

TO: Town of Geneseo Planning Board
FROM: PDDG
RE: Comments on FEIS submitted by Newman Development Group on 2.4.08
DATE: March 3, 2008

Our review of Newman's recently submitted Final Environmental Impact Statement (FEIS) indicates that it remains significantly incomplete with respect to the original Scope and supplemental requirements imposed by the Planning Board and non-responsive to many of the questions and comments posed by PDDG and other citizens during the public comment period. In addition, it appears to be purposefully obfuscatory, and in some cases, demonstrably false in its continuing mischaracterization of the planning and zoning for the Gateway District.

As a result of these serious concerns, discussed further below, we urge the Planning Board to make use of the power provided to it by the State Environmental Quality Review Act (SEQRA) to contract with an independent consultant to complete the studies needed for a complete and accurate FEIS. While we understand that the Town's consultants, MRB and Stantec, have or will issue additional requirements for the applicant, it is becoming increasingly clear that the applicant is willfully refusing to comply with the clear requests of the board as part of an apparent strategy to wear down the board.

Further, we renew our request that the Planning Board establish a public comment period to receive public responses to the applicant's draft FEIS. We believe such a public comment period is legally required under SEQR regulations for all new and supplemental information submitted throughout the Environmental Impact Statement process. Failure to provide a fair public comment period as outlined in SEQRA represents a potentially serious procedural flaw in the Planning Board's review of Newman's application.

Finally, we request that this issue and our previous repeated requests for timely access to public documents in this matter be placed on the agenda of the Planning Board's next meeting. We note that a FOIL request to see MRB's response to the applicant, which the board indicated on February 11 would be sent by February 15, was FOILED more than two weeks ago and has not been received.

Establishing a policy making these unambiguously public documents publicly available in a timely manner and without the need for repeated FOIL requests would save everyone involved a lot of time and would contribute to a spirit of open deliberation of the public's business. We believe it is time that both these matters are addressed by the full board so that we may have the opportunity to get a response to our requests.

Without prejudice to the right for all members of the public to comment on the new material submitted with the FEIS, we would like to note the following as evidence that Newman's FEIS is incomplete, legally inadequate, and disingenuous. (A more comprehensive analysis of the many inadequacies of the FEIS will be provided in the future.)

- According to SEQRA, "EISs must be clearly and concisely written in plain language that can be read and understood by the public." The FEIS submitted by Newman lacks these qualities. It is argumentative, frequently and even intentionally unclear, strongly biased in support of the project in question, and lacks clear and concise discussions of the impacts and mitigations associated with the project. With its long history of aggressive advocacy and efforts to bias the process in its favor, Newman would seem to be incapable of producing an FEIS that meets this fundamental requirement of SEQRA.

Newman's discussions of the Gateway zoning with respect to a curb cut on 20A (pages 23-24, 26-30) and alternative routes traffic studies (pages 7-8, 12-13) are but two examples of a lack of concision and clarity.

- Of particular concern to PDDG is Newman's ongoing and deliberate mischaracterization of the planning and zoning for the Gateway. As PDDG has pointed out repeatedly for more than two years, Newman's proposal is simply and fundamentally in contradiction to the planning and zoning for the Gateway District. Our continued research into this issue has only strengthened our conclusion. The SEQRA process obligates Newman to address these issues in an open and forthright manner.

Anyone who reviews the history of that planning and zoning, beginning with the drafting of the 1992 Master Plan and continuing through the drafting and enactment of the Gateway District zoning, the Gateway Overlay District zoning, and the construction of Volunteer Road, will see an explicit effort to prohibit big box retail development and 20A-fronting retail development. Newman's draft provides no indication of any familiarity with this history.

Indeed, in the FEIS, in which it is required to indicate the relationship between its proposal and the existing zoning, Newman continues to claim that its proposal is somehow consistent with that planning and zoning. These claims are patently false in numerous respects:

- The suggestion (page 23) that the Gateway zoning expresses no preference for light industrial and other non-retail uses is false. The Mixed Use I and Mixed Use III zoning impose much stricter standards on retail uses than on industrial and other commercial uses.
- The statement that "the proposed GTC uses are clearly consistent with uses that were envisioned for the MU-III District" (page 24) is directly contrary to the provision of that zoning limiting retail (and only retail) buildings to 35,000

square feet.

- Newman's efforts to gain access to Route 20A and to a building fronting 20A as a matter of right strain any credible reading of the existing zoning. The suggestion that code compliant development would result in multiple 20A curb cuts (page 26) is expressly contrary to the zoning. The statement that the Gateway zoning "does not indicate access to any of these thoroughfares [20A or Lima Rd] is excluded" (page 27) is directly contradicted by the Gateway Overlay District zoning. That zoning states that "uses which are permitted after the construction of the internal road system serving the parcel where development is proposed within the overlay district shall be required to take access via that road system and will not be permitted to develop any direct access to the property from Route 20A or Lima Road." Since there is no question that Volunteer Road serves the parcels in question, there can be no reasonable question that access to 20A from the parcels to be developed is prohibited. Anyone with any question about the meaning of this zoning should review the history of its development. That history expresses a clear intent to provide a single access point into the Gateway as a means of controlling the type of development that occurs in that area.
- Newman's new references to the Town zoning code's language regarding "Customary Accessory Uses" to support its claim to a right for an unenclosed garden center is in conflict with a fair reading of the Town's zoning. Newman's proposal has always included an unenclosed garden center, a feature we believe to be in direct conflict with the MU-I zoning requirement that "any retail business" must be conducted within a "completely enclosed building." The Code Enforcement Officer has interpreted this matter differently, stating that "the lumberyard at Lowe's" may be "within an area enclosed by a suitable solid wall or fence." However, it is the garden center, not the lumberyard, that is to be unenclosed, rendering the code officer's interpretation irrelevant to Newman's plans. Apparently recognizing this, Newman has come forward with a new claim, that the "Customary Accessory Uses" provision of the Town's zoning allows a garden center or nursery as a customary accessory use to its proposed principal use. The problem with this claim is that Use Class 11, which provides for Customary Accessory Uses, does not apply to Use Class 21, the zoning for the subject parcel. As is stated in the introduction to this section of the zoning (Section 106-13B), the language regarding Customary Accessory Uses applies only to Use Classes 4 through 17. Use Classes 18 through 22 were added separately and are self-contained.
- Newman's FEIS, as with its DEIS, fails to include any analysis that might reasonably be construed as a precedent analysis. In both its original scope and in its subsequent supplemental guidelines, the Planning Board has required analysis of "the impacts of additional similar retail development within the Gateway Overlay District" as a means to address public concern "that the proposed project will encourage and result in similar development within the Gateway Overlay District." The entirety of Newman's response and "analysis" is a one paragraph statement, based on nothing more than a cursory examination of Canandaigua,

concluding that limited additional retail development is likely (page 43). The failure to take seriously this serious public concern, even with two opportunities to consider the issue, is evidence of Newman's cavalier attitude toward the EIS process.

For these reasons and many others, we believe Newman has forfeited the opportunity to contribute further to the development of the FEIS and urge the Planning Board to contract with an independent agency to complete the necessary studies and draft a FEIS that the Board can then complete and adopt.