stated that the Planning Board is against outside loud speakers from the Lowe's site. It was also recommended that a balloon test be taken.

Santino Carnevale, resident of Oregon Avenue, noted that the noise from motorcycles and fire trucks is noticeable and the traffic is terrible. His suggestion is to abolish Oregon Avenue and work with the residents (3) of that area.

In closing, Jay Pohlman stated that 9 more studies are forthcoming.

Motion was made by Mr. Phillips, seconded by Mrs. Yerkovich to table. Carried.

Arthur Court Apartments - South Park Avenue. No one appeared.

Woodstream Estates - Rogers Road

Mr. Reilly explained that the conservation area that was proposed for the front of Woodstream Estates has been removed and replaced with the Army Corp's suggestion for a wetlands mitigation (pond). The Planning Board advised that Marrano Ent. should replace this vegetation in



County of Erie

JOEL A. GIAMBRA
COUNTY EXECUTIVE

ANDREW M. ESZAK, AICP
COMMISSIONER

DEPARTMENT OF ENVIRONMENT & PLANNING

October 20, 2006

Mr. Andrew Reilly, P. E., AICP
Town of Hamburg Planning Consultant
S-6100 South Park Avenue
Hamburg, NY 14075

RE: 239M Submittal for Rezoning for Lowe's

Dear Mr. Reilly:

This is in response to the Town of Hamburg's 239M submittal for Erie County Department of Environment and Planning comments on the proposed rezoning of land parcels along Southwestern Boulevard to accommodate a Lowe's Home Improvement Center.

As you know, we have submitted comments under separate cover to the Town of Hamburg's Request for Lead Agency status pursuant to New York State Environmental Quality Review (SEQR) procedures. These were forwarded to your attention via a letter dated October 17, 2006.

The SEQR documentation notes that a traffic study is underway concerning the Lowe's project. Upon receipt of said study this Department will evaluate the completeness of the 239M referral record and inform you accordingly.

For your information, the 239M referral received from the Town made no mention of a site plan, variance or other Town actions that might prompt a 239M review. You might want to check the completeness of the forms as submitted to our office from the Town.

Please contact me at 858-6716 should you have any questions.

Very truly yours,

ANDREW M. ESZAK, AICP
Commissioner

AME:TJD/cw
C: Mark R. Lee

tjd2810.doc

B-62

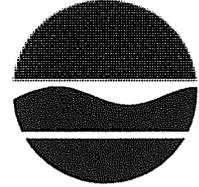
New York State Department of Environmental Conservation

Division of Environmental Permits, Region 9

270 Michigan Avenue, Buffalo, New York, 14203-2999

Phone: (716) 851-7165 • FAX: (716) 851-7168

Website: www.dec.state.ny.us



Denise M. Sheehan
Commissioner

October 23, 2006

Mr. Drew Reilly
Town of Hamburg
Planning Department
S6100 South Park Avenue
Hamburg, New York 14075

Dear Mr. Reilly:

**REZONING OF 36 ACRES
SOUTHWESTERN BOULEVARD AND SOWLES ROAD
MORADA BAY ASSOCIATES, LLC
PROPOSED LOWE'S HOME CENTER
TOWN OF HAMBURG - ERIE COUNTY**

In response to your September 27, 2006 letter regarding the above noted, please be advised of the following:

1. The unnamed stream flowing through the property is not a protected stream and, therefore, will not require a Protection of Waters Permit.
2. Approximately 75 percent of the site is located on potentially hydric soils (see attached map). It is unclear whether the project will impact Federal Wetlands in the area. The project sponsor should contact the United States Department of the Army Corps of Engineers (COE) Buffalo District Office (1776 Niagara Street, Buffalo, New York 14207), telephone: (716) 879-4330, concerning the COE's regulatory jurisdiction and any other approvals from that agency. If Federal Wetlands are involved, the COE may require Water Quality Certification and this Department would be the approving agency. This Department and the Town of Hamburg will need to know, for State Environmental Quality Review purposes, if federal wetland mitigation will be required for the project, and, if so, how much and where it will be located (on or off site).
3. Although State regulated freshwater wetlands are not presently shown on our current wetland regulatory maps for the proposed site in Hamburg, the project sponsor should contact Mr. Ken Roblee, Wildlife Biologist, at the following telephone number: (716) 851-7010, to arrange for a delineation as soon as possible. Once the delineation is completed, the boundary of any state regulated wetland should be surveyed to accurately determine its location relative to the proposed building and the property lines.
4. The applicant must provide a detailed downstream routing of the proposed sewer lines to the location of treatment. An engineering report must be prepared to confirm the sewer lines will have proper capacity, during normal and peak flows, including wet weather events, to insure that the proposed development and existing and future area residents will not experience sanitary overflows or basement flooding. The engineering report (data gathered and calculations) must be submitted to our Division of Water (Attn: Regional Water Engineer) and the Erie County Health Department, 95 Franklin Street, Buffalo, New York 14202, telephone: 716/858-7762.

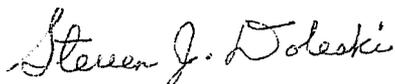
5. It was noted on the Federal Emergency Management Agency's FIRM Map No. 360244 0005D that the site is located within the designated 100-year floodplain. Proof is needed that the project plans comply with the National Flood Insurance Program (NFIP) regulatory standards. Acceptable proof may consist of either (1) project plans certified by a NYS licensed engineer with the engineer's seal and a statement that the plans comply with the NFIP and Town of Hamburg floodplain regulatory standards, (2) a conceptual plan approval stating that the project design/plans comply with said regulatory standards, or (3) a Flood Plain Development Permit issued by the Town of Hamburg.
6. The whole site appears to be within an archaeologically sensitive area, as shown on the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) website (www.oprhp.state.ny.us/nr/main.asp). As part of the SEQR process, the Town should evaluate this concern. If you have any questions regarding this, you may wish to contact OPRHP (telephone: 518/237-8643). Note that if any of the described Department approvals are required, an appropriate archaeological investigation must be conducted in order to satisfy the NYS Historic Preservation Act.
7. Since project activities will involve land disturbance of over 1 acre, the project sponsor is required to obtain a State Pollutant Discharge Elimination System General Permit (GP-02-01) for Stormwater Discharge from Construction Activities. A Notice of Intent (NOI) is required to be sent to NYSDEC, Bureau of Water Permits, 625 Broadway, Albany, New York 12233-3505, telephone: 518/402-8111 and approved before construction commences. The General Permit GP-02-01 and NOI form are available on the Department's website at www.dec.state.ny.us.

This General Permit requires the project sponsor (operator) and all contractors and subcontractors to control stormwater runoff according to the Stormwater Pollution Prevention Plan, which is to be developed prior to filing NOI and prior to commencement of the project.

It appears that the Town of Hamburg should act as SEQR Lead Agency, as the environmental impacts of the proposal are primarily of local significance. I strongly recommend that no determination of environmental significance be made by the Town until the informational items described previously in this letter have been resolved.

If you have any questions, please feel free to contact Mr. Steven Miller or me at 716/851-7165.

Respectfully,



Steven J. Doleski
Regional Permit Administrator

SJM:vm

cc: U.S. Department of the Army, Corps of Engineers, Buffalo District Office
Hon. Steven Walters, Supervisor, Town of Hamburg
Ms. Catherine A. Rybczynski, Town Clerk, Town of Hamburg

B-6A



County of Erie

JOEL A. GIAMBRA
COUNTY EXECUTIVE

DEPARTMENT OF ENVIRONMENT & PLANNING

ANDREW M. ESZAK, AICP
COMMISSIONER

WILLIAM M. MURRAY
DEPUTY COMMISSIONER

October 27, 2006

Ms. Terry Dubey
Town of Hamburg Planning Department
Hamburg Town Hall
S-6100 South Park Avenue
Hamburg, New York 14075

Subject: Proposed Lowe's 239M Site Plan review period / DEIS

Dear Ms. Dubey:

Thank you for submitting the traffic study prepared by SRF Associates for Paridigm Development regarding the proposed Lowe's store.

We understand the Town Board has issued a SEQR Positive Declaration regarding the proposed development, requiring the applicant to prepare a Draft Environmental Impact Statement (DEIS).

Please refer to this office a copy of the Draft Environmental Impact Statement. This will allow commencement of our review per Section 239M of New York State General Municipal Law. Thank you for your cooperation.

Very truly yours,

THOMAS J. DEARING
Community Planning Coordinator

C: Mark Lee
Carl Dimmig

tjd2818.doc

TOWN OF HAMBURG

ENGINEERING DEPARTMENT

6100 South Park Avenue • Hamburg, New York 14075 • (716) 649-6111, Ext. 2350 • Fax (716) 649-2522
E-mail: engineering@townofhamburgny.com



Supervisor
STEVEN J. WALTERS

Councilmen
D. MARK CAVALCOLI
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Town Engineer
GERARD M. KAPSIK, P.E.

Town Attorney
VINCENT J. SORRENTINO

Town Clerk
CATHERINE A. RYBCZYNSKI

Supt. of Highways
JAMES F. CONNOLLY

TO: Planning Board

FROM: Engineering Dept.

DATE: 11/1/06

SUBJ: 11/1/06 PLANNING BOARD WORK SESSION AGENDA
Lowe's Rezoning - Southwestern Blvd.

The following are review comments on a concept plan dated 7/13/06:

- (1) The survey and legal description are acceptable.
- (2) Public water service is available to the site. The Erie County Water Authority should be contacted to determine if there is adequate pressure and flow to service the site.
- (3) There is an existing sanitary sewer that crosses the site. The sewer easement location should be shown on the drawing.
- (4) The site is located within the Southwestern Overlay District.
- (5) Several of the nearby parcels are identified incorrectly. Oregon Place, a Town highway, should also be labeled on the drawing.
- (6) The site is located within a 100 year flood plain. A Flood Plain Development Permit will be required for the site. The location of Waterfalls Village Creek through the site should be shown.

All comments are to be satisfactorily addressed for approval.


Gerard M. Kapsiak, P.E.

Town Engineer



Richard J. Lardo
Principal Engineer

P.P.

Lowe's Scoping Session - Proposed for Southwestern Blvd.

Attorney Jay Pohlman, and representatives of Lowe's, appeared before the Planning Board for the preparation of the scoping document for Lowe's which is considering locating on Southwestern Blvd. Mr. Rob Rubino of Gar Appraisals has prepared a study on the economic impact that the project will have on residential properties. The study included 3 streets around the perimeter of the project. Property values next to a big box store will go up as opposed to devaluation as originally thought. Examples were given.

Mr. Sandy Carnevale of Oregon Avenue, presented a small sketch for an inner road (private drive) from Oregon to the development as a one way cut thru for the 3 families who live on that street as traffic is their biggest concern.

Diane Neuhauser of Cornell Street asked if there would be a fence around the proposed Lowe's? Response given is that this will be an open buffer. A resident of Heatherwood asked if additional trees could be planted to shore up the buffer as there are many scrub trees on the parcel. Also, at the present time, there is a stub street on Heatherwood that is not too attractive and the residents would like this resolved. Response to this matter is it will have to be researched to determine ownership. Lighting is also a concern to the residents. Drainage needs to be studied. It was noted that drainage will be improved with this project. A question was raised as to why the Orchard Park store is not sufficient for the demographics. Response given is that the Orchard Park facility is overtaxed at the present time and the Hamburg store will help alleviate that situation. A traffic study has already been presented and will be incorporated in the DEIS. Alternate sites should also be written into the document.

Motion was made by Mr. Phillips, seconded by Mr. McCabe to Table to the December 20th meeting. Carried.

~~Bilodeau Parcel Subdivison - South Park & Big Tree~~

~~Mr. Bilodeau and Chantel Costello appeared before the Planning Board on a proposed subdivision of a remaining parcel to be developed for duplexes on South Park and Big Tree Road. At the last meeting, it was noted that the County was interested in the property to locate an interceptor on the land. Ms. Costello responded that she spoke with the County and they are only interested in obtaining an easement to the back of the property, which will be way into the future. Therefore, they are interested in pursuing the project as planned. The sewer for this subdivision will have to be brought in, as well as a road to service the lots built according to Town standards. A geo technical study must also be done. The Planning Board would like to see the driveway behind the building with green space in the front. Applicant to proceed to preliminary plat.~~

~~Motion was made by Mr. Phillips, seconded by Mr. McCabe to table. Carried.~~

B-67

P.B. 10/5

Page 3, 11-1-06

Clover Construction Cont.

Board would also like to see a rendering as to what the units will look like. The Conservation Board would like to see some trees saved. Comments have also been received from Ron Klimowicz, Asst. Chief of Big Tree Fire Company. Item on for November 15th meeting.

Lowe's Home Improvement Center - Southwestern Blvd.

Jay Pohlman and Associates from Morado Bay appeared before the Planning Board on the proposed project for Lowe's to be located on Southwestern Blvd. A Positive Dec was issued by the Town Board on October 23, 2006 for the rezoning of property (36.15) acres from R-2, R-3 and C-1 to C-2, General Commercial and an out parcel. An independent traffic consultant will be hired to review the traffic along that route and will run the model.

Mr. Pohlman noted that the wetland study is in the hands of Earth Dimensions. Forthcoming is the economic impact and the sound analysis report. The evaluation of alternate mitigations should also be investigated. A draft scoping session will be conducted at the November 15th meeting.

Wal-Mart Super Center - Southwestern Blvd.

Neal Madden, Attorney for Wal-Mart appeared at the Planning Board to give an update on the project. A decision is required on the 3 lot subdivision, the special use permit on the size of the building and the Tire Lube Center, and site plan approval is yet to be resolved.

At the last meeting, notes on the drawing should reflect no RV parking on the site (overnight), and no gas stations, etc. An appearance will be required at the ZBA level on November 14th on the signage and variance on height of the peaks of the building and directional signage. The Negative Declaration will be sent to the ENB for the next meeting.

Hickey Farms Project - Mark Trammell

Mr. Trammell appeared before the Planning Board on a procedural issue that has come up with the Hickey Farms project. There will be two ownerships on the project. Two investment groups are involved, with a tax benefit package. The question is, will the project have to be subdivided. An agreement showing ownership is to be given to the Town. There should be no problems on this issue.

Southtown's Christian Center - Fellowship hall - 6619 Southwestern Blvd.

A proposed fellowship and youth center addition is proposed for Southtown's Christian Center. The total site acreage is 23.1 acres. The building will be 148' x 66 for 9,768 s.f. and the other is 146' x 70' for 10,220 s.f. Parking is adequate. Mrs. Yerkovich will do the on site inspection. An additional fee of \$600 is required.

B-68

Rezoning Petition on a proposed Lowe's to be located on Southwestern Blvd.

Attorney, Jay Pohlman appeared on behalf of the Lowe's Rezoning Petition to be located on Southwestern Boulevard near Sowles Road. A Positive Declaration was issued and an Environmental Impact Statement will be required for this project. A scoping session has been set with the Town Board and Planning Board for January 3rd, 2007 in Room 7B of Hamburg Town Hall at 7:30 p.m. to review the issues to be studied. One of the agencies involved will be the Big Tree Fire Department. Several studies have already been prepared and presented. However, these reports are to be incorporated in a draft environmental impact statement. The draft is then submitted to the Town for completeness. A public hearing will be held, and a final environmental impact statement is prepared representing the opinions of the Town. Questions and answers are then accepted for a FEIS. The Town Board will approve or disapprove the project because of the rezoning.

Mr. Don Owens, of Earth Dimensions, presented a report on the soil conditions and wetlands. Mr. Owens noted that he has been the author of the soil survey report and has mapped 1/3 of the parcels in the Town of Hamburg. The parcel under consideration includes an area of bedrock controlled from Southwestern Boulevard to the lake. On Camp Road from Southwestern, the grade goes downhill to the railroad bridge. All drainage ways in this part of the Town are parallel, and water flows from Southwestern to Lake Erie. The drainage way on the south side of the site flows to Southwestern then towards Lake Erie. It is convexal to Lake Erie. We have also mapped the woods on all sides of the residential area. There is a gentle slope from Lowe's to the residential areas. As such, we will be developing the site and intercept some of the water and direct it away from the homes on the other side of the woods going into the creek. As for soil conditions, the rock is close to the surface. Ground conditions are stable. The federal wetlands consist of 2.341 acres on site close to Southwestern and they will be redirected to the water shed and into a culvert near Southwestern Boulevard. Only 1.2 acres will be developed. There are many wetlands in the Town of Hamburg and few wetlands on this site. To mitigate the problem, trees are being saved around the side of the development near the residential areas. There are no State wetlands on the site. We will be cutting off part of the water shed and diverting it to another direction. A site analysis will be submitted to the Town Board.

Motion was made by Mr. Phillips, seconded by Mrs. Yerkovich to Table to January 3rd work session. Carried.

Southampton Condos - Big Tree Road

Mr. Allan Wexler of E&M Engineering appeared on behalf of the proposed Southampton Condos on Big Tree Road. Mr. Nigro would like to develop the second phase of acreage, however, there is concern on the private road. Mr. Nigro is not interested in using the access road. He is trying to create another lot. One option is do it by a deed. Getting a release from the lenders is impossible, and figuring out a viable solution is difficult. Agreements were never signed. An easement was never recorded in the Erie County Clerk's office. Therefore, there is no legal status. The paved portion, (by adverse possession) was granted by the apartment owners. The owners do

Root 2 lot subdivision - Old Lake Shore near Ainslee Lane

The request is for a two lot subdivision. At the present time, there is an existing home, as well as another home with a garage and apartment up above the garage. The owner would like to split the property into two lots. The proposal does not meet the required frontage or setbacks. The proposed subdivision does not meet the zoning requirements. A negative recommendation will be submitted to the Zoning Board for variances, as the applicant is creating non-conforming lots.

Other Items:

1. Scoping session for Lowe's to take place at the January 3rd Work session.
2. Planning Board get-together after Planning Board meeting 12-20-06
3. Meeting on Southampton Condos to take place Wed. With R. Lardo, Drew, Don McKenna.

Motion was made by Mr. Phillips, seconded by Mr. Taber to adjourn the meeting. Meeting adjourned at 10:00 p.m.

Respectfully submitted,

Paul Eustace, Secretary
Planning Board

Vanderbilt Properties (Cont.)

- B. What impacts will there be to the public benefit from the reduced tax assessment Levied on the condominiums proposed by this development as opposed to single Family homes that could be built under the existing zoning?
- C. What, exactly, is the disparity in tax rates and/or tax revenues between the proposed Condominiums and single family R-A housing?

III. Localized Land Use/Community Character

- A. What impact will the proposed project have on the current agricultural activities in Properties adjacent and nearby to the east, particularly along Pleasant Avenue?

Mr. Graver of Pleasant Avenue noted that there will be additional discharge added to the drains that presently exist. Response: The system must meet Town and State standards.

Kathy Dolberg noted that with all this rezoning, it is throwing people out of their homes. Right now, we cannot get out of our driveways. I don't see how this project will help the community. By constructing new homes, it will be shoving out people in older homes.

Mr. Paul Eustace stated that he is concerned with the idea of only one entrance to the complex. This is opening up a can of worms.

Motion was made by Mrs. Yerkovich, seconded by Mr. Eustace to Table. Carried.

Lowe's of Hamburg NY - Draft Scope Document

Attorney Jay Polman appeared before the Planning Board with representatives of Lowe's on the draft scope for the proposed Lowe's which involves the rezoning of 28 acres for the construction of a 139,410 s.f. Lowe's and an out parcel for retail development on Southwestern Blvd. Some of the studies have already been done and will be incorporated in the DEIS for the Town Board. A site analysis has also been prepared as to why this area has been selected for the site. The project entails 5 separate parcels, 2 homes and two businesses; namely the Reid's Tire Store and the Music Store. Zoning is mixed with parcels from R-2 in the back to commercial in the front.

Karen Aqualine of Heatherwood asked when is a buffer enough? Response: 18 plus acres will remain green.

Dick Smith of Heatherwood noted concern about the buffer area as to who will maintain and clean up the green space? Will it be dedicated, how will it be enforced, have other alternatives been considered along Route 20? Response: Mr. Pohlman responded that the green area will be dedicated to the Town of Hamburg, who will take title to keep it in its natural state by an easement. A land

Lowe's (Cont.)

Conservancy would monitor the site and look for any encroachment.

Mr. Russ Porter stated that a creek runs thru that section of the parcel. What about drainage and how will that affect Heatherwood? Response: Everything will be collected thru the storm sewer and be discharged into a pond at a much slower rate. All drainage will be captured in this manner.

Mr. Mark Kreiger of Heatherwood explained that at the present time, kids go back there, take trees down and build campfires. Who will be responsible for this tree loss? Response: The solution to this problem is to have the parents of the children replace and pay for destroyed trees.

A resident of 4775 Pineview asked what assurances will residents have that this area will remain green? Response: Conditions can be placed on the approval as it requires a Special Use Permit. The Town Building Inspection Department is the enforcer on these regulations. The developer must comply with these conditions; otherwise, the approval can be revoked.

Mrs. Rogers asked what will be stored outside, how much screening will there be? Response: To be put in the document. Town Board members requested a rendering of the proposed building. One example for a very attractive Lowe's site is located in Gaithersburg, Maryland.

Mrs. Kesner asked for the dimensions of the buffer? Response: each side will have 200', and the back portion will be from 315' to 340'. Mrs. Kesner stated concern of noise, lights, and traffic.

The next step is to go to the Town Board on January 22nd with an official scope document.

Motion was made by Mrs. Yerkovich, seconded by Mr. Eustace to submit the draft scope for the Lowe's project to the Town Board for the January 22nd session. Carried.

Reorganization Results for Planning Board:

David Phillips	Vice-Chairman
Paul Eustace	Secretary
Sasha Yerkovich	To be re-appointed as a member

Peter Duchmann - Advanced Auto Electronics - Southwestern Blvd.

Mr. Peter Duchmann appeared before the Planning Board with a revised site plan for his proposed relocation from the corner that is being taken by the State, to the former Seven Corners Restaurant location on Southwestern Blvd. Amendments have been made to a plan that was just submitted to address current conditions and future conditions when the road is built. However, the Engineering Department has not had a chance to review the revised drawing. A diagram was submitted whereby the applicant's driveway will be located at the west end of the highway. An Unofficial preliminary sketch on the driveway was presented from DOT dated 1-3-07.

File

TOWN OF HAMBURG

S-6100 SOUTH PARK AVENUE • HAMBURG, NEW YORK 14075 • (716) 649-6111 • FAX (716) 649-4087



Supervisor
STEVEN J. WALTERS

Town Attorney
VINCENT J. SORRENTINO

Councilmen
D. MARK CAVALCOLI
KATHLEEN COURTNEY HOCHUL
JOAN A. KESNER
THOMAS J. QUATROCHE, JR.

Town Clerk
CATHERINE A. RYBCZYNSKI

Supt. of Highways
JAMES F. CONNOLLY

March 8, 2007

RECEIVED

MAR 09 2007

TOWN OF HAMBURG
PLANNING DEPT.

Jay A. Pohlman, Esq.
3993 South Park Avenue
Buffalo, New York 14219

Attn: Jay A. Pohlman, Esq.

Re: Lowe's Store
Southwestern Boulevard, Town of Hamburg

Dear Mr. Pohlman:

With respect to your client's rezoning application for the above-mentioned project, you are aware that the Town of Hamburg issued a Positive Declaration in accordance with the State Environmental Quality Review Act. In response to the Positive Declaration, the Environmental Impact Statement (EIS) process has been started and scoping has begun.

In accordance with Section 617.3 of 6NYCRR Part 617-SEQR, the Lead Agency (the Town of Hamburg) can charge a fee to the Applicant to recover the actual costs of reviewing the draft and/or final EIS.

The Town has begun to incur costs for special meetings (scoping meetings) and for the preparation of the scoping document. We also anticipate costs associated with having consultants review sections of the DEIS.

We, therefore, are requesting that you (the applicant) provide a retainer of \$25,000.00 to the Town. This money will be utilized to pay consultant fees. Copies of these billings will be provided to your office. When the account is running low, or when we have a better handle on our costs for these expenses, we may ask you to replenish the account.

We do not anticipate these fees to come anywhere close to the maximum amounts listed in Section 617.13(c), and in accordance with Section 617.13(f), you may appeal the fees if you find them inequitable.

B-73

March 8, 2007

Please remit a check in the amount of \$25,000.00 to the Town of Hamburg Town Clerks Office, marked "EIS Review Fees" for placement in a Special Account.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Boehm", with a long horizontal flourish extending to the right.

Richard G. Boehm
Deputy Town Attorney

RGB/cc

CC: Planning Department

Paradigm Development, Inc.
8348 Boston State Road
P.O. Box 196
Colden, NY 14033

TO: Planning Board/Drew Reilly
FROM: Conservation Advisory Board
RE: Proposed Lowe's Store Scoping document
DATE: 4/4/07

On Saturday, March 31, Dr. Andrele, Messrs. Carnevale, Loquet, Nichols and Spittler reviewed the site print and visited the site.

The site wetlands have been delineated (Earth Dimensions 7/20/06) and a review of the delineation report indicates a very complete assessment of the site.

While we don't have a print of the proposed buffer(s), we are aware of them and highly encourage they be maintained.

We will be happy to review the DEIS when it is presented.

To: WESTERN GUYANA PLANNING BOARD/DRAW REVIEW
From: DENVER/MS/MS/MS CAB

SUBJECT: PROPOSED LOWES STORE SIZING DOCUMENT

O.M. Saturday March 31st Ch. André, Messrs
Carmvale, Hoquet, Nichols & Spittler reviewed the
site print and visited the site.

The site wetlands have been delineated
(Earth Dimensions 7/20/00) and a review of
the delineation report indicates a very complete
assessment of the site.

While we don't have any print of
the proposed buffers, we are aware of
them and highly encourage they be
maintained.

We will be happy to review the
DEIS when it is presented.

Code of the Town of Hamburg, New York

[Click here to open the Table of Contents](#)

[This Code is also available for purchase](#)

**Updated 01 - 15 - 2007
(Supp No. 35)**

*This electronic version of the Code is provided for informational purposes only and has been updated as indicated above.
For the official version of the Code or more recent legislation, please contact the municipality.*

Town Offices

S-6100 South Park Avenue
Hamburg, New York 14075
Telephone: (716) 649-6111

Website: www.townofhamburgny.com

Chapter 76: BUILDING CONSTRUCTION AND FIRE PREVENTION

[HISTORY: Adopted by the Town Board of the Town of Hamburg 7-12-1965 by L.L. No. 5-1965; amended in its entirety 3-14-2005 by L.L. No. 1-2005. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Fire Prevention Bureau — See Ch. 28.
Alarm systems — See Ch. 65.
Brush, grass and weeds — See Ch. 75.
Unsafe buildings — See Ch. 80.
Dead trees — See Ch. 90.
Removal of topsoil — See Ch. 107, Art. II.
Fire Prevention Code — See Ch. 113.
Flood damage prevention — See Ch. 115.
Junk vehicles — See Ch. 145.
Lighting nuisances — See Ch. 155.
Mobile home parks — See Ch. 165.
Transient retail merchants — See Ch. 191, Art. II.
Sanitary Sewer Code — See Ch. 205.
Refuse disposal — See Ch. 220, Part 2.
Storage trailers — See Ch. 225.
Swimming Pool Code — See Ch. 232.
Zoning — See Ch. 280.

§ 76-1. Title.

This chapter shall be known and cited hereafter as the "Town of Hamburg Building Construction and Fire Prevention Code."

§ 76-2. Intent.

It is the intent of this chapter to provide for the administration and enforcement of the provisions of all laws, codes, ordinances, regulations and orders applicable to:

- A. The location, design, materials, construction, alteration, repair, equipment, maintenance, use, occupancy, removal and demolition of buildings, structures and appurtenances within the Town.
- B. Fire prevention and fire safety regulations consistent with nationally recognized good practices for safeguarding of life and property from the dangers of fire and explosions arising from hazardous conditions in the use or occupancy of buildings or premises and from the storage and use of hazardous substances, materials and devices.

§ 76-3. Administration and enforcement.

- A. The Town Board of the Town of Hamburg does hereby establish and maintain a functional entity hereafter referred to as the "Department of Code Enforcement."
- B. It shall be the purpose of this Department to execute and enforce the provisions of both state (as promulgated by 19 NYCRR, Chapter XXXII, Part 1203) and all applicable local laws listed herein.
- C. The Town Board shall appoint qualified personnel (namely code enforcement officials and fire inspectors, duly certified by the Department of State Codes Division under the provisions of Title 19 NYCRR, Chapter XII, Part 435) who are responsible for the administration and enforcement in compliance with the applicable regulations of both state and local laws.

§ 76-4. Duties and powers of Code Enforcement Department.

- A. Except as otherwise specifically provided by law, ordinance, rule or regulation, or except as herein otherwise provided, the Department of Code Enforcement shall administer and enforce all provisions of laws, ordinances, rules and regulations applicable to the plans, specifications or permits for the construction, alteration and repair of buildings and structures regulated hereunder, the installation and use

B-7B

- of materials and equipment therein, the location, use, occupancy, conditions and maintenance thereof.
- B. The code enforcement officers shall promulgate rules and regulations subject to the approval of the Town Board to secure the intent and purpose of this chapter and a proper administration and enforcement of the laws, ordinances, rules and regulations governing the plans, specifications, construction, alteration, repairs, conditions or maintenance pertaining to buildings, equipment and other structures regulated hereunder.
 - C. He shall receive applications, approve plans and specifications and issue permits for the erection, alteration and repairs of buildings, other structures and equipment regulated hereunder and shall examine the premises for which such applications have been received, approved plans or such permits have been issued for the purpose of ensuring compliance with the laws, ordinances, rules and regulations governing same.
 - D. He shall issue, in writing, all appropriate notices or orders to remove illegal or unsafe conditions, to require the necessary safeguards during construction and to ensure compliance, during the entire course of construction, with the approved plans and specifications, the conditions of the building permit and the requirements of the applicable laws, ordinances, rules and regulations.
 - E. Whenever the same may be appropriate to determine compliance with the provisions of the applicable laws, ordinances, rules and regulations covering the construction, alteration, repair or occupancy, he may, at his discretion, accept and rely upon written reports of tests in the field by experienced, professional persons or by accredited and authoritative testing laboratories or service inspection bureaus or agencies.
 - F. He shall issue a certificate of occupancy, where appropriate, for a building or structure constructed, altered or occupied in accordance with the provisions of the New York State Uniform Fire Prevention and Building Code and all other applicable laws, ordinances, rules and regulations.
 - G. Code enforcement officers and/or fire inspectors shall have the authority to make fire prevention inspections in accordance with the Fire Prevention and Property Maintenance Code of New York and may assist, where practical, in determining the cause and origin of any fire occurring within the Town.
 - H. Code enforcement officers and/or fire inspectors shall have authority and be accountable to inspect all structures afflicted by fire to assess damage and ascertain the appropriate measures to ensure safety to the occupants and to safeguard the public from associated hazards created by the fire. These measures shall not be limited to implementing the removal of such hazards, ordering the immediate closing of the building, condemnation of the premises, securing the structure or put through necessary means to abate potential endangerments to life or safety.

§ 76-5. Referenced codes.

The Town Board shall empower the designated personnel within the Department of Code Enforcement, including all appointed code enforcement officials, and fire inspectors, to administer, enforce and otherwise perform all duties in respect to the state and local laws as follows:

- A. Under Title 19 NYCRR, Chapter XXXII, Part 1203 and in accordance with Subdivision 2 of § 381 of the Executive Law with regard to the administration and enforcement of the Uniform Fire Prevention and Building Code (hereafter referred to as "the Uniform Code"), the following adopted New York State codes listed and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference:
 - (1) Building Code of New York State.
 - (2) Residential Code of New York State.
 - (3) Electrical Code of New York State.
 - (4) Fuel Gas Code of New York State.
 - (5) Mechanical Code of New York State.
 - (6) Plumbing Code of New York State.
 - (7) Property Maintenance Code of New York State.
 - (8) Fire Prevention Code of New York State.
 - (9) Energy Conservation Code of New York State.

B-79

(10) Factory Manufactured Buildings (The provisions of 19 NYCRR in regard to factory-manufactured structures installed in New York State shall apply.).

B. In accordance with Subdivision 3 of § 20 of the Municipal Home Rule Law with regard to the administration and enforcement of all applicable legislation adopted by the Town of Hamburg (hereafter referred to as "local law"), the following local laws listed and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference:

- (1) L.L. No. 11-1994: Alarm Systems Editor's Note: See Ch. 65, Alarm Systems. .
- (2) L.L. No. 9-1974: Brush, Grass and Weeds Editor's Note: See Ch. 75, Brush, Grass and Weeds. .
- (3) L.L. No. 5-1972: Unsafe Buildings Editor's Note: See Ch. 80, Unsafe Buildings. .
- (4) L.L. No. 3-1993: Coastal Erosion Hazard Area Editor's Note: See Ch. 85, Coastal Erosion Hazard Area. .
- (5) L.L. No. 4-1968: Dead Trees Editor's Note: See Ch. 90, Dead Trees. .
- (6) L.L. No. 13-1979: Removal of Topsoil Editor's Note: See Ch. 107, Art. II, Removal of Topsoil. .
- (7) L.L. No. 10-1994: Flood Damage Prevention Editor's Note: See Ch. 115, Flood Damage Prevention. .
- (8) L.L. No. 6-1994: Junk Vehicles Editor's Note: See Ch. 145, Junk Vehicles. .
- (9) L.L. No. 5-1995: Lighting Nuisances Editor's Note: See Ch. 155, Lighting Nuisances. .
- (10) L.L. No. 1-1991: Mobile Homes Editor's Note: See Ch. 165, Mobile Home Parks. .
- (11) L.L. No. 1-1992: Transient Retail Merchants Editor's Note: See Ch. 191, Art. II, Transient Retail Merchants. .
- (12) L.L. No. 22-1968: Sanitary Sewer Code Editor's Note: See Ch. 205, Sanitary Sewer Code. .
- (13) L.L. No. 3-1969: Refuse Disposal Editor's Note: See Ch. 220, Part 2, Refuse Disposal. .
- (14) L.L. No. 2-1995: Storage Trailers Editor's Note: See Ch. 225, Storage Trailers. .
- (15) Chapter 232, adopted 9-12-1966: Swimming Pool Code Editor's Note: See Ch. 232, Swimming Pool Code. .
- (16) L.L. No.10-1986: Zoning Editor's Note: See Ch. 280, Zoning. .

§ 76-6. Most restrictive methods to govern.

Where, in any specific case, different sections of this Code specify different methods of construction or other requirements, the most restrictive shall govern.

§ 76-7. Records and reports.

The Department of Code Enforcement shall keep permanent official records of all transactions and activities conducted by the Department, including all applications received, approved plans, permits and certificates issued, inspection reports, all rules and regulations under its jurisdiction and the notices and orders issued. Where applicable, such records shall be considered public records and may be obtained through the Town Clerk under a freedom of information request procedure. In some cases, depending on the magnitude of record, report or information requested, all costs associated with the retrieval, processing and reproduction of such records will be assessed. Once the costs have been determined, they must be paid in full prior to dispersal of the request.

§ 76-8. Penalties for offenses.

- A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy any building or other structure regulated hereunder, or portion thereof, or to store, handle, or use hazardous substances, materials or devices in violation of the New York State Uniform Fire Prevention and Building Code, this chapter or other applicable ordinance or any regulation or rule promulgated by the Department of Code Enforcement in accordance with the applicable laws, or fail in any manner to comply with a notice, directive or order of the designated code enforcement official or his representative issued pursuant to the New York Executive Law, the New York State Uniform Fire Prevention and Building Code, or this chapter, or to construct, alter, use or occupy any building, structure, or premises regulated hereunder, or part thereof, or to store, handle or use hazardous substances, materials or devices in a manner not permitted by

an approved building permit, fire prevention permit or certificate of occupancy or in strict accordance with the approved plans and specifications.

- B. It shall be unlawful for any person, firm or corporation to install, or cause to be installed, or to alter or repair electrical wiring on properties for light, cooling, heat or power in any manner not permitted by an approved electrical permit.
- C. Any person having been served with an order pursuant to the provisions of 19 NYCRR, Chapter XXXIII, Subchapter A or B, or this chapter who shall fail to comply with it within 30 days after such service or within the time frame fixed by the Code Enforcement Department for compliance, and any owner, builder, engineer, architect, tenant, contractor, construction superintendent, or other agencies or any other person taking part or assisting in the construction, repair, alteration or use of any building, other structure or equipment regulated by 19 NYCRR, Chapter XXXIII, Subchapter A or B or this chapter, or any person storing, handling or using hazardous substances, materials or devices.

§ 76-9. Permit regulations.

No work shall be undertaken which involves erecting, placing, altering, repairing or demolishing any structure or part thereof, nor installing of electrical, plumbing or mechanical systems, or including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto, except pursuant to a permit issued as provided by this article and unless such permit, at the time of the doing of such work, shall be in full force and effect.

- A. Exceptions. Exceptions to the requirement of a building permit are permitted under the following circumstances: necessary repairs of a minor nature that have no material effect to the structural features or alterations to existing buildings, provided that they do not:
 - (1) Materially affect structural features; and
 - (2) Affect firesafety features such as smoke detectors, sprinklers, required fire separations and exits; and
 - (3) Involve the installation or extension of electrical systems; and
 - (4) Include the installation of solid-fuel-burning heating appliances and associated chimneys or flues.
- B. Parties who intend to undertake work subject to the provisions of this code shall be required to apply and obtain any required building permit prior to the commencement of the work. An application for a building permit shall provide sufficient information to enable the code enforcement official to determine if the proposed work conforms with all applicable codes and regulations. The following is the minimum information and documentation required upon submission of a building permit application, in order that it can be considered subject for approval:
 - (1) An identification and description of the proposed work; and
 - (2) A description of the premises, including Tax Map number and street address; and
 - (3) The occupancy classification of the affected building or structure; and
 - (4) Construction documents (drawings and specifications) that define the scope of the proposed work; and
 - (5) A copy of a contract or similar document which substantiates the total cost of the proposed work.
- C. Construction documents shall not be accepted as part of the application for a building permit unless such documents:
 - (1) Meet the provisions of New York State Education Law, including § 7302, as amended, of Article 147, which stipulate that for any new building construction, alteration or addition to any building or structure costing in excess of \$10,000 or which involves changes affecting the structural safety or public safety thereof, a registered design professional, including registered architects or licensed professional engineers, certified in the State of New York be employed also, in connection with the construction of buildings or additions in excess of 1,500 square feet, but not including uninhabitable structures. In such cases and to serve as evidence of this requirement, all documents must have the original seal affixed to each sheet or page submitted.
 - (2) Indicate with sufficient clarity the nature and extent of the work proposed, including but not limited to a projected total cost estimate of work and/or material list itemized to the satisfaction of the code enforcement official.

- (3) Substantiate that the proposed work will comply with the Uniform Code and applicable Hamburg Zoning law; Editor's Note: See Ch. 280, Zoning. and
 - (4) Include a current site plan that shows any existing structures on the site, including the location of any existing utility easement or septic system, and indicates the location of the intended work as well as the distances between the structures and the lot Lines,
- D. Proof of insurance.
- (1) The permit applicant must show adequate general liability coverage in the amount and form acceptable to the Town of Hamburg.
 - (2) To assure compliance to with § 57 of the Workers' Compensation Law and § 220, Subtitle 8, of the Disability Benefits Law of the State of New York, all applicants (prior to permit issuance) must submit proof that they have obtained workers' compensation and disability benefits coverage, or that they are not required to provide coverage under these Laws.
 - (3) Only forms acceptable to the New York Workers' Compensation Board will satisfy the requirement of certifying that worker's compensation insurance has been properly secured.
- E. Licensing of plumbing and site utility contractors. In all cases where there is to be installation of new plumbing or alteration of existing plumbing, or sewer work, a plumbing/sewer permit must first be obtained by a licensed plumber or site utility contractor.
- F. Application for a permit shall be made by the owner or lessee, or the agent of either, or by the architect, engineer or builder employed in connection with the proposed work. When such an application is made by a person other than the property owner, it is the applicant's responsibility to obtain the owner's authorization and permission to conduct the proposed work. The code enforcement official may require an affidavit, signed by the property owner, indicating such approval and authorization. Amendments to the application or to the plans and specifications may be filed at any time prior to completion of the work. Such amendments shall likewise be subject to the approval of the Code Enforcement Department and, after approval, shall be filed with and be deemed a part of the original permit application.

§ 76-10. Action on application; expiration of permits; acceptance of inspections; conformity to approved plans.

- A. Applications for building permits shall be examined within a reasonable time after filing and if, after examination, it appears that the proposed work will be in compliance with the provisions of this chapter and other laws applicable thereto and that the proposed construction or work will be safe, the application will be approved. If the examination reveals otherwise, the application will be returned as rejected, causing the applicant to make the necessary adjustments to bring the plans and specifications into compliance with the article.
- (1) Upon payment of the required fee and upon satisfactory proof being given that the applicant is in compliance with applicable provisions, rules and regulations of this chapter, a permit may be issued by and bear the name and signature of the code enforcement official and applicants having proper authorization.
 - (2) Any permit granted hereunder shall be limited only to the activity authorized on said permit, and its continued validity shall be subject to the conditions set forth on said permit. The permit shall not be transferable, and any change in the activity, size, extent or type of operation, location, ownership or use shall nullify the original permit so as to require issuance of a new permit.
 - (3) Each and every permit issued by the Code Enforcement Department under the provisions of this chapter shall expire and become null and void at the expiration of one year from the date of issuance, unless within such period an extension of such permit has been obtained from the Code Enforcement Department. The provisions of this section shall apply to any such extension.
- B. Permits shall continue until revoked or finalized as provided for herein or expire after a period of one year. An extension of the permit time period may be granted, provided that satisfactory reason can be shown for failure to complete the work or activity authorized within the prescribed time period. For good cause shown, an application may be made for a six-month period for an extension of said period upon payment of a renewal fee of 1/2 the original building permit fee. Permits can only be renewed twice (one year beyond the original permit expiration date), and upon such expiration the work shall continue only if a new permit is granted at the discretion of the Code Enforcement Department.

B-82

- C. The acceptance of any permit issued pursuant to this chapter constitutes agreement and consent by the person to allow the code enforcement official to enter the premises at any reasonable time to conduct inspections as required by this chapter. Refusal to allow the code enforcement official or fire inspector to conduct said inspections of the premises and their records shall constitute justification for the revocation or suspension of said permit. In addition, should the code enforcement official or fire inspector deem it necessary, application may be made to any court of competent jurisdiction to obtain a warrant authorizing an inspection of the premises in question.
- D. All work performed under a permit issued as provided in this article shall conform to the application, the plans and specifications and any amendments thereof approved by the code enforcement official.

§ 76-11. Revocation.

The code enforcement official and fire inspector shall have the authority to revoke permits issued by them in the following instances:

- A. If it shall appear to them that there has been any false statement or misrepresentation as to a material fact in the application or any accompanying statement or plans upon which the permit was based.
- B. Where it is found that the permit as issued was in conflict with the requirements of any applicable code, ordinance, policy, procedure, rule or regulation and, accordingly, should not have been issued.
- C. Where the person to whom a permit has been issued fails or refuses to comply with a stop-work order duly issued by the code enforcement official in accordance with the provisions of this chapter.

§ 76-12. Stop-work orders.

- A. Whenever the code enforcement official has reasonable grounds to believe that work on any building or structure is proceeding without a permit or is otherwise in violation of the provisions of any applicable law, code, ordinance or regulation or is not in conformity with any of the provisions of the application, plans or specifications on which a permit was issued or is being continued in an unsafe and dangerous manner, he/she shall notify either the owner of the property, or the owner's agent, or the person or corporation performing the work to immediately suspend all work. In such instance, any and all persons shall immediately suspend all related activities until the stop-work order has been duly rescinded.
- B. Such stop-work order shall be in writing on a form prescribed by the code enforcement official and shall state the reason for the stop-work order, together with the date of issuance. The stop-work order shall bear the signature of the code enforcement official and shall be prominently posted at the work site. The posting of a stop-work order on the job site shall be deemed sufficient notice to suspend all work.

§ 76-13. Fees.

All permit and licensing fees collected shall be as specified herein or on the building permit schedule as approved from time to time by Town Board resolution.

- A. The fee for a permit issued as a result of a person not obtaining such permit prior to the start of construction shall be triple the cost of the original permit.
- B. Reinspection fee. A reinspection fee will be imposed against the permit holder, builder or developer to cover the cost of a repeat inspection under the following circumstances:
 - (1) When it can be verified by the code enforcement official that the builder/developer has scheduled an inspection with the Code Enforcement Department with the full knowledge that the work (scheduled for inspection) was substantially incomplete or deficient, creating the need for subsequent inspection.
 - (2) If the permit holder or builder has not provided safe and/or adequate access to the premises necessary for the code enforcement official to conduct a proper inspection. The Code Enforcement Department will affix the cost of any reinspection fees on the building permit. A certificate of occupancy will not be issued until such time that the cost of these fees are reimbursed to the Town by the builder/owner and the work has been satisfactorily completed.

§ 76-14. Certificates of occupancy and compliance.

B-83

- A. No newly constructed building or addition shall be occupied or used, in whole or in part, until a certificate of occupancy has been issued by the code enforcement official certifying that such building conforms substantially to the permit and requirements of laws, ordinances and rules applying to buildings of its class and kind. No other structure or construction issued a permit in accordance with the provisions of this chapter shall be used or otherwise put into service without issuance of a certificate of compliance by the Code Enforcement Department certifying that the work for which the permit was issued has been completed substantially in accordance with the provisions of laws, ordinances and rules applying to such construction.
- B. In addition to the certification as to the compliance with the permit and the provisions of law, certificates of occupancy shall state the purposes for which the building may be used, in whole or in several parts, and may contain such special stipulations as the circumstances of the case may require, consistent with the provisions of law and ordinance.
- C. A certificate of occupancy shall be issued within 10 days after application therefor if the building, at the time of such an application, is not unlawful, which certificate may be endorsed upon the building permit.
- D. The owner or his/her agent must submit to the Code Enforcement Department an "as built" survey, executed by a duly Licensed surveyor or professional engineer, verifying the true location of the new building or additions in reference to all the property lines and existing structures.

§ 76-15. Conditional occupancy.

- A. Upon request, the code enforcement official may issue a conditional certificate of occupancy for a building or structure, or parts thereof, before the entire work covered by the permit has been completed, provided that the building or structure, or portion or portions to the extent completed, may be occupied safely without jeopardizing life or public welfare. A conditional certificate of occupancy shall specify the conditions that must be met before a final certificate of occupancy can be issued and shall specify an expiration date. The expiration date may be extended at the discretion of the code enforcement official.
- B. Conditional certificates of occupancy criteria. A conditional certificate of occupancy may be issued for a building, provided that all laws, rules, ordinances and regulations of the State of New York and Town of Hamburg, together with the following, as applicable in the sole judgment of the code enforcement official, are complied with:
 - (1) The conditional certificate of occupancy shall state a date upon which it shall automatically expire and become void.
 - (2) A list of all items remaining to be completed on the project site shall be set forth on the conditional certificate of occupancy and a time limit stated, by which date all items of work are to be completed.
 - (3) A cost estimate of the remaining work shall be submitted by the applicant in a form acceptable to the code enforcement official, which cost estimate may be increased to reflect cost overruns or additional work necessary to complete required items.
 - (4) A letter of commitment shall be submitted with an original signature affixed by the property owner and/or applicant and approved by the Code Enforcement Department to the Town of Hamburg, agreeing to complete the remaining work prior to the stipulated expiration date.

§ 76-16. Existing buildings.

- A. Nothing in this code shall require the removal, alteration or abandonment of the lawful use and occupancy of a lawfully existing building, except as may be necessary for the safety of life or property. Upon written request from the owner, the code enforcement official shall issue a certificate of occupancy for an existing building, certifying the occupancy or use of such building after a verification by inspection, provided that at the time of issuing such a certificate there exists no violation of law or noncompliance with an order of the code enforcement official.
- B. In the case of an existing building or structure built of material heretofore approved, but now not conforming to the provisions of this code, wherein it is proposed to make a minor alteration or addition, the code enforcement official may, in his discretion and when in his judgment the requirements of this code inflict an undue hardship, permit the use of such nonconforming materials in the making of such minor alterations or addition. Nothing in this subsection shall permit the violation of any state law or requirement, nor permit any construction that is hazardous or not structurally sound in the judgment of the code enforcement official.

§ 76-17. Change of occupancy.

- A. No change of occupancy or use shall be made in a building heretofore erected or altered, or property thereof, that is not consistent with the last issued certificate of occupancy for such building, without prior review and compliance approval from the Code Enforcement Department.
- B. In the case of an existing building, no change of occupancy shall be made unless the code enforcement official finds, upon inspection, that such building and property thereof conforms to the provisions of law and of the ordinances with respect to the proposed new occupancy and use. He may, in his discretion, require the filing of plans and specifications showing the structural strength and type of construction of such building or, if warranted, refer the owner of such property to the Planning Board for site plan review before issuing such certificate.

§ 76-18. Unsafe buildings.

- A. A building or structure, or part thereof, that may be or shall at any time become unsafe by reason of bad condition of walls, overloaded floors, defective construction, deterioration or lack of safeguards against fire or other causes shall, unless made safe and secure after notice is herein provided, be taken down and removed by the owner or by the Town of Hamburg, its agents or representatives, at the expense of the owner.
- B. A building or structure declared structurally unsafe by the Code Enforcement Department or damaged by fire may be restored to safe condition, provided that if the damage or cost of reconstruction or restoration is in excess of 50% of said building or structure, exclusive of foundations, and if such work of reconstruction or restoration is not begun in six months' time of being damaged by fire, such building or structure, if reconstructed or restored, shall be made to conform to the requirements of new buildings as to materials and form of construction, but no change of use or occupancy shall be compelled by reason of such construction or restoration, except as provided in the Town Zoning Ordinance. Editor's Note: See Ch. 280, Zoning.
- C. Upon receipt of information that a building or structure or part thereof is unsafe or dangerous, the code enforcement official shall make or cause to be made an inspection thereof, and if it is found that an unsafe condition exists or that the structure or part thereof has deteriorated to such an extent as to be dangerous, he shall serve or cause to be served on the owner, occupant or tenant a written notice requiring the same to be made safe and secure or to be removed from the premises. The code enforcement official may, if he believes that the necessities of the cause so require, cause a notice to be attached to any such unsafe building or a building which has deteriorated to such an extent as to be unsafe, stating that the same is dangerous, and no person shall deface, remove or in any manner place any obstruction to the view of such notice.
- D. In case there shall be, in the opinion of the code enforcement official, actual and immediate danger of collapse of a building or structure, or any part thereof, so as to endanger public safety, life or property, he shall cause the necessary work to be done to render such building or structure, or part thereof, temporarily safe, or to demolish and remove the same, whether or not the procedure prescribed in the preceding sections shall have been commenced, and in such case, the code enforcement official shall report the expense of such work to the Town Board, which shall order such expense to be assessed against the premises upon which such work was done.
- E. Prior to securing or demolishing such unsafe building or structure either by the Town employees or pursuant to a contract, the Town Board shall notify the owner in writing of the actual cost of such work at the address of the property and at the address as indicated on the assessment roll of the Town of Hamburg by depositing a true copy of the same in a postpaid properly addressed wrapper in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York. Such notice shall state the date, time and place where the Town Board shall hold a public hearing on the amount of such cost and that the owner may appear before the Town Board to contest or object to such amount. Such hearing shall be held not less than five days after serving of such notice. After such hearing the Town Board may confirm such amount, reduce it or increase it; however, if it increases the amount, it shall hold another public hearing on like notice of the increased amount. After the Town Board shall determine the final amount of costs, it shall adopt a resolution levying the same upon the land on which the unsafe building or structure is located.

§ 76-19. Notice of violations; penalties for offenses.

- A. Whenever the code enforcement official is satisfied that a building or structure or any portion thereof or any work in connection therewith, which is regulated, permitted or forbidden by this code, is being erected,

385

altered or repaired or has been erected, altered or repaired in violation of the provisions of this code or in violation of the plans and specifications pursuant to which a permit for such work has been issued, or where a building or structure or part thereof shall have become unsafe by reason of had condition of walls, overloaded floors, defective construction, deterioration or lack of safeguards against fire or other causes, he may serve a written notice upon the person responsible therefor, directing discontinuance of such action or correction of the violation complained of and requiring compliance with the provisions contained in this code. Any person having been served with such notice or order shall comply with the requirements thereof within 10 days of service of said written notice. Service can be made personally or by registered or certified mail sent to the owner, or by substituted service in conformance with the Civil Practice Law and Rules, at the last address shown on the assessment roll covering said property.

- B. Whenever, in the opinion of the code enforcement official, the erection, alteration or repair of any building or structure is being carried on in violation of a provision or requirement of this code, he may order, orally or in writing, all further work to be stopped and may require suspension of work until such violation has been remedied.
- C. Any person, firm or corporation who shall violate a provision of this code or fail to comply with any of the requirements thereof or who shall erect, construct, alter, repair, place or demolish or has erected, constructed, altered, repaired, placed or demolished a building, structure or part thereof or who has failed to remove a building or structure declared structurally unsafe by reason of bad condition of walls, overloaded floors defective construction, deterioration or lack of safeguards against fire or other causes in violation of a detailed statement or plan submitted and approved thereunder or of a permit or certificate issued thereunder shall be guilty of an offense, which shall be punishable by a fine of not less than \$50 nor more than \$500, and each day such violation shall be permitted to exist shall constitute a separate offense; and a person, firm or corporation who shall own a building or structure or a part thereof that may be or shall at any time become unsafe because of the bad condition of walls, overloaded floors, defective construction, deterioration or lack of safeguards against fire shall be repaired forthwith, and the condition in violation of this article remedied forthwith or said building, structure or part thereof shall be directed to be removed and demolished.

§ 76-20. Interpretations and variance provisions.

As stipulated within the context of this article, the code enforcement official is duly responsible to interpret all relevant provisions to ensure compliance. Upon application, any variance from strict compliance of the specifications relating to the State Building Code shall be referred to the New York State Board of Review Council pursuant to Title 19 NYCRR, Chapter XXXII, Part 1205. The code enforcement official is also authorized to make interpretations in regard to the Town Zoning Code Editor's Note: See Ch. 280, Zoning, and pertinent Town local law. When deemed necessary, the code enforcement official may also refer such interpretations to the Zoning Board of Appeals. Any appeal for variance or any modification of provisions of the Town Zoning Code shall be referred to the Zoning Board of Appeals, which subject to its approval, may grant a variance in accordance with Article XXXIII.

§ 76-21. Restrictions on garage permits.

No permit will be issued for the construction of a private garage or other similar outbuilding on any lot unless it is in compliance with zoning regulations applicable thereto. It is the intent of this section to prevent the construction of a garage or other outbuilding to be used for a residence until such time as the residence may be built.

§ 76-22. Parking provisions.

Each plan filed for the construction of any structure, except a one- or two-family residence, shall provide sufficient parking area off the public highway to provide for all normal parking requirements of the structure to be built, all in accordance with regulations applicable thereto.

§ 76-23. Grading.

- A. Grading shall conform to grades of adjacent property unless, by mutual agreement of adjacent owners, a new grade is established which is satisfactory to the Town Engineer.
- B. Grading in subdivisions with an approved grading plan shall conform to said plans unless, by mutual

B-56

agreement of adjacent owners, a new grade is established which is satisfactory to the Town Engineer.

- C. Grading in subdivisions with no approved grading plan or on lots with no approved grading plan shall be approved by the Town Engineer.

§ 76-24. Plumbing and site utility work administrative rules and regulations.

- A. All plumbing and site utility work conducted in the Town of Hamburg shall be performed only by duly licensed plumbers, with the exception of any owner working exclusively on the premises on which he or she resides and has obtained the necessary plumbing permit.
- (1) A licensed master plumber or journeyman plumber or site utility contractor employing plumbers shall be present at all times when work is being performed on any premises within the Town of Hamburg, exclusive of the Villages of Hamburg and Blasdell, involving the original installations, alterations or repair of plumbing as defined in § 76-24 of this chapter.
 - (2) Applicants must have:
 - (a) Four years of vocational school, plus two years of practical experience under the supervision of a master plumber; or
 - (b) Four years of practical plumbing experience; or
 - (c) An equivalent combination of training and experience indicated in Subsection A(2)(a) or (b) above.
- B. Method of application for license. Any person who shall desire a license to conduct a plumbing business within the Town of Hamburg, exclusive of the Villages of Blasdell or Hamburg, shall apply in person and register his or its name and address with the code enforcement official upon the application form prescribed by the Code Enforcement Department.
- C. Issuance of license. A code enforcement official shall issue a license authorizing said applicant to conduct such business in the Town of Hamburg upon being satisfied that the applicant has met the following conditions:
- (1) Approval of code enforcement official, evidenced by the receipt of a certificate from the Town Plumbing License Examiner showing that such person has satisfactorily passed an examination held by said examiner. The certificate must be dated within one year of the date of the application.
 - (2) Proof of financial responsibility. The applicant shall file with the Code Enforcement Department a certificate of insurance protecting the Town to the extent of the following limits: personal liability of \$300,000 and property liability of \$50,000.
 - (3) Payment of fees as prescribed for a master license, a journeyman license or site utility contractor.
- D. Use of license by others. No license holder shall allow his name or license to be used by any other person or party either for the purpose of obtaining permits or doing any work under his license. Plumbers will be held responsible for the violation of any rules of the Town by journeymen plumbers or others in their employ.
- E. Transfer of license. A license cannot be transferred to any successor in the business or to any person whomsoever under any circumstances.
- F. Expiration of license. All licenses shall expire on the 31st day of December of the year issued and may be renewed within 30 days preceding expiration.
- G. Renewals. A renewal license shall be issued by the Code Enforcement Department each year to any person holding a license at the expiration of the previous year, without examination, upon payment of the license fee and proof of financial responsibility. If, however, the application for the renewal license is not made within 30 days after the expiration of the prior existing license, such license shall be deemed to have lapsed. A new license shall not be issued except upon new application made pursuant to Subsections B and C of this section unless the licensee make payment on prior annual renewal fees.
- H. Examinations.
- (1) It shall be the joint responsibility of the code enforcement official and duly appointed Plumbing License Examiner to have jurisdiction over and examine all persons desiring or intending to engage in the plumbing business, sewer installations or as employing plumbers in the Town of Hamburg, with the

B-87

- power of examining persons applying for examinations, such as plumbers and site utility contractors, to determine their qualifications for conducting the business of plumbing and sewer construction and to issue certificates of competency to all such persons who shall have satisfactorily passed the examination before them and who shall be by them determined to be qualified for conducting business as plumbers and site utility contractors within the Town. The Town Board (by resolution on an annual basis) shall appoint a qualified individual hereafter known as the "Plumbing License Examiner." It shall be this individual's responsibility to prepare and monitor plumbing examinations in order to certify that all applicants meet a satisfactory level of competency.
- (2) The Plumbing License Examiner shall hold an examination during each June and December hereafter for site utility contractors and master and journeyman plumbers.
 - (3) Upon the request of a qualified applicant, a special examination may be held, at any time, at the discretion of the supervising code enforcement official. The expense of such special examination shall be established by Town Board resolution, which amount shall be deposited with the Town Clerk by the applicant for such examination.
 - (4) Before an applicant shall be admitted to an examination, he shall file his application in writing with the Code Enforcement Department at least five days before the examination date and shall pay to the Town Clerk the required examination fee. The names and addresses of applicants shall be forwarded by the Code Enforcement Department to the Town Clerk.
- I. Inspection of plumbing and site utility work. There shall be appointed, as provided by law, a duly certified code enforcement official whose duties, in addition to those prescribed by law and those which may be prescribed by the Town Board, shall be to inspect the construction and alteration of all plumbing work performed in the Town of Hamburg and to report, in writing, the results of such inspection of such plumbing to the Code Enforcement Department, and he shall also report in like manner any person engaged in or carrying on the business of employing plumbers, without having the license herein provided.
- J. Notice of violation of rules.
- (1) Whenever any inspector or other person reports a violation of any rule or regulation for plumbing and drainage, or a deviation from any officially approved plan or specification for plumbing and drainage filed with the Code Enforcement Department, a notice of the violation thereof shall be served upon the person, firm or corporation doing the work, if a registered plumber.
 - (2) Such notice may be served personally or by mail, and, if by mail it may be addressed to such licensed plumber at the address registered by him or it with the Town Clerk, but the failure of a plumber to register will relieve the Town from the requirement of giving notice of violation. Unless the violation is removed within three days after the date of serving or mailing such notice, exclusive of the day of serving or mailing, the code enforcement official may proceed with enforcement action according to law. A reinspection fee shall be charged.
- K. Violations; how punished.
- (1) Any person violating the provisions of this article or any rules or regulations of the Town Code Enforcement Department and who fails to remove or correct such violations after notice as provided in Subsection J hereof shall be guilty of a misdemeanor and, on conviction, shall be subject to a fine of not more than \$500 or imprisonment for not more than 30 days, or both, and in addition, if a licensed plumber, shall forfeit his or its license.
 - (2) All violations under this article shall be prosecuted in the name of the inspector on behalf of the Town of Hamburg.
- L. Issuance of permits to connect with sewers restricted. He (the officer having charge of various sewer districts in the Town of Hamburg) shall not issue a permit to anyone to connect with the sewers in the Town of Hamburg, unless such person is duly licensed to conduct business in the Town of Hamburg.
- M. Plans and specifications. Plans and specifications of the work, together with an application signed by the owner or his agent for a permit, must be submitted to the code enforcement official for approval, and a permit must be obtained before any part of the building or work is commenced, There shall be a separate plan for each building, public or private, accompanied by specifications describing the drainage of said building on blanks prescribed and furnished for this purpose, showing the size and kind of pipes, traps, closets, fixtures, etc. to be used, the same to be examined and placed on file with the Code Enforcement Department. A fee, as determined by a schedule of fees, adopted by the Town Board, shall accompany

each application.

- N. A further change in plans. Application for change in plans or work in the building must be made in writing by the plumber, duly signed by the owner or his agent, and a written permit obtained from the code enforcement official before any part of the work is started.
- O. Hamburg Master and Miscellaneous Sanitary Sewer Districts. The fee for a sewer permit to make any connection to the sanitary sewers in the Hamburg Master and Miscellaneous Sewer Districts shall be established at the following rates:
- (1) For single- or double-family dwellings, the fee shall be \$400.
 - (2) For multifamily housing, the fee shall be \$400, plus \$200 for each additional dwelling unit in excess of two dwelling units.
 - (3) For commercial or institutional facilities having sanitary facilities that are served by a domestic water service less than one inch in diameter, the fee shall be \$400. For those facilities served by a domestic water service which is equal to or greater than one inch in diameter, but less than 1 1/2 inches in diameter, the fee shall be \$700. For facilities served by a domestic water service which is equal to or greater than 1 1/2 inches in diameter but less than two inches in diameter, the fee shall be \$1,500.
 - (4) For facilities served by a domestic water service which is equal to two inches in diameter, the fee shall be \$2,000. For any facility served by a domestic water service which is greater than two inches in diameter, the fee shall be determined based on the size of the water service, and such fee shall be calculated by the Code Enforcement Department. NOTE: Water services used for the sole purpose of fire protection shall not be considered in the determination of sewer permit fees.
 - (5) The fee for a permit to make any connection within sanitary sewers tributary to the Village of Blasdell Sewage Treatment Plant shall be reduced by 50%.
- P. Erie County Sanitary Sewer District No. 2. The fee for a sewer permit to make any connection to the sanitary sewers in the Erie County Sanitary Sewer District No. 2 shall be established at the following rates:
- (1) For single- or double-family dwellings, the fee shall be \$50.
 - (2) For multifamily housing, the fee shall be \$50, plus \$25 for each additional dwelling unit in excess of two dwelling units.
 - (3) For commercial or institutional facilities having sanitary facilities that are served by a domestic water service less than one inch in diameter, the fee shall be \$50. For those facilities served by a domestic water service which is equal to or greater than one inch in diameter, but less than 1 1/2 inches in diameter, the fee shall be \$75. For those facilities served by a domestic water service which is equal to or greater than 1 1/2 inches in diameter but less than two inches in diameter, the fee shall be \$200.
 - (4) For facilities served by a domestic water service which is equal to two inches in diameter, the fee shall be \$350. For any facility served by a domestic water service which is greater than two inches in diameter, the fee shall be determined based on the size of the water service, and such fee shall be calculated by the Code Enforcement Department. NOTE: Water services used for the sole purpose of fire protection shall not be considered in the determination of sewer permit fees.
- Q. Northeast Hamburg Erie County Sanitary Sewer District No. 3. The fees for a sewer permit to make any connection to the sanitary sewers in the Northeast Hamburg Erie County Sewer District No. 3 shall be established at the following rates:
- (1) For single- or double-family dwellings, the fee shall be \$200.
 - (2) For multifamily housing, the fee shall be \$200, plus \$100 for each additional dwelling unit in excess of two dwelling units.
 - (3) For commercial or institutional facilities having sanitary facilities that are served by a domestic water service less than one inch in diameter, the fee shall be \$200.
 - (4) For those facilities served by domestic water service which is equal to or greater than one inch in diameter but less than 1 1/2 inches in diameter, the fee shall be \$350. For those facilities served by a domestic water service which is equal to or greater than 1 1/2 inches in diameter but less than two inches in diameter, the fee shall be \$800.
 - (5) For facilities served by a domestic water service which is equal to two inches in diameter, the fee shall

3-39

be \$1,400. For any facility served by a domestic water service which is greater than two inches in diameter, the fee shall be determined based on the size of the water service, and such fee shall be calculated by the Code Enforcement Department. NOTE: Water services used for the sole purpose of fire protection shall not be considered in the determination of sewer permit fees.

§ 76-25. General regulations.

- A. Use of public sewers required. Where a public sewer is accessible in a street, alley, easement or thoroughfare to a building or premises abutting thereon, the liquid waste from any plumbing system in said building shall be discharged into the public sewer unless otherwise prohibited.
- B. Sewage treatment required. Where the liquid wastes from any plumbing are not discharged into a public sewer, such wastes shall be so treated or disposed of as recommended by the Erie County Health Department.
- C. Septic tank location. Septic tanks are to be located as recommended by the Erie County Health Department.
- D. Harmful wastes in sewers.
 - (1) Attention is referred to the provisions Part 403 of Title 40, Code of Federal Regulations (40 CFR) and the Rules and Regulations for Erie County Sewer Districts Section 404, Oil and Grease Separators and/or Sediment Separators, which stipulates that all food preparation facilities, vehicle maintenance shops and garages and similar commercial establishments which generate and discharge oil, grease, grit and sediments, or other harmful ingredients in excess of 100 milligrams per liter (100 mg/l), or as determined to be detrimental to, and into the public sewer, shall be required to provide an oil and grease and/or sediment separator in compliance to the required design guidelines stated therein.
 - (2) In no case may any liquid or vapors having a temperature greater than 122° F. (50° C.) or wastewater of such quantity and temperature as to cause the temperature of the influent at the treatment plant to exceed 104° F. (40° C.) be discharged. In such a case there shall be provided a satisfactory cooling device.
- E. Explosive or inflammable matter in sewers.
 - (1) No explosive or inflammable matters shall be discharged into any sewer.
 - (2) Cleaning establishments, buildings used for housing or repairing automobiles, gasoline and oil service stations and other buildings or establishments where gasoline, oils, calcium, carbide or other explosives or inflammable materials are stored, sold or handled, the drains from which are connected to the public sewers, must be provided with an approved intercepting pit or tank so constructed, located and maintained as to prevent the entrance into the sewer of such explosive or inflammable matter.
- F. Protection of material. All pipes passing under or through walls shall be protected from breakage. No metal pipes shall pass through or under cinders, slag or other corrosive material.
- G. Workmanship. Workmanship shall be of such character as fully to secure the result sought to be obtained in all of the sections of this code.
- H. Installation of inside plumbing by owner. All inside plumbing installed by the owner himself, who shall occupy the building as his home, shall comply with the requirements of this code, and in such event the word "owner" shall be substituted for the word "plumber" throughout this code, with the exception that the license requirement will be waived.

§ 76-26. Electrical inspection.

- A. Electrical inspector. The supervising code enforcement officer and each of the duly appointed inspectors of any electrical inspection company or agency which has been approved by local electric utilities and which has submitted to the Town of Hamburg proof of satisfactory liability coverage are hereby authorized and deputized as agents of the Town of Hamburg to make inspections and reinspections of all electrical installations heretofore and hereafter described and to approve or disapprove the same. In no event, however, will the cost or expense of such inspections and reinspections be a charge against the Town of Hamburg.

B-90

B. Duties of the Electrical Inspector.

- (1) It shall be the duty of the designated inspector to report in writing to the Code Enforcement Department Inspector, whose duty it shall be to enforce all provisions of this article, all violations or deviations from or omissions of the electrical provisions of the New York State Uniform Fire Prevention and Building Code applicable to the Town of Hamburg and of all local laws, ordinances and the New York State Uniform Fire Prevention and Building Code, as referred to in this article, insofar as any of the same apply to electrical wiring. The inspector shall make inspections and reinspections of electrical installations in and on properties in the Town of Hamburg upon the written request of an authorized official of the Town of Hamburg or as herein provided. The inspector is authorized to make inspections and reinspections of electrical wiring, installations, devices, appliances and equipment in or on properties within the Town of Hamburg where he deems it necessary for the protection of life and property. In the event of an emergency, it is the duty of the inspector to make electrical inspections upon the oral request of an official or officer of the Town of Hamburg.
- (2) It shall be the duty of the inspector to furnish written reports to the proper officials of the Town of Hamburg and owners and/or lessees of property where defective electrical installations and equipment are found upon inspection. He shall authorize the issuance of a certificate of compliance when electrical installations and equipment are in conformity with this article. He shall direct that a copy of the certificate of compliance be sent to the Town of Hamburg to the attention of the Code Enforcement Department.

- C. Violations of the article. It shall be a violation of this article for any person, firm or corporation to install, to cause to be installed or to alter electrical wiring for light, heat or power in or on properties of the Town of Hamburg until an application for inspection has been filed with any electrical inspection company or agency which has been approved by local electric utilities and which has submitted to the Town of Hamburg proof of satisfactory liability coverage. It shall be a violation of this article for a person, firm or corporation to connect or cause to be connected electrical wiring in or on properties for light, heat or power to any source of electrical energy supply prior to the issuance of a temporary certificate or a certificate of compliance by the designated electrical inspector or inspection agency.

§ 76-27. Special regulations.

In cases where the New York State Uniform Fire Prevention and Building Code has referred to local jurisdiction, in the absence of a local law, the designated code enforcement official shall be the local authority having jurisdiction.

§ 76-28. When effective.

This article shall take effect immediately.

B-91

Chapter 115: FLOOD DAMAGE PREVENTION

[HISTORY: Adopted by the Town Board of the Town of Hamburg 9-26-1994 by L.L. No. 10-1994. Amendments noted where applicable.]

GENERAL REFERENCES

Building Code — See Ch. 76.

Coastal erosion hazard area — See Ch. 85.

Environmental quality review — See Ch. 105.

Mobile home parks — See Ch. 165.

Subdivision of land — See Ch. 230.

Zoning — See Ch. 280.

ARTICLE I Findings; Purposes; Objectives

§ 115-1. Findings.

The Town Board of the Town of Hamburg finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Hamburg and that such damages may include destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this chapter is adopted.

§ 115-2. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities.
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- C. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters.
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages.
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- F. Qualify and maintain for participation in the National Flood Insurance Program.

§ 115-3. Objectives.

The objectives of this chapter are:

- A. To protect human life and health.
- B. To minimize expenditure of public money for costly flood control projects.
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. To minimize prolonged business interruptions.
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.

B-92

- G. To provide that developers are notified that property is in an area of special flood hazard.
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

ARTICLE II Definitions

§ 115-4. Terms defined.

- A. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meanings they have in common usage and to give this chapter its most reasonable application.
- B. As used in this chapter, the following terms shall have the meanings indicated:

APPEAL — A request for a review of the local administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING — A designated AO, AH or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent or greater annual chance of flooding to an average annual depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1 - A30, A99, V, VO, VE or V1 - V30. It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain."

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT — That portion of a building having its floor subgrade (below ground level) on all sides.

BUILDING — See "structure."

CELLAR — The same meaning as "basement."

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING — A nonbasement building built, in the case of a building in Zones A1 - A30, AE, A, A99, AO, AH, B, C, X or D, to have the top of the elevated floor or, in the case of a building in Zones V1-30, VE or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1 - A30, AE, A, A99, AO, AH, B, C, X or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. In the case of Zones V1 - V30, VE or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by the community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION — The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

FEDERAL EMERGENCY MANAGEMENT AGENCY — The federal agency that administers the National Flood Insurance Program.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — An official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The "FBFM" delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

B-93

FLOOD ELEVATION STUDY — An examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOOD OR FLOODING

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (a) The overflow of inland or tidal waters;
 - (b) The unusual and rapid accumulation or runoff of surface waters from any source.
- (2) "Flood" or "flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection (1)(a) above.

FLOOD HAZARD BOUNDARY MAP (FHBM) — An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — See "flood elevation study."

FLOODPLAIN OR FLOOD-PRONE AREA — Any land area susceptible to being inundated by water from any source. (See definition of "flooding.")

FLOODPROOFING — Any combination of structural and nonstructural additions, changes or adjustments to structures which reduces or eliminates flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY — The same meaning as "regulatory floodway."

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding and ship repair facilities. The term does not include long-term storage, manufacturing, sales or service facilities.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

HISTORIC STRUCTURE — Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a State Inventory of Historic Places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a Local Inventory of Historic Places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior; or
 - (b) Directly by the Secretary of the Interior in states without approved programs.

LOCAL ADMINISTRATOR — The person appointed by the community to administer and implement this chapter by granting or denying development permits in accordance with its provisions. This person is often the Code Enforcement Officer, Building Inspector or employee of an engineering department.

B-94

LOWEST FLOOR — Lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's "lowest floor," provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a "recreational vehicle."

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL — For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME — The same meaning as "manufactured home."

NATIONAL GEODETIC VERTICAL DATUM (NGVD) — As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the community and includes any subsequent improvements to such structure.

NEW MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

ONE-HUNDRED-YEAR FLOOD — The same meaning as "base flood."

PRINCIPALLY ABOVE GROUND — At least 51% of the actual cash value of the structure, excluding land value, is above ground.

RECREATIONAL VEHICLE — A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 115-13B of this chapter.

START OF CONSTRUCTION — Includes substantial improvement; the initiation, excluding planning and design, of any phase of a project; and physical alteration of the property, and shall include land preparation, such as clearing, grading and filling; installation of streets and/or walkways; excavation for a basement, footings, piers or foundations; or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers and building materials. For manufactured homes, the actual "start" means affixing of the manufactured home to its permanent site.

STRUCTURE — A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. "Substantial damage" also means flood-related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred. **[Amended 12-17-2001 by L.L. No. 5-2001]**

B-95

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. The term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

VARIANCE — A grant or relief from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

ARTICLE III General Provisions

§ 115-5. Applicability.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Hamburg.

§ 115-6. Basis for establishing areas of special flood hazard.

- A. The areas of special flood hazard are identified and defined on the following documents prepared by the Federal Emergency Management Agency: **[Amended 11-8-1999 by L.L. No. 7-1999; 12-17-2001 by L.L. No. 5-2001]**
 - (1) Flood Insurance Rate Map (multiple panels) Index No. 360244 0001-0021, whose effective date is December 20, 2001.
 - (2) A scientific and engineering report entitled "Flood Insurance Study, Town of Hamburg, New York, Erie County," dated December 20, 2001.
- B. The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and/or maps are on file at the Building Inspection Department, Town of Hamburg, 6100 South Park Avenue, Hamburg, NY 14075.

§ 115-7. Interpretation; conflict with other laws.

- A. This chapter includes all revisions to the National Flood Insurance Program through November 1, 1989, and shall supersede all previous laws adopted for the purpose of flood damage prevention.
- B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

§ 115-8. Severability.

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

§ 115-9. Penalties for offenses.

No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained

B-96

shall prevent the Town of Hamburg from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under Article VI will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 115-10. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Hamburg, any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

ARTICLE IV Administration

§ 115-11. Designation of local administrator.

The Building Inspector-Code Enforcement Officer is hereby appointed local administrator to administer and implement this chapter by granting or denying floodplain development permits in accordance with its provisions.

§ 115-12. Floodplain development permit.

- A. Purpose. A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and ensuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in § 115-6, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the local administrator and may include but not be limited to plans, in duplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing.
- B. Fees. All applications for a floodplain development permit shall be accompanied by an application fee. The application fee shall be as established by the Town Board of the Town of Hamburg under separate resolution. In addition, the applicant shall be responsible for reimbursing the Town of Hamburg for any additional costs necessary for review, inspection and approval of this project. The local administrator may require a deposit of no more than \$500 to cover these additional costs.
- C. Application for permit. The applicant shall provide the following information as appropriate. Additional information may be required on the permit application form.
 - (1) The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved structure to be located in Zones A1 - A30, AE or AH, or Zone A if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the local administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
 - (2) The proposed elevation, in relation to mean sea level, to which any new or substantially improved nonresidential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the local administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.
 - (3) A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in § 115-15C, Utilities.
 - (4) A certificate from a licensed professional engineer or architect that any nonresidential floodproofed structure will meet the floodproofing criteria in § 115-17, Nonresidential structures.
 - (5) A description of the extent to which any watercourse will be altered or relocated as a result of

B-97

proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in § 115-6, when notified by the local administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.

- (6) A technical analysis, by a licensed professional engineer, if required by the local administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.
- (7) In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either 50 lots or five acres.

§ 115-13. Duties and responsibilities of local administrator.

Duties of the local administrator shall include but not be limited to the following.

- A. Permit application review. The local administrator shall conduct the following permit application review before issuing a floodplain development permit:
 - (1) Review all applications for completeness, particularly with regard to the requirements of § 115-12C, Application for permit, and for compliance with the provisions and standards of this law.
 - (2) Review subdivision and other proposed new development, including manufactured home parks to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards of Article V, Construction Standards, and, in particular, § 115-14A, Subdivision proposals.
 - (3) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The local administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination. If the proposed development may result in physical damage to any other property or fails to meet the requirements of Article V, Construction Standards, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and resubmit the application.
 - (4) Determine that all necessary permits have been received from those governmental agencies from which approval is required by state or federal law.
- B. Use of other flood data.
 - (1) When the Federal Emergency Management Agency has designated areas of special flood hazard on the community's Flood Insurance Rate map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the local administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 115-12C(7), as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this law.
 - (2) When base flood elevation data are not available, the local administrator may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard for the purposes of this law.
- C. Alteration of watercourses. The local administrator shall:
 - (1) Notify adjacent communities and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse and submittal of evidence of such notification to the Regional Director, Region II, Federal Emergency Management Agency.
 - (2) Determine that the permit holder has provided for maintenance within the altered or relocated portion

B-98

of said watercourse so that the flood-carrying capacity is not diminished.

D. Construction stage.

- (1) In Zones A1 - A30, AE and AH, and also Zone A if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, the local administrator shall obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by the same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).
- (2) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The local administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

E. Inspections. The local administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.

F. Stop-work orders.

- (1) The local administrator shall issue or cause to be issued a stop-work order for any floodplain development found ongoing without a development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 115-9 of this chapter.
- (2) The local administrator shall issue or cause to be issued a stop-work order for any floodplain development found noncompliant with the provisions of this law and/or the conditions of the development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 115-9 of this chapter.

G. Certificate of compliance.

- (1) In areas of special flood hazard, as determined by documents enumerated in § 115-6, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the local administrator stating that the building or land conforms to the requirements of this chapter.
- (2) A certificate of compliance shall be issued by the local administrator upon satisfactory completion of all development in areas of special flood hazard.
- (3) Issuance of the certificate shall be based upon the inspections conducted as prescribed in Subsection E, inspections and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.

H. Information to be retained. The local administrator shall retain and make available for inspection copies of the following:

- (1) Floodplain development permits and certificates of compliance.
- (2) Certifications of as-built lowest floor elevations of structures required pursuant to Subsections D(1) and (2), and whether or not the structures contain a basement.
- (3) Floodproofing certificates required pursuant to Subsection D(1), and whether or not the structures contain a basement.
- (4) Variances issued pursuant to Article VI, Variance Procedure.
- (5) Notices required under Subsection C, Alteration of watercourses.

B-99

Chapter 230: SUBDIVISION OF LAND

[HISTORY: Adopted by the Town Board of the Town of Hamburg 12-16-1991 by L.L. No. 14-1991. Amendments noted where applicable.]

GENERAL REFERENCES

Conservation easements — See Ch. 87.

Clearing, stripping and erosion control — See Ch. 107, Art. III. Department of Planning and Development — See Ch. 18.

Environmental quality review — See Ch. 105.

Flood damage prevention — See Ch. 115.

Tree management — See Ch. 243.

Wetlands protection — See Ch. 272.

Zoning — See Ch. 280.

ARTICLE I General Provisions

§ 230-1. Purpose.

- A. The public health, safety, morals and general welfare require harmonious, orderly and progressive development of land within towns of the state. In furtherance of this purpose, regulations of the subdivision of land by Town governing authorities is desired for the following purposes, among others:
- (1) To encourage the development of economically sound and stable communities.
 - (2) To assure the provision of required streets, utilities and other facilities and service to new land developments.
 - (3) To assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in new land developments.
 - (4) To assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational educational and other public purposes.
 - (5) To assure, in general, the wise development of new areas in harmony with the Master Plan of the town.
 - (6) To assure coordination of intergovernmental public improvement plans of the town.
 - (7) To assure coordination of intergovernmental public improvement plans and programs within the county.
 - (8) To assure proper legal description, identification, monumentation and recording of real estate boundaries.
 - (9) To secure equitable handling of all subdivision plats by providing uniform standards and procedures, thus providing suitable sites for building purposes and human habitation.
- B. When the development is coordinated in the overall manner stated above, it will be of mutual benefit to the developer, the buyer, Town and county officials and the public.

§ 230-2. Approval authority.

By the authority of the resolution adopted by the Town Board on January 7, 1944, pursuant to the provisions of § 271 of the Town Law of the State of New York, the Planning Board of the Town of Hamburg is empowered and authorized to approve plats for land subdivision within the town.

§ 230-3. Jurisdiction.

The Hamburg Planning Board shall have jurisdiction of the subdivision of all lands located within the Town of Hamburg, excluding the Village of Hamburg and the Village of Blasdell. All subdivision plats shall be submitted to the Hamburg Town Planning Board for processing as stipulated in these regulations.

B-100

§ 230-4. Title.

These regulations shall be known and may be cited as the 'Town of Hamburg Land Subdivision Regulations, 1991,' or "Subdivision Regulations."

ARTICLE II Administration**§ 230-5. Exceptions.**

The standards and requirements of this chapter may be modified by the Planning Board in the case of a plan or program which, in the judgment of the Board, provides adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the tract when fully developed and populated and which also provides such covenants or other legal provisions as will assure conformity with the Comprehensive Plan.

§ 230-6. Variances.

Where, because of topographical or other conditions peculiar to the site, strict adherence to the provisions of the regulations of this chapter would cause an unnecessary hardship, the Planning Board may authorize a variance if such variance can be made without destroying the intent of these regulations. Any variance thus authorized is required to be entered, in writing, in the minutes of the Planning Board and the reasoning on which the departure was justified set forth. In granting variances, the Planning Board may impose such conditions as will, in its judgment, secure substantially the objective of the standards or requirements so varied.

§ 230-7. Penalties for offenses.

Any violation of these regulations shall be deemed an offense and is punishable by a fine of not more than \$500 or 15 days in jail, or both. Each day that such violation continues to exist may further be declared to constitute a separate and additional violation. The public improvement permit shall be revoked for violation of the standards for the construction of improvements and a fine or jail term imposed.

§ 230-8. Amendments; procedure.

These regulations may be amended from time to time by the Town Board as herein specified, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the Planning Board for review and recommendation. The Planning Board shall have 45 days within which to submit a report. If no action is taken within the specified time, it shall be deemed to have recommended approval of the amendment.

§ 230-9. Severability.

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the regulations as a whole or any other part thereof other than the part so declared to be unconstitutional or invalid.

§ 230-10. When effective.

This chapter shall take effect and be in force from and after its adoption.

§ 230-11. Repealer.

All ordinances or resolutions or parts of ordinances or resolutions, other than Chapter 280, Zoning, which are in conflict herewith are hereby repealed. Should the requirements of this chapter conflict with those of Chapter 280, Zoning, the more stringent requirement shall prevail.

ARTICLE III Definitions

§ 230-12. Word usage and definitions.

A. Unless otherwise expressly stated, the following terms shall, for the purpose of these regulations, have the meanings indicated. Words in the singular include the plural, and words in the plural include the singular. The word "person" includes a corporation, unincorporated association and a partnership as well as an individual. The word "building" shall be construed as if followed by the words "or part thereof." The word "street" includes "road," "highway," "boulevard" and "lane," and the word "watercourse" includes "drain," "ditch" and "stream." The words "shall" or "will" are mandatory; the word "may" is permissive.

B. As used in this chapter, the following terms shall have the meanings indicated:

ALLEY OR SERVICE DRIVE — A minor right-of-way privately or publicly owned, primarily for service access to the back or side of properties.

BUILDING LINE, FRONT — A line parallel to the front property line in front of which no structure shall be erected.

BUILDING LINE, REAR — The boundary opposite and more or less parallel to the front building line.

BUILDING LINE, SIDE — Any building boundary line not a front building line or a rear building line.

COMPREHENSIVE PLAN (MASTER PLAN) — The plan, or any part thereof, for the town, approved, adopted or intended as a guide for development. This may include but is not limited to Chapter 280, Zoning, this chapter, the Community Facilities Plan, Major Thoroughfare Plan, Land Use Plan, Public Improvement Program and the capital improvement budget.

CONTRACTOR — The developer or subdivider or his representative, whether doing work on a contract basis or working directly for the developer or subdivider.

DOUBLE-FRONTAGE LOT — A continuous (through) lot of the same depth as the width of a block and which is accessible from both of the streets upon which it fronts.

DWELLING UNIT — Any structure or part thereof designed to be occupied as living quarters as a single housekeeping unit.

EASEMENT — A grant by the property owner for use by the public, a corporation or persons(s) of a parcel of land for specified reasons.

ENGINEER — The duly designated Town Engineer of the Town of Hamburg licensed and registered in New York to perform the duties of engineer as herein specified.

FINAL PLAT — A complete and exact subdivision plat prepared for official recording as required by the Hamburg Town Planning Board.

HEALTH DEPARTMENT — The Erie County Health Department.

IMPROVEMENTS — Those physical additions and changes to the land that may be necessary to produce usable and desirable lots.

LOT — A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or lease to or separate use of another or for development. The word "lot" includes the words "plot" and "parcel."

LOT AREA — The area contained within the property lines of the individual parcels of land as shown on a subdivision plat, excluding space within any street right-of-way, but including the area of any easement.

LOT REMNANT — A portion of land below minimum lot size left over after subdividing a larger tract.

OFFICIAL MAP — An official map of the Town showing the location of existing or proposed streets, public building sites, drainage rights-of-way and public open spaces. The "Official Map" may include the whole or any part or parts of the town.

PLANNED UNIT DEVELOPMENT — See Chapter 280, Zoning.

PLANNING BOARD — The Hamburg Town Planning Board, a legal agency of the Town of Hamburg.

PRELIMINARY PLAT — A tentative subdivision plat, in lesser detail than the final plat, indicating the approximate proposed layout of a subdivision as the basis for consideration prior to preparation of the final

B-102

plat.

REVERSE-FRONTAGE LOT — A lot extending between and having a frontage on an expressway, arterial or collector street and a minor or local street and with vehicular access solely from the latter.

SIDEWALK AREA — That portion of a street not included in the paved roadway but within the right-of-way devoted in part to pedestrian traffic.

SINGLE-TIER LOT — A lot which backs upon a limited-access highway, a railroad, a physical barrier, a major arterial or a nonresidential use and to which access from the rear of the lot is usually prohibited.

SKETCH PLAN — A sketch layout of a proposed subdivision presented for discussion purposes prior to the submission of a preliminary plat.

STAFF — The technical staff of the Hamburg Town Planning Department.

STREET — A dedicated and accepted public right-of-way for vehicular and/or pedestrian circulation.

- (1) EXPRESSWAY — A limited access highway designed for unrestricted movement with no private access. Access is only allowed at interchanges which are engineered for free-flowing movement.
- (2) ARTERIAL OR MAJOR ARTERIAL — Major roads designed to move high volumes of traffic but which allow direct access from other roads. Direct access from private property is to be controlled as much as possible.
- (3) COLLECTOR STREET — A road which collects traffic from local streets and feeds this traffic to more major roads.
- (4) LOCAL OR MINOR STREET - The primary purpose of these roads is to provide direct access to abutting private property and to discourage, as much as possible, their use as collectors or arterials.
- (5) MARGINAL ACCESS STREET - A local or minor (service) street which parallels and is immediately adjacent to a major street or highway and which provides access to abutting properties and protection from through traffic and control of intersections with major traffic streets.
- (6) CUL-DE-SAC - A street intersecting another street at one end and permanently terminated by a vehicular turnaround at the other.

SUBDIVIDER — Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

SUBDIVISION — The division of any parcel of land into two or more lots, plots, sites or other divisions of land for immediate or future sale or for building development with or without streets or highways; provided, however, that the sale or exchange of parcels of land between adjacent or adjoining property owners or where such sales do not create additional lots shall not be considered a subdivision of land. The term "subdivision" also includes resubdivision and as appropriate in these regulations shall refer to the process of subdividing land or to the land subdivided.

- (1) MAJOR SUBDIVISION — Any subdivision not classified as a minor subdivision, including but not limited to subdivisions of five or more lots, or any size subdivision requiring any new street or extension of municipal facilities.
- (2) MINOR SUBDIVISION — Any subdivision containing not more than four lots fronting on an existing street and not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with any provision or portion of the Master Plan, Official Map or Chapter 280, Zoning, if such exists, or these regulations. The Planning Board may waive the filing requirement of final plat for a minor subdivision if acceptable with the Town Engineer.

SURFACE DRAINAGE PLAN — A plan showing all present and proposed grades and facilities for stormwater drainage.

TOWN BOARD — The chief legislative body of the Town of Hamburg.

TOWNHOUSE — One of two or more residential buildings having a common or party wall separating dwelling units.

ZERO LOT LINE — The location of a building on a lot in such a manner that one or more of the building's sides rests directly on a lot line.

B-103

ARTICLE IV Approval Procedure

§ 230-13. Sketch plan.

- A. Subdividers shall submit a sketch plan to the Planning Department for staff review and comment prior to meeting with the Planning Board. Submission of a sketch plan shall not constitute formal filing of a preliminary plat with the Planning Board.
- B. Sketch plan requirements. A sketch plan shall consist of a freehand layout of the site including, as available, a tentative street layout, proposed lot arrangement showing the number of lots, identification of existing structures, watercourses, wooded areas, possible wetland areas, proposed open space areas, scenic views, both off the site and on, existing zoning and large rock outcrops of construction significance. The developer shall also submit to the Planning Department relevant segments of United States Geological Survey (USGS) maps depicting the topographic contours of the site; United States Soil Conservation Service maps showing the soil survey of the site; and, on sites of 20 acres or more, aerial photographs with sufficient detail to make identifiable the aforementioned natural features.

§ 230-14. Submission of preliminary plat, approval.

The procedure for obtaining preliminary plat approval is as follows:

- A. The subdivider shall file with the Town Clerk the application and pay such fees as established by the Town Board. The Planning Director shall receive the following:
 - (1) Sufficient sets of prints of the preliminary plat and legal description for review.
 - (2) Three signed statements describing the proposed use of the land and a draft of any protective covenants to be applied to the subdivision.
 - (3) Sufficient copies of any supplemental information such as a topographic map.
 - (4) State Environmental Quality Review (SEQR) Part I assessment form.
- B. Before acting on the preliminary plat, the Planning Board may request a report from any person or agency directly concerned with the proposed development, such as the Erie County Department of Public Works, Erie County Department of Planning, Erie County Department of Health, New York State Department of Transportation and the Town of Hamburg Engineering Department. Such reports shall certify compliance with or note deviations from the requirements of this chapter and include comments on other factors which bear upon the public interest.
- C. Such a preliminary plat shall be clearly marked "preliminary plat" and shall conform to the definition provided in this section. Within 45 days after the receipt of such preliminary plat by the Clerk of the Planning Board the Planning Board shall hold a public hearing, which hearing shall be advertised at least once in a newspaper of general circulation in the Town at least five days before such hearing.
- D. Within 45 days after the date of such hearing, the Planning Board shall approve with or without modification or disapprove such preliminary plat, and the ground of a modification, if any, or the ground for disapproval, shall be stated upon the records of the Planning Board. Notwithstanding the foregoing provisions of this section, the time in which the Planning Board must take action on such plat may be extended by mutual consent of the owner and the Planning Board. When so approving a preliminary plat, the Planning Board shall state, in writing, modifications, if any, as it deems necessary for submission of the plat in final form. Within five days of the approval of such preliminary plat, it shall be certified by the Clerk of the Planning Board as granted preliminary approval and a copy filed in his office and a certified copy mailed to the owner. In the event that the Planning Board fails to take action on a preliminary plat within the time prescribed therefor, such plat shall be deemed granted preliminary approval.
- E. Time frames upon approval. **[Amended 8-4-2003 by L.L. No. 4-2003]**
 - (1) Within one year of the approval of the preliminary plat, the owner must submit construction plans to the Town Engineer for review. Within two years of the preliminary plat approval, the developer must have secured construction plan approval from the Town Engineer. In the event that the approval of construction plans is delayed because the developer has pending applications which are being reviewed by the governing regulatory agencies, a one-year extension of time to obtain construction plan approval shall be granted upon Town approval of application by the developer to the Planning

B-104

Board and Town Engineer. If the above time frames are not properly complied with, the preliminary plat approval shall also expire.

- (2) In the case of a multiphase development, the same time frames shall exist for each subsequent phase. For example, after Phase 1 construction plans are approved, the owner/developer must submit within one year construction plans for Phase 2 to the Town Engineer for review. Within two years of Phase 1 approval, the owner/developer must have secured construction plan approval from the Town Engineer. Phase 3 will have the same requirements as they relate to Phase 2 approval.
 - (3) In all cases, inactivity (building permits, approval applications, etc.) on a multiphased project for over a two-year period shall cause the preliminary approval to expire, and future phases of the project will require a new preliminary subdivision approval and the plans must meet all zoning and design requirements that exist at that time.
 - (4) For all multiphased projects that have phases that have not been approved after a five-year period, but meet the previous requirements of one- and two-year time frames, the owner/developer must appear before the Planning Board to receive reapproval of the preliminary plat. (The subdivision will still be "grandfathered" from any Zoning Code amendments; bulk and use requirements.)
- F. During preliminary review, if the application is tabled by the Planning Board for additional information, or upon request of the applicant, and remains tabled for three months with no activity, the application will be considered as being expired. Prior to the expiration of the application, the applicant can request in writing that the ninety-day period be extended for one additional ninety-day period. After expiration of an application, the applicant may resubmit a new application with the appropriate fee. A new application made within six months of the expiration will require a fee equal to 50% of the required application fee. After six months, a full fee will be required. **[Added 6-14-1999 by L.L. No. 5-1999]**

§ 230-15. Preliminary plat.

- A. The preliminary plat plan shall be drawn at a scale no smaller than 100 feet to one inch and shall show the following:
- (1) The proposed subdivision name or identifying title.
 - (2) The name of the owner of the tract or his authorized agent, if any, and of the subdivider.
 - (3) The date, North point and graphic scale.
 - (4) Zoning requirements, specifically district and lot size.
 - (5) A key or vicinity map for the purpose of locating the site to be subdivided shall be requested to accompany the plat.
 - (6) The names of all owners of all immediately adjacent unplatted land; the names of all proposed or existing subdivisions immediately adjacent and the locations and dimensions of any streets or easements shown thereon; and the location of all buildings.
 - (7) The location and widths of any streets or other public ways or places shown upon an adopted or approved town, county or regional plan, if such exists for the area to be subdivided.
 - (8) The full plan of the development, showing the location of all proposed streets, roads, parks, playgrounds and other public areas; proposed building setback lines for each street; proposed lot lines; approximate dimensions of lots; lot numbers in consecutive order; and all streets and other areas designed for appurtenant facilities, public use of proposed to be dedicated or reservations.
 - (9) The center-line curve radius for all proposed streets.
 - (10) Proposed street names.
 - (11) Watercourses, drainage and utility easements.
 - (12) Wooded areas and rock outcrops, marshes, isolated trees with a diameter of eight inches or more at a height of three feet above ground.
 - (13) Total acreage, average lot sizes (square footage of lots) and existing zoning.
- B. When the preliminary plat submitted covers only a part of the subdivider's entire holding, a sketch of the prospective future street system of the unsubmitted part shall be furnished. The street system of the

B-105

submitted part will be considered in the light of adjustments and connections with future streets in the part not submitted.

- C. Subdividers shall provide for the Planning Board to review a copy of all previous approved plans and sketch layouts of the subdivision or planned unit development currently under review.

§ 230-16. Resubdivision procedures.

For any replatting or resubdivision of land, the same procedure, rules and regulations shall apply as prescribed herein for an original subdivision. No other procedure may be followed.

ARTICLE V Required Improvements; Design Standards

§ 230-17. General requirements.

- A. Land subject to flooding and land deemed by the Planning Board to be uninhabitable for other reasons shall not be platted for residential occupancy nor for such other uses as may increase danger to health, life or property or aggravate a flood hazard.
- B. Preservation of natural features. The Planning Board shall, wherever possible, establish the preservation of all natural features which add value to residential developments and to the community, such as large trees or groves, watercourses and falls, beaches, historic spots, vistas and similar irreplaceable assets.
- C. Conformity to existing maps or plans. The location and width of all proposed streets shall be in conformity with the existing or amended plans of the Town or Planning Board.
- D. Continuation of adjoining street system. The proposed street layout shall be coordinated with the street system of the surrounding area. Where possible, existing principal streets shall be extended and the names of such streets continued.
- E. Access to adjacent properties. Where, in the opinion of the Planning Board, it is desirable to provide for street access to an adjoining property, proposed streets shall be extended by dedication to the boundary of such property and a temporary turnaround shall be provided.
- F. Private streets and reserve strips. There shall be no private streets or reserve strips platted in any subdivision.
- G. Lot remnants. No lot remnants shall be permitted to appear on any plat.
- H. Large tracts or parcels. Where land is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow for the opening of future streets and logical further resubdivision. Reverse-frontage lots may be required on major arterials.
- I. The developer is responsible to plant two deciduous trees per subdivision lot. Corner lots will require an additional two trees. The trees are to have a minimum caliper of 2 1/2 inches measured six-inches above the ground. Trees are to be planted parallel to the street at a location in general to be two-feet outside the right-of-way. Some areas may require the location of the trees to be planted will be worked out with the Building Inspector, Highway Superintendent and Town Engineer. Trees should be spaced evenly and should avoid underground utilities. The tree species are to be selected from a list provided by the Planning Department. Continuity of species is required. Unless other arrangements are made, trees are to be planted prior to the issuance of a certificate of occupancy (CO). The developer is responsible to replace any dead or diseased tree for a period of three-years after the CO is issued. Tree planting requirements can be waived or altered only with Planning Board approval. It is the intent of the Town, that in those areas in which trees are preserved or natural vegetative conditions are protected that the requirement to plant 2 trees per lot will be waived. **[Amended 3-14-1994 by L.L. No. 3-1994; 8-4-2003 by L.L. No. 4-2003]**
- J. Lots. All lots shall front upon a public street. Double-frontage lots shall be avoided whenever possible. Reverse-frontage lots may be required on major arterials.
- K. Street names. Proposed streets which are obviously in alignment with others existing and named shall bear the assigned name of the existing streets. In no case shall the name for proposed streets duplicate or be phonetically similar to existing street names, irrespective of the use of the suffix street, avenue, boulevard, drive, place, court, etc.

B-106

- L. Subdivisions and apartment project names. Subdivision names and apartment project names shall not duplicate or be confused with existing names. Subdivision and apartment project names are subject to approval by the Planning Board. This is not intended to limit the creativity of the developer.
- M. Topographic map. Include all buildings, improvements such as roads and ditches, contours, property lines and all existing features. Elevations and contours shall be referenced to the National Geodetic Vertical Datum of 1929.
- N. Vicinity or location map. The Planning Board shall require a vicinity or location map to be submitted by the subdivider with any plat or replat.
- O. In all major subdivisions in the South Central Hamburg, Lakeview, and Southeastern Hamburg Overlay District, all extensions of private utility and communication distribution facilities shall be installed below grade. Where existing overhead distribution facilities are already in place, service from lot line to the proposed house shall be installed below grade. **[Added 8-4-2003 by L.L. No. 4-2003]**
- P. In all other areas in the Town of Hamburg, outside the South Central Hamburg, Lakeview and Southeastern Hamburg Overlay Districts, it is the strong intent that extensions of private utility and communication distribution facilities shall be installed below grade in new major and minor subdivisions. The Town Planning Board may waive or modify this requirement, provided extenuating circumstances can be shown or where the Planning Board determines that overhead installation is more environmentally desirable than below grade. **[Added 8-4-2003 by L.L. No. 4-2003]**
- Q. Installation shall be in the manner prescribed by the Building Code and the utility company having jurisdiction. Where facilities are provided, they shall be planned to anticipate future utility needs. **[Added 8-4-2003 by L.L. No. 4-2003]**

§ 230-18. Lots.

The size, shape and orientation of nonresidential lots shall be such as the Planning Board deems appropriate or as stated herein, for the type of development and use contemplated. Residential lots shall comply with the following requirements:

- A. Area. Lot dimensions and area shall not be less than the requirements of Chapter 280, Zoning, unless the approval of the Zoning Board of Appeals is granted.
- B. Orientation. Side lot lines shall be substantially at right angles or radial to street lines.
- C. All lots shall abut by their full frontage on a publicly dedicated street or a street that has received the legal status as such.
- D. Floodway, floodplain and wetlands. Lots in a floodway or floodplain or within 100 feet of a designated wetland, whether incorporated as part of the subdivision or not, are subject to the following provisions:
 - (1) Flood damage prevention as provided for in Chapter 115 of the Code of the Town of Hamburg.
 - (2) Article 24 of the New York State Environmental Conservation Law.
 - (3) Wetlands falling under federal jurisdiction will be subject to a site-specific buffer zone, the width of which is to be as designated by the Planning Board, unless appropriate fill permits are obtained from the United States Army Corps of Engineers. Under no other circumstances shall the Town approve any project or issue permits for a project which includes plans to build a structure or place fill within the designated buffer zone.

§ 230-19. Easements.

Utility and other easements shall be provided as follows:

- A. Utility easements shall be provided where deemed necessary by the Engineer and shall be at least 15 feet in width.
- B. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse, and such further width or construction, or both, as will be adequate for the purpose.
- C. Lakes, ponds, creeks, boat ramps and similar areas may be accepted for maintenance only if sufficient land

B-107

is dedicated as a public recreation area or park. Such areas must be approved by the Director of Recreation and Town Engineer before approval of the final plat. Where such area constitutes a necessary part of the drainage control system, such area must be approved by the Town Engineer.

§ 230-20. Buffer strips. [Amended 8-4-2003 by L.L. No. 4-2003]

- A. Railroads. For health, safety and welfare reasons, when residential districts/developments directly abut railroads (active lines), a buffer strip of at least 50 feet shall be provided along the lot line(s) where said land uses abut. In reviewing the buffer, the Planning Board shall consider the topography of the area, and receive input from the Conservation Advisory Board and the Engineering Department. This review may result in a required buffer being greater than 50 feet for public health and safety issues. Consideration shall be given to the existing state of the buffer area, with preference given to leaving the area in its natural state. If the natural conditions do not provide the proper buffering conditions, the Planning Board may require improvements such as plantings or a planted berm. These improvements shall be made by the applicant, owner or a homeowners' association.
- B. Limited access highways, major arterials, commercial and industrial developments or other uses that may need to be buffered from residential development. When residential districts/developments directly abut these uses, a buffer of 30 to 50 feet or more may be required along the lot line(s) where said land uses abut. In reviewing and determining the size of this buffer, the Planning Board shall receive input from the Conservation Advisory Board and the Engineering Department (consideration must be given to the location of utilities and drainage systems). Consideration shall be given to the existing state of the buffer area, with preference given to leaving the area in its natural state. If the natural conditions do not provide the proper buffering conditions, the Planning Board may require improvements such as plantings or a planted berm. These improvements shall be made by the applicant, owner or a homeowners' association.
- C. Other buffer requirements. For the buffers required by the Planning Board for Subsections A and B, the following requirements must be met:
 - (1) For purposes of title, these buffer strips shall be part of the platted lots, but be protected by a conservation easement in the name of the Town. The conservation easement shall be in the form of the Town standard which is available through the Town Attorney's office. These easements will be enforced by the Town. and penalties will be imposed for not meeting the easement's requirements.
 - (2) In the cases where the buffer is planted or other improvements made, the Town Planning Board may require a maintenance bond acceptable to the Town's Engineering and Legal Department. The bond shall be a two-year bond to ensure the establishment of the landscape materials.

§ 230-21. Park, active and passive recreation space. [Amended 8-4-2003 by L.L. No. 4-2003]

- A. Required recreation area for a subdivision shall be 10% of the total acreage of the subdivision.
- B. If the Planning Board determines that a given subdivision requires land for active or passive recreational purposes (upon recommendation from the Recreation Department or the Conservation Advisory Board), the character and location of such land reserved for recreational purposes shall be suitable for this use. Lands that are undevelopable, such as wetlands and their buffers, steep slope areas, required stream setbacks, etc. shall not count towards the ten-percent criteria, but can be included in these passive recreation areas. Whether the recreational lands are intended by the Planning Board for active or passive recreation, the developer shall submit acceptable alternative site locations of the requisite size from which the Planning Board shall select areas to be used for recreational purposes. Once the size and location of the recreational area is determined, the Planning Board shall receive approval from the Town Board for the land to be shown for dedication to the Town. (See Subsection D.) The Planning Board may require improvements such as fences, sidewalks, grading, topsoil and seed, storm drainage facilities or other improvements. The determination for required improvements shall be coordinated with the Recreation Department and the Town Board. The subdivider shall be responsible for these improvements.
- C. In considering recreation land for major subdivisions, the developer and Planning Board must consider the construction of bike paths and multi-use trails. In areas where the Town of Hamburg has an existing trail or bike path system, or in areas where the Town has plans for such (refer to Open Space/Recreation Plan and the Town's Master Bike Path Plan), bike paths and/or multi-use paths may be required by the Planning Board (interconnection with these existing or planned systems).
- D. If the Planning Board determines that a suitable park or parks of adequate size cannot be located within the

B-108

subdivision, a payment in lieu of land shall be provided by the developer according to the Town of Hamburg fee schedule. If a smaller size area is found, the Planning Board could recommend to the Town Board a reduction of this fee by an appropriate amount. In the cases where bike paths or trails are provided, the Planning Board shall calculate the amount of land encumbered (dedication, easement, etc.) by the path or trail as credit towards the 10% land requirement (developable land requirement). The Planning Board shall also consider the level of improvements being made for these systems, and then determine if the fee is waived or a reduction of the fee will be recommended.

- E. Passive recreation and park land, if to be deeded to the Town, shall be permanently monumented and deeded to the Town prior to final Town Board acceptance. The subdivider shall also install any fences, sidewalks or other required improvements prior to final Board acceptance.
- F. All passive recreation and park land not to be deeded to the Town shall have an association or other means of legal control, acceptable to the Town Attorney and Planning Board, to assure the land will be maintained and never developed. This protection may include an easement to the Town of Hamburg that guarantees that the land will remain as proposed.

§ 230-22. Streets.

In general, the design standards which shall apply to streets are as follows:

- A. Right-of-way widths. Minimum street right-of-way widths shall be in accordance with the major thoroughfare plan for the Town and county and shall be recommended as follows:

Type of Street	Minimum Right-of-Way Width (feet)
Expressway	200*
Arterial	150*
Collector	100
Local or minor	70

*NOTE: Or as determined after consultation with the County Department of Public Works, Planning Board and the State Department of Transportation or jurisdiction of the road it contacts.

- B. Pavement widths. Pavement widths face to face of curb shall be not less than the following:

Type of Street	Pavement Width (feet)
Expressway	*
Arterial	50*
Acceptable	50*
Desirable	72*
Collector	48
Local or minor	28

*NOTE: Or as determined after consultation with the County Department of Public Works, Planning Board and the State Department of Transportation or jurisdiction of the road it contacts.

- C. Grades. Street grades are suggested as follows:

- (1) Street grades may be not more than 7% nor less than 0.4 of 1% (or as determined after consultation with the Town or County Department of Public Works, the Planning Board or the State Department of Transportation, when applicable).
- (2) Grades approaching intersections may not exceed 4% for a distance of not less than 100 feet from the

B-109

center line of said intersection where possible (or as determined after consultation with the Town or County Department of Public Works, the Planning Board or the State Department of transportation, when applicable).

- D. Horizontal curves. Where a center-line deflection angle of more than 10° occurs, a circular curve shall be introduced, having a center-line radius of not less than the following:
- (1) Major street: 500 feet.
 - (2) Collector street: 300 feet.
 - (3) Local or minor street: 150 feet.
- E. Vertical curves. All vertical curves shall have such length as necessary to provide safe sight distances as specified by the American Association of State Highway Officials.
- F. Tangents. Except for minor streets, there shall be a tangent of at least 100 feet between reverse curves.
- G. Intersections. Street intersections shall be laid out as follows:
- (1) Streets shall intersect as nearly as possible at right angles, and no street shall intersect at less than 75°.
 - (2) Intersections with principal arterial streets shall be at least 1,300 feet apart measured from center line to center line.
 - (3) Proper sight lines shall be provided and maintained at all intersections of streets. Measured along the center line, three feet above pavement, there shall be a clear sight distance triangle of 200 feet on major arterials, 100 feet on collector streets and 75 feet on local or minor streets, measured from a point of the center-line intersection of the streets.
 - (4) A center line offset minimum of 125 feet shall be provided at street jogs.
 - (5) Multiple intersections involving the junction of more than two streets shall be avoided whenever possible, but where they are unavoidable, such intersections shall be designed with extreme care for both vehicular and pedestrian safety.
- H. Cul-de-sac. Permanent dead-end street length shall not be longer than 500 feet or as determined by the Planning Board. These streets shall be provided with a turnaround having a minimum radius of 50 feet to the face of the curb and a minimum right-of-way radius of 75 feet.
- I. Half-streets. The dedication of half-street at the perimeter of a new subdivision is prohibited. Where there exists a half-street in an adjoining subdivision, the remaining half shall be provided by the proposed development.
- J. Temporary turnarounds. A temporary turnaround, 50 feet in radius, shall be required where the logical extension of a subdivision street is terminated and that the street is two or more lots deep. A "T" type turnaround may be used with the approval of the Town Engineer and Planning Board.
- K. Other requirements:
- (1) Minor streets in a new development shall be so laid out as to discourage through traffic. However, the provision for the extension and continuation of major and collector streets into and from adjoining areas is required. Where a subdivision abuts or contains an existing major street or expressway, the Planning Board may require marginal access streets, single-tier lots or such treatment as will provide protection for abutting properties, reduction in the number of intersections with the major traffic street and separation of local and through traffic.
 - (2) Subdivisions developed abutting existing or dedicated or platted streets where rights-of-way are inadequate, the developer shall make available the additional rights-of-way to meet the minimum standards of these regulations. Rights-of-way widths may be determined after consultation with Town/County Engineer, Planning Board and the State Department of Transportation.
- L. Pedestrian circulation. Adequate plan consideration and provision for pedestrians and/or bicyclists shall be made accommodating safe and convenient circulation within the subdivision and between the subdivision and surrounding areas of interest (parks, schools, commercial activity, etc.). Design elements shall include walks, trails, paths or other linkages along roads, property lines or other common areas within the boundaries of the subdivision, as acceptable to the Planning Board. Sidewalk requirements may be waived

B-110

by the Planning Board at its discretion.

§ 230-23. Blocks.

- A. Length. Block lengths generally shall not exceed 1,500 feet.
- B. Width. Blocks shall have a sufficient width to allow two tiers of lots of minimum depth. Blocks may consist of single tier lots where such are required to separate residential developments from through vehicular traffic or nonresidential uses.
- C. Commercial. Commercial areas shall comply with Chapter 280, Zoning, of the Code of the Town of Hamburg. The block layout shall conform, with due consideration of site conditions, to the best possible layout to serve the buying public, to permit good traffic circulation and the parking of cars, to make delivery and pickup efficient and to reinforce the best design of the units in the commercial area.
- D. Industrial. The block layout in industrial areas shall be governed by the most efficient arrangements of space for present use and future expansion, with due regard for worker and customer access and parking, and shall comply with Chapter 280, Zoning, of the Code of the Town of Hamburg.

§ 230-24. Utility standards.

The Town Engineer shall approve all standards for the construction of improvements required by the Planning Board for development. These improvements include streets, sidewalks, public water, lighting facilities, sanitary sewers, drainage facilities, clearing, stripping and erosion control, postal delivery box locations and other improvements which may be regulated, controlled or maintained by the Town of Hamburg. The standards may be changed, modified or updated from time to time, if such changes are considered desirable by the Town Engineer. All applicable district, county, state or other requirements shall also apply. Construction plan approval shall expire and be of no further effect 12 months from the date of approval. Extension time may be applied for if acceptable to the Town Engineer and if utility plans are updated to conform to current Town requirements.

§ 230-25. Construction plan.

A construction plan shall be submitted to the Town Engineer for review and approval. It will include the following:

- A. A clearing, stripping and soil erosion control plan for controlling soil erosion and construction sites.
- B. A grading plan to show provisions for surface drainage of the tract to be submitted.
- C. A storm sewer and pavement plan showing profiles for each proposed street and storm sewer. These plans may be submitted as separate sheets.
- D. A sanitary sewer and waterline plan showing profiles for all proposed sanitary sewers and waterlines.
- E. A streetlighting plan showing locations of all underground service facilities and proposed street light locations.
- F. Typical cross sections and details of all proposed utilities.
- G. General utility plan with all proposed utilities shown on one sheet.
- H. Other applicable criteria as requested by the Town Engineer.

§ 230-26. Public improvement permit.

- A. The subdivider shall file with the Town Clerk an application for construction of a public improvement and pay such fees as established by the Town Board for all proposed improvements. The permit shall not be effective until approved by the Town Board.
- B. All contractors and subcontractors performing the actual work under a public improvement permit, shall maintain in continuous effect workers' compensation insurance and liability insurance. Insurance limits and other applicable criteria shall be as approved by the Town Board.
- C. Maintenance of completed work shall conform to:
 - (1) The Town of Hamburg regulations for design and construction of improvements.

B-111

- D. The subdivider shall guarantee his work against failure for a period of two years. To ensure compliance with the above he shall post a bond or such other security agreement as to be agreeable with the Town Attorney and the Town Board in the amount of 25% of the estimated cost of the improvements. This, however, is not to be construed as an alternative to acceptance of any doubtful or substandard work, nor is it intended to include the failures due to utilities installed after the developer has completed his work.

§ 230-27. Performance bond.

- A. In the event that a developer wishes to file a final plat as a map cover with the Erie County Clerk before the necessary public improvements have been constructed on a portion or portions of the site, the developer shall be required to post a performance bond. The submittal of a performance bond in lieu of completing the work shall be subject to the acceptance of the Town Engineer. The value of the performance bond shall be equal to the Town Engineer's estimated cost of construction of the public improvements for such unimproved portion of the final plat concerning which signature is sought. In lieu of a performance bond, cash or certified funds may be placed in an escrow account maintained by the town. After the posting of such security, the final plat will be signed by the Town Engineer and submitted to the Planning Board for approval.
- B. Any performance bond or escrow account as referenced herein shall guarantee completion of all improvements upon the segment of the site, as shown on the final plat submitted, within a time period acceptable to the Town Engineer, which period shall not exceed one year from the date the bond is issued or the escrow account established. Extensions of the bonding or escrow period may be granted following application to the Town Engineer, if said extension is determined to be acceptable by the Town Engineer. The performance bond or escrow moneys shall be released after the Town Engineer certifies that all improvements are completed to specification and the Town Board has accepted the completed improvements.
- C. After the final plat has been filed with the Erie County Clerk, building permits may be issued by the Building Inspector. The certificate of occupancy for said building permits shall not be issued until final Town Board acceptance of all public improvements.

ARTICLE VI Final Plan Requirements

§ 230-28. Final plat.

- A. The final plat shall be at a scale no smaller than 100 feet to one inch and will be drawn on a sheet not larger than 24 inches by 36 inches in width leaving a margin on one end of two inches for binding purposes and a one-half-inch margin on the other three sides. The final plat shall constitute only of that portion of the approved preliminary plat which the subdivider has completed satisfactorily at the time; provided, however, that such portion conforms to all requirements of this chapter. If the final plat is drawn in two or more sections match-marks are to be shown. In addition, it shall be accompanied by a key map showing the location of the several sections. The final plat shall be prepared by a land surveyor or licensed civil engineer and shall show the following information:
- (1) The name of the subdivision.
 - (2) The name and address of the owner and subdivider.
 - (3) The North point designation, graphic scale and data.
 - (4) The block and numbers (in consecutive order) and dimensions. The total number of lots, square footage of each lot and acreage of the whole development.
 - (5) The names of the owners of all adjoining unsubdivided land.
 - (6) Lot lines with accurate bearings and distances.
 - (7) Accurate dimensions of existing public land and of any property to be dedicated or reserved for public, semipublic or community use within the boundaries of the plat; and all areas to which title is reserved by owner.
 - (8) Accurate distances and directions to the nearest established street corners or official monuments. Reference corners shall be accurately described on the plat.

B-112

- (9) Accurate locations of all existing and recorded streets intersecting the boundaries of the tract.
- (10) The complete curve data for all curves included in the plat, including radius, delta angle and tangent.
- (11) Street lines, with accurate dimensions in feet and hundredths of feet, with the bearing of such street lines.
- (12) Street names.
- (13) The location and material of all permanent monuments and lot markers, as required by the Town Engineer and installed by the subdivider before final Town Board acceptance.
- (14) Easements for utilities and any limitations on such easements.
- (15) Building lines not less than the minimum as fixed by Chapter 280, Zoning, or any other setback lines established by these regulations or by public authority or those specified in the deed restrictions, whichever is greater.
- (16) All dimensions shall be calculated to the nearest 1/100 of a foot.
- (17) Sewage disposal, water supply and any other health department requirement to be included on the final plat.

B. The following certificates, where applicable, shall be shown on the plat:

- (1) Certification, with seal, by a New York licensed land surveyor or licensed professional engineer to the effect that the survey and plat are correct in accordance with this chapter and plat law, as follows:

"In my opinion, this is a correct representation of the land platted and has been prepared in conformity with minimum standards and requirements of law.

On _____ 19 _____

By _____

New York Registration

Number _____ "

- (2) Certificate of approval by the Planning Board, as follows:

"Pursuant to the Town of Hamburg Land Subdivision Regulations, all the requirements of approval having been fulfilled, this final plat was given final approval by the Town of Hamburg Planning Board on _____ 19 _____

_____ "

Chairman

- (3) Certificate of approval by the Town Engineer, as follows:

"On _____ 19 _____

By: _____ "

Town Engineer

- (4) Certificate of approval by Erie County Department of Health, as follows:

(space for ECHD stamp)

- (5) The owner's certification, as follows:

B-113

"The owner of the land shown on this plat and whose name is subscribed hereto, in person or through a duly authorized agent, certifies that this plat was made from an actual survey and that all state, Town and county taxes or other assessments now due on this land have been paid.

Agent _____

Date _____

Owner _____

Date _____ "

C. The final plat shall be accompanied by the following material:

- (1) Restrictions of all types which will run with the land and become covenants in the deeds of lots shown on the drawing.
- (2) All covenants running with the land governing the reservation and maintenance of dedicated or undedicated land or open space, which shall bear the certificate of approval of the Town Attorney as to their legal sufficiency.
- (3) A certificate of dedication of streets and other public property (this is the offer of dedication).

§ 230-29. Submission of final plat.

- A. Before a subdivision plat may be submitted to the Planning Board for final approval, all of the public improvements for that phase of the plat subject to such final approval must be constructed and/or installed by the developer. In the event that a developer intends to construct the public improvements in only some portion or portions of the total subdivision plan which has been granted preliminary plat approval, the developer shall submit a final plat depicting only those portions whereon said public improvements are complete.
- B. When the public improvement work has been satisfactorily completed or performance bonded, the subdivider may then submit the final plat (map cover) to the Town Engineer. When it is acceptable, the Town Engineer will sign the plat and then submit it to the Planning Board for review and action.

§ 230-30. Final plat approval,

The procedure for obtaining final plat approval is as follows:

- A. The final plat shall be properly signed and executed as required by these regulations before recording by the Clerk of Erie County.
- B. Within 45 days of the submission of a plat in final form for approval by the Planning Board, a hearing shall be held by the Planning Board, which hearing may be advertised at least once in a newspaper of general circulation in the Town at least five days before such hearing, provided, however, that when the Planning Board deems the final plat to be in substantial agreement with a preliminary plat approved and modified in accordance with requirements of such approval if such preliminary plat has been approved with modification, the Planning Board may waive requirements for such public hearing.
- C. The Planning Board shall, by resolution, conditionally approve with or without modification, disapprove or grant final approval and authorize the signing of such plat, within 45 days of its receipt by the Clerk of the Planning Board.
- D. Notwithstanding the foregoing provisions of this section, the time in which the Planning Board must take action on such plat may be extended by mutual consent of the owner and the Planning Board. In the event that the Planning Board fails to take action on a final plat within the time prescribed therefor, the plat shall be deemed approved and a certificate of the Clerk of the Town as to the date of submission, and the failure to take action within such prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required.
- E. Upon resolution of conditional approval of such final plat, the Planning Board shall empower a duly authorized officer to sign the plat, subject to completion of such requirements as may be stated in the resolution. Within five days of such resolution, the plat shall be certified by the Clerk of the Planning Board as conditionally approved and a copy mailed to the owner, including a statement of such requirement which,

B-014

when completed, will authorize the signing of the conditionally approved final plat. Upon completion of such requirements the plat shall be signed by said duly authorized officer of the Planning Board.

- F. Conditional approval of a final plat shall expire within 180 days after the date of the resolution granting conditional approval unless such requirements have been certified as completed. The Board may, upon application and for good cause shown, extend such limitation for one or more additional six-month periods. The final plat as approved and so stamped by the Board must be filed or recorded in the Erie County Clerk's office within 90 days of such approval and stamping.
- G. When the approved plat has been recorded, one linen of the plat with the restrictive covenants will be furnished to the Engineering Department and six photo copies for distribution to Town departments.

§ 230-31. Final acceptance.

No street shall be accepted and maintained by the town, nor shall any permit be issued by the administrative agent or department of the town, for the construction of any building upon any land concerning which a plat is required to be approved unless and until the final plat has been approved by the Hamburg Town Planning Board and all public improvements have been accepted by the Town Board. The procedure for obtaining final Board acceptance is as follows:

- A. The final plat shall have been recorded by the County Clerk.
- B. The street(s) or other land(s) and easements shall have been deeded and filed with the County Clerk.
- C. All public improvement work shall have been completed and approved by the Town Engineer. Minor improvements may be performance bonded for final acceptance if recommended by the Town Engineer and approved by Town Board resolution.
- D. All sewer, water or other work shall have been completed and approved by district, county, state or other authority.
- E. The maintenance bonds shall be approved by the Town Attorney.
- F. The Town Board shall have all required items in place for a regularly scheduled meeting.

B-115

Chapter 272: WETLANDS PROTECTION

[HISTORY: Adopted by the Town Board of the Town of Hamburg 8-4-2003 by L.L. No. 4-2003. Amendments noted where applicable.]

GENERAL REFERENCES

Coastal erosion hazard area — See Ch. 85.
Environmental quality review — See Ch. 105.
Excavation and soil removal — See Ch. 107.
Flood damage prevention — See Ch. 115.
Subdivision of land — See Ch. 230.
Zoning — See Ch. 280.

§ 272-1. Intent; purpose.

- A. It is the intent of the Town of Hamburg (through these regulations) to help avoid, restrict and minimize damage or loss of wetlands in the Town, ensure that wetland areas are properly identified and meet state and federal requirements, and in some cases place additional design requirements for the filling of wetland areas in unavoidable situations.
- B. These regulations are necessary due to the importance of these valuable natural resources in protecting public health, safety and welfare. Wetlands provide the following to the Town of Hamburg:
 - (1) In their natural state, wetlands serve to control flooding and water pollution, buffer shorelines and stream banks against erosion and maintain supplies of potable groundwater.
 - (2) Wetlands also provide high-quality wildlife habitat and other opportunities for recreation, scientific study and natural resource education.
 - (3) Wetlands are subject to significant development constraints because of poorly drained subsoils and the need for constructed drainage and stormwater management systems to compensate for the loss of natural wetlands functions.
 - (4) In a well-planned community, wetlands offer the benefits of open space and natural separation of land uses.

§ 272-2. General requirements for development.

- A. State wetlands.
 - (1) Where state wetlands are depicted on state maps (found at the NYSDEC), development applications (subdivisions, site plans, etc.) must depict their location on submitted plans.
 - (2) Delineation of these wetlands must be confirmed by NYSDEC representative, surveyed and depicted on plan submittals. Plans must also show the required regulated one-hundred-foot adjacent area.
 - (3) The Town of Hamburg strongly encourages the avoidance of all State wetlands and no construction within the one-hundred-foot adjacent areas. Any filling / construction or other regulated activity necessary must meet all State guidelines and the additional Town requirements. (See § 272-3.)
 - (4) Preserved wetland areas, including adjacent areas, shall be included in a conservation area, considered for dedication to the Town, or dedication to other conservation organizations.
- B. Federal wetlands (regulated by the US Army Corps of Engineers).
 - (1) All development plans that include areas of hydric soils (as shown in the Erie County Soils Manual), must have wetlands delineation performed prior to submittal to the Town.
 - (2) All development plans that include areas of potentially hydric soils (as shown in the Erie County Soils Manual) must have these areas depicted on any submittals to the Town. These areas will be investigated by representatives of the Hamburg Conservation Advisory Board and where advised, will require an official wetlands delineation. This investigation does not relieve the applicant of his responsibilities of identifying federal wetlands.
 - (3) For those areas determined to be jurisdictional federal wetlands, the Town of Hamburg strongly encourages their avoidance and preservation. Any filling / construction necessary must meet all

B-116

federal guidelines and the additional Town requirements. (See § 272-3.)

- (4) For areas determined to be nonjurisdictional Federal wetlands, the Town of Hamburg strongly encourages their avoidance and preservation. If these areas must be filled in due to the uniqueness of the site, the additional Town requirements must be met. (See § 272-3.) This uniqueness of the site must be proven to the Planning Board through site plan or subdivision approval.

§ 272-3. Design requirements.

Any state, federal or nonjurisdictional federal wetlands that are filled in must also meet the following requirements:

- A. Drainage designs for the project must acknowledge the removal of these wetland areas in the drainage design, or consider replacement of these wetlands on the site.
- B. Drainage ponds must be oversized to mitigate the removal of these wetland areas.
- C. Replacement (mitigation) wetlands required by the NYSDEC or US Army Corps of Engineers shall be located as near as possible to those being filled in and should at a minimum be within the same watershed (preferably on the same site).
- D. In wetland areas to be filled, soil borings will be necessary to determine suitability for structures to be constructed in these areas. A report from a licensed engineer will need to be submitted to the Town.

§ 272-4. Additional requirements.

For site plan and subdivision applications that include areas of state, federal, nonjurisdictional wetlands, or potentially hydric soils, the applicant must provide to the Town soils information. This information is to include depth to groundwater (including signs of mottling) and soil types. The extent of this testing will be determined at sketch plan or at the first meeting before the Planning Board.

B-117

ARTICLE XIV C-2 General Commercial District [Amended 1-11-1993 by L.L. No. 1-1993; 1-26-1998 by L.L. No. 1-1998]**§ 280-80. Intent.**

The intent of the C-2 General Commercial District is to provide an area for larger scale (up to 100,000 square feet), regional-type commercial operations. These areas typically have access to major roads and highways within the Town that provide transportation routes to and from surrounding communities. In general, this commercial zoning district is buffered from any surrounding residential areas and provides an area for larger, more intrusive commercial operations. Consideration to pedestrian and automobile access, traffic congestion, aesthetics, landscaping, adaptive reuse, residential buffering, protection of incompatible uses and enhancing the overall image of the Town shall be part of the design.

§ 280-81. Permitted uses and structures.

Use and structures with a size limitation of 100,000 square feet (base floor dimension) are permitted in the C-2 District as follows:

A. Principal uses and structures:

- (1) Principal uses and structures permitted in the C-1 District. No residential housing shall be permitted.
- (2) Retail sales.
- (3) Eating or drinking establishments.
- (4) Boat or marine sales and service.
- (5) Laundry or dry-cleaning plants.
- (6) Custom shops, including but not limited to printing, electrical, heating, plumbing or woodworking shops.
- (7) Warehouses, but not including the storage of highly flammable or explosive materials.
- (8) Billiard or pool halls, bowling alleys, skating rinks, dance halls and video game rooms.
- (9) Dairies; bottling of nonalcoholic beverages from previously prepared ingredients.
- (10) Wholesale sales and distribution.
- (11) Commercial swimming pools.
- (12) Drive-in restaurants.
- (13) Theaters and drive-in theaters.
- (14) Golf driving ranges or miniature golf.
- (15) The following uses, provided that they are conducted within a completely enclosed building or within an area enclosed by a solid wall or fence at least eight feet in height.
 - (a) Building materials supply, including incidental millwork.
 - (b) Public utility storage, service buildings and yards.
 - (c) Small-animal hospitals.
 - (d) Machine and tool sales, rentals and service.
 - (e) Storage and sales of solid fuel.
 - (f) Storage and sales of feed for livestock.
- (16) Private rental storage facilities (mini-storage) are prohibited.
- (17) The following uses by special use permit authorized by the Planning Board (see Article XLVI):
 - (a) Permitted uses [Subsections A(1) through (15) above] greater than 100,000 square feet (gross floor dimension).

B-118

- (b) Nursery schools and day-care centers.
- (c) New or used motor vehicles sales (servicing of vehicles is allowed at these facilities).
[Amended 6-14-1999 by L.L. No. 5-1999]
- (d) Terminals for local trucking and delivery service, but not including any tractor, trailer or tractor-trailer combination, or automobile conveyor, provided that all vehicle loading, unloading and parking is on the premises.
- (e) Commercial car washes.
- (f) Filling stations, gasoline stations and automotive repair services (including oil change, muffler and brake shops, collision shops and tire shops), provided that all repairs/work shall be conducted in an enclosed building. **[Amended 6-14-1999 by L.L. No. 5-1999]**
- (g) Public garages, but not including auto wrecking or the storage of motor vehicles not eligible for New York State motor vehicle inspection stickers.

B. Accessory uses and structures:

- (1) Accessory uses permitted in the C-1 District.
- (2) Accessory uses and structures customarily incidental to permitted principal uses.

§ 280-82. Minimum lot size.

Unless otherwise provided, the minimum lot size in the C-2 District shall be as specified in this section.

- A. Lot area. Lot area will be based on the size of the building, parking requirements and landscaping.
- B. Lot width at the building line: 100 feet.

§ 280-83. Maximum height of buildings.

Unless otherwise provided, the maximum height of buildings in the C-2 District shall be as specified in this section.

- A. Maximum: 35 feet.

§ 280-84. Lot coverage.

- A. Maximum: 85%.

§ 280-85. Required yards.

Unless otherwise provided, the minimum required yards and other open spaces in the C-2 District shall be as specified in this section.

- A. Front yard: 40 feet.
- B. Side yards:
 - (1) Principal buildings: none required, except that:
 - (a) Where a side yard is provided, it shall be no less than five feet.
 - (b) Where a side yard abuts any R District boundary, it shall be not less than 20 feet or the height of the principal building, whichever is greater.
 - (c) Where a side yard is used for either vehicular ingress or egress, it shall be at least 12 feet.
 - (d) Where a side yard is used for vehicular ingress and egress, it shall not be less than 25 feet.
- C. Rear yard:
 - (1) Minimum: 10 feet.

B-119

(2) Along an R District boundary: same distance as required for a side yard along an R District boundary.

§ 280-86. Off-street parking.

For applicable off-street parking regulations, see Article XXXII.

§ 280-87. Signs.

For applicable sign regulations, see Article XXXVI.

§ 280-88. Supplemental regulations.

For applicable supplemental regulations pertaining to use, height, area or open space, see Articles XXXVII through XXXIX.

§ 280-89. Landscaping.

The Planning Board may require and modify landscaping plans for site locations to establish a positive design image.

§ 280-90. Architectural requirements.

The applicant shall submit building plans and elevations showing how any proposed structure meets the requirements of this article and any requirements of any applicable zoning overlay.

B-120

ARTICLE XXIII Southwestern Boulevard Overlay District [Added 3-9-1992 by L.L. No. 4-1992]**§ 280-151. Purpose.**

The purpose of this district is to provide for an excellence of design and aesthetics along Southwestern Boulevard, the main transportation corridor of the Town of Hamburg, through the application of an overlay district. The overlay district regulations are intended to supplement the underlying zoning regulations to provide for harmony and continuity of development along Southwestern Boulevard. These special regulations are intended to require developers to establish a positive design image.

§ 280-152. Permitted uses.

The uses permitted in the Southwestern Boulevard Overlay District will be the same uses permitted in the underlying zoning district. All uses permitted, with the exception of single- and double-family residential units, which are exempted, will be subject to compliance with the special site design conditions specified in § 280-1256.

§ 280-153. Permitted accessory uses.

The accessory uses permitted in the Southwestern Boulevard Overlay District shall be the same as the accessory uses permitted in the underlying zoning district.

§ 280-154. Permitted signs.

The signs permitted in the Southwestern Boulevard Overlay District will be regulated by Article XXXVI, Sign Regulations, of this Chapter 280.

§ 280-155. Subdivision regulations.

The division of all lands, regardless of zoning classification, shall be subject to Chapter 230, Subdivision of Land, of the Code of the Town of Hamburg.

§ 280-156. Site design conditions.

- A. All permitted uses except those exempted will comply with the following:
- (1) A landscape plan shall be included in the submittal package for approval. The landscape plan shall be prepared and certified by a New York State licensed landscape architect.
 - (2) The submittal shall also include elevations, cross sections and perspective drawings, as necessary. In addition, information shall be provided on facade treatment and building materials.
 - (3) All buildings shall be set back not less than 50 feet from the street right-of-way. This fifty-foot setback area shall be landscaped with grass, trees and shrubs. No parking will be allowed in this area. Pedestrian circulation is allowed in this setback area.
 - (4) At least one street tree per 30 feet of frontage shall be planted in the required fifty-foot setback area. Additional trees shall be planted throughout the developed area at a ratio of one tree per 30 feet of side and rear yard dimension within the area to be developed. Trees may be spaced evenly or clustered. Acceptable trees shall be limited to those trees listed on the Southwestern Boulevard Overlay District Tree List. This list is available from the Planning Department. Substitution of plant material may be approved by the Planning Board.
 - (5) For all areas, deciduous trees planted shall have a minimum caliper of 2 1/2 inches, measured six inches above the ground. All conifer trees shall have a minimum height of five feet above the finished grade.
 - (6) Landscaping standards.
 - (a) General.

B-121

- [1] A minimum ground area of not less than 10% of the total area to be developed shall be the landscaped area required.
 - [2] The arrangement and location of a landscaped area shall be dispersed through the development site so as to prevent unsightliness and monotony of parked cars.
 - [3] Landscape treatments shall be designed as an integral part of the entire development.
 - [4] Vegetation shall be compatible with soil conditions on the development and the regional climate.
 - [5] Existing natural features and vegetation shall be preserved and incorporated in the landscaped area wherever possible.
 - [6] The primary emphasis of the landscape treatment shall be on trees; effort shall be made to preserve and integrate into the site design existing trees as much as possible. Preserved existing trees may be credited.
 - [7] Plastic or other types of artificial plantings or vegetation shall not be permitted.
 - [8] All required planting shall be maintained in a healthy and productive condition and shall be routinely examined, and plant materials shall be replaced as necessary.
- (b) Automotive use areas.
- [1] Not less than 5% of the interior of a parking area designed for 10 cars or more shall be devoted to the required landscaped area.
 - [2] Each interior landscape area shall be at least 100 square feet in area.
 - [3] Each interior landscape area shall have an approved tree planted at the minimum ratio of one tree per 100 square feet of interior landscape island.
 - [4] Off-street loading areas must be screened by wooden, brick or masonry fences at least six feet high. This is also required for refuse storage areas.
 - [5] Not less than a five-foot-wide yard shall separate parking areas located on different parcels. Any amount over this will be credited to the parking area interior landscaping requirement.
 - [6] Where the Planning Board deems possible, adjacent existing, proposed or future development shall be connected by a shared service road, connecting parking facilities.

B. The Planning Board may waive or modify any requirement under this § 280-156.

B-122

ARTICLE XXXII Off-Street Parking Requirements

§ 280-215. General requirements.

- A. After the effective date of this chapter, off-street parking spaces shall be provided as hereinafter specified at the time a building or structure is erected or at the time a new use of open land is established. In the case of an enlargement of any existing building, structure or use after the effective date of this chapter, off-street parking spaces shall be provided as hereinafter specified for the enlarged portion of such building, structure or use.
- B. No existing off-street parking area shall be reduced in capacity so as to be less than required by this law, or, if such parking capacity is already less than herein required, such parking area shall not be further reduced; provided, however, that a reduction in such existing parking area shall be allowed if equivalent parking space is provided for the use involved.

§ 280-216. Dwellings.

Off-street parking spaces for dwellings shall be provided as follows:

- A. Single-family or two-family dwellings: two spaces for each dwelling unit.
- B. Multifamily dwellings: two spaces for each dwelling unit.
- C. Hotels, motels or rooming or lodging houses: one space per unit. **[Amended 2-22-1999 by L.L. No. 3-1999]**
- D. Bed-and-breakfast establishments and tourist homes: one space for each unit and two spaces for the owner. **[Added 2-22-1999 by L.L. No. 3-1999** Editor's Note: This local law also provided for the renumbering of former Subsection D as Subsection E.]
- E. Additional spaces for accessory uses:
 - (1) Offices for the treatment of humans: five spaces for each treatment room.
 - (2) Other offices: two spaces for each office.

§ 280-217. Institutional uses.

Off-street parking spaces for institutional uses shall be provided as follows:

- A. Hospitals: 1 1/2 spaces for each bed.
- B. Sanatoriums, convalescent homes or nursing homes: one space for each five beds.
- C. Homes for senior citizens or the aged; orphanages: one space for each five persons in residence.

§ 280-218. Places of assembly.

Off-street parking spaces for places of assembly shall be provided as follows:

- A. Schools.
 - (1) Elementary and middle or intermediate schools: one space for each classroom, plus one space for each five seats in the auditorium or public meeting room.
 - (2) High schools: one space for each classroom, plus one space for each nonteaching employee, plus one space for each five seats in the auditorium or stadium, whichever is greater.
 - (3) Colleges: one space for each classroom, plus one space for each nonteaching employee, plus three spaces for each four full-time students.
- B. Churches; principal or accessory auditoriums, theaters, stadiums or sports arenas: one space for each three seats.
- C. Libraries, museums or art galleries: one space for each 300 square feet of gross floor area.
- D. Bowling alleys: five spaces per alley.
- E. Skating rinks: one space for each 100 square feet of gross floor area.

B-123

- F. Eating or drinking establishments, principal or accessory:
 - (1) Drive-in type: one space for each 40 square feet of gross floor area.
 - (2) Other types: two spaces for each five seats.
- G. Clubs or lodges: one space for each 100 square feet of floor area used for club or lodge purposes, plus one space for each sleeping room.
- H. Mortuaries or funeral parlors: 15 spaces for each parlor.
- I. Swimming pools, principal or accessory, other than private pools: one space for each 25 square feet of pool area.
- J. Dance halls or studios: one space for each 50 square feet of gross floor area.
- K. In the event that any of the uses, buildings or structures described in Subsections A through J of this section are contained in or are part of a local, community or regional shopping center, the requirement of § 280-219D shall apply.

§ 280-219. Business or industrial uses.

Off-street parking spaces for business or industrial uses shall be provided as follows:

- A. Furniture, floor covering or appliance stores; custom shops; wholesale businesses: one space for each 700 square feet of gross floor area, with a minimum of four spaces required.
- B. New or used car sales: one space for each 700 square feet of sales area within a building, but not less than five spaces for customer parking and one space for each two employees. Such spaces shall be clearly marked and shall not be used for the parking of unregistered motor vehicles.
- C. Gasoline stations, public garages or repair garages, principal or accessory: three spaces for each service bay.
- D. Local shopping centers with over 20,000 square feet of gross leasable floor area: one space for each 150 square feet of gross floor area; community and regional shopping centers: one space for every 200 square feet of gross leasable area.
- E. Individual retail stores: one space for each 175 square feet of gross floor area.
- F. Real estate offices: eight spaces, or 1 1/2 spaces per employee.
- G. Doctor or dentist offices: eight spaces per doctor or dentist.
- H. Other business or professional offices or banks: one space for each 175 square feet of gross floor area.
- I. Manufacturing, storage or other industrial floor area: one space for each 1,000 square feet of gross area used for such purposes, but shall not be less than one space for each two employees.
- J. All other principal uses not above enumerated or excepted: one space for each 350 square feet of gross floor area.
- K. Food stores and discount stores: one space for each 100 square feet of gross floor area.

§ 280-220. Mixed uses.

Except as otherwise provided in Article XXXIII, where any building or lot is occupied by two or more uses having different parking requirements, the parking requirement for each use shall be computed separately to determine the total off-street parking requirement.

ARTICLE XXXIII Units of Measurement

§ 280-221. Size of parking spaces.

For the purpose of computing the gross parking area for required off-street parking, 350 square feet of

B-124

unobstructed net standing, maneuvering or access area shall be considered as one parking space. However, a lesser area may be considered as one parking space if the Building Inspector certifies that the layout and design of the parking area are adequate to permit convenient access and maneuvering. In any event, the size of a parking space shall be at least 18 feet long and nine feet wide, exclusive of access or maneuvering area. Parking spaces for the handicapped shall conform to ANSI A117.1-1980.

§ 280-222. Gross floor area.

Gross floor area shall include all areas of a building as mentioned in § 280-215; provided, however, that basement or cellar floor area not used for processing, servicing or sales of goods or merchandise shall not be counted as gross floor area.

§ 280-223. Seats.

In places of assembly, other than churches, where bench-type seats are provided or where standing patrons are served at a counter or bar, each 20 linear inches of such seating or standing space shall be considered as one seat for the purpose of determining off-street parking requirements.

§ 280-224. Employees.

In any case where there is more than one work shift, the total number of employees used to compute off-street parking requirements shall include the maximum number of employees on two shifts.

§ 280-225. Fractional units.

When application of the units of measurement to determine required off-street parking spaces results in a fractional parking space of 1/2 or more, one parking space shall be required.

ARTICLE XXXIV Waiver of Required Off-Street Parking

§ 280-226. Accessory uses.

- A. No off-street parking shall be required for uses accessory to any institutional use specified in § 280-217 or for an accessory restaurant used primarily for students, patients, tenants or employees occupying a principal use.
- B. In the case of accessory retail sales, restaurants or swimming pools, the lesser parking requirement for either the accessory use or the principal use, whichever requirement is less, shall be reduced by 50%.

§ 280-227. Joint facilities.

- A. In the case of a church and school on the same lot, the lesser parking requirement shall be waived.
- B. Where places of assembly, specified in § 280-218, are located on the same lot with other uses, the Zoning Board of Appeals may permit a reduction in the number of required off-street parking spaces for such places of assembly.
- C. Where public off-street parking facilities are available, other than off-street parking provided for a public building, the Zoning Board of Appeals may permit a reduction in the number of required off-street parking spaces for uses located on any lot within 600 feet of such public parking facility.

ARTICLE XXXV Site Requirements for Off-Street Parking Spaces

§ 280-228. Location.

- A. General provision. All required off-street parking spaces shall be provided on the same lot with the building or use they serve, except as provided in the following § 280-228B, Group facilities.

B-125

- B. Group facilities. In any C, M or Mixed Use District, required off-street parking spaces may be provided in group parking facilities designed to serve two or more buildings or uses on different lots, provided that:
- (1) The total parking spaces in such group facility shall not be less than the sum of the requirements for the various uses computed separately.
 - (2) All required parking spaces shall be not more than 600 feet from the boundary of the lot on which such buildings or uses are located.
 - (3) The above Subsections B(1) and (2) shall not apply in the case of community or regional shopping centers.

§ 280-229. Setback.

- A. In any R District:
- (1) Enclosed off-street parking spaces shall be subject to the regulations for accessory buildings in Article XXXIX.
 - (2) No open off-street parking space shall be permitted in a required front yard or exterior side yard.
 - (3) No open off-street parking area for five or more motor vehicles shall be located within five feet of any side or rear lot line of an adjoining lot in any R District.
- B. In any C or M District, for all uses within those districts except community and regional shopping centers:
- (1) Unless reduced by action of the Zoning Board of Appeals upon the favorable recommendation of the Town Planning Board, no open or enclosed off-street parking space shall be permitted within 35 feet of any street line; provided, however, that no action by the Board of Appeals shall allow such off-street parking space less than 10 feet distant from any property line.
 - (2) No open or enclosed off-street parking space shall be permitted within 10 feet of any side lot line or rear lot line of a lot used for residential purposes or in any R District.
 - (3) In the HC District, no open or enclosed off-street parking spaces shall be permitted within 10 feet of any side lot line or 20 feet of any rear lot line of a lot used for residential purposes or in any R District.
[Added 1-26-1998 by L.L. No. 1-1998]
- C. Community and regional shopping centers. Setbacks relating to open or enclosed off-street parking spaces within the lot lines of community and regional shopping centers shall be prescribed on an individual basis by the Town Planning Board during the site plan review process for each proposed community or regional shopping center development established in Article XXXIX. During this process, consideration must be given to the special characteristics of community and regional shopping centers, including but not limited to existing proximate development, the grouping of structures, the need for large parking areas, ingress and egress, traffic circulation, buffer zones, signs, lighting, landscaping and the need for high shopper visibility from adjoining major access roads. Requirements of this section shall not be any less than those specified in Subsections A and B.

§ 280-230. Encroachment prohibited.

All areas counted as required off-street parking areas shall be unobstructed and free of other uses, except off-street loading or unloading.

§ 280-231. Guaranty of availability.

In any case where required off-street parking spaces are provided off-site in group facilities, such off-site parking spaces shall be subject to deed, lease or contract restrictions acceptable to the Town Attorney of the Town of Hamburg, binding the owner, his heirs or assigns to maintain the required number of spaces available through the life of such use.

§ 280-232. Additional requirements for open off-street parking spaces.

All open off-street parking spaces shall be considered as automotive use areas and shall be subject to the

B-126

requirements of Article XXXVII in addition to the provisions of this section.

8-127

ARTICLE XXXVI Sign Regulations [Amended 2-10-2003 by L.L. No. 1-2003]**§ 280-233. Statement of purpose and legislative intent.**

Sign regulations, including, but not limited to, provisions controlling the type, design, size, location, motion, illumination and maintenance thereof, are designed and enacted in furtherance of the following substantial governmental interests and purposes:

- A. To protect property values, create a more attractive economic and business climate and protect the physical appearance of the community from the effects of inharmonious, bizarre and out-of-scale signs.
- B. To preserve the scenic and natural beauty of designated areas and provide a more enjoyable and scenic community.
- C. To reduce signs and advertising distractions and obstructions that may contribute to traffic congestion and/or accidents, while permitting adequate business identification, advertising and communication, as well as noncommercial communication.
- D. To provide reasonable, yet appropriate, conditions for advertising goods sold or services rendered in business districts by relating size, type and design of signs to the type of establishment.
- E. To control signs so that their appearance will be aesthetically harmonious with the overall design of the area.
- F. To reduce hazards that may be caused by signs overhanging or projecting over public right-of-way.
- G. To curb the deterioration of natural beauty in the community's environment.

§ 280-234. Definitions.

As used in this article, the following terms shall have the meanings indicated:

SIGN — A name, identification, description, display or illustration which is affixed to or painted or represented directly or indirectly upon a building, structure or piece of land which directs attention to an object, product, service, place, activity, person, institution, organization or business and the supporting members thereto.

SIGN FACE AREA — The entire area within the single, continuous perimeter enclosing the extreme limits of writing representation, emblem or any figure or similar character, together with any material or color forming an integral part of the display or used to differentiate such sign from the background against which it is placed. The supports, uprights or structures on which any sign is supported shall not be included in determining the sign area unless such supports, uprights or structures are designed in such manner as to form an integral part of the display. Where a sign has two or more faces, the area of all faces be the face area of the sign.

SIGN, BILLBOARD — Any sign that attracts attention to an object, product, service, place, activity, institution, organization or business not available or located on the lot where the sign is located.

SIGN, CHANGEABLE LETTER — A sign where the supporting frame or structure is permanent and only the letters, displays or illustrations thereon are changeable or temporary.

SIGN, FASCIA — A sign attached flat against the fascia.

SIGN, FREESTANDING — A sign resting upon or attached to the ground by means of an integral base or one or more poles or standards. Freestanding signs include both pole signs and ground signs.

SIGN, UNDER CANOPY — A sign attached to the soffit or under the fascia of a structure canopy, covered entrance or walkway, awning or marquee.

SIGN, WALL — A sign integral with or attached to and supported by the exterior wall of a building and projecting not more than 12 inches therefrom; also a permanent sign other than one limited to a trade logo or identification symbol erected or maintained on a window.

§ 280-235. Exceptions.

For the purpose of this article, the term "sign" does not include:

B-128

- A. Signs erected and maintained pursuant to and in discharge of any governmental function.
- B. Signs which signify the posting of property such as signs prohibiting trespassing.
- C. Integral, decorative or architectural features of building, except letters or trademarks.
- D. Signs not exceeding eight square feet per face directing and guiding traffic and parking on private property and bearing no advertising. The location shall be approved as a part of the site plan or coordinated sign plan or by the Planning Director.

§ 280-236. Noncommercial messages.

Notwithstanding any other provision contained herein to the contrary, noncommercial messages may be contained on any authorized sign.

§ 280-237. General regulations.

- A. The prohibitions contained in this section shall apply to all signs and use districts.
- B. No sign other than a billboard, as regulated by this article, shall be used to attract attention to an object, product, place, activity, institution, organization or business not available or located on the premises where the sign is located.

§ 280-238. Illumination.

Any illuminated sign or lighting device shall employ only lights emitting a light of constant intensity, and no sign other than that part used to report time, temperature, stock market and/or news reports shall be illuminated by or contain flashing, intermittent, rotating or moving light or lights. In no event shall any illuminated sign or lighting device be placed so as to permit the beams and illumination therefrom to be directed upon a public street, highway, sidewalk or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance. The full number of illuminating elements of a sign shall be kept in working condition or immediately repaired or replaced. Overhead wires or exposed wires on a sign or its supporting members are prohibited.

§ 280-239. Signs on public property.

No sign shall be placed in any street right-of-way or on other public property.

§ 280-240. Obstructions.

- A. No sign shall create a traffic hazard by obstructing the view at any street intersection or by design resemblance through color, shape or other characteristics common to traffic control devices. No freestanding sign having the lowest member, excluding the pole, less than eight feet above the finished grade shall be allowed on corner lots in a triangle formed between points on the front and side lot lines 35 feet from the intersection.
- B. Every sign shall at all times be in a safe and structurally sound condition and maintained by replacement of defective or worn parts, painting, repainting and cleaning. The Building Inspector shall require compliance with all standards of this article, If the sign does not comply with adequate safety standards, it shall be removed.

§ 280-241. Abandoned signs.

Except as otherwise provided in this article, any sign which is located on property which becomes vacant and unoccupied for a period of three months or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Permanent signs applicable to a business temporarily suspended because of a change of ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of six months or more. An abandoned sign is prohibited and shall be removed by the owner of the sign or owner of the premises. Failure to remove an abandoned sign shall be a violation of this article.

B-129

§ 280-242. Dangerous or hazardous signs.

No person shall maintain or permit to be maintained on any premises owned, occupied or controlled by him any sign which is either not structurally sound or creates an electrical hazard. Any such sign shall be removed or repaired by the owner or user of the sign or the owner of the premises.

§ 280-243. Unlawful signs.

No person shall erect on any premises owned or controlled by him or use any sign which does not comply with the provisions of this article.

§ 280-244. Street improvement projects.

Any sign over a public right-of-way which was subject to removal or relocation at the owner's expense, pursuant to a permit or other ordinance of the Town, shall be removed by the owner or altered at the owner's expense to comply with the regulations of this article if, as the result of or after completion of a street improvement project, the sign does not or would not comply with the provisions hereof.

§ 280-245. Nonconforming signs.

- A. Signs eligible for characterization as nonconforming. Any sign which does not comply with this article is eligible for characterization as a nonconforming sign if:
 - (1) The sign was erected pursuant to a permit and complied with all requirements then in effect; and
 - (2) It complies with the provisions of §§ 280-284 through 280-290.
- B. Loss of nonconforming status. A nonconforming status shall terminate, if:
 - (1) The sign is altered in any way in structure or size (except for normal maintenance.)
 - (2) The sign is relocated.
 - (3) The sign is replaced.
 - (4) There is any change in the tenancy, use or occupancy of the premises by the sign.
- C. Nonconforming sign maintenance and repair. Nothing in this section shall relieve the owner or user of a nonconforming sign or owner of the property on which the nonconforming sign is located from complying with the provisions of this article regarding safety, maintenance and repair of signs, provided that any repainting, cleaning and other normal maintenance or repair of the sign or sign structure shall not modify the sign structure or copy in any way not permitted under this section.
- D. Where signs individually or collectively in a multiple development, as hereinafter defined, are nonconforming, one or more new wall and canopy/fascia signs complying with the provisions of this section may be erected whenever the tenancy, use or occupancy of an individual establishment or enterprise changes.

§ 280-246. Signs permitted in all districts as accessory uses or structures without a use permit.

One sign for each building or lot advertising the sale, rental or lease of the premises or part thereof on which the sign is displayed, not exceeding six square feet in residential districts and 24 square feet in business and industrial districts, is permitted. Illumination shall not be permitted.

§ 280-247. Address.

One sign indicating the name and address of the occupants of a dwelling, not exceeding two square feet in area, is permitted. An address sign shall not be permitted if a sign permitted for the office of a resident professional is in use.

§ 280-248. Project name.

B-30

- A. One sign indicating the project name and the names of the architect, engineer, contractor and participating public and governmental agencies and officials, placed on the premises where construction, repair or renovation is in progress, not exceeding 32 square feet in face area, 15 feet in height nor located less than 25 feet from the lot line and 75 feet from any dwelling not within the project, is permitted.
- B. A sign may be used in connection with a roadside stand to advertise the sale of produce on farms within this district, provided that the produce being sold is produced on the farm or by the occupant thereof elsewhere. The sign face area shall not exceed 32 square feet for a wall sign or either side of a ground sign. The sign shall be removed when the roadside stand is not in use.

§ 280-249. Permit required.

Unless otherwise provided in this article, no sign shall be erected, altered, constructed, relocated or enlarged without first obtaining a permit from the Building Inspector/Code Enforcement office of the Town of Hamburg. Nevertheless, no permit shall be necessary to erect, alter, construct, relocate or enlarge a sign with no commercial message.

§ 280-250. Application for permit.

- A. Prior to the issuance of any sign permit for the erection, alteration, construction, relocation or enlargement of a sign, application for such permit shall be made to the Building Inspector/Code Enforcement Officer containing the following information:
 - (1) The name, address and telephone number of the applicant and the owner of the building, structure or property upon which the sign is to be erected, altered, constructed, relocated or enlarged.
 - (2) The written consent of the owner of the building, structure or property upon which the sign is to be erected, altered, constructed, relocated or enlarged.
 - (3) A rendering exhibiting:
 - (a) The proposed lettering and the pictorial matter of the sign;
 - (b) The dimensions of the sign and proposed lettering;
 - (c) The wind-pressure resistance of the sign in pounds per square foot;
 - (d) The construction details of the sign structure and mounting devices;
 - (e) The means of illuminating the sign, if illuminated;
 - (f) The proposed location on the building, structure or property of all the sign.
- B. In addition to the above-cited required information, the Building Inspector/Code Enforcement Officer is empowered to require of any sign permit application such additional information as he deems necessary to properly administer a sign permit application within the spirit, intent and provisions of this article.

§ 280-251. Signs as accessory uses and structures.

All signs, except signs erected by a governmental entity for a public purpose, shall be considered as accessory uses and structures in the zoning district where permitted. No permitted sign shall be attached directly or indirectly to any light standard, utility pole or tree. Also, all signs must conform to § 280-276, Visibility at intersections.

§ 280-252. Certain signs prohibited in all districts.

Billboards, roof signs, pennants, ribbons, streamers, spinners or similar moving, fluttering or revolving devices are prohibited in any zoning district. Flashing, oscillating and revolving signs are prohibited in any zoning district unless necessary for public safety or welfare.

B-131

§ 280-259. Signs permitted in C Districts.

The following signs shall be permitted in C Districts:

- A. Signs permitted and as regulated in the R-1 District, except for the following:
 - (1) Signs for a profession or home occupation shall be permitted, subject to the regulation of business signs in §§ 280-261, 280-262 and 280-263 of Article XXXVI.
 - (2) "For rent" and "for sale" real estate signs not exceeding 32 square feet in area.
 - (3) Illuminated institutional signs shall be permitted, pursuant to any regulations for illuminated signs in Article XXXVI, but without the prior approval of the Zoning Board of Appeals.
- B. Business signs, subject to the regulations of business signs in §§ 280-261, 280-262 and 280-263 of Article XXXVI. Unless otherwise provided, business signs may be illuminated by a steady light, provided that such lighting does not shine directly onto other properties and that such signs comply with all other regulations for illuminated signs as prescribed in Article XXXVI.

B-132

§ 280-261. Business signs in C, M or Mixed Use Districts.

The following regulations apply to business signs in C, M or Mixed Use Districts:

- A. One sign for each establishment on each side of a building fronting a public street or containing a public entrance, except on a side facing onto a contiguous R District.
- B. Wall signs.
 - (1) Wall signs shall be attached to or incorporated in the building wall. Such signs shall have:
 - (a) An aggregate area not in excess of 10% of the area of the building front to which such signs are affixed, not to exceed 120 square feet in area.
 - (b) A maximum width of 75% of the building wall's horizontal measurement, except that, where such horizontal measurement is 20 feet or less, the maximum width may be 90% of such measurement.
 - (2) Wall signs shall not:
 - (a) Be more than 18 feet above ground level.
 - (b) Extend more than two feet above the roofline to a maximum of 18 feet above ground level.
 - (c) Extend more than one foot beyond the wall to which it is attached.
- C. Projecting signs. Projecting signs shall not:
 - (1) Exceed 32 square feet in area.
 - (2) Project into a public right-of-way.
 - (3) Extend more than eight feet from a building wall.
 - (4) Extend more than 18 feet above ground level.
 - (5) Be less than nine feet above ground level.
- D. Where a covered walk extends across the front of a building, signs may be mounted on the roof of the walkway to a maximum height of three feet. Signs related to the entrance of an individual business establishment may also be hung from the underside of a covered walkway. The maximum size of such signs shall be eight inches by four feet.
- E. At the entrance to business establishments above the first floor, the nameplates of such establishments may be mounted flat at the side of such entrances, and the size shall not exceed nine inches by 18 inches.
- F. A detached sign may be erected where the building to which said detached or freestanding sign is accessory thereto is set back from the street line a distance of 40 feet or more. Such detached sign shall:
 - (1) Have a setback of five feet from the front property line and be no less than 20 feet from any other property line.
 - (2) Have a maximum area of 40 square feet unless said sign identifies a group of stores as a retail shopping center or plaza, except that a sign area may be increased at a rate of one square foot for each additional foot of setback from the front property line to a maximum area of 100 square feet in a C District and 136 square feet in an M or Mixed Use District.
 - (3) For a sign identifying a group of stores as a retail center or plaza, have a maximum area of one square foot for every three linear feet of front property line, except that the sign area may be further increased at the rate of one square foot for each additional foot of setback from the front property line to a maximum area of 100 square feet.
 - (4) Have a height no greater than 18 feet above ground level.
 - (5) Have no less than three feet from the bottom of the sign to the ground.
- G. No sign within 100 feet of any R District boundary shall have a surface area (in square feet) larger than its distance (in linear feet) from such R District boundary.
- H. In community and regional shopping centers, freestanding signs, commonly known as "pylon signs," shall be permitted at the entrance or entrances to such shopping center and shall not contain more than 400 square feet. Such freestanding signs shall designate only the name of the shopping center and may include

B-133

a theater panel listing current attractions and advertising of public affairs or public events in the community. Exterior signs for department stores on the exterior surface of department store buildings or above the parapet wall of such buildings in such shopping centers shall be permitted but shall be limited in size to 15% of the total area of the exterior face of the department store on which the sign is located. Exterior signs for commercial outlets, other than department stores in such shopping centers, shall be permitted on the exterior face of the building wherein such outlets are located, but shall be limited in size to no more than 10% of the total area of the exterior face of the building in which such outlets are located.

§ 280-262. Computation of permissible sign area.

- A. When computing the total permissible sign for any use, the following procedures shall be used:
- (1) The total area of a sign consisting of letters, characters and/or symbols painted, placed or otherwise affixed to a background material especially designed for such sign shall be determined by multiplying the height by the width of such background material.
 - (2) The total area of a sign consisting of letters, characters and/or symbols which depict a sign, without regard to any background material especially designed for such sign, shall be the sum of the areas of each letter, numeral, character and/or symbol determined by multiplying the maximum height by the maximum width of each letter, numeral, character and/or symbol, including any intervening spaces between them.
- B. The total area of all signs for any use shall not exceed the requirements set forth in Article XXXVI. Existing signs shall be included in the computation.

§ 280-263. Safety standards.

Every sign shall be so designed and located in such a manner as to:

- A. Not impair public safety. Illuminated signs shall not be located in the corner visibility area as defined in Article XXVII.
- B. Not restrict clear vision between a sidewalk and a street.
- C. Not be confused with any traffic sign or signal.
- D. Not prevent free access to any door, window or fire escape.
- E. Withstand a wind-pressure load of at least 20 pounds per square foot.

B-134

ARTICLE XLIV Site Plan Review

§ 280-301. When required; exceptions.

Unless otherwise provided and as regulated by the Subdivision Regulations of the Town of Hamburg, Editor's Note: See Ch. 230, Subdivision Regulations. site plan review and a site plan approval shall be required for all uses, buildings and structures that require a building permit or a certificate of occupancy under this chapter and for which an application therefor has been made to the Town of Hamburg, except for a farm, one-family dwelling or a two-family dwelling and its permitted accessory uses, buildings or structures, prior to the issuance of a building permit or certificate of occupancy.

§ 280-302. Site plan waiver. [Added 11-13-2000 by L.L. No. 8-2000]

- A. A site plan waiver may be issued if a proposed project is minor in nature to the extent that a full site plan review may not be necessary. In such case, if an existing previously approved site plan is on file with the Town and the modifications are deemed minor by the Site Plan Waiver Committee, consisting of the department heads of the Building Department, Engineering Department, Planning Department and the Planning Board Chairman, a site plan waiver may be issued upon payment of the required fee. Once the site plan waiver is approved, the applicant may apply for a building permit.
- B. In general, a site plan waiver may be issued for a project that has met one or more following criteria (at the discretion of the Site Plan Waiver Committee):
 - (1) Additions of less than 1,000 square feet or which represent less than 10% of the existing structure, where no variances are needed for construction.
 - (2) Accessory buildings or additions that are not visible from the road or adjoining residential uses.
 - (3) A minor change in use that does not require additional parking.
 - (4) Such other minor changes as determined by the Site Plan Waiver Committee.
- C. In all cases, an existing site plan shall be on file with the Town and the site shall be in general conformance with previously approved site plans, as applicable. Furthermore, the site plan waiver may include conditions that must be met for the issuance of the building permit.
- D. In certain cases, the preparation of a site plan application may be deemed necessary to meet the requirements of a site plan waiver process. It may be determined that the proposed project needs formal site plan approval from the Planning Board.
- E. Determinations and approval conditions for a site plan waiver may only be appealed by the applicant by appearing before the Planning Board under a formal site plan application. Approval of any site plan waiver shall remain in effect for a period of not more than one year, unless a successful application for a building permit has been made within that period.

§ 280-303. Procedure for review and approval.

- A. Where site plan review is required, the enforcement officer of this chapter shall refer the application, site plan and supporting data to the Town Planning Board. The Planning Board shall review the application, site plan and supporting data and, at a regular meeting of the Planning Board, after determining that all requirements have been met, shall approve, approve with modification or disapprove the site plan. Approval of any site plans so deemed shall remain in effect for a period of not more than one year unless a successful application for a building permit has been made within that period or a single six-month extension has been granted by the Planning Board.
- B. Site plan applications that are tabled by the Planning Board for additional information, or at the request of the applicant, will remain as tabled items for three months (three subsequent Planning Board meetings). Unless an extension is requested and approved, the application will be considered to be expired after this ninety-day period of inactivity. Prior to the expiration of the application, the applicant can request in writing that the ninety-day period be extended for one additional ninety-day period. To begin the process again, within six months of the expiration, the applicant will need to resubmit the application with 50% of the required fee. After six months, a new submission will require the full fee. [Added 6-14-1999 by L.L. No. 5-1999]

B-135

§ 280-304. Authority to require additional data.

In addition to the required site plan and supporting data indicated in § 280-312, the Planning Board may request of a property owner or his agent additional supporting data or plans the Planning Board deems necessary and pertinent to carry out its responsibility for site plan review as provided in this chapter.

§ 280-305. Submission of site plan and supporting data.

The property owner or his agent shall submit nine copies of a site plan and supporting data prepared by and bearing the official seal and signature of a licensed architect, landscape architect, civil engineer or land surveyor, which may include the following information, presented in drawn form at a scale approved by the enforcement officer of this chapter and accompanied by a written text:

- A. Survey of the property, showing existing topographic features, including contours, large trees, buildings, structures, streets, property lines, utility easements, rights-of-way and land use, and the zoning and ownership of surrounding property.
- B. A site plan showing proposed lots, blocks, building locations and land use areas.
- C. Traffic circulation, parking and loading spaces and pedestrian walks.
- D. Landscaping plans, including site grading, drainage existing and proposed landscape materials, including trees and shrubs, and their locations, identification of those materials to be removed, existing and proposed structures and all greenspace areas designed as part of the site environment. Natural site features and vegetation shall be preserved and integrated into the proposed site development wherever possible. All new trees shall have a minimum of three inches of caliper measured six inches above the ground.
- E. Preliminary engineering plans, including street improvements, storm drainage system, public utility extensions, water supply, sanitary sewer facilities, outdoor lighting and the location of existing and proposed fire hydrants as approved by the Fire Chief or Town Engineer.
- F. Preliminary architectural drawings for buildings to be constructed.
- G. Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas.

§ 280-306. Criteria for review recommendations.

- A. The Planning Board shall review the site plan and supporting data and take into consideration the following:
 - (1) Harmonious relationship between proposed uses and existing adequate uses.
 - (2) Maximum safety of vehicular circulation between the site and street network.
 - (3) Adequacy of interior traffic circulation and parking and loading facilities, with particular attention to vehicular and pedestrian safety.
 - (4) Adequacy of landscaping and setbacks in regard to achieving maximum compatibility with and protection of adjacent property and land uses.
- B. Should changes or additional facilities be recommended by the Planning Board, recommended approval of the site plan shall be conditional upon satisfactory compliance by the property owner with the changes or additions.
- C. In cases where any action of the Zoning Board of Appeals is required, the site plan shall be the subject of a preliminary review by the Planning Board, in accordance with the review procedure set forth above, before action is taken by the Zoning Board of Appeals. After such action by the Zoning Board of Appeals, the Planning Board shall conduct a final review of the site plan.

§ 280-307. Performance bond as condition of approval.

The Planning Board may require, as a condition of site plan approval, that the property owner file a performance bond, in such amount as determined by the Town Engineer, to insure that the proposed development will be built in compliance with accepted plans.

B-136

§ 280-308. Site plan revisions.

A property owner wishing to make any changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

7-137

ARTICLE XLV Zoning Board of Appeals

§ 280-309. Creation and organization.

The Zoning Board of Appeals consisting of seven members, as constituted and empowered under § 267 of Article 16 of the Town Law, on the effective date of this chapter shall be continued. Vacancies occurring in such Board shall be filled in accordance with the Town Law. The Zoning Board of Appeals shall have all the powers and perform all the duties prescribed by statute and by this chapter.

§ 280-310. Powers and duties.

A. Appellate jurisdiction.

(1) Appeals of interpretation. The Zoning Board of Appeals shall hear and decide appeals where it is alleged that there is an error or misinterpretation in any order, requirement, decision or determination by an administrative official of the Town of Hamburg charged with the enforcement of the provisions of this chapter. The Zoning Board of Appeals may reverse, modify or affirm, in whole or in part, any such appealed order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as, in its opinion, ought to be made in strictly applying and interpreting the provisions of this chapter and, for such purposes, shall have all the powers of the officer from whom the appeal is taken.

(2) Appeals for variance.

(a) On an appeal from an order, requirement, decision or determination of any administrative official charged with the enforcement of this chapter, where it is alleged by the appellant that there are practical difficulties or unnecessary hardship in the way of carrying out the strict application of any provision of this chapter, the Zoning Board of Appeals may grant a variance in the strict application of such provisions, provided that all of the following findings are made:

- [1] That there are unique circumstances or conditions peculiar to the particular property and that the practical difficulties or unnecessary hardship are not due to circumstances or conditions generally created by the provisions of this chapter in the zoning district in which the property is located.
- [2] That such circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of the property, and that the granting of the variance is therefore necessary to realize a reasonable use of the property.
- [3] That the variance, if granted, will be in harmony with the general purpose and intent of this chapter, will not be injurious to the neighborhood, will not impair the appropriate use or development of adjacent property and will not be detrimental to the public welfare.
- [4] That such practical difficulties or unnecessary hardship are not self-created by any person having an interest in the property through disregard for or ignorance of the provisions of this chapter; provided, however, that where all other required findings are made, the purchase of property subject to a variance grant shall not itself constitute a self-created hardship.
- [5] That within the intended and purposes of this chapter the variance, if granted, is the minimum variance necessary to afford relief.

(b) The following types of cases shall be construed as eligible for consideration within the meaning of this chapter:

- [1] Unusual size or shape of lot: where, by reason of the exceptional narrowness, shallowness or shape of a specific piece of property at the time of the effective date of this chapter or by reason of exceptional topographic conditions or other exceptional physical difficulties in the development of such piece of property, the literal enforcement of the requirements of this chapter pertaining to yards or other space relationships would result in peculiar practical difficulties or exceptional undue hardship upon the owner of such property. No use variance shall be granted in such case.
- [2] Adjacent nonconforming uses: where, adjacent to a lot on both sides in the case of an interior lot, or on both the side and rear of the lot or on all other corners of an intersection in

B-138

the case of a corner lot, there are buildings or uses which do not conform to regulations prescribed in this chapter for the district in which said lot is located. In considering such appeal, the Zoning Board of Appeals shall give due regard to the nature and conditions of all adjacent uses and structures, and, in granting any such appeal, the Zoning Board of Appeals may impose special requirements and conditions for the protection of conforming uses and the ultimate removal of nonconforming uses and structures. In any case, the variance as to the use or uses permitted on any lot, whether principal or accessory, shall not allow a use or combination of uses more intensive or less restricted than any use which is legally existing on premises immediately adjacent on either side of said lot, or of premises on any corner of the intersection in the case of a corner lot.

[3] Nonconforming building: where the principal building on any premises was originally lawfully erected and intended for a principal use and such building would now be a nonconforming use in the district in which located and the right to continue or reestablish such nonconforming use in such building is denied by the provisions of Article XLII of this chapter, and where the literal enforcement of such provisions would result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the owner of such property. In considering such appeal, the Zoning Board of Appeals shall give due regard to the age and condition of such building and its adaptability for or convertibility to a conforming use. In approving any such appeal, the Zoning Board of Appeals shall specify the time limit during which such grant of a variance shall be effective, which time limit shall in no case exceed the estimated useful life of such building. In case the building has been condemned by the Building Inspector and ordered to be demolished, the Zoning Board of Appeals shall not grant any such variance.

[4] Any other case involving practical difficulties or unnecessary hardship in the way of carrying out any provision of this chapter pursuant to and in accord with the intent and purpose of Subdivision 5 of § 267 of Article 16 of the Town Law.

(c) In granting a variance, the Zoning Board of Appeals may vary or modify the provisions of this chapter so that the spirit of the law shall be observed, public safety secured and substantial justice done. Toward this end, the Zoning Board of Appeals may prescribe such conditions or restrictions as it may deem necessary. Such conditions or restrictions shall be incorporated in the building permit and the certificate of occupancy.

B. Original jurisdiction.

(1) General provisions.

- (a) The Zoning Board of Appeals shall hear and decide, in accordance with the provisions of this chapter, all applications for modifications of provisions of this chapter in all such cases upon which the Zoning Board of Appeals is specifically authorized to pass or to make any other determination required by this chapter.
- (b) In authorizing any specified modification or in making any required determination, all required findings shall be made, and, in the case of modifications, the Zoning Board of Appeals may prescribe appropriate conditions to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety, convenience or general welfare.
- (c) No modification of the provisions of this chapter shall be authorized by the Zoning Board of Appeals unless, in addition to other findings specified in this chapter, it finds that such modification:
- [1] Will be in harmony with the general purposes and intent of this chapter.
 - [2] Will not tend to depreciate the value of adjacent property.
 - [3] Will not create a hazard to health, safety or the general welfare.
 - [4] Will not alter the essential character of the neighborhood or be detrimental to the residents thereof.
 - [5] Will not otherwise be detrimental to the public convenience and welfare.

(2) Special permits.

B-139

- (a) Temporary structures or uses. The Zoning Board of Appeals may authorize a temporary and revocable permit for not more than two years for uses or structures that do not conform to the regulations of this chapter for the district in which it is located, provided that the following findings are made:
 - [1] That such use is of a temporary nature and does not involve the erection or enlargement of any permanent structure.
 - [2] In case of a renewal of such permit, that all conditions and safeguards previously required have been complied with.
- (b) Permitted temporary structures or uses; extension of time limit. The Zoning Board of Appeals may authorize the continuation of temporary structures or uses incidental to construction work, provided that the following findings are made:
 - [1] That the nature and scale of the construction are such to require a longer period of time for completion.
 - [2] That such construction has been diligently prosecuted or that any delays have been unavoidable.
- (3) Modification of regulations.
 - (a) Reduction of parking spaces for places of assembly. The Zoning Board of Appeals may authorize a reduction of not more than 50% in the number of required off-street parking spaces for places of assembly when located on the same lot with other uses, provided that the following findings are made:
 - [1] That, in accordance with times of operation and times of peak demand, there will be no conflict in the joint use of such off-street parking spaces.
 - (b) Reduction of parking spaces where public off-street parking facilities are available. Where public off-street parking facilities, other than parking provided for a public building, are available, the Zoning Board of Appeals may reduce, on a pro rata basis, the parking requirements for all uses within 600 feet of any boundary of such public parking facility.
 - (c) Exception from exterior side yard requirements. The Zoning Board of Appeals may modify the exterior side yard requirements for principal buildings on deep corner lots, provided that the following findings are made:
 - [1] That the rear yard is at least 50 feet in depth.
 - [2] That such modification will not adversely affect the adjoining property.
 - (d) Exception from fence height limitations. The Zoning Board of Appeals may permit a fence up to eight feet in height in any rear yard, not a front yard equivalent, or in any side yard, not a required side yard, provided that such fence is at least 10 feet from any property line and that the following findings are made:
 - [1] That such fence shall not unduly shut out light or air to adjoining properties.
 - [2] That such a fence shall not create a fire hazard by reason of its construction or location.

§ 280-311. Procedures.

- A. General provisions. The Zoning Board of Appeals, consistent with this chapter, may adopt rules of conduct and procedure.
- B. Filing appeals. An appeal to the Zoning Board of Appeals from any ruling of any administrative official charged with the enforcement of this chapter may be taken by any person aggrieved or by any officer, department, division, board or bureau of the Town of Hamburg. Such appeal shall be taken, within such time as shall be prescribed by the Board by general rule, by filing with the officer from whom the appeal is taken and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- C. Filing applications. An application for any matter upon which the Zoning Board of Appeals is required to

B-140

pass may be made to the Building Inspector by the owner, the tenant of the property or a duly authorized agent for which such appeal or application is sought.

D. Meetings, witnesses and records.

- (1) Meetings of the Board shall be held at the call of the Chairman and at such other times as the Zoning Board of Appeals may determine. All meetings shall be open to the public.
- (2) The Chairman of the Zoning Board of Appeals or, in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses.
- (3) The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official action. Every rule and regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Zoning Board of Appeals shall immediately be filed in the office of the Town Clerk and shall be a public record.

E. Stay of proceedings. Any appeal to the Zoning Board of Appeals shall stay all proceedings in furtherance of the action appealed from, except as otherwise provided in Subdivision 4 of § 267 of the Town Law.

F. Public hearing. The Zoning Board of Appeals shall fix a reasonable time for a hearing of an appeal, applications for special permits or modifications of regulations, or other matters referred to it, and shall give public notice thereof in accordance with the provisions of Subdivision 5 of § 267 of the Town Law.

G. Decisions of the Zoning Board of Appeals.

- (1) The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector or to decide in favor of the applicant any matter upon which it is required to pass under this chapter or to effect any variation in this chapter.
- (2) Every decision of the Zoning Board of Appeals shall be by resolution. Where findings are required, the decision shall set forth each required finding, supported by substantial evidence or other data considered by the Zoning Board of Appeals in each specific case, or, in the case of denial, the decision shall include the findings which are not satisfied.

H. Violation of conditions or restrictions. Failure to comply with any condition or restriction prescribed by the Zoning Board of Appeals in approving any appeal for a variance or application for a special permit or a modification of regulations shall constitute a violation. Such violation may constitute the basis for revocation of a variance, special permit or modification or for penalties and other applicable remedies.

I. Lapse of authorization. Any variance, special permit or modification of regulations authorized by the Zoning Board of Appeals shall be automatically revoked, unless a building permit conforming to all the conditions and requirements established by the Zoning Board of Appeals is obtained within six months of the date of approval by the Zoning Board of Appeals and construction is completed within one year of such date of approval.

J. Rehearing. There shall be no rehearing of an appeal or application by the Zoning Board of Appeals, except in accordance with Subdivision 6 of § 267 of Article 16 of the Town Law.

B-141

ARTICLE XLVI Special Use Permits [Amended 6-12-1989 by L.L. No. 4-1989; 1-26-1998 by L.L. No. 1-1998]**§ 280-312. General provisions.**

- A. A use listed as requiring a special use permit shall not be presumed to be an allowable use. It shall be the responsibility of the petitioner for a special use permit to prove to the satisfaction of the Town that the items listed in this section and under the section of that particular special use are met. These uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered on an individual case.
- B. No special permit shall be authorized by the Town unless, in addition to other requirements specified in this chapter, it finds that such special permit:
 - (1) Will be in harmony with the general purposes and intent of this chapter.
 - (2) Will not create a hazard to health, safety or the general welfare.
 - (3) Will not alter the essential character of the neighborhood nor be detrimental to the residents thereof.
 - (4) Will not otherwise be detrimental to the public convenience and welfare.
- C. In authorizing any special permit, the Town Planning Board may prescribe appropriate conditions to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety or general welfare.

§ 280-313. Application procedure.

- A. Applications for special use permits shall be acted on by the Planning Board after a public hearing.
- B. A plan or the proposed development of a site for a permitted special use shall be submitted with an application for a special use permit, and such plan shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping and other pertinent information that may be necessary to determine if the proposed special use meets the requirements of this chapter.
- C. If a special use permit is granted, the applicant will then proceed with site plan approvals and with any other required approvals or permits.

B-142

§ 280-327. Penalties for offenses.

- A. In the event of any violation of a special use permit, the Town may seek enforcement under any available authority, including but not limited to Town Law § 268.
- B. Any use receiving a special use permit that subsequently does not meet the requirements and/or conditions of that permit or this chapter shall be subject to fines under Town Law and shall have its permit revoked, and the use shall be terminated within 90 days of notification by the Town.

§ 280-328. Expiration.

A special use permit shall be deemed to authorize only one particular use and shall expire if the special use shall cease for a period of more than one year.

B-143

ARTICLE XLVIII Amendments

§ 280-338. Authority to make amendments.

The Town Board may, from time to time, on its own motion or on petition or on the recommendation of the Town Planning Board, after proper public notice and public hearing, amend, supplement or repeal the regulations, provisions or boundaries of this chapter.

§ 280-339. Provisional amendments.

In the case of a proposed amendment which involves the reclassification or transfer of any area from an R District to any C, M or Mixed Use District, the Town Board may require the petitioner to submit a development plan showing the extent, location and character of proposed uses and structures. The Town Board may require that such plan be modified to meet any objections raised at any public hearing thereon, or subsequent thereto, and may qualify its approval of any such amendment by attaching a special endorsement thereto. Within a period of six months from the approval of such a provisional amendment, no building permit or certificate of occupancy shall be issued for any property within the area described by said amendment, except in accordance with the approved development plan and with all conditions and limitations placed thereon by the Town Board, or in accordance with the zoning regulations applicable prior to said reclassification action. Unless an application for a building permit for such special development is made within six months from the Town Board's approval and unless development of the area included in such development plan is commenced within a period of one year after the Town Board's approval, said approval shall be void, and the zoning classification shall be as it was when the petition for amendment was filed.

§ 280-340. Amendment procedure.

A. Petition for amendment.

- (1) Filing of petition. A petition to amend, change or supplement the text of this chapter or any zoning district as designated on the Zoning Map, or any section thereof, established herein shall be filed with the Town Clerk on forms obtained from his office and shall be transmitted by him to the Town Board. On and after the effective date of this chapter, any petition to amend, change or supplement this chapter shall be accompanied by a filing fee in an amount as established by the Town Board.
- (2) Public hearings, official notice, recording. Unless otherwise provided, the provisions of § 265 of Article 16 of the Town Law and subsequent amendments thereto pertaining to public hearings, official notice and proper recording of zoning actions taken by the Town Board shall apply to all amendments to this chapter.
- (3) As part of the rezoning application, the applicant shall allow the Town to erect a sign on the subject property indicating that the property has been petitioned for rezoning. **[Added 1-26-1998 by L.L. No. 1-1998]**

B. Referral to Planning Board. Each proposed amendment, except those initiated by the Town Planning Board, shall be referred to the Town Planning Board for an advisory report prior to the public hearing held by the Town Board. In reporting, the Town Planning Board shall fully state its reasons for recommending or opposing the adoption of such proposed amendment and, if it shall recommend adoption, shall describe any changes in conditions which it believes make the amendment desirable and shall state whether such amendment is in harmony with a Comprehensive Plan for land use in the Town.

C. Rehearing on petition. The disposition of a petition for amendment by the Town Board shall be final, and disapproval or denial of the proposed amendment shall void the petition. No new petition for an amendment which has been denied by the Town Board shall be considered by it, except for a vote to table or to receive and file, and no public hearing shall be held on such amendment within a period of one year from the date of such denial unless the Town Planning Board shall submit a recommendation, with reasons stated therefor, certifying that there have been substantial changes in the situation which would merit a rehearing by the Town Board.

3-144

ARTICLE XLIX Definitions and Word Usage

§ 280-341. Rules of construction of language.

- A. Words used in the present tense include the future tense.
- B. Words used in the singular include the plural, and words used in the plural include the singular.
- C. The word "person" includes an individual, firm, company, partnership or corporation.
- D. The words "shall" or "will" are mandatory; the word "may" is permissive.
- E. The words "used" or "occupied," as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be used or occupied."
- F. Any reference to an "R District" shall be interpreted to mean "R-A, R-E, R-1, R-2, R-3, R-4 and NC Districts."
- G. Any reference to a "C District" shall be interpreted to mean "C-1, C-2 and HC Districts." **[Amended 1-26-1998 by L.L. No. 1-1998]**
- H. Any reference to an "M District" shall be interpreted to mean "M-1, M-2 and M-3 Districts."
- I. Any reference to a "mixed use district" shall be interpreted to mean "PUD Districts."

§ 280-342. Definitions.

For the purposes of this chapter, certain terms or words used herein shall be interpreted or defined as follows:

ACCESSORY BUILDING OR STRUCTURE — A building or structure, the use of which is incidental to that of the main building and which is located on the same premises.

ACCESSORY USE — A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building, except as otherwise provided for off-street parking.

ALTERATION — Any change in, rearrangement of, addition to or relocation of a building or structure, or any modification in construction or equipment.

ANIMAL HOSPITAL — The premises or buildings used for the diagnosis, treatment or other care of the ailments of domesticated, household animals, which may include related facilities such as laboratories, offices and temporary quarters for such animals.

BED-AND-BREAKFAST — See "tourist home." **[Added 2-22-1999 by L.L. No. 3-1999]**

BUILDING — A combination of any materials, whether portable or fixed, having a roof, to form a structure affording shelter for persons, animals or property. The word "building" shall be construed, when used herein, as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

BUILDING HEIGHT — The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof.

BUILDING INSPECTOR — The officer(s) designated by the Town of Hamburg and charged with the enforcement of zoning, building and fire prevention codes. **[Added 2-22-1999 by L.L. No. 3-1999]**

BUILDING LINE — See "setback."

CLUSTER HOUSING — A residential subdivision, designed for single-family dwelling purposes, comprising 10 or more acres, in which minimum lot areas and minimum lot dimensions may be reduced by a specific amount, provided that land not used for residential lots, except streets, in the subdivision is used for recreational or open space purposes. The phrase "clustering" shall refer to "cluster housing."

CONDOMINIUM — An apartment house or houses, the apartments or dwelling units of which are individually owned, each owner receiving a deed enabling him to sell, mortgage or exchange his apartment independent of the owners of the other apartments in the building or buildings.

DAY-CARE CENTER OR NURSERY SCHOOL — A place, person, association, corporation, institution or agency licensed by the State of New York providing care for three or more children for at least three hours, but less than 24 hours, away from their homes and in which parents, guardians or others responsible for care place children. This does not include care provided in an after-school program operated for the primary purpose of religious education.

DOG KENNEL — The keeping of more than two dogs that are more than three months old.

DRIVE-IN RESTAURANT — A restaurant wherein all patrons thereof are not required to be seated to be served.

DWELLING — A building used as the living quarters for one or more families.

B-45

- A. DWELLING UNIT — One or more rooms designed for occupancy by one family for cooking, living and sleeping purposes.
- B. SINGLE-FAMILY DWELLING — A building containing one dwelling unit and designed or used exclusively for occupancy by one family.
- C. TWO-FAMILY DWELLING — A building containing two dwelling units and designed or used exclusively for occupancy by two families living independently of each other, or two one-family dwellings having a party wall in common.
- D. MULTIFAMILY DWELLING — A building or portion thereof containing three or more dwelling units and designed or used for occupancy by three or more families living independently of each other.

DWELLING GROUP — A group of two or more dwellings located on the same lot and having any yard or open space in common.

ENLARGEMENT — An increase in floor area of an existing building, or an increase in the size of an existing structure, or an increase in the area of land used for an existing open use.

EXTENSION — An increase in the amount of existing floor area used for an existing use in an existing building.

FAMILY — One or more persons living together in one dwelling unit and maintaining a common household, including domestic servants and gratuitous guests, together with boarders, roomers or lodgers not in excess of the number allowed by this chapter as an accessory use.

FILLING STATION — Any area of land, including structures thereon, used for the retail sale of gasoline or other motor vehicle fuel for the propulsion of vehicles. A "filling station" can be either self-service or attendant-operated.

FOREST FARMING — The management of a stand of forest on a sustained-yield basis, which includes replanting as well as harvesting.

GARAGE, PRIVATE — An accessory building or portion of a main building used for the storage of self-propelled vehicles, including one commercial vehicle having a rated capacity of not more than 3/4 ton, used by the occupants of the premises, and may include space for not more than one passenger vehicle used by others.

GASOLINE STATION — Any area of land, including structures thereon, that is used for the sale of gasoline, other motor vehicle fuel, oil or other lubricating substances and motor vehicle accessories, and which may or may not include facilities for lubricating, washing or otherwise servicing motor vehicles, but not including the painting thereof or the storage of vehicles for any purpose other than servicing with fuel, lubricants, antifreeze, tire repair and other emergency repairs of a temporary nature.

GROSS LEASABLE AREA — The enclosed building area of a shopping center, exclusive of all common areas such as enclosed pedestrian walks, walkways, hallways, public restrooms, open-area garden facilities, maintenance rooms, utility rooms and other areas of a like and similar nature.

HOME OCCUPATION — An accessory use of a service character, conducted within a dwelling by residents thereof, which is clearly secondary to the dwelling use for living purposes and does not change the character thereof or have any exterior evidence of such use and which conforms to the following additional conditions:

- A. The home occupation shall be carried on wholly within the principal or accessory building. No person outside the resident family shall be employed. There shall be no exterior storage of materials used in the home occupation. No offensive noise, vibration, smoke, dust, odor, light or glare shall be produced.
- B. Home occupation may include dressmaking; home cooking; teaching and musical instruction (limited to a single pupil at a time); practice by an artisan; television, electrical or radio repair; barber; and cosmetologist.
- C. Home occupation shall not be interpreted to include the following: commercial stable and kennel, animal hospital, restaurant, music or dancing instruction to groups, convalescent home, mortuary, garage or premises for the repair of motor vehicles and other trades or businesses of a similar nature.

HOTEL — A building containing sleeping rooms in which lodging is provided primarily for transient guests for compensation, and which may include public dining facilities.

JUNKYARD — A place where junk, waste and discarded or salvaged materials are bought, sold, exchanged, sorted, stored, baled, packed, disassembled, handled or abandoned, but not including pawn shops, antique shops, establishments for the sale, purchase or storage of used furniture, household equipment, clothing, used motor vehicles capable of being registered or machinery to be reused for the purpose for which originally manufactured.

KENNEL, BOARDING — The temporary storage for pay of domestic pets. Domestic pet breeding is permitted. Specifically excluded are pets and animals that may be pets but are normally considered wild.

KENNEL, DOG — The keeping of more than two dogs over three months old.

B-146

LOT — A parcel or plot of land occupied or capable of being occupied by a principal building or use, or a group of principal buildings or uses that are united by a common interest or customary accessory buildings or uses, and including such open spaces to be used in connection with such buildings or uses.

LOT, CORNER — A lot at the junction of and fronting on two or more intersecting streets.

LOT COVERAGE — The amount of the lot covered by imperious surfaces, including but not limited to buildings, driveways, accessory structures, parking lots, etc. It is the intent that these areas not covered will remain in their natural state or are to be landscaped. **[Added 1-26-1998 by L.L. No. 1-1998]**

LOT DEPTH — The mean horizontal distance between the front and rear lot lines.

LOT, INTERIOR — A lot other than a corner lot.

LOT LINE — The property line bounding a lot. Where any property line parallels a street and is not coincident with the street line, the street line shall be construed as the property line for the purpose of complying with the area and setback regulations of this chapter.

LOT LINE, FRONT — Where a lot abuts upon only one street, the street line shall be the "front lot line." Where a lot abuts upon more than one street, the assessment roll of the Town of Hamburg shall determine the "front lot line."

LOT LINE, REAR — Any lot line which is opposite and more or less parallel with the front lot line. In the case of a lot which comes to a point at the rear, the "rear lot line" shall be an imaginary line 10 feet in length, entirely within the lot, parallel to and most distant from the front lot line.

LOT LINE, SIDE — Any lot line which is not a front lot line or a rear lot line.

LOT, THROUGH — A lot in which the front lot line and the rear lot line abut a street.

LOT WIDTH — The least horizontal distance across the lot between side lot lines, measured at the front of a main building erected or to be erected on such a lot or at a distance from the front lot line equal to the required depth of the front yard.

MOBILE HOME — As defined pursuant to L.L. No. 7 of 1973, Chapter 165 of the Code of the Town of Hamburg, entitled "Mobile Home Parks."

MOBILE HOME COURT — As defined pursuant to L.L. No. 7 of 1973, Chapter 165 of the Code of the Town of Hamburg, entitled "Mobile Home Parks."

MOTEL — A building or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing accessory off-street parking facilities. The term "motel" includes buildings designated as "motor lodges," "auto courts" and similar appellations.

NONCONFORMING — Any lawful building or structure or any lawful use of land, premises, building or structure which does not conform to the regulations of this chapter for the district in which such building, structure or use is located either at the effective date of this chapter or as a result of subsequent amendments thereto.

NURSERY SCHOOL — See "day-care center."

NURSING OR CONVALESCENT HOME — Any building where persons are housed or lodged and furnished with meals and nursing care for hire.

OPEN SPACE — The unoccupied area open to the sky on the same lot with a principal building or structure and/or any accessory building, exclusive of parking areas or driveways. "Open space" also refers to a parcel or parcels of land or an area of water, or a combination of land and water, within a site with any or all of such features as common outdoor recreation areas, woodland areas, parks, playfields, playgrounds, golf courses, tennis courts, skiing facilities, nature trails, formal gardens, lakes and swimming pools, camping facilities, unoccupied areas in a natural state and similar open areas, exclusive of streets and parking areas.

PETS — Animals normally considered domestic pets, such as dogs and cats. Other animals that are being treated as "pets," such as farm animals and exotic pets that are normally considered as wild, are limited to the R-A District unless otherwise approved by the Zoning Board of Appeals.

PROFESSIONAL RESIDENCE-OFFICE — A single-family detached residence in which the residential occupant has a professional office, such as an architect, accountant, chiropractor, dentist, doctor of medicine, engineer, insurance agent, landscape architect, land surveyor, lawyer, osteopath, physiotherapist, planning consultant, podiatrist, psychologist or realtor, which is clearly secondary or accessory to the one-family dwelling use for living purposes and does not change the residential character thereof and where not more than one person outside the family is employed.

PUBLIC GARAGE OR REPAIR GARAGE — Any garage other than a private garage, and which is used for the storage, repair, rental, greasing, washing, lubrication, servicing, adjusting or equipping of automobiles or other motor

vehicles.

QUARRY, SANDPIT GRAVEL PIT, TOPSOIL STRIPPING — A parcel of land or part thereof used for the purpose of extracting stone, sand, gravel or topsoil for sale, as an industrial operation, and exclusive of the process of grading a lot preparatory to the construction of a building for which a building permit has been issued by the Township of Hamburg.

REPAIR — The replacement or renewal, excluding additions, of any part of a building, structure, device or equipment, with like or similar materials or parts, for the purpose of maintaining such building, structure, device or equipment.

RESERVOIR SPACE — A temporary storage space for a vehicle waiting for service or admission.

SCHOOL — A public, parochial or private school.

SETBACK (BUILDING LINE) — The minimum horizontal distance from any existing or proposed building or structure to the nearest point in an indicated lot line or street line.

SHOPPING CENTER — The division of a single structure or grouping of structures (some of which may be in separate ownership) which constitute a convenient, planned and harmonious shopping and entertainment place with shared customer and employee parking areas.

- A. LOCAL SHOPPING CENTER — A shopping center with a gross leasable area of less than 100,000 square feet.
- B. COMMUNITY SHOPPING CENTER — A shopping center with a gross leasable area of more than 100,000 square feet but less than 400,000 square feet.
- C. REGIONAL SHOPPING CENTER — A shopping center with a gross leasable area of more than 400,000 square feet.

SIGN — Any structure or part thereof, or any device attached to, painted on or represented on a building or other structure, upon which is displayed or included any letter, work, model, banner, flag, pennant, insignia, decoration, device or representation used as or which is in the nature of an announcement, direction, advertisement or other attention-directing device. A sign shall not include a similar structure or device located within a building, except for illuminated signs within show windows. A sign includes any billboard, but does not include the flag, pennant or insignia of any nation or association of nations, or of any state, city or other political unit, or of any political, charitable, educational, philanthropic, civic, professional, religious or like campaign, drive, movement or event.

- A. ADVERTISING SIGN — A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the same lot on which the sign is located.
- B. FLASHING SIGN — Any moving or animated sign or any illuminated sign on which the artificial or reflected light is not maintained stationary and constant in intensity and color at all times when in use. Any revolving illuminated sign shall be considered a flashing sign.
- C. ILLUMINATED SIGN — Any sign designed to give forth any artificial light, or designed to reflect light from one or more sources.

SPORTSMAN AND GUN CLUBS — Institutions whereby members and/or guests enjoy said sport without any permanent occupancy of premises. **[Added 4-22-2002 by L.L. No. 4-2002]**

STORY — That portion of a building between the surface of any floor and the surface of the floor next above it, or, if there is no floor above it, then the space between any floor and the ceiling next above it. A basement shall be counted as a story for purposes of height measurement if the ceiling is more than five feet above the average adjoining ground level or if used for business or dwelling purposes. A "half story" is a story under a sloping roof, having a ceiling height of seven feet or more for an area not exceeding 1/2 the floor area of the next lower full story in the building.

STREET — A public right-of-way for vehicular and pedestrian circulation, which has been dedicated, improved and accepted.

STREET LINE — A line separating a lot from a street. In any case where a future street line has been established or approved by the Town Board, such future street line shall be considered as a street line for the purposes of determining lot area and setback requirements.

STRUCTURAL ALTERATION — Any change in the supporting members of a building or other structure, such as bearing walls, columns, beams or girders.

STRUCTURE — Anything constructed or erected which requires permanent location in or on the ground or attachment to something having such location, but not including a trailer or mobile home.

TEMPORARY STRUCTURE — An assembly of materials, forming a construction of component structural parts for occupancy exceeding 15 persons or such other uses, having a fixed location in or on the ground or attachment to something having such location but not including a trailer or mobile home for less than seven consecutive days. A

temporary structure shall not be erected for a period of 90 consecutive calendar days thereafter, beyond the expiration of the initial seven-day period. **[Added 4-10-2000 by L.L. No. 2-2000]**

TOURIST HOME — A private, owner-occupied residential dwelling in which overnight accommodations are provided or offered for tourist and transient guests for compensation, with or without the inclusion of one meal. This use is subordinate and incidental to the main residential use of the dwelling. **[Amended 2-22-1999 by L.L. No. 3-1999]**

TOWNHOUSE — A building or dwelling designed for or occupied by no more than one family and attached to other similar buildings or dwellings by not more than two common walls extending from the foundation to the roof and providing two direct means of access from the outside. A townhouse is individually owned, an owner receiving a deed enabling him to sell, mortgage or exchange his dwelling unit independent of the owners of any other dwelling unit attached thereto by a common wall.

TRAILER — A vehicle, other than a mobile home, used as sleeping or living quarters, whether self-propelled or towed, or a camper body mounted on a motor vehicle. A trailer shall also include any vehicle towed or used for carrying goods, equipment, machinery or recreation vehicles or as a site office.

USE — The specific purpose for which land or a building is designed, arranged or intended or for which it is or may be occupied or maintained.

WILDLIFE RESERVATIONS — Areas, including conservation areas, set aside to protect and encourage native species of birds and wildlife. **[Added 4-22-2002 by L.L. No. 4-2002]**

YARD — That portion of a lot extending open and unobstructed from the ground upward along a lot line.

YARD, FRONT — A yard extending the full length of the front lot line between side lot lines. The front yard depth of a lot located on a curve shall be measured from the cord connecting the arc of the front lot line.

YARD, FRONT, EQUIVALENT — That portion of a rear yard of a through lot extending along a street line and from the street line for a depth equal to a required front yard. Any front yard equivalent shall be subject to the regulations of this chapter which apply to front yards.

YARD, REAR — On an interior lot, a yard extending for the full length of the rear lot line between side lot lines. On a corner lot, a yard extending along a rear lot line between an interior side line and a side yard which abuts a street.

YARD, REQUIRED — A yard having a depth or width set forth in the applicable district regulations. Such width or depth shall be measured perpendicular to lot lines.

YARD, SIDE — A yard extending along a side lot line from the required front yard to the required rear yard, except that, on a corner lot where the side lot line abuts a street, the side yard shall extend from the required front yard to the rear lot line.

A. **EXTERIOR SIDE YARD** — A side yard extending along a street line.

B. **INTERIOR SIDE YARD** — A side yard extending along a lot line of an adjoining lot.

ZONING MAP — A composite of 71 sectional maps, including all areas of the Town of Hamburg, plus a single index map which locates each of said sectional maps in the Town. The index map also indicates the legend of the zoning districts, by description and symbol, used on said sectional maps. Each of said 71 sectional maps is at a scale of one inch equals 200 feet. Affixed to each sectional map is a stamp which identifies said map as a section of the Zoning Map of the Town of Hamburg and indicates the number of said map to correspond with its number and location as shown on the index map. Each of said sectional maps includes, in whole or in part, area in the Town of Hamburg outside any incorporated village. Any zoning district described on said sectional maps is described by district boundary lines and by appropriate district symbols as indicated in the aforesaid legend on the index map.

B-149

APPENDIX C

Appendix C

Excerpts from Lowe's Home Center, Southwestern Boulevard, Hamburg, New York
Geotechnical Evaluation.....C-1 to C-71

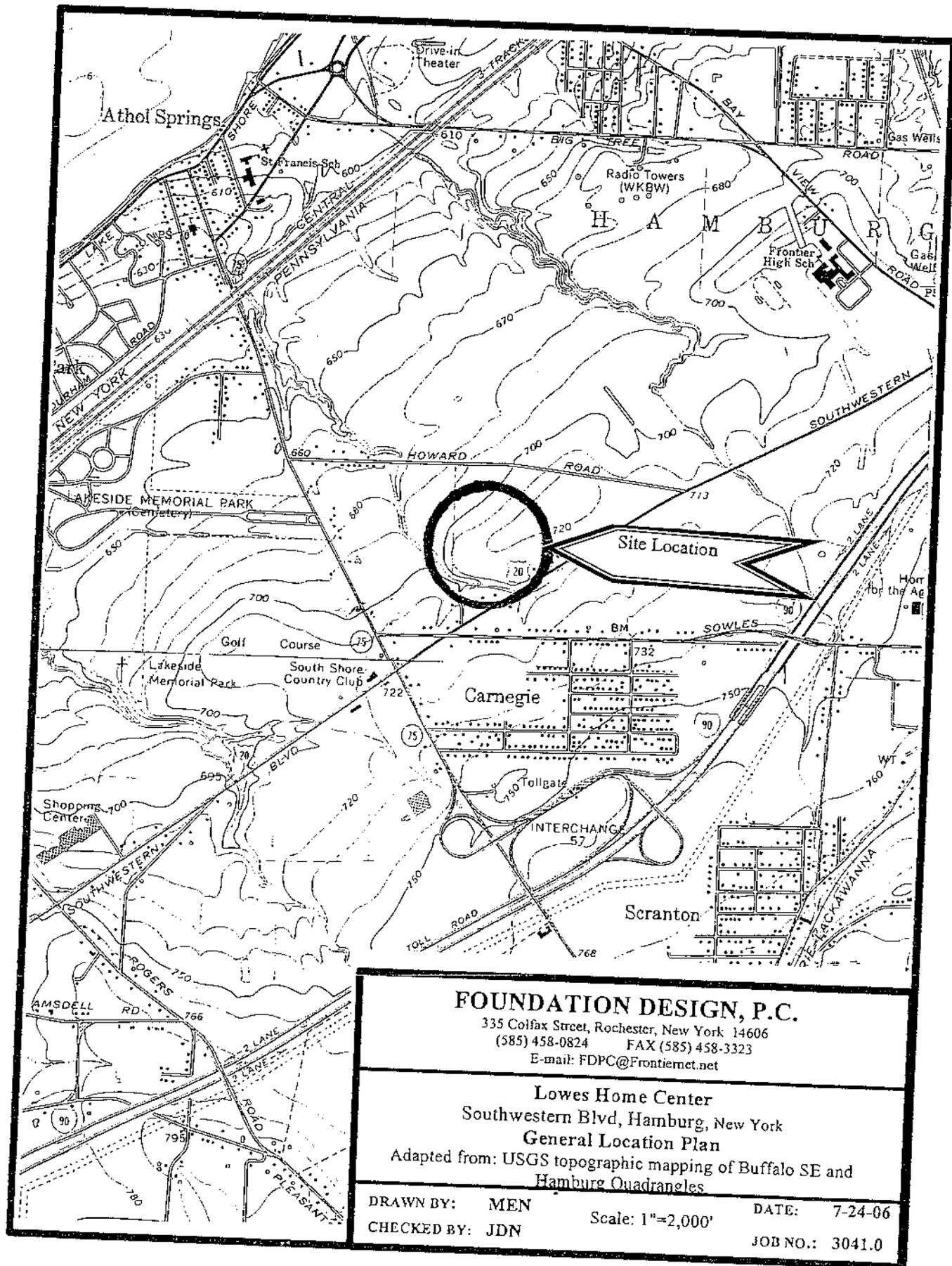
By: Foundation Design, P.C.
335 Colifax Street
Rochester, New York 14606

Dated: October, 2006



APPENDIX A

General Location Plan
Boring Location Plan



FOUNDATION DESIGN, P.C.

335 Colfax Street, Rochester, New York 14606
 (585) 458-0824 FAX (585) 458-3323
 E-mail: FDPC@Frontiernet.net

Lowes Home Center
 Southwestern Blvd, Hamburg, New York
General Location Plan
 Adapted from: USGS topographic mapping of Buffalo SE and
 Hamburg Quadrangles

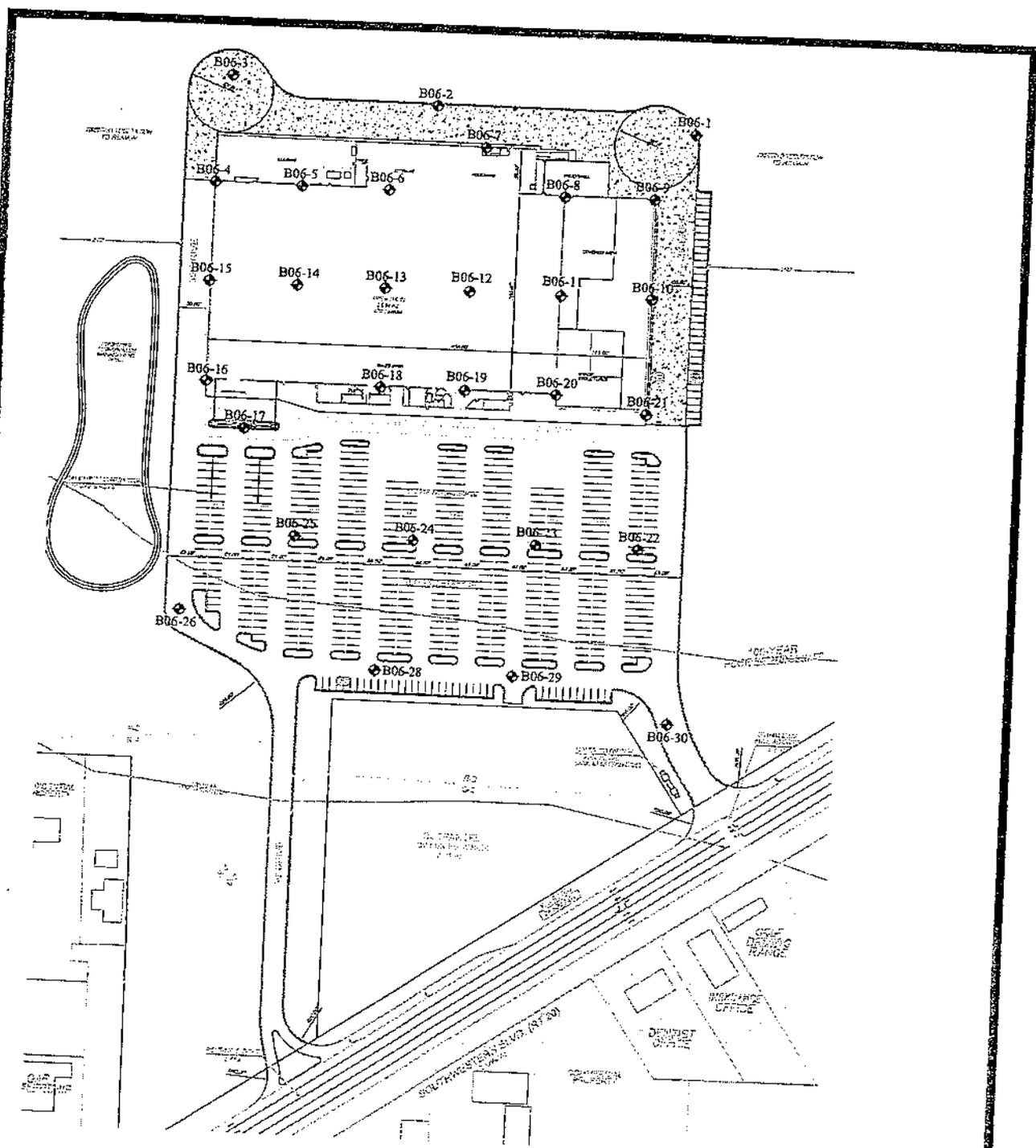
DRAWN BY: MEN

Scale: 1"=2,000'

DATE: 7-24-06

CHECKED BY: JDN

JOB NO.: 3041.0

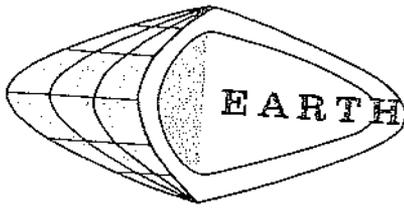


FOUNDATION DESIGN, P.C.		
335 Colfax Street, Rochester, New York 14606		
(585) 458-0824		FAX (585) 458-3323
E-mail: FDPC@Frontier.net		
Lowes Home Improvement Center Southwestern Boulevard, Hamburg, New York Boring Location Plan Adapted from T-K Engineering and Design Group, Inc. March 2005 Preliminary Site Plan		
DRAWN BY:	ARS	DATE: 09-5-06
CHECKED BY:	JDN	1"=200'
		JOB NO.: 3041.0



APPENDIX B

Boring Logs



EARTH DIMENSIONS, INC.

Soil and Hydrogeologic Investigations • Wetland Delineations

1091 Jamison Road • Elma, NY 14059

(716) 655-1717 • FAX (716) 655-2915

12L05c

HOLE NO. Bore Hole 06-1

SURF. ELEVATION 722.7

PROJECT Proposed Lowe's Hmbg. behind 4934 Southwestern Blvd LOCATION Town of Hamburg, Erie Co., NY

CLIENT Foundation Design

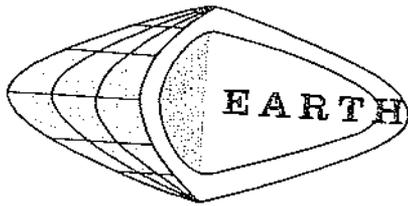
DATE STARTED 07/19/06 COMPLETED 07/19/06

DEPTH IN FT BLOWS ON SAMPLER

SN	0/6	6/12	12/18	18/24	N	LITH	DESCRIPTION AND CLASSIFICATION	WATER TABLE AND REMARKS
REC								
1	1							
14		1			6		Extremely moist dark brown (CLAYEY-SILT) topsoil with some clay, little organic matter, firm, granular soil structure, (CL).	Clayey topsoil with little organic matter to 0.4 feet over clayey glacial drift with some gravel to 2.0 feet over shale bedrock to refusal.
			5				0.4	
2	35			14				
14		56					Extremely moist distinctly mottled brown gravelly (CLAYEY-SILT) with 20 to 40% gravel, occasional cobble, some clay, firm, weakly blocky soil structure, (CL).	2.0
			00/4				clear transition to	
3	18							6.0
5	7	00/3					Olive gray shale bedrock, soft and moderately soft, soft shale can be crushed between fingers into a soil material with some effort, moderately soft shale can be etched with fingernail.	
							grades downward to	
4	00/5							12.5
3							Dark gray shale bedrock, moderately soft, can be etched by fingernail.	
5	00/3							No water at completion.
2							Auger refusal at 12.5 feet.	

N=NUMBER OF BLOWS TO DRIVE 2" SPOON 12" WITH 140 lb. WT. FALLING 30" PER BLOW
 LOGGED BY Steven J. Currie, Soil Scientist, (mw)

C-5



EARTH DIMENSIONS, INC.

Soil and Hydrogeologic Investigations • Wetland Delineations

1091 Jamison Road • Elma, NY 14059

(716) 655-1717 • FAX (716) 655-2915

12L05c

HOLE NO. Bore Hole 06-3

PROJECT Proposed Lowe's Hmbg. behind 4934 Southwestern Blvd
Town of Hamburg, Erie Co., NY

LOCATION

SURF. ELEVATION 707.1

CLIENT Foundation Design

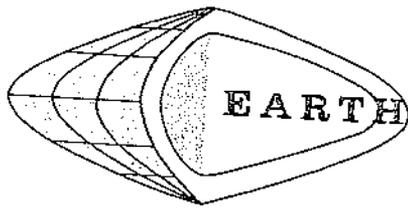
DATE STARTED 07/20/06 COMPLETED 07/20/06

DEPTH IN FT BLOWS ON SAMPLER

SN	0/6	6/12	12/18	18/24	N	LITH	DESCRIPTION AND CLASSIFICATION	WATER TABLE AND REMARKS
1	1							
24		2			5		Extremely moist dark brown (CLAYEY-SILT) topsoil with some clay, little organic matter, soft, granular soil structure, (CL).	Clayey topsoil with little organic matter to 0.5 feet over clayey slack water sediment with trace gravel to 2.0 feet over clayey slack water sediment to 4.0 feet over shale bedrock to refusal.
2	3						0.5	
24		5			13		Extremely moist highly mottled olive brown (SILTY-CLAY) with 1 to 5% gravel, soft, blocky soil structure, (CL).	
			8				clear transition to	
				12			1.0	
3	100/5						Extremely moist highly mottled olive gray (SILTY-CLAY) with 1 to 5% gravel, soft with nearly vertical gray desiccation cracks, (CL).	
4							clear transition to	
							2.0	
4	28						Moist highly mottled olive gray (SILTY-CLAY), thinly laminated with nearly vertical gray desiccation cracks, (CL).	
8	100/3						clear transition to	
							4.0	
5	100/4						Olive gray shale bedrock, soft and moderately soft, soft shale can be crushed between fingers into a soil material with some effort, moderately soft shale can be etched with fingernail.	
3							grades downward to	
							8.0	
							Gray shale bedrock, moderately soft, can be etched with fingernail.	
							9.5	
							Auger refusal at 9.5 feet.	

N=NUMBER OF BLOWS TO DRIVE 2 * SPOON 12 * WITH 140 lb. WT. FALLING 30 * PER BLOW

LOGGED BY Steven J. Currie, Soil Scientist, (mw)



EARTH DIMENSIONS, INC.

Soil and Hydrogeologic Investigations • Wetland Delineations

1091 Jamison Road • Elma, NY 14059

(716) 655-1717 • FAX (716) 655-2915

12L05c

HOLE NO. Bore Hole 08-18

SURF. ELEVATION 713.2

PROJECT Proposed Lowe's Hmbg. behind 4934 Southwestern Blvd
Town of Hamburg, Erie Co., NY

LOCATION

CLIENT Foundation Design

DATE STARTED 07/21/06 COMPLETED 07/21/08

DEPTH IN FT BLOWS ON SAMPLER

SN	0/ 6	6/ 12	12/ 18	18/ 24	N	LITH	DESCRIPTION AND CLASSIFICATION	WATER TABLE AND REMARKS
							Olive brown shale bedrock, soft and moderately soft, soft shale can be crushed between fingers into a soil material with some effort, moderately soft shale can be etched with fingernail. grades downward to 8.0	
							Olive gray shale bedrock, soft and moderately, soft shale can be crushed between fingers into a soil material with some effort, moderately soft shale can be etched with fingernail. grades downward to 13.0	
							Gray shale bedrock, medium hardness, can be easily etched with a knife.	
							Boring completed at 20.0 feet 20.0	

N=NUMBER OF BLOWS TO DRIVE 2 * SPOON 12 * WITH 140 LB. WT. FALLING 30 * PER BLOW
LOGGED BY Steven J. Currie, Soil Scientist, (mw)



APPENDIX C

Laboratory Test Results



580 Olean Road
East Aurora, NY 14052
phone: (716) 655.4933
fax: (716) 655.8638

Soil • Aggregate • Synthetic Testing

August 23, 2006

Mr. Jeffrey Netzband, P.E.
Foundation Design, P.C.
335 Colfax Street
Rochester, New York 14606

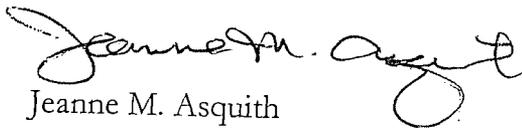
Re: Soil Testing Report, Lowes-Hamburg (3041.0), Invoice for Testing

Dear Mr. Netzband:

3RD Rock, LLC is pleased to present results of several samples transported to 3rd Rock from July 19, 2006 to July 25, 2006. Samples were analyzed for one or more of the following: Moisture Content, Grain Size Analysis, Atterberg Limits, Modified Proctor, Expansion Index, or California Bearing Ratio in general accordance with the applicable ASTM methodologies. The invoice is enclosed for your use.

Please contact us if you have any questions or require additional information. We appreciate this opportunity to be of service to Foundation Design and look forward to providing additional services in the future.

Sincerely,
3rd Rock, LLC


Jeanne M. Asquith
Laboratory Manager

enc.
File: 06-029



Expansive Soil Classification Test Results
Residential Code of New York State, R403.1.8

Project: Lowes-Hamburg, 3041.0
Client: Foundation Design, P.C.

Project No: 06-029
Date: 8/8/06

Expansion Index Test, UBC Std 18-2					
Borehole No.	Sample No.	Lab ID No.	Expansion Index	Molding Water Content, %	Initial Dry Density, pcf
B14, B26, B29, B30	Sample No 1	06-288	28	10.4	104.7
B6, B7, B14, B17	Sample No 2	06-289	96	11.5	102.2

3rd Rock, LLC
580 Olean Road
East Aurora, NY 14052
(716)655-4933
(716)655-8638 (fax)



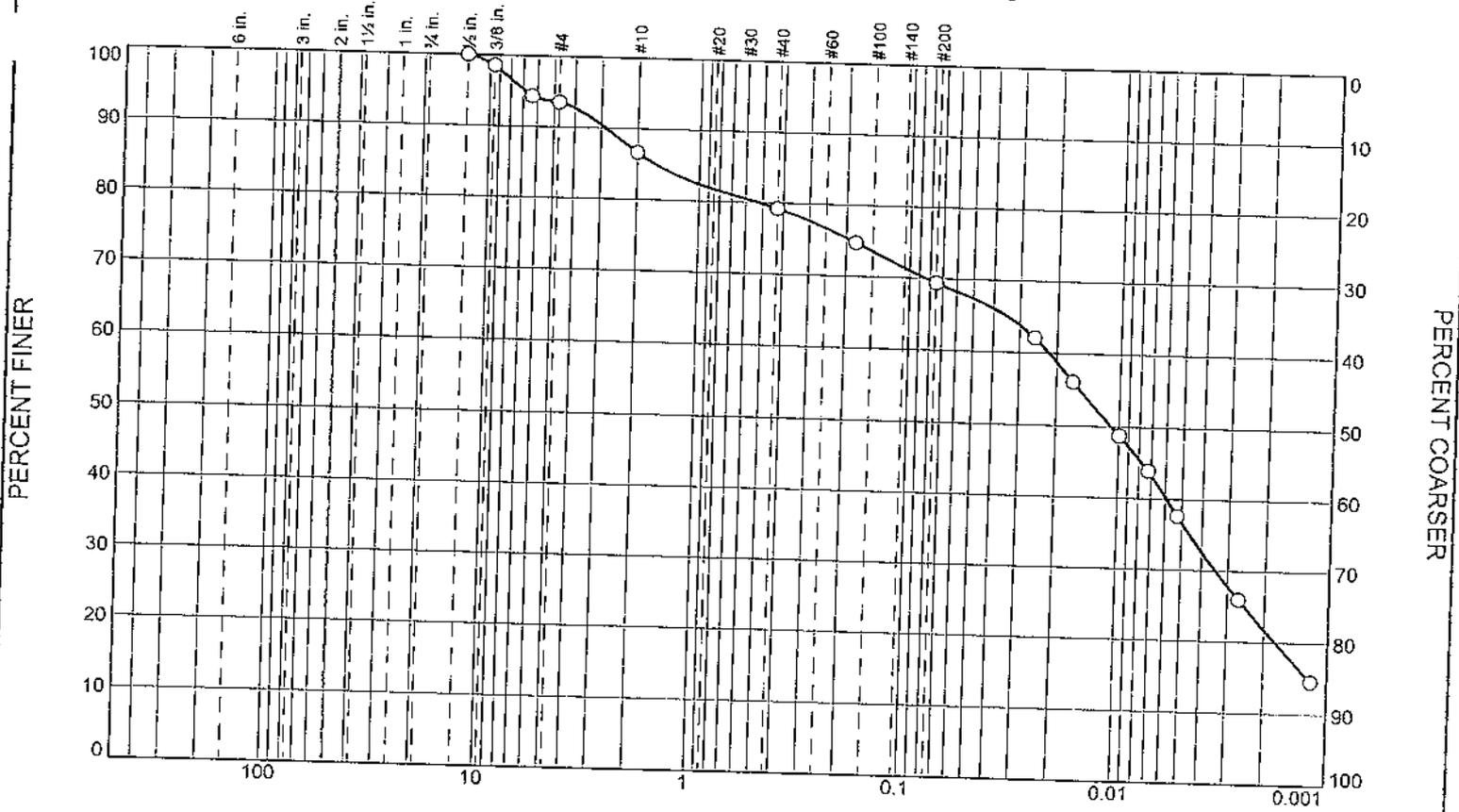
Moisture Content Test Results by ASTM D2216

Project: Lowes-Hamburg, 3041.0
Client: Foundation Design, P.C.

Project No: 06-029
Date: 8/1/06

Sample No.	Lab ID No.	Moisture Content %
B06-26: S-2: 2-4'	06-264	8.9
B06-26: S-3: 4-6'	06-265	8.3
B06-25: S-2: 2-4'	06-266	12.7
B06-22: S-2: 2-4'	06-267	12.8
B06-23: S-2: 2-4'	06-268	13.3
B06-23: S-3: 4-6'	06-269	12.5
B06-12: S-2: 2-4'	06-272	13.2
B06-2: S-2: 2-4'	06-273	19.3
B06-6: S-2: 2-4'	06-277	11.5
B06-7: S-2: 2-4'	06-278	12.5
B06-8: S-2: 2-4'	06-279	12.9

Particle Size Distribution Report



GRAIN SIZE - mm.

% +3"	% Gravel		% Sand			% Fines	
	Coarse	Fine	Coarse	Medium	Fine	Silt	Clay
0.0	0.0	6.5	6.9	7.4	9.8	32.7	36.7

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
1/2"	100.0		
3/8	98.6		
1/4	94.3		
#4	93.5		
#10	86.6		
#40	79.2		
#80	74.7		
#200	69.4		

* (no specification provided)

Sample Description

ID#06-268

PL= Atterberg Limits (ASTM D 4318)
 LL= _____ PI= _____

USCS= _____ Classification
 AASHTO= _____

Coefficients

D₈₅= 1.6219 D₆₀= 0.0217 D₅₀= 0.0109
 D₃₀= 0.0034 D₁₅= 0.0012 D₁₀= _____
 C_u= _____ C_c= _____

Date Tested: 7/31/06 Tested By: SS

Remarks

Light Yellowish Brown

Sample No.: B06-23-S-2 Source of Sample: 3041.0
 Location: _____
 Checked By: _____

Date Sampled: _____
 Elev./Depth: 2-4'

Title: _____

3rd Rock, LLC

East Aurora, NY

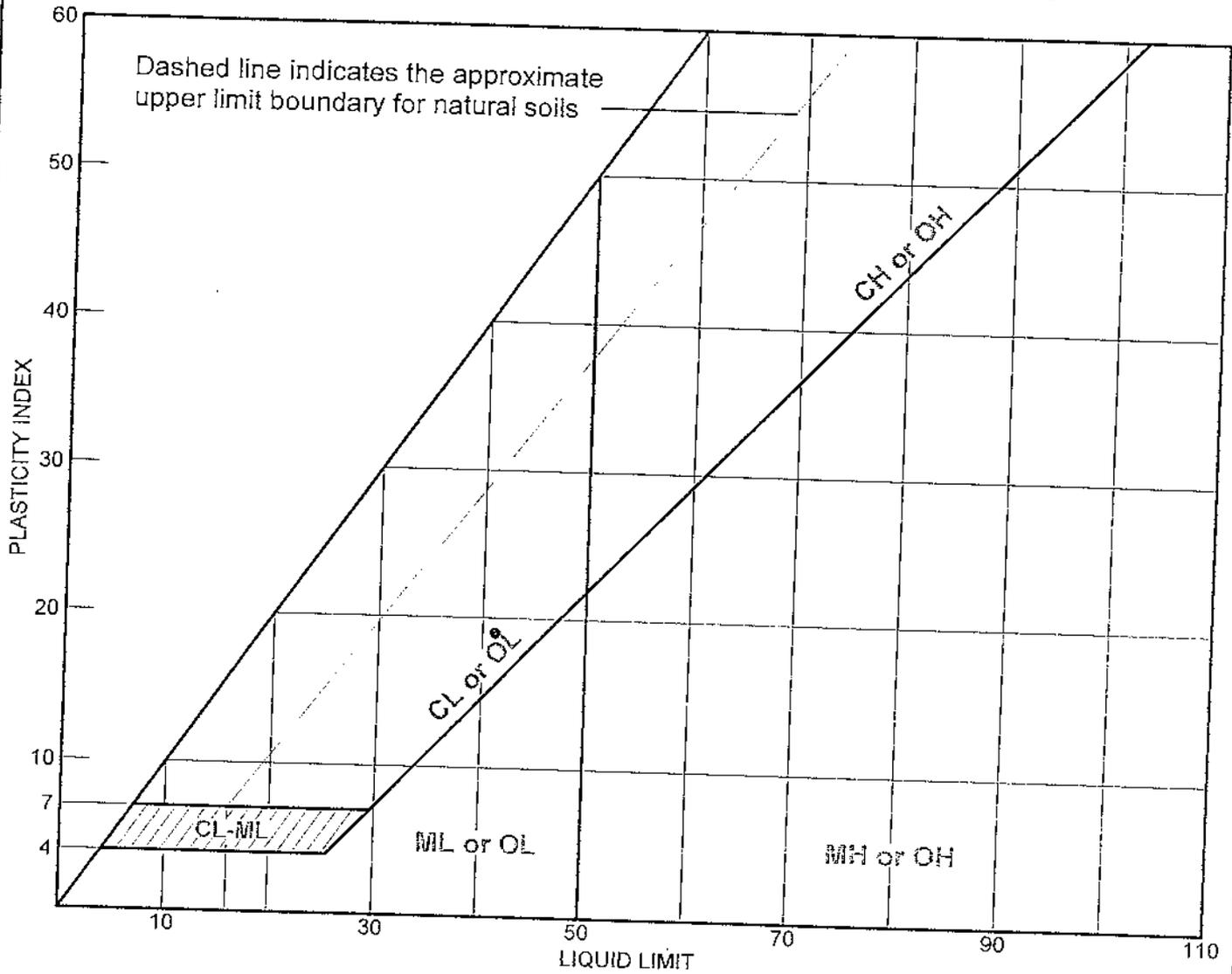
Client: Foundation Design, P.C.
 Project: Lowes, Hamburg

Project No: 06-029

Plate

C-40

LIQUID AND PLASTIC LIMITS TEST REPORT



SOIL DATA								
SYMBOL	SOURCE	SAMPLE NO.	DEPTH (ft.)	NATURAL WATER CONTENT (%)	PLASTIC LIMIT (%)	LIQUID LIMIT (%)	PLASTICITY INDEX (%)	USCS
•	3041.0	B06-15:S-2	2-4'		22.2	41.2	19.0	CL

LIQUID AND PLASTIC LIMITS TEST REPORT

3rd Rock, LLC
East Aurora, NY

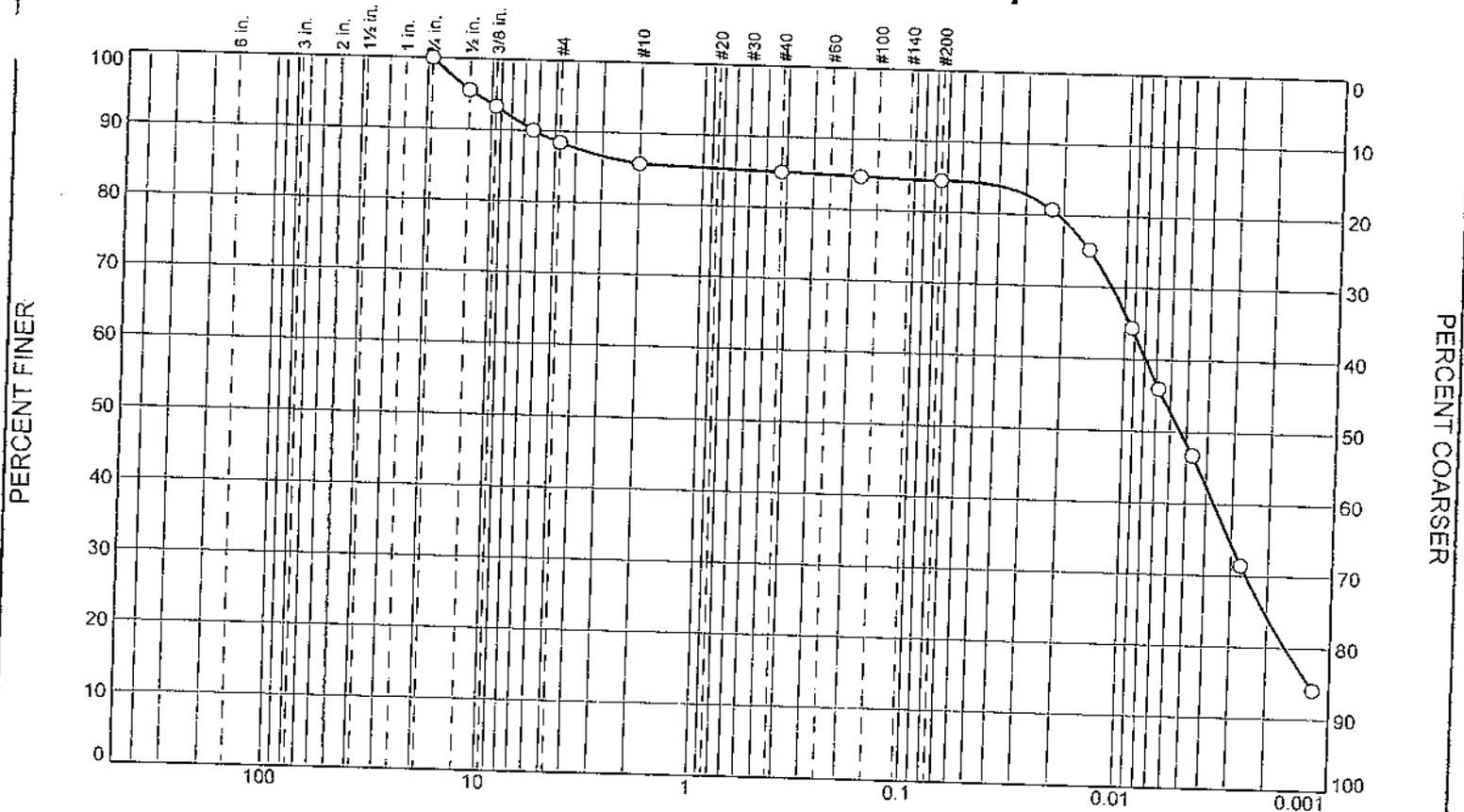
Client: Foundation Design, P.C.

Project: Lowes, Hamburg

Project No.: 06-029

C-41
Plate 06-270

Particle Size Distribution Report



GRAIN SIZE - mm.

% +3"	% Gravel		% Sand			% Fines	
	Coarse	Fine	Coarse	Medium	Fine	Silt	Clay
0.0	0.0	11.6	2.7	0.7	0.6	36.0	48.4

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
3/4	100.0		
1/2	95.5		
3/8	93.3		
1/4	90.1		
#4	88.4		
#10	85.7		
#40	85.0		
#80	84.7		
#200	84.4		

Sample Description

ID#06-270

Atterberg Limits (ASTM D 4318)

PL= 22.2 LL= 41.2 PI= 19.0

USCS= CL **Classification**

AASHTO=

Coefficients

D₈₅= 0.3660 D₆₀= 0.0079 D₅₀= 0.0053

D₃₀= 0.0026 D₁₅= 0.0013 D₁₀=

C_u= C_c=

Date Tested: 7/31/06 Tested By: SS

Remarks

Light Olive Gray

* (no specification provided)

Sample No.: B06-15:S-2 Source of Sample: 3041.0
 Location:
 Checked By:

Date Sampled:
 Elev./Depth: 2-4'

Title:

3rd Rock, LLC

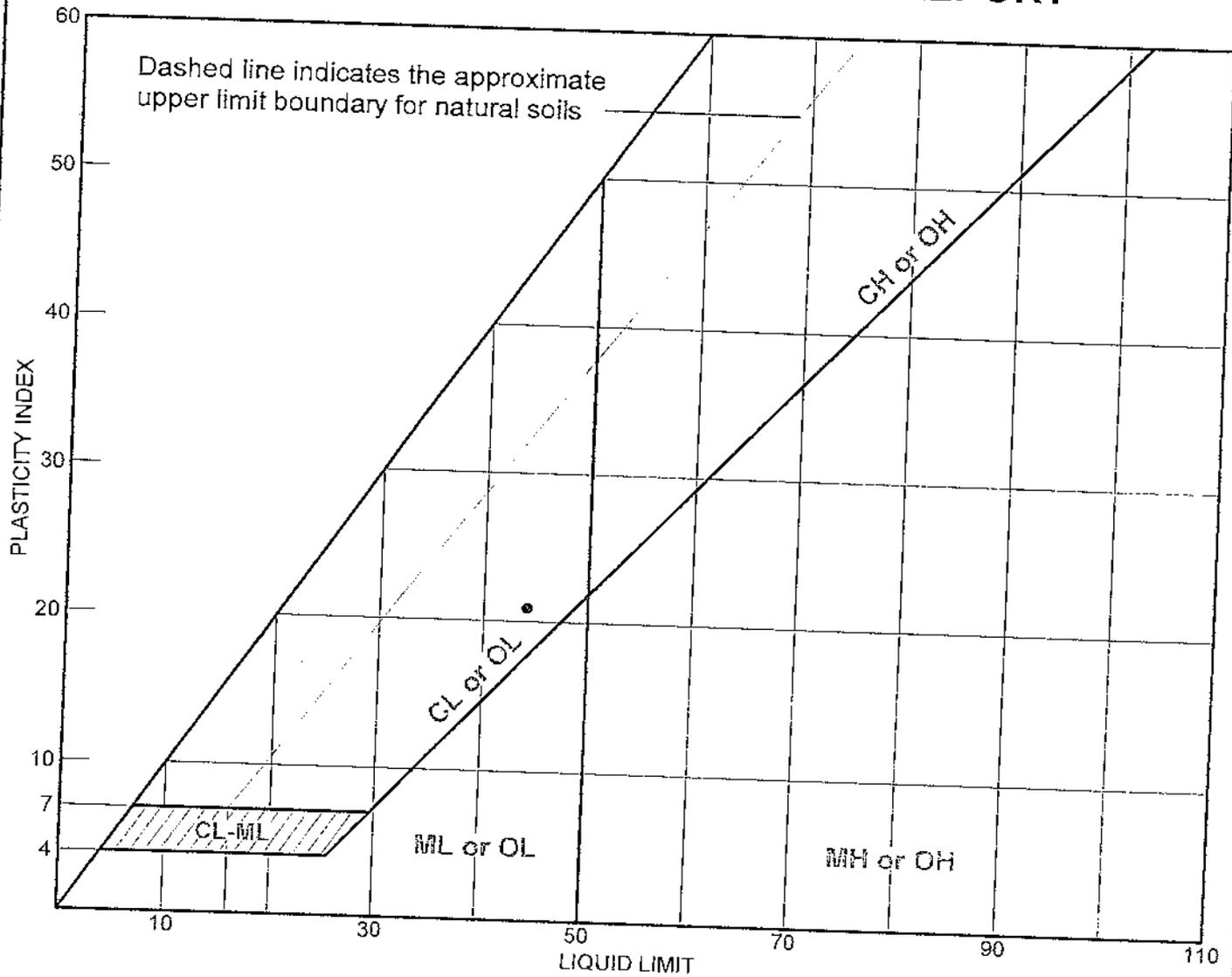
East Aurora, NY

Client: Foundation Design, P.C.
 Project: Lowes, Hamburg

 Project No: 06-029

Plate **C-42**

LIQUID AND PLASTIC LIMITS TEST REPORT



SOIL DATA								
SYMBOL	SOURCE	SAMPLE NO.	DEPTH (ft.)	NATURAL WATER CONTENT (%)	PLASTIC LIMIT (%)	LIQUID LIMIT (%)	PLASTICITY INDEX (%)	USCS
•	3041.0	B06-14:S-2	2-4'		23.3	44.2	20.9	CL

LIQUID AND PLASTIC LIMITS TEST REPORT

3rd Rock, LLC
East Aurora, NY

Client: Foundation Design, P.C.

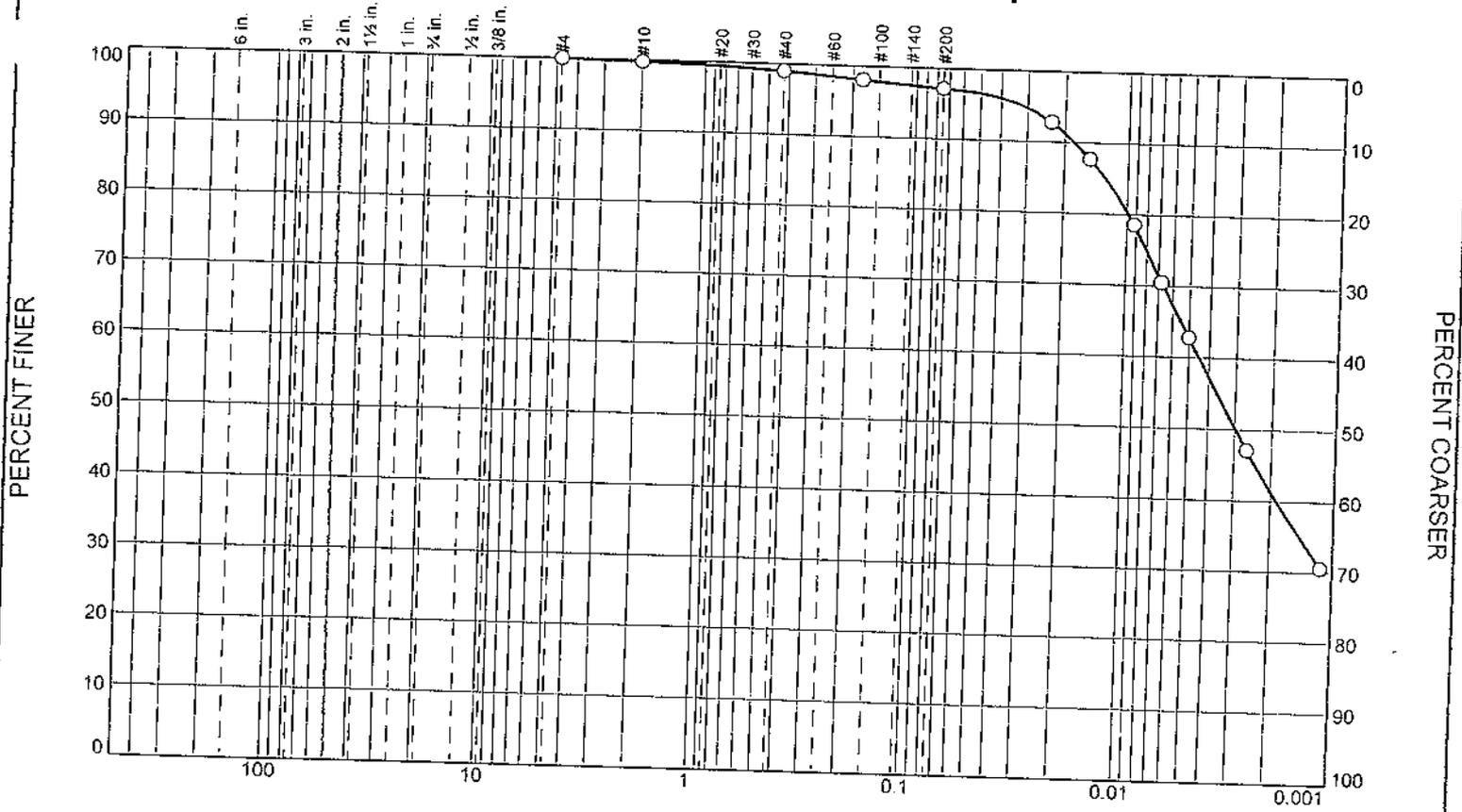
Project: Lowes, Hamburg

Project No.: 06-029

C-43

Plate 06-271

Particle Size Distribution Report



GRAIN SIZE - mm.

% +3"	% Gravel		% Sand			% Fines	
	Coarse	Fine	Coarse	Medium	Fine	Silt	Clay
0.0	0.0	0.0	0.2	0.8	1.9	34.3	62.8

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
#4	100.0		
#10	99.8		
#40	99.0		
#80	98.0		
#200	97.1		

* (no specification provided)

Sample Description

ID#06-271

Atterberg Limits (ASTM D 4318)

PL= 23.3 LL= 44.2 PI= 20.9

Classification

USCS= CL AASHTO=

Coefficients

D₈₅= 0.0127 D₆₀= 0.0045 D₅₀= 0.0030
 D₃₀= D₁₅= D₁₀=
 C_u= C_c=

Date Tested: 7/31/06 Tested By: SS

Remarks

Pale Olive

Sample No.: B06-14:S-2 Source of Sample: 3041.0

Date Sampled:
Elev./Depth: 2-4'

Location:
Checked By:

Title:

3rd Rock, LLC

Client: Foundation Design, P.C.
Project: Lowes, Hamburg

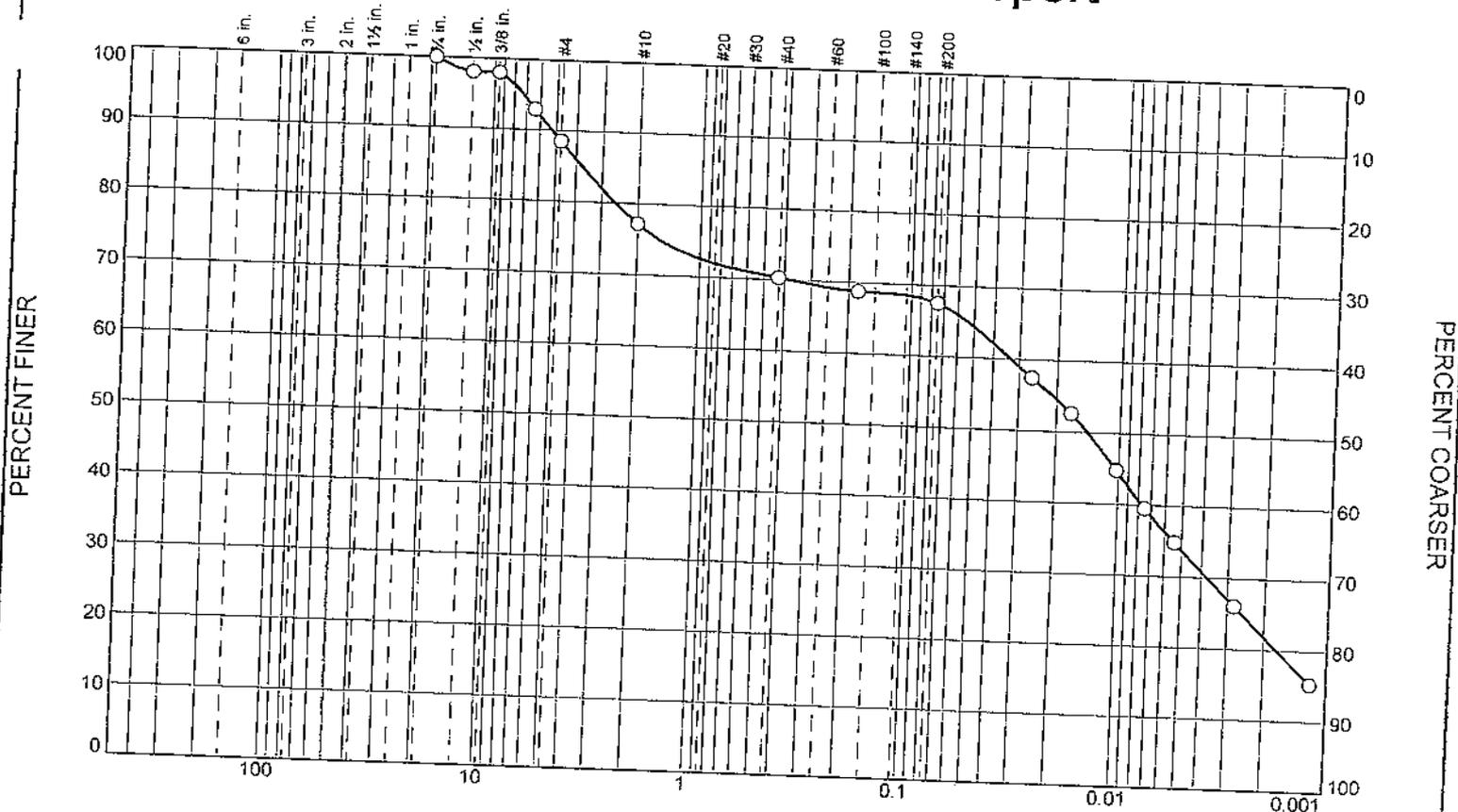
East Aurora, NY

Project No: 06-029

Plate

C-44

Particle Size Distribution Report



GRAIN SIZE - mm.

% +3"	% Gravel		% Sand			% Fines	
	Coarse	Fine	Coarse	Medium	Fine	Silt	Clay
0.0	0.0	11.5	11.3	6.9	2.8	33.7	33.8

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
3/4	100.0		
1/2	98.0		
3/8	98.0		
1/4	92.9		
#4	88.5		
#10	77.2		
#40	70.3		
#80	68.8		
#200	67.5		

* (no specification provided)

Sample Description

ID#06-274

PL= Atterberg Limits (ASTM D 4318)
 LL= _____ PI= _____

USCS= _____ Classification
 AASHTO= _____

Coefficients
 D₈₅= 3.7474 D₆₀= 0.0329 D₅₀= 0.0142
 D₃₀= 0.0038 D₁₅= _____ D₁₀= _____
 C_u= _____ C_c= _____

Date Tested: 7/31/06 Tested By: SS

Remarks

Light Olive Brown

Sample No.: B06-18:S-2 Source of Sample: 3041.0

Date Sampled:
Elev./Depth: 2-4'

Location:
Checked By:

Title:

3rd Rock, LLC

Client: Foundation Design, P.C.
Project: Lowes, Hamburg

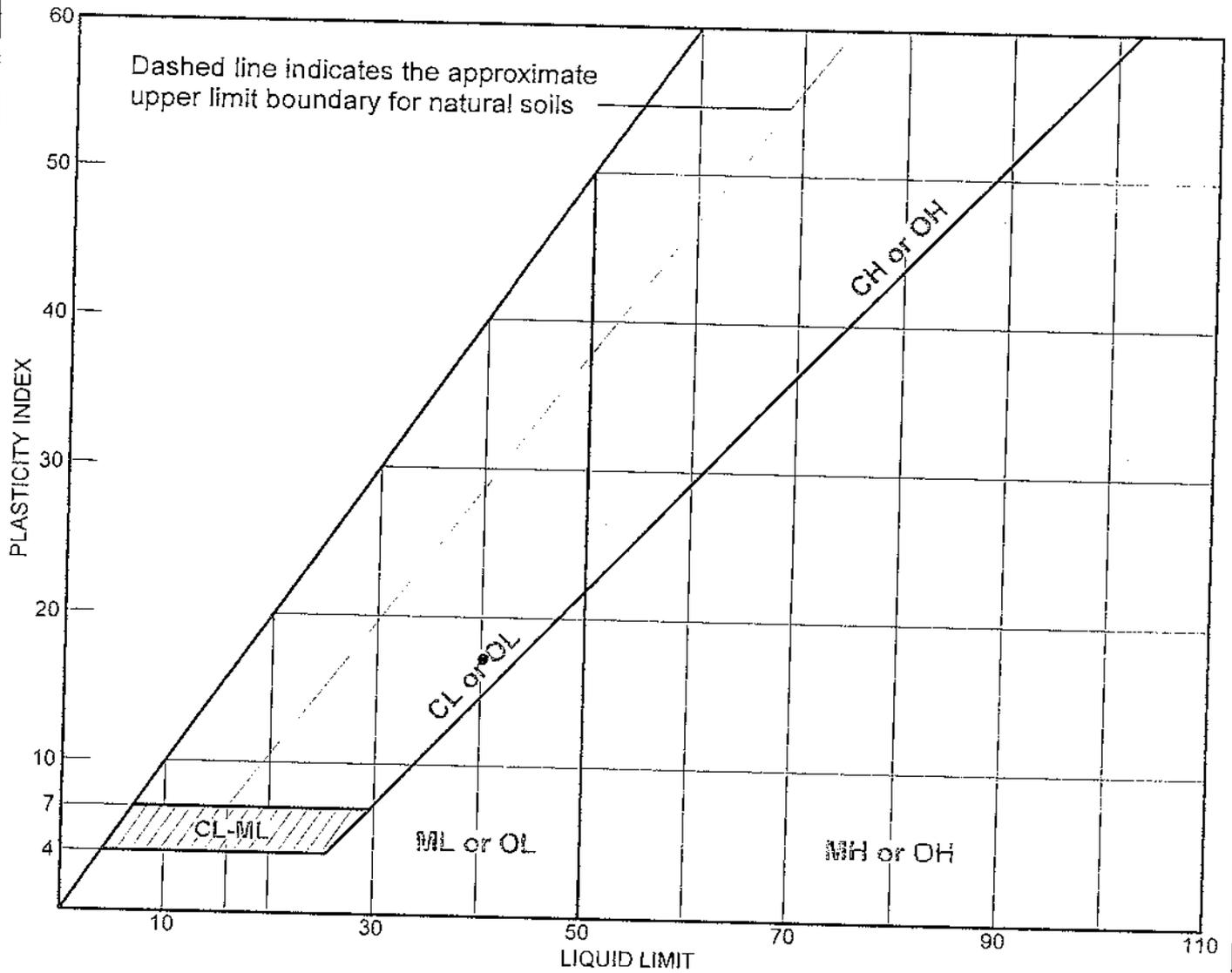
East Aurora, NY

Project No: 06-029

Plate

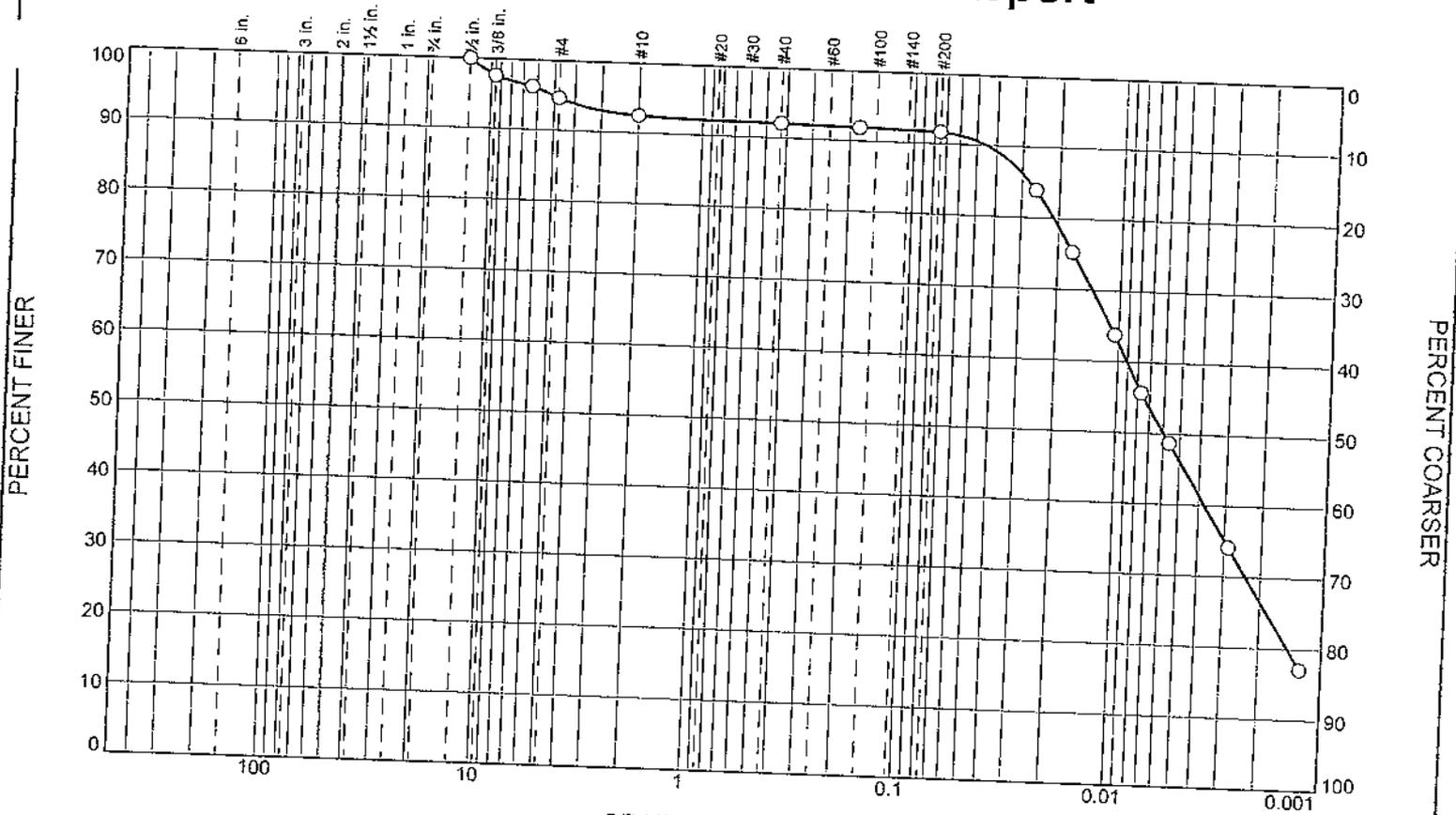
C-46

LIQUID AND PLASTIC LIMITS TEST REPORT



SOIL DATA								
SYMBOL	SOURCE	SAMPLE NO.	DEPTH (ft.)	NATURAL WATER CONTENT (%)	PLASTIC LIMIT (%)	LIQUID LIMIT (%)	PLASTICITY INDEX (%)	USCS
•	3041.0	B06-18:S-3	4-6'		23.0	40.2	17.2	CL

Particle Size Distribution Report



GRAIN SIZE - mm.

% +3"

% Gravel

% Sand

% Fines

0.0

Coarse

Fine

Coarse

Medium

Fine

Silt

Clay

0.0

5.4

2.1

0.4

0.4

45.4

46.3

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
1/2	100.0		
3/8	97.6		
1/4	96.2		
#4	94.6		
#10	92.5		
#40	92.1		
#80	91.9		
#200	91.7		

(no specification provided)

Sample Description

ID#06-275

Atterberg Limits (ASTM D 4318)

PL= 23.0 LL= 40.2 PI= 17.2

Classification

USCS= CL AASHTO=

Coefficients

D₈₅= 0.0275 D₆₀= 0.0091 D₅₀= 0.0060
 D₃₀= 0.0024 C_u= D₁₅= D₁₀=
 C_c=

Date Tested: 7/21/06 Tested By: SS

Remarks

Pale Olive

Sample No.: B06-18:S-3 Source of Sample: 3041.0

Date Sampled:
Elev./Depth: 4-6'

Location:
Checked By:

Title:

3rd Rock, LLC

Client: Foundation Design, P.C.
Project: Lowes, Hamburg

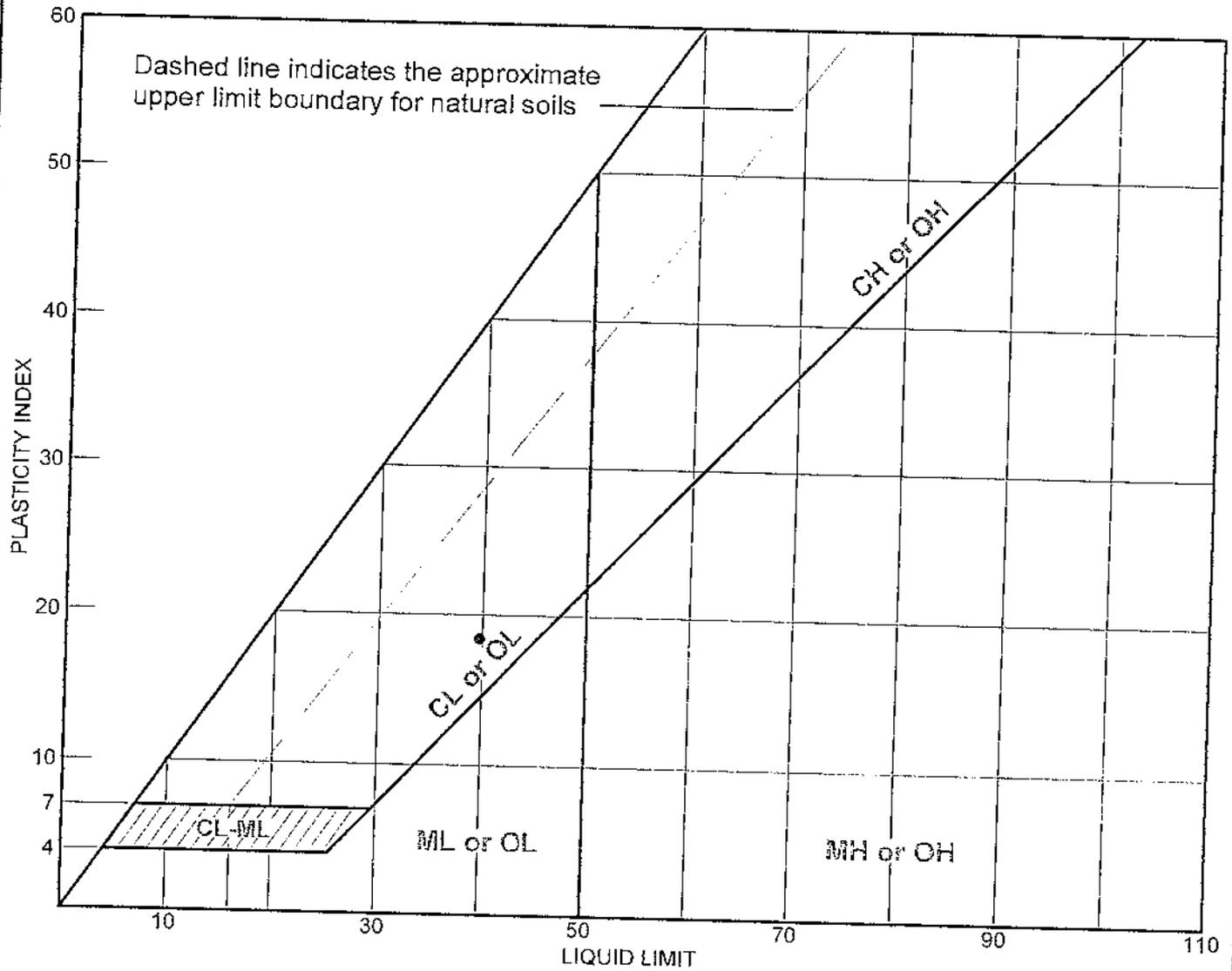
East Aurora, NY

Project No: 06-029

Plate

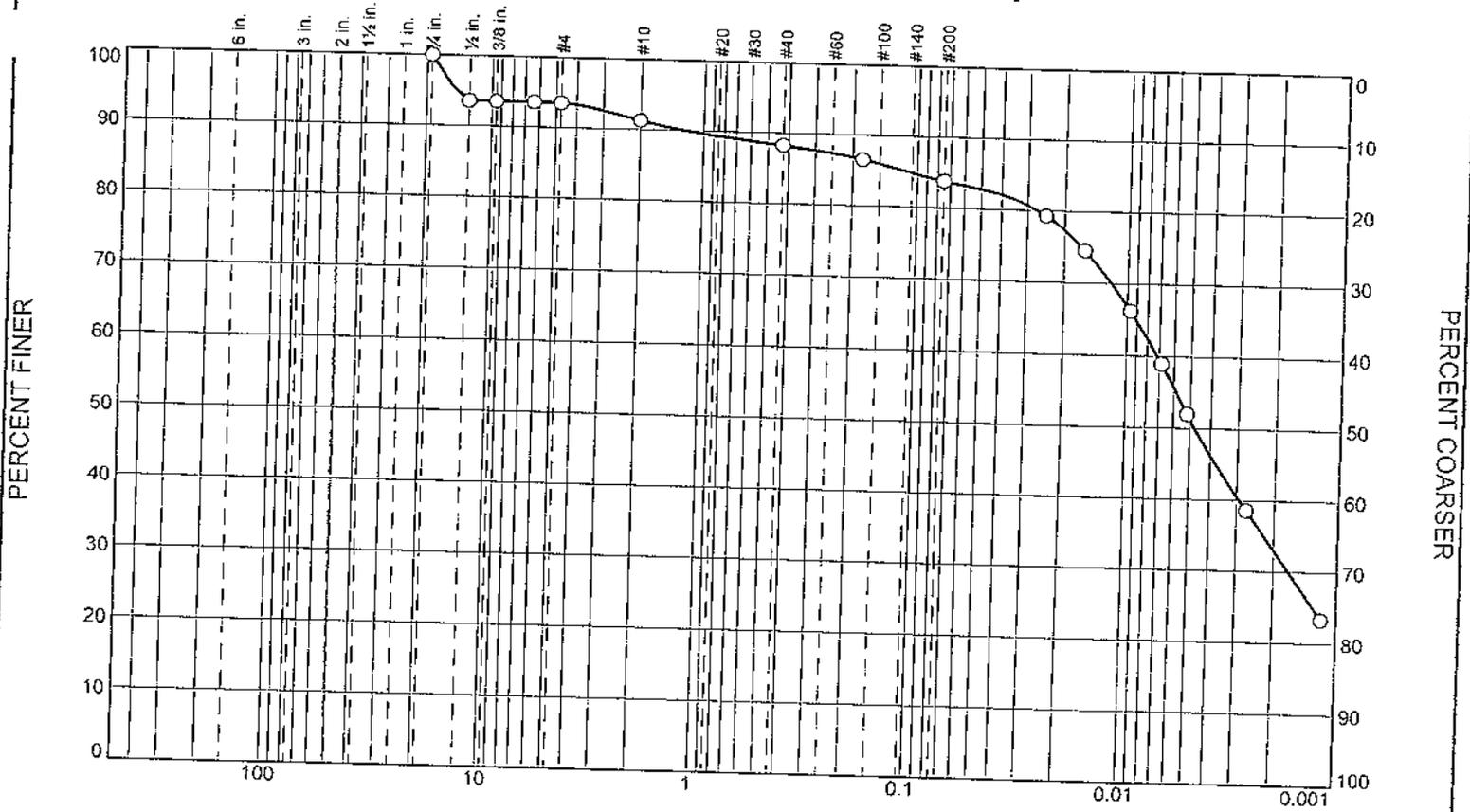
C-48

LIQUID AND PLASTIC LIMITS TEST REPORT



SOIL DATA								
SYMBOL	SOURCE	SAMPLE NO.	DEPTH (ft.)	NATURAL WATER CONTENT (%)	PLASTIC LIMIT (%)	LIQUID LIMIT (%)	PLASTICITY INDEX (%)	USCS
•	3041.0	B06-5:S-2	2-4'		21.3	39.7	18.4	CL

Particle Size Distribution Report



GRAIN SIZE - mm.

% +3"	% Gravel		% Sand			% Fines	
	Coarse	Fine	Coarse	Medium	Fine	Silt	Clay
0.0	0.0	6.5	2.2	3.1	4.5	32.5	51.2

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
3/4	100.0		
1/2	93.6		
3/8	93.6		
1/4	93.6		
#4	93.5		
#10	91.3		
#40	88.2		
#80	86.5		
#200	83.7		

Sample Description

ID#06-276

Atterberg Limits (ASTM D 4318)

PL= 21.3 LL= 39.7 PI= 18.4

Classification

USCS= CL AASHTO=

Coefficients

D₈₅= 0.1122 D₆₀= 0.0071 D₅₀= 0.0048
D₃₀= 0.0017 D₁₅= D₁₀=
C_u= C_c=

Date Tested: 7/31/06 Tested By: SS

Remarks

Pale Olive

(no specification provided)

Sample No.: B06-5:S-2 Source of Sample: 3041.0
 Location:
 Checked By:

Date Sampled:
 Elev./Depth: 2-4'

Title:

3rd Rock, LLC

Client: Foundation Design, P.C.
 Project: Lowes, Hamburg

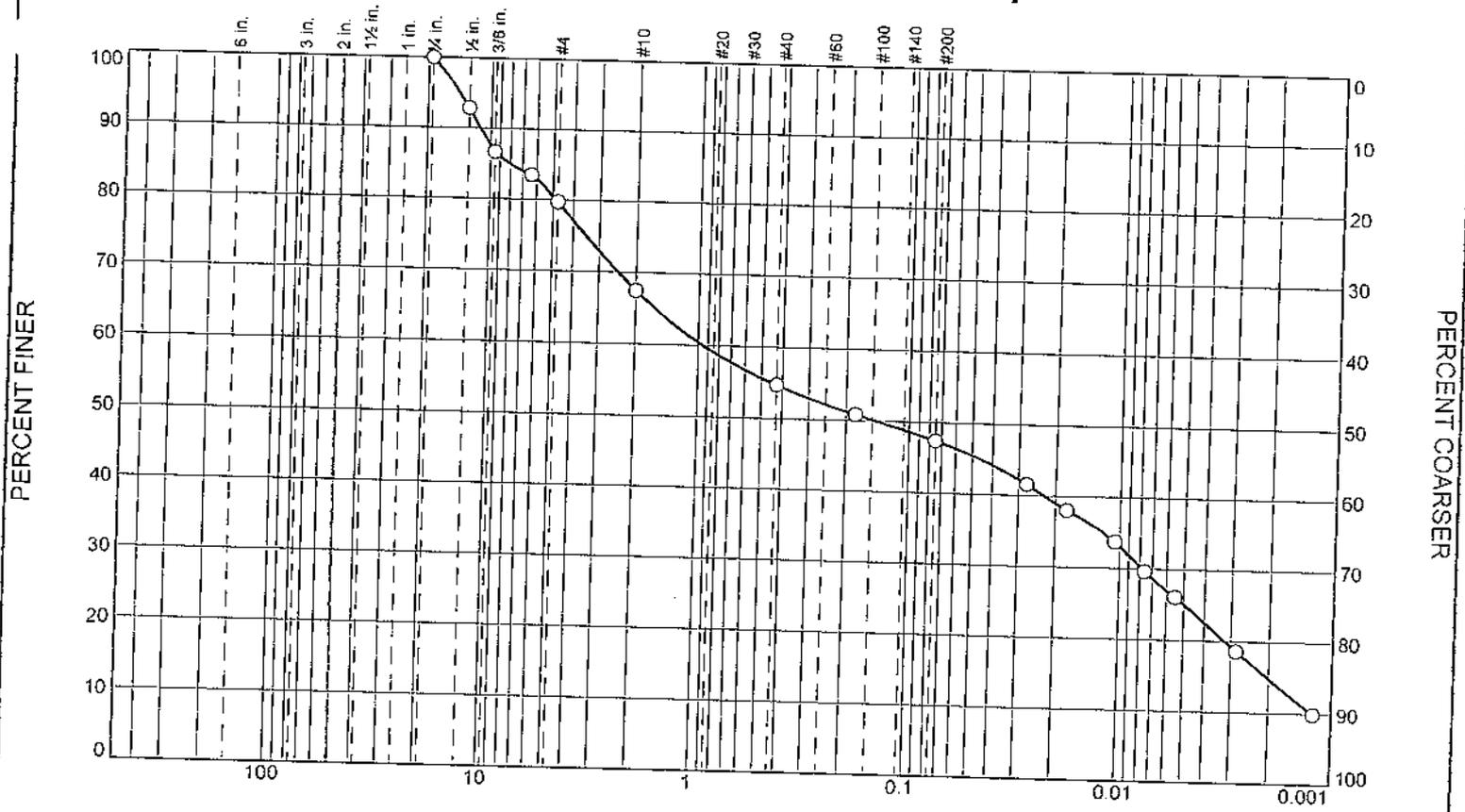
East Aurora, NY

Project No: 06-029

Plate

C-50

Particle Size Distribution Report



GRAIN SIZE - mm.

% +3"	% Gravel		% Sand			% Fines	
	Coarse	Fine	Coarse	Medium	Fine	Silt	Clay
0.0	0.0	20.3	12.2	12.8	7.3	22.3	25.1

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
3/4	100.0		
1/2	92.8		
3/8	86.7		
1/4	83.5		
#4	79.7		
#10	67.5		
#40	54.7		
#80	50.8		
#200	47.4		

Sample Description

ID#06-277

Atterberg Limits (ASTM D 4318)

PL= _____ LL= _____ PI= _____

Classification

USCS= _____ AASHTO= _____

Coefficients

D₈₅= 8.1306 D₆₀= 0.9483 D₅₀= 0.1456
D₃₀= 0.0078 D₁₅= 0.0020 D₁₀= 0.0012
C_u= 768.89 C_c= 0.05

Date Tested: 7/29/06 Tested By: RP

Remarks

Light Yellowish Brown

* (no specification provided)

Sample No.: B06-6:S-2 Source of Sample: 3041.0
 Location: _____
 Checked By: _____

Date Sampled: _____
 Elev./Depth: 2-4'

Title: _____

3rd Rock, LLC

Client: Foundation Design, P.C.
 Project: Lowes, Hamburg

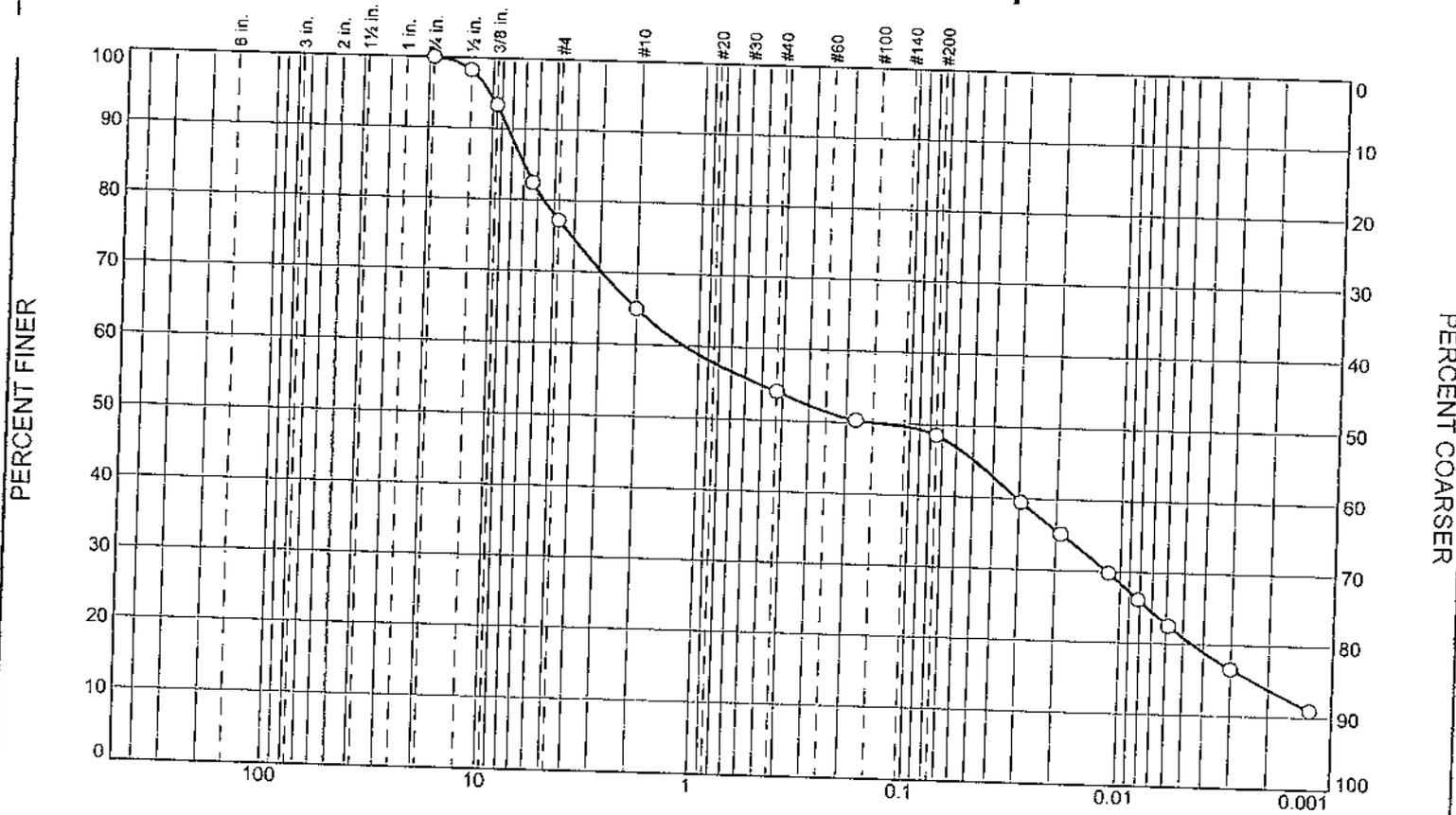
East Aurora, NY

Project No: 06-029

Plate

C-51

Particle Size Distribution Report



GRAIN SIZE - mm.

% +3"	% Gravel		% Sand			% Fines	
	Coarse	Fine	Coarse	Medium	Fine	Silt	Clay
0.0	0.0	22.8	12.2	11.0	5.4	27.7	20.9

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
3/4	100.0		
1/2	98.3		
3/8	93.4		
1/4	82.4		
#4	77.2		
#10	65.0		
#40	54.0		
#80	50.3		
#200	48.6		

* (no specification provided)

Sample Description

ID#06-279

PL= Atterberg Limits (ASTM D 4318)
 LL= _____ PI= _____

USCS= _____ Classification
 AASHTO= _____

Coefficients
 D₈₅= 7.0240 D₆₀= 1.1754 D₅₀= 0.1445
 D₃₀= 0.0115 D₁₅= 0.0024 D₁₀= _____
 C_u= _____ C_c= _____

Date Tested: 7/31/06 Tested By: SS

Remarks

Light Olive Brown

Sample No.: B06-8:S-2 Source of Sample: 3041.0
 Location: _____
 Checked By: _____

Date Sampled: _____
 Elev./Depth: 2-4'

Title: _____

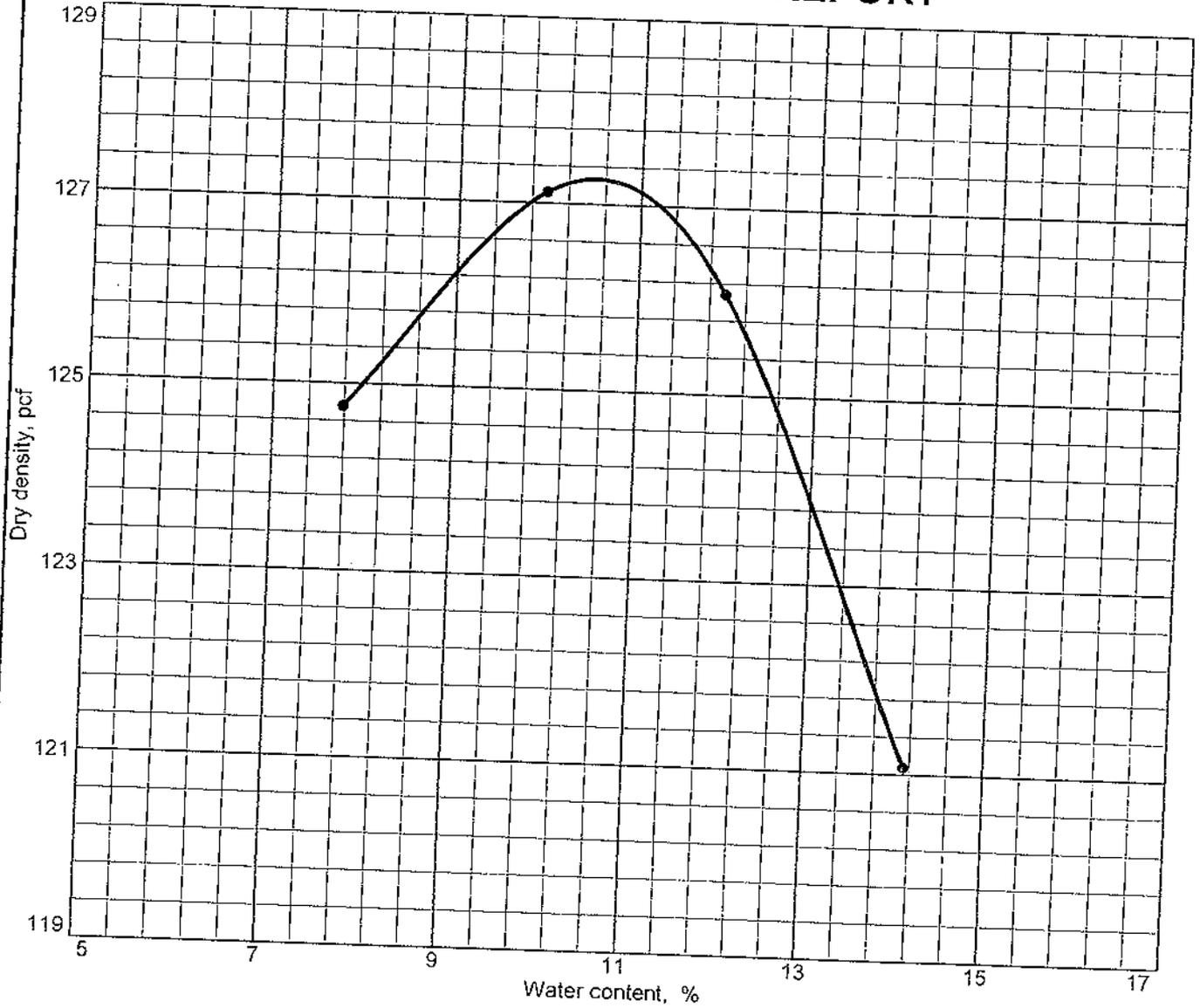
3rd Rock, LLC

East Aurora, NY

Client: Foundation Design, P.C.
 Project: Lowes, Hamburg
 Project No: 06-029

Plate C-52

COMPACTION TEST REPORT



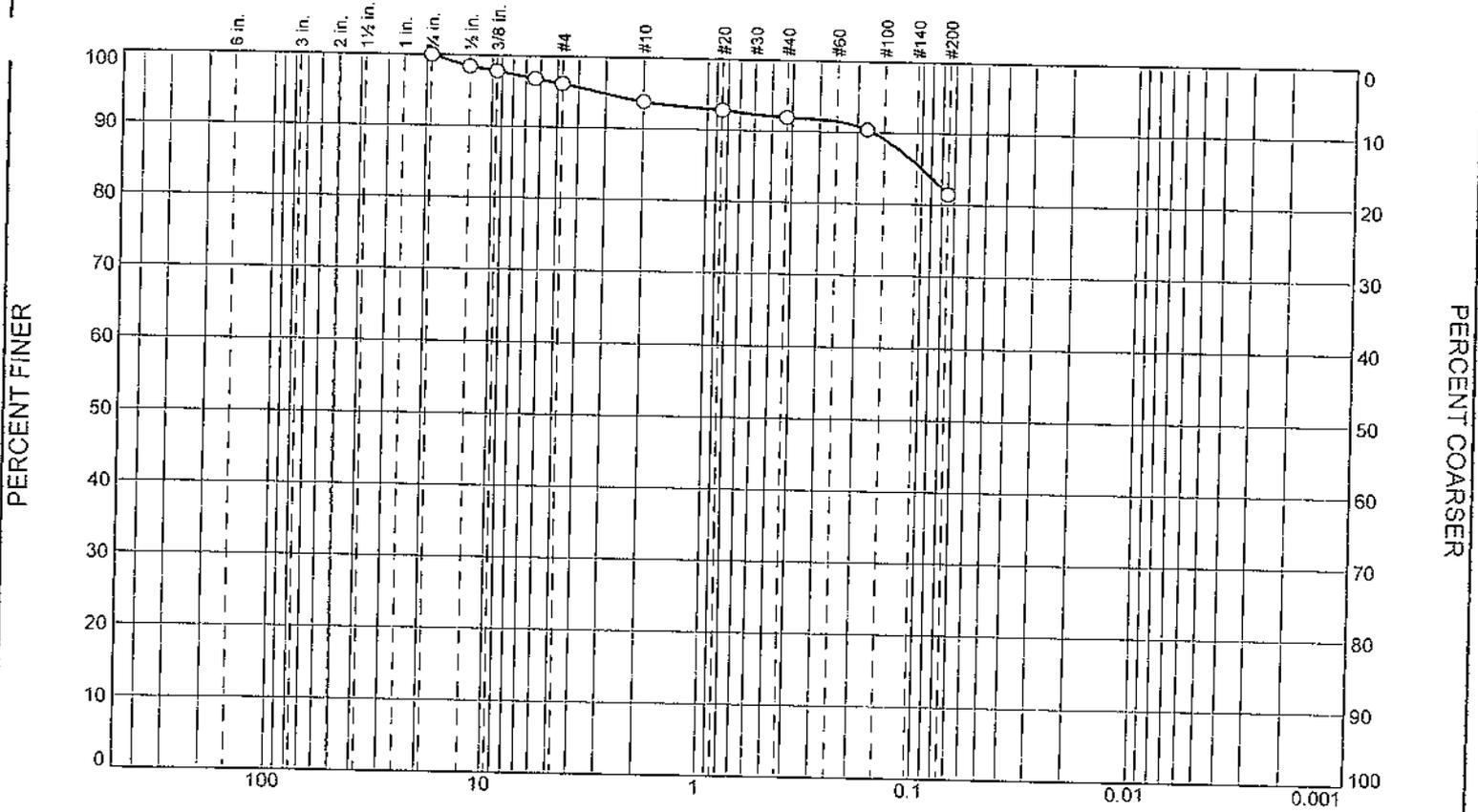
Test specification: ASTM D 1557-00 Method B Modified

Elev/ Depth	Classification		Nat. Moist.	Sp.G.	LL	PI	% > 3/8 in.	% < No.200
	USCS	AASHTO						
							2.0	72.2

TEST RESULTS	MATERIAL DESCRIPTION
Maximum dry density = 127.3 pcf Optimum moisture = 10.5 %	ID#06-283
Project No. 06-029 Client: Foundation Design, P.C. Project: Lowes, Hamburg	Remarks:
● Source: 3041.0 Sample No.: B-25	
3rd Rock, LLC East Aurora, NY	

C-SA
Plate

Particle Size Distribution Report



GRAIN SIZE - mm.

% +3"	% Gravel		% Sand			% Fines	
	Coarse	Fine	Coarse	Medium	Fine	Silt	Clay
0.0	0.0	3.9	2.3	1.9	10.4	81.5	

SIEVE SIZE	PERCENT FINER	SPEC.* PERCENT	PASS? (X=NO)
3/4	100.0		
1/2	98.5		
3/8	97.8		
1/4	96.8		
#4	96.1		
#10	93.8		
#20	92.8		
#40	91.9		
#80	90.4		
#200	81.5		

Sample Description

ID#06-284

Atterberg Limits (ASTM D 4318)

PL= LL= PI=

Classification

USCS= AASHTO=

Coefficients

D₈₅= 0.1000 D₆₀= D₅₀=

D₃₀= D₁₅= D₁₀=

C_u= C_c=

Date Tested: 7/31/06 Tested By: SS

Remarks

* (no specification provided)

Sample No.: B-30 Source of Sample: 3041.0

Location: Title:

Checked By: Date Sampled:

Elev./Depth:

<p>3rd Rock, LLC</p> <p>East Aurora, NY</p>	<p>Client: Foundation Design, P.C.</p> <p>Project: Lowes, Hamburg</p> <p>Project No: 06-029</p>
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Plate C-55

COMPACTION TEST REPORT



Test specification: ASTM D 1557-00 Method B Modified

Elev/ Depth	Classification		Nat. Moist.	Sp.G.	LL	PI	% > 3/8 in.	% < No.200
	USCS	AASHTO						
							2.2	81.5

TEST RESULTS	MATERIAL DESCRIPTION
Maximum dry density = 128.6 pcf Optimum moisture = 10.0 %	ID#06-284
Project No. 06-029 Client: Project: Lowes, Hamburg	Remarks:
● Source: 3041.0 Sample No.: B-30	
3rd Rock, LLC East Aurora, NY	

C-56

Plate



LABORATORIES, INC.

GEOTECHNICAL, GEOSYNTHETIC AND MATERIALS TESTING AND RESEARCH

August 17, 2006
06LS905.01

3rd Rock, LLC
580 Olean Road
East Aurora, NY 14052

Attn: Jeanne Asquith

**RE: CBR TEST RESULTS
LOWES, HAMBURG PROJECT**

Dear Ms. Asquith:

JLT Laboratories, Inc. (JLT) is pleased to submit the results of CBR testing performed on samples identified as B-25 and B-30 for the above referenced project. Both samples were compacted to 95% of the Modified Proctor maximum dry density at optimum moisture plus 2% as specified on the assignment sheets. It is noted that swell after the specified 96 hours of inundation time was substantial. This resulted in a soft surface and low CBR values.

We appreciate the opportunity to provide our services and look forward to working with you again. Should you have any questions, comments or require additional information, please do not hesitate to call. Thank you.

Sincerely,

JLT LABORATORIES, INC.

John Boschuk, Jr., P.E.
President

Enclosures
JB/rdo
\\wp10\letter\06265

C-57

CBR Test Results
 ASTM D-1883 Modified as noted



Client: 3rd Rock, LLC
 Project: Lowes, Hamburg
 Material: B-25

Project No: 06LS905.01
 Date: 08/17/06
 Perf'd By: HH
 Chk'd By: JB Jr.

Compaction: 6 inch Mold and Modified Proctor Hammer
 Compacted to the density and moisture content specified

Property Data

Prior to Soaking

Units	Sample B-30
Initial Dry Density	pcf 120.9
Initial Moisture	% 12.5

Max Dry Density : 127.3 pcf
 Opt. Moisture : 10.5 %
 Compaction : 95 %
 Moisture at : Opt + 2%

After Soaking

Units	Sample B-30
Avg. Dry Density	pcf 103.7
Average Moisture	% 19.1
Top Inch Moisture	% 26

Compaction Properties
 95% of MPMDD : 120.94 pcf
 Moisture : 12.5 %

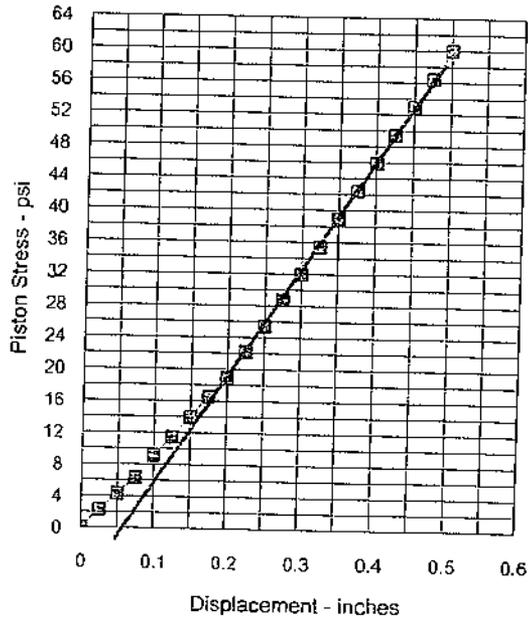
Surcharge Weight
 Swell after Soaking
 Pretest Seating Load

lbs	10
%	12.9
lbs	10

Piston Area 3.0 sq in

Displacement inches	Sample B-30 lbs	lbs	lbs
0.000	0.0		
0.025	7.0		
0.050	13.0		
0.075	19.0		
0.100	27.4		
0.125	34.4		
0.150	42.0		
0.175	49.8		
0.200	56.9		
0.225	66.7		
0.250	76.4		
0.275	86.3		
0.300	96.0		
0.325	106.4		
0.350	116.9		
0.375	127.4		
0.400	137.8		
0.425	148.3		
0.450	159.0		
0.475	169.5		
0.500	180.0		

Piston Stress vs Displacement



Corrected Stress

Units	Sample 1	Sample 2	Sample 3
@ 0.1 inches	psi 16		
@ 0.2 inches	psi 28.5		

CBR Value

@ 0.1 inches	1.6		
@ 0.2 inches	1.9		

CBR vs Dry Density

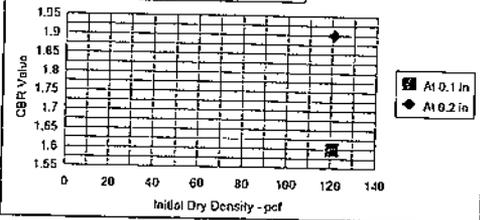


FIGURE B-25

C-58

CBR Test Results
ASTM D-1883 Modified as noted



Client: 3rd Rock, LLC
 Project: Lowes, Harnburg
 Material: B-30

Project No: 06LS905.01
 Date: 08/17/06
 Perf'd By: HH
 Chk'd By: JB Jr.

Compaction: 6 inch Mold and Modified Proctor Hammer
 Compacted to the density and moisture content specified

Property Data

Prior to Soaking

Units	Sample B-30
Initial Dry Density	pcf 122.1
Initial Moisture	% 12.0

Max Dry Density : 128.6 pcf
 Opt. Moisture : 10 %
 Compaction : 95 %
 Moisture at : Opt + 2%

After Soaking

Avg. Dry Density	pcf 108
Average Moisture	% 14.7
Top Inch Moisture	% 20.5

Compaction Properties
 95% of MPMDD : 122.17 pcf
 Moisture : 12 %

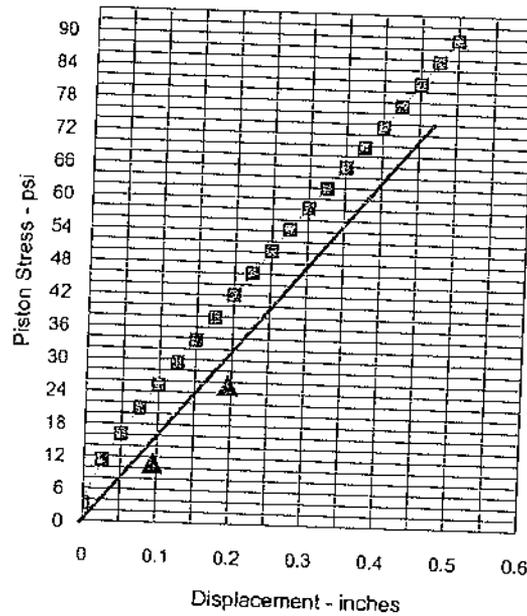
Surcharge Weight
 Swell after Soaking
 Pretest Seating Load

lbs	10
%	12.9
lbs	10

Piston Area 3.0 sq in

Displacement inches	Sample B-30 lbs	lbs	lbs
0.000	10.0		
0.025	34.3		
0.050	48.7		
0.075	63.1		
0.100	75.8		
0.125	88.5		
0.150	101.1		
0.175	113.7		
0.200	126.4		
0.225	138.6		
0.250	151.0		
0.275	163.0		
0.300	175.1		
0.325	186.3		
0.350	198.0		
0.375	208.9		
0.400	220.2		
0.425	232.3		
0.450	244.5		
0.475	256.8		
0.500	268.9		

Piston Stress vs Displacement



Corrected Stress

Units	Sample 1	Sample 2	Sample 3
@ 0.1 inches	psi 15.5		
@ 0.2 inches	psi 32		

CBR Value

@ 0.1 inches	1.6		
@ 0.2 inches	2.1		

CBR vs Dry Density

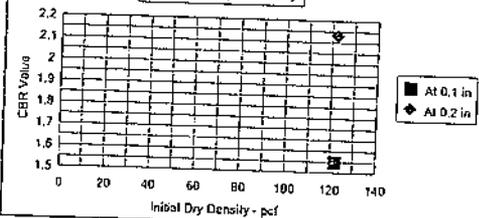


FIGURE B-30

C-59



Rochester Office
 535 Summit Point Drive
 Henrietta, NY 14467

LABORATORY D.I.P.R.A. TESTS

Project: Lowe's

Project Number: RT-06-113

Town /City: Hamburg

Date: 9/13/06

Technician: William Gilmore

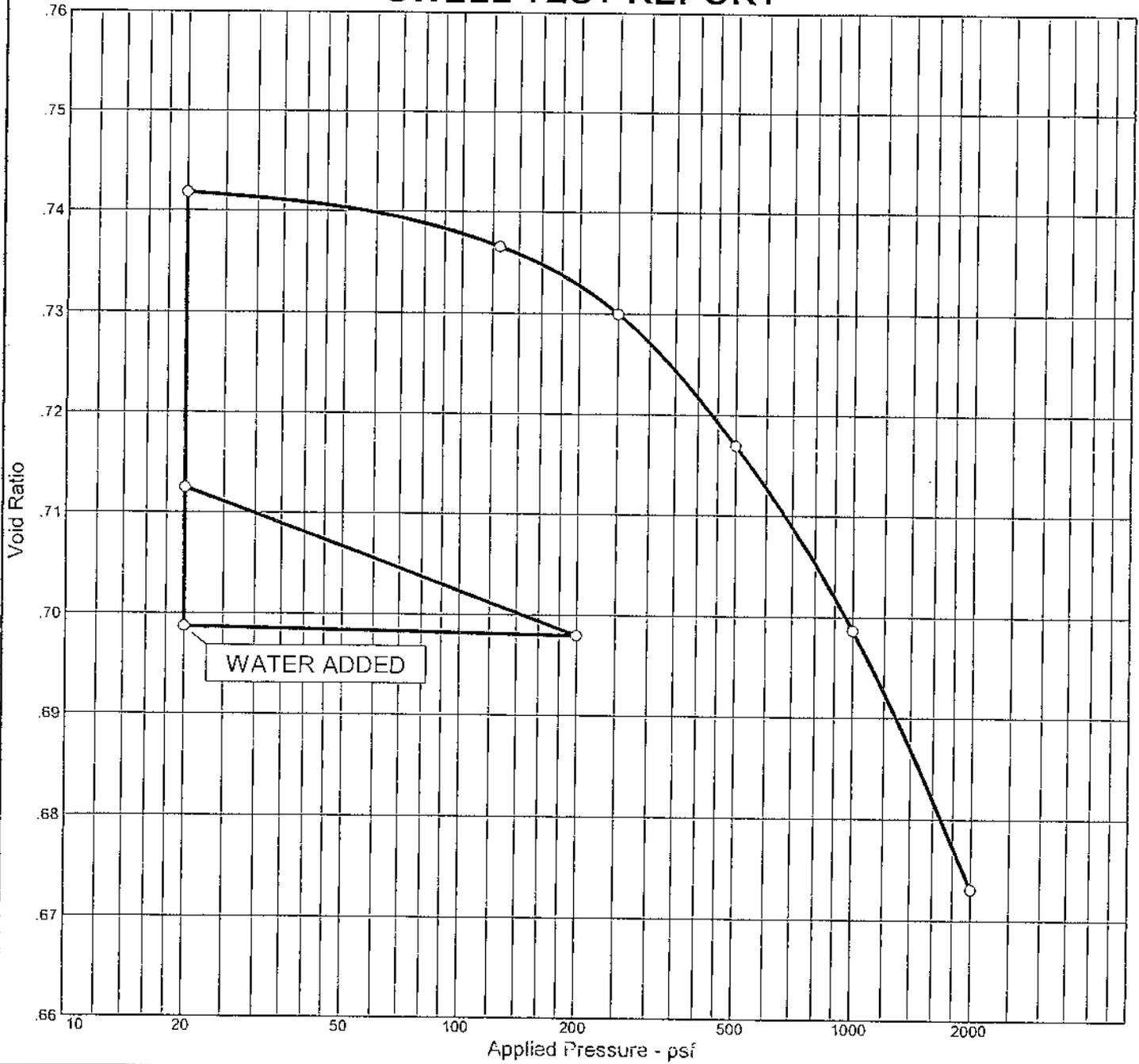
Test Results

Laboratory Analysis of the soil sampled:

Lab ID No.	LOCATION	RESISTIVITY (ohm-cm)	REDOX (mv)	pH	SULFIDES (+,T,-)	MOISTURE (wet, moist, dry)	TOTAL POINTS
		points	points	points	points	points	
06-728	Combined Sample	11300	51.3	7.87	-	Moist (12.4%)	4.5
		0	3.5	0	0	1	

Note: Per the Ductile Iron Pipe Research Association (DIPRA), point totals 10 or greater should be considered for Cathodic Protection.

SWELL TEST REPORT



Natural		Dry Dens. (pcf)	LL	PI	Sp. Gr.	Overburden (psf)	P _c (psf)	C _c	C _s	Swell Press. (psf)	Heave %	e ₀
Sat.	Moist.											
96.4 %	25.4 %	98.4			2.70	200	923	0.09	0.00	1001	2.6	0.712

MATERIAL DESCRIPTION										USCS	AASHTO
Brown-gray silty clay, trace sand and gravel											

Project No. AT-06-029 Client: Foundation Design, PC
 Project: Lowes - Hamburg, NY
 Location: B-6, S-1, 1.0 - 3.0 feet

Remarks:
 ASTM D4546 " Method A"

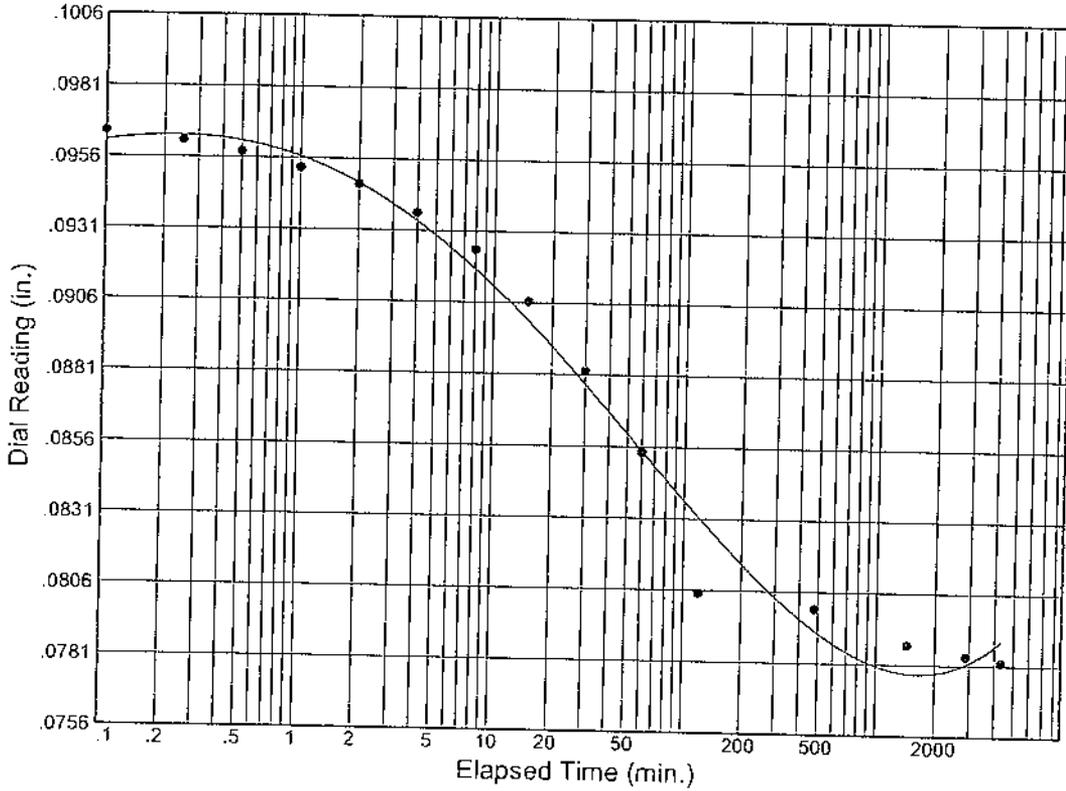
SWELL TEST REPORT
SJB SERVICES, INC.

C-61
 Sample ID

Dial Reading vs. Time

Project No.: AT-06-029
Project: Lowes - Hamburg, NY

Location: B-6, S-1, 1.0 - 3.0 feet



Load No.= 4

Load= 20 psf

$D_0 = 0.09783$

$D_{50} = 0.08863$

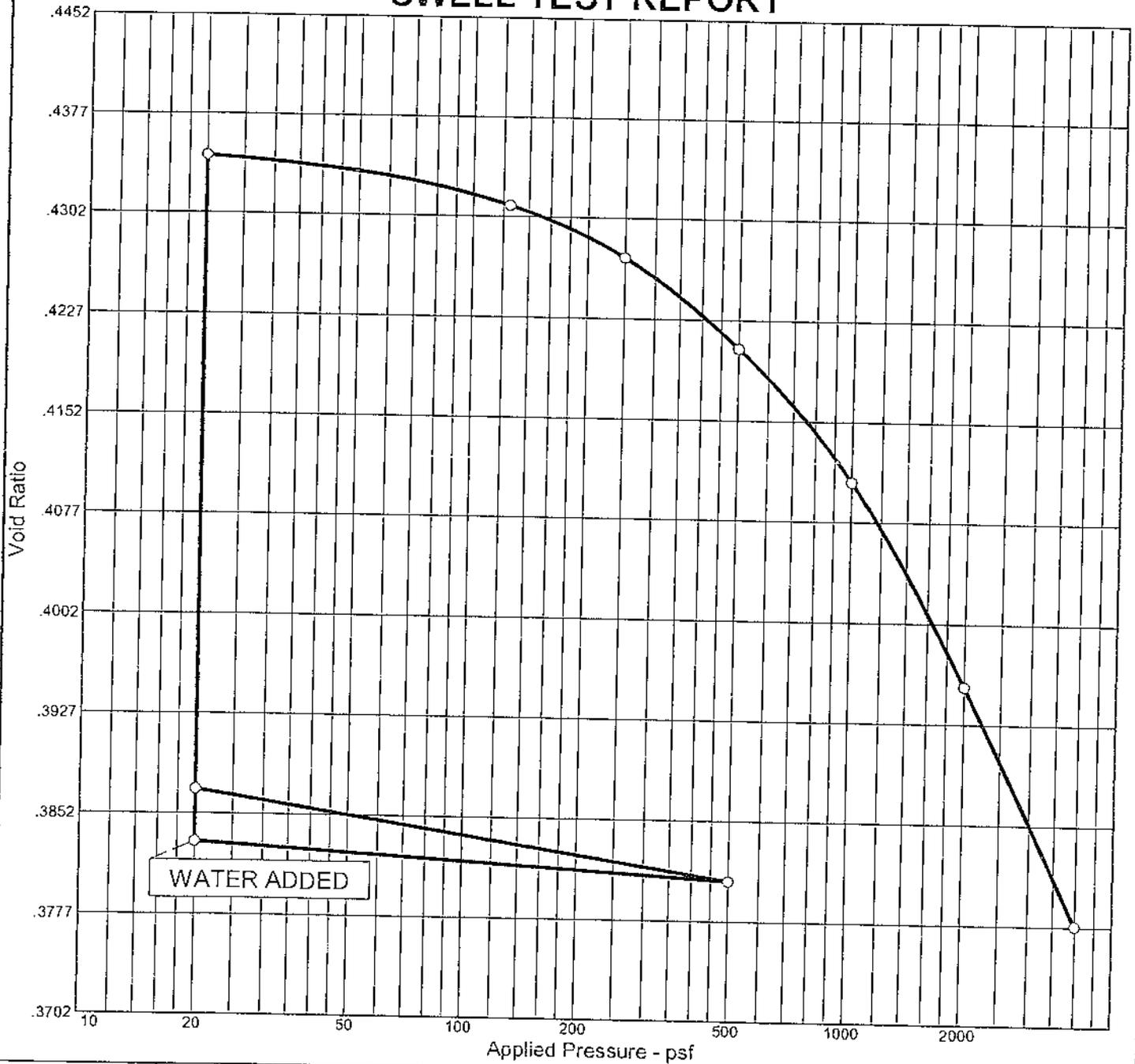
$D_{100} = 0.07943$

$T_{50} = 23.11 \text{ min.}$

$C_v @ T_{50}$

0.01 ft.²/day

SWELL TEST REPORT



Natural Sat.	Natural Moist.	Dry Dens. (pcf)	LL	PI	Sp. Gr.	Overburden (psf)	P _c (psf)	C _c	C _s	Swell Press. (psf)	Heave %	e ₀
101.8 %	14.6 %	121.5			2.70	500	1098	0.06	0.00	3552	3.9	0.387

MATERIAL DESCRIPTION										USCS	AASHTO
Brown-Gray silty clay											

Project No. AT-06-029 Client: Foundation Design, PC
 Project: Lowes - Hamburg, NY
 Location: B-6, S-2, 3.0 - 5.0 feet

Remarks:
 ASTM D4546 "Method A"

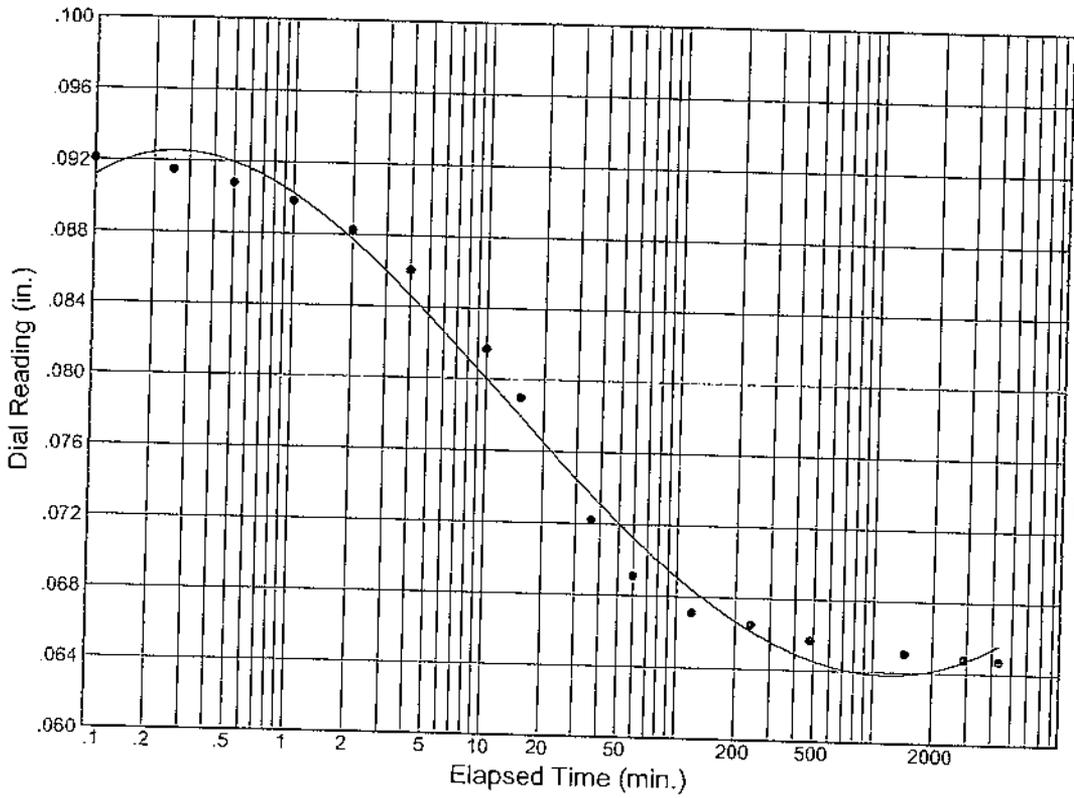
SWELL TEST REPORT
SJB SERVICES, INC.

C-63
 Sample ID

Dial Reading vs. Time

Project No.: AT-06-029
Project: Lowes - Hamburg, NY

Location: B-6, S-2, 3.0 - 5.0 feet

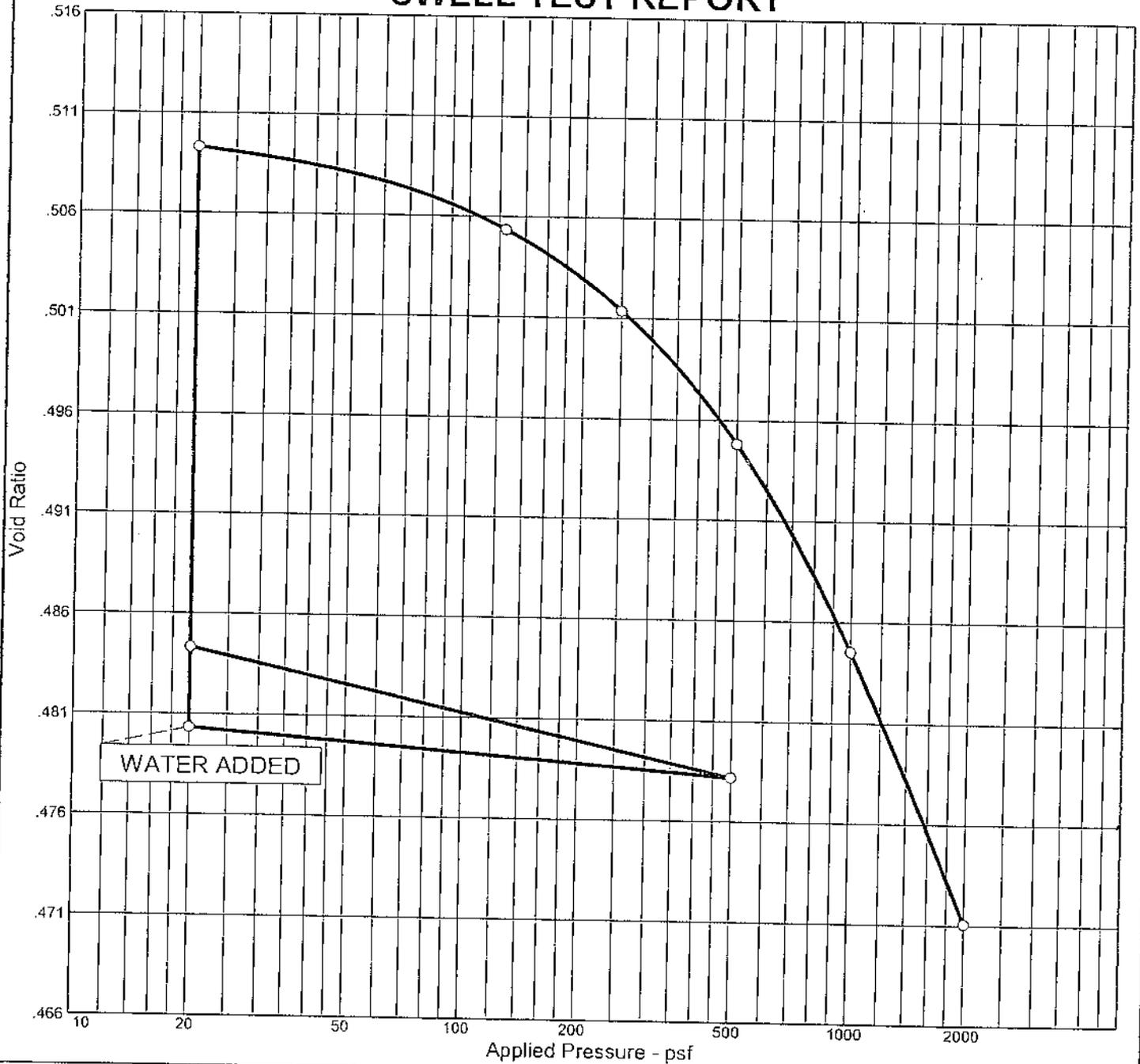


Load No.= 4
Load= 20 psf
 $D_0 = 0.09250$
 $D_{50} = 0.07900$
 $D_{100} = 0.06550$
 $T_{50} = 12.25 \text{ min.}$

$C_v @ T_{50}$
0.02 ft.²/day

C-64

SWELL TEST REPORT



Natural		Dry Dens. (pcf)	LL	PI	Sp. Gr.	Overburden (psf)	P _c (psf)	C _c	C _s	Swell Press. (psf)	Heave %	e ₀
Sat.	Moist.											
85.3 %	15.3 %	113.6			2.70	500	1009	0.05	0.00	1382	2.1	0.484

MATERIAL DESCRIPTION										USCS	AASHTO
Grey Green silty clay											

Project No. AT-06-029 Client: Foundation Design, PC
 Project: Lowes - Hamburg, NY
 Location: B-18, S-2, 3.0 - 5.0 feet

SWELL TEST REPORT
SJB SERVICES, INC.

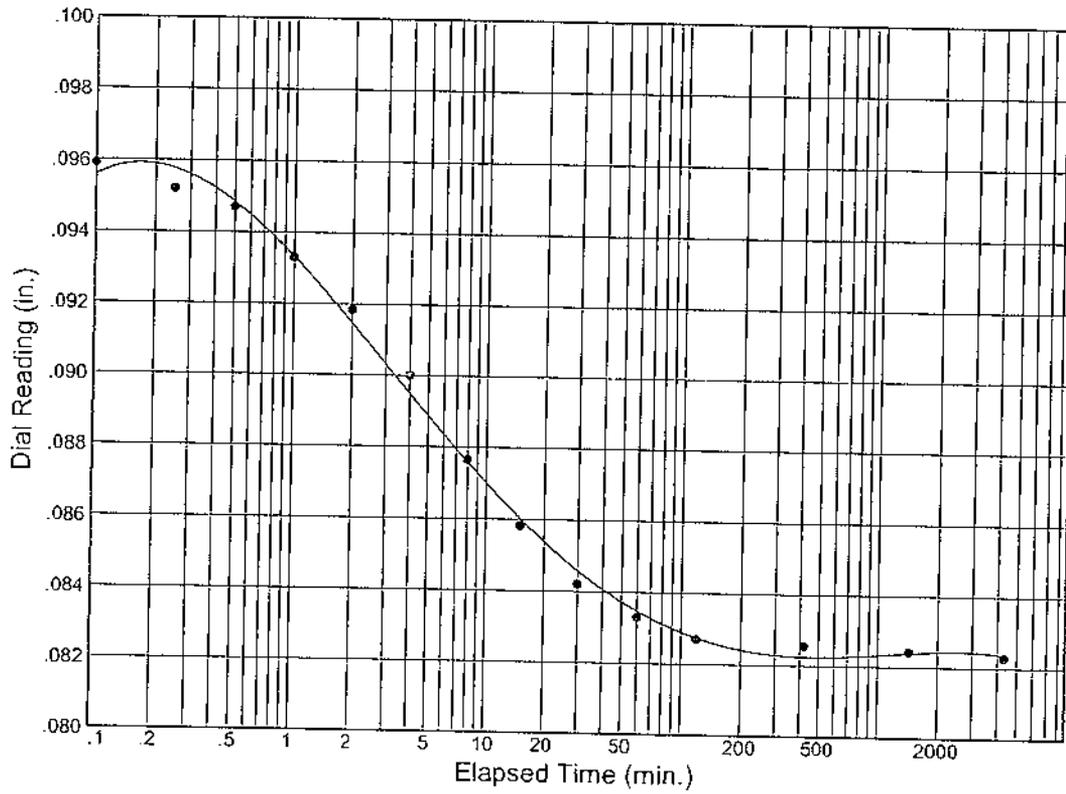
Remarks:
 ASTM D4546 "Method A"

C-65
 Sample ID

Dial Reading vs. Time

Project No.: AT-06-029
Project: Lowes - Hamburg, NY

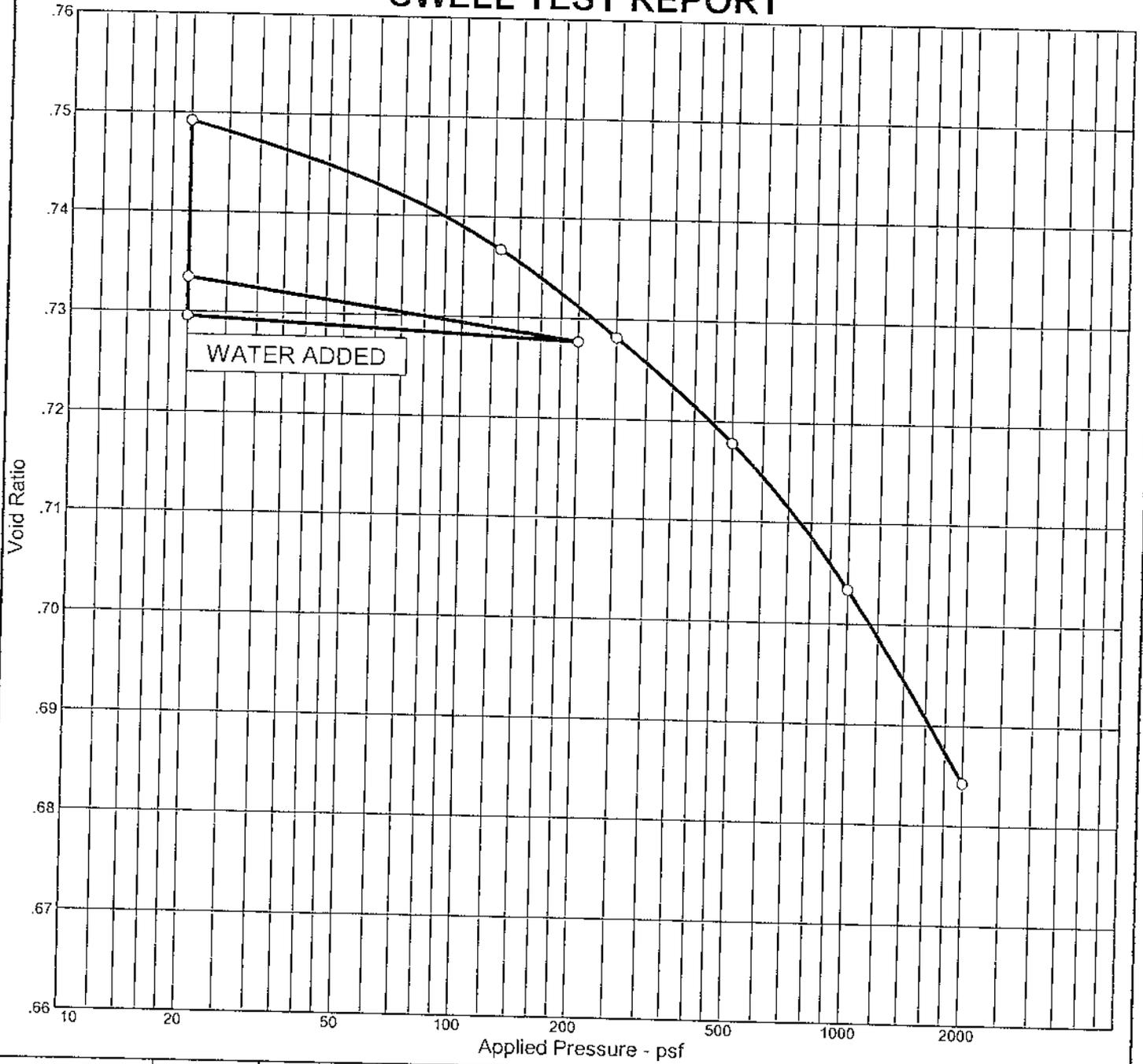
Location: B-18, S-2, 3.0 - 5.0 feet



Load No.= 4
Load= 20 psf
 $D_0 = 0.09692$
 $D_{50} = 0.09004$
 $D_{100} = 0.08315$
 $T_{50} = 3.31 \text{ min.}$

$C_v @ T_{50}$
0.08 ft.²/day

SWELL TEST REPORT



Natural		Dry Dens. (pcf)	LL	PI	Sp. Gr.	Overburden (psf)	P _c (psf)	C _c	C _s	Swell Press. (psf)	Heave %	e ₀
Sat.	Moist.											
57.5 %	15.6 %	97.2			2.70	200	428	0.06	0.00	239	1.2	0.733

MATERIAL DESCRIPTION		USCS	AASHTO
Grey Brown Mottled sandy, clayey silt			

Project No. AT-06-029 Client: Foundation Design, PC
 Project: Lowes - Hamburg, NY
 Location: B-21, S-1, 1.0 - 3.0 feet

Remarks:
 ASTM D4546 "Method A"

SWELL TEST REPORT
SJB SERVICES, INC.

Sample ID C-67



REPORT OF TESTING

Natural Water Content
ASTM D 2216

Project: Lowes - Hamburg, NY

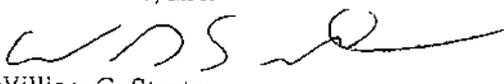
Date: October 26, 2006

Client: Foundation Design, P.C.

SJB No.: AT-06-029

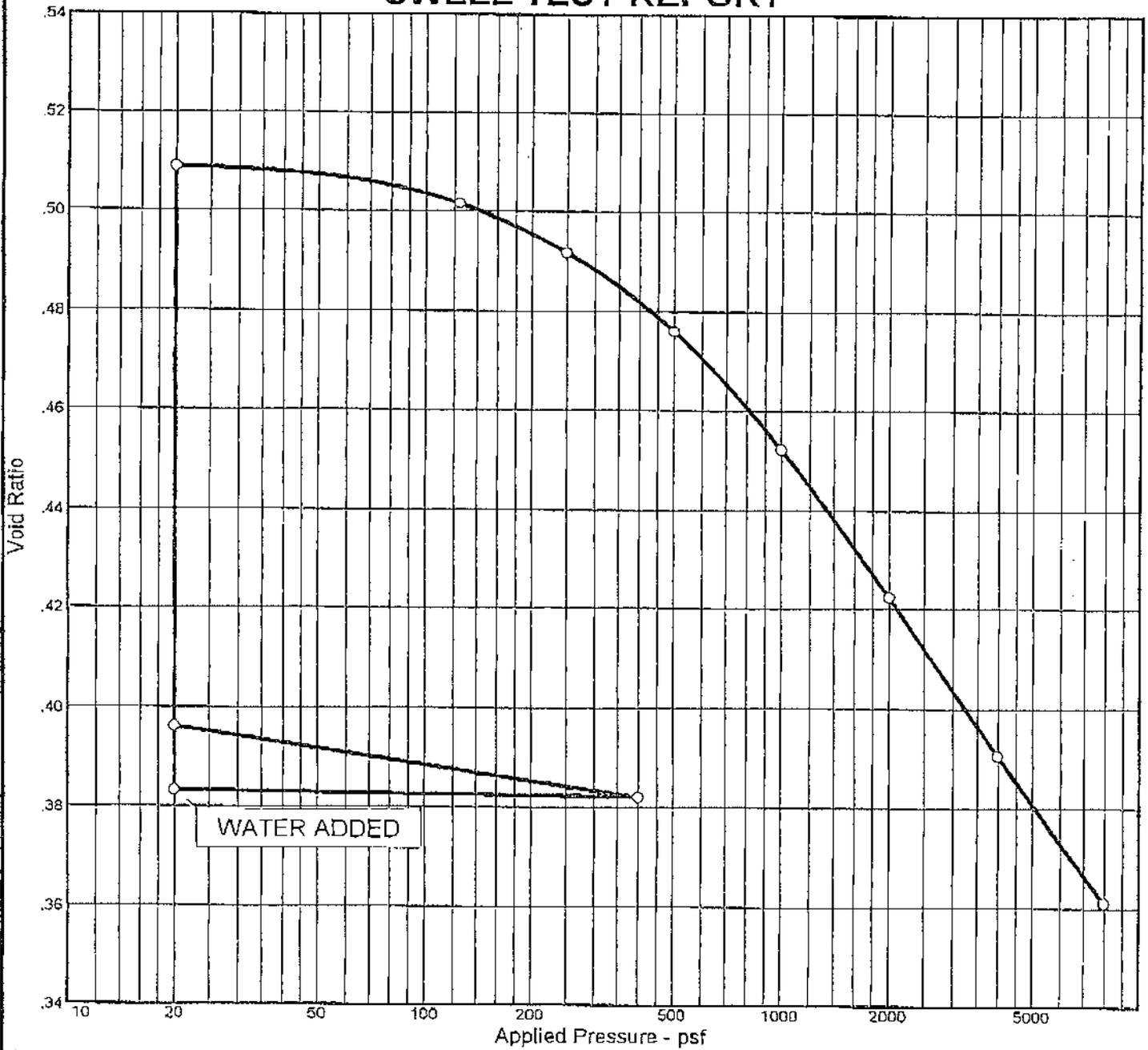
<u>Boring No.</u>	<u>Sample No.</u>	<u>Depth (ft)</u>	<u>Tube Section</u>	<u>Water Content</u>
B-6	S-1	1 - 3	Top Middle Bottom	19.4 % 21.8 % 19.0 %
B-6	S-2	3 - 5	Top Middle Bottom	17.0 % 14.3 % 10.7 %
B-15	S-1	1 - 2.5	Top Middle Bottom	34.8 % 17.9 % 11.5 %
B-18	S-2	3 - 5	Top Middle Bottom	17.3 % 15.5 % 12.9 %
B-21	S-1	1 - 3	Top Middle Bottom	40.6 % 15.8 % 11.8 %
B-21	S-2	3 - 5	Top Middle Bottom	27.5 % 14.0 % 15.3 %
B-25	S-1	1 - 3	Top Middle Bottom	17.7 % 18.8 % 13.6 %
B-25	S-2	3 - 3.6	Middle	13.6 %

Respectfully Submitted,
SJB Services, Inc.


William G. Stanton
Eastern Regional Manager

C-69

SWELL TEST REPORT



Natural		Dry Dens. (pcf)	LL	PI	Sp. Gr.	Overburden (psf)	P_c (psf)	C_c	C_s	Swell Press. (psf)	Heave %	e_0
Sat.	Moist.											
83.5 %	12.3 %	120.7			2.70	400	1829	0.10	0.00	4854	9.2	0.396

MATERIAL DESCRIPTION										USCS	AASHTO

Project No. AT-06-029 **Client:** Foundation Design, P.C.
Project: Lowes - Hamburg, NY
Location: Remolded Composite Sample

Remarks:
 ASTM D4546 "Method A"

SWELL TEST REPORT
SJB SERVICES, INC.

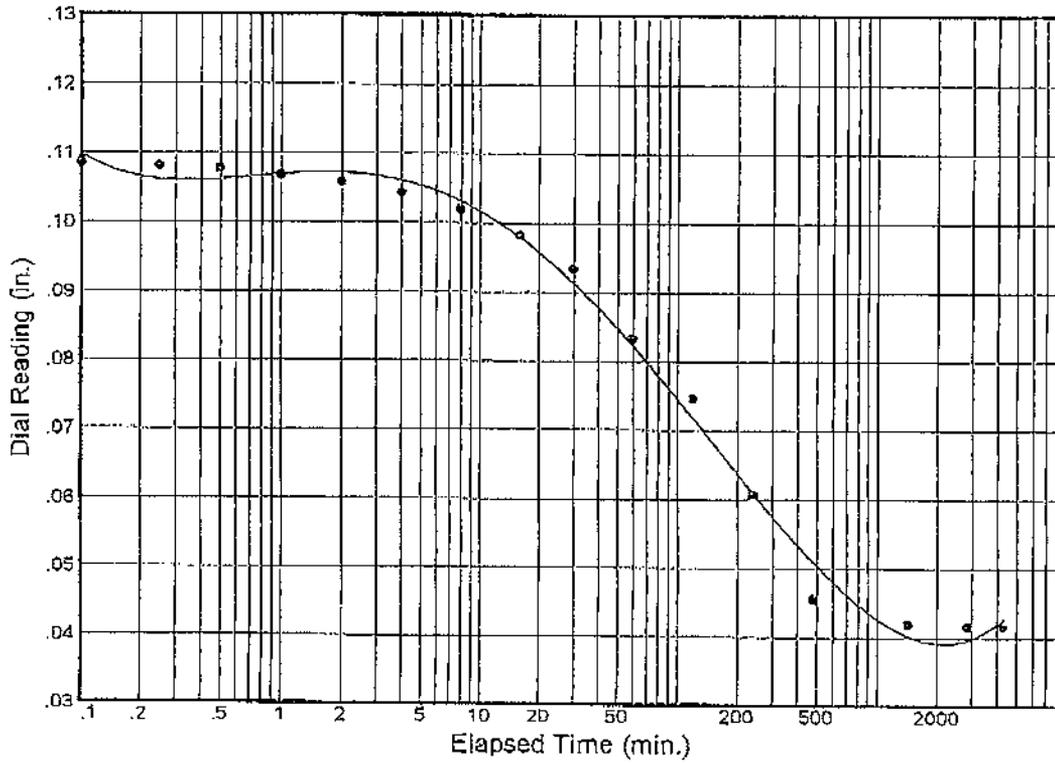
Sample ID

C-70

Dial Reading vs. Time

Project No.: AT-06-029
Project: Lowes - Hamburg, NY

Location: Remolded Composite Sample



Load No.= 4

Load= 20 psf

$D_0 = 0.10890$

$D_{50} = 0.07532$

$D_{100} = 0.04174$

$T_{50} = 94.93 \text{ min.}$

$C_v @ T_{50}$
0.00 ft.²/day