

ARTHUR J. GIACALONE

Attorney At Law
17 Oschawa Avenue
Buffalo, New York 14210

Telephone: (716) 687-1902

Email: AJGiacalone@twc.com

April 18, 2016

City Planning Board
City of Buffalo
901 City Hall
Buffalo, NY 14202

Re: 975-1005 Fuhrmann Blvd. – Buchheit’s Consultants need to do their homework!

Dear City Planning Board:

Whether it is the result of arrogance, carelessness, or lack of skill, the information submitted on behalf of developer Gerry Buchheit’s Queen City Landing project – at the former Freezer Queen site on Buffalo’s Outer Harbor – continues to be plagued with unanswered questions, inaccuracies, and omissions. And, despite this “information void,” Mayor Brown’s planning staff is still pushing the approval process along at a rapid pace, to the detriment of the public, conscientious members of the city’s various boards, and our environment.

I revisited Buffalo’s Planning Department office on April 15, eleven days after the City Planning Board prematurely held a public hearing for the proposed 23-story complex at 975-1005 Fuhrmann Blvd. [<https://withallduerespectblog.com/2016/03/28/cancel-april-4-2016-planning-bd-hearing-on-23-story-tower-project/>], and three days prior to the Planning Board’s April 18, 2016 meeting where two important matters relating to Mr. Buchheit’s project are on the agenda: completion of the public hearing begun on April 4 regarding the developer’s plans to demolish the existing building, construct a 23-story mixed-use tower and three-level parking ramp, and subdivide the 20-acre parcel; and, approval of a SEQRA resolution that will decide whether the project sponsor must prepare a Draft Environmental Impact Statement [DEIS].

The ONLY “new” material made available by the city planning office for public review was a glossy, three-ring binder, dated April 4, 2016, the date of the original public hearing. Unavailable for review – either because it wasn’t in existence, or was being kept from the public – was a response to the legal and environmental issues raised during the April 4th proceedings, documentation addressing the claims asserted in my April 7, 2016 letter to the City’s Corporation Counsel, Timothy Ball, or staff correspondence addressing any of these concerns. The public (and, media) will never know whether Gerry Buchheit, or his legal and engineering consultants, have been told by the City planning officials “not to worry” about the legal and environmental concerns being raised by – in Mr. Buchheit’s words – “an obstructionist ... [who] objects to everything.” [See [BuffNews 04-08-16 article.](#)] The Buchheit team is certainly acting as if it has no obligation to accurately and fully support its assertions. To the contrary, it all-too-often makes conclusory, incomplete statements, and appears to have faith that Buffalo’s decision-makers will simply acquiesce and comply with its requests. Here are several examples:

A. Still no proof that the property was rezoned in 2008.

The City Clerk, Gerald Chwalinski, signed a document on March 17, 2016 indicating that the Common Council adopted a resolution on June 24, 2008 that rezoned the property – 975 and 1005 Fuhrmann Blvd. – from “M3” (Heavy Industrial) to “CM” (“General Commercial”). Most significantly, however, the resolution expressly states that the rezoning would NOT take effect unless and until two conditions were met:

- *“a certified copy [of the resolution] is filed by the petitioner in the office of the Erie County Clerk’s Office and proof of such filing is submitted to the City Clerk’s Office”*
AND
- *“such conditions as set by the City Planning Board are met.”*

The City Clerk’s 03/17/2016 statement does not address the crucial question: Were the conditions met? And there are two very good reasons to believe that they weren’t. First, had they been met (with proof of filing in the County Clerk’s office submitted to the then-City Clerk, the same Gerald Chwalinski) the City’s official zoning map would have – in the ordinary course – reflected that change, as required by the City Code. But the City’s records still show the property as zoned “M3” – a zoning district that does NOT allow residential units.

Note: The “Existing Zoning” map in the Green Code DGEIS documents, accepted by the Common Council in mid-February 2016, showed the entire area in and around the former Freezer Queen site as zoned “M3.” Likewise, the Brownfield Opportunity Area documents made public in October 2015 state, “All of the land in the Outer Harbor has been designated as M1-Light Industrial, M2-General Industrial or M3 Heavy Industrial.”

A second reason to believe that the rezoning resolution never went into effect stems from the fact that Mr. Buchheit’s Queen City Landing, LLC, was the owner of the property when the June 2008 resolution was adopted. Had the conditions been met, Mr. Buchheit would be the party most likely to have in his possession proof of the steps that had been taken to effectuate the rezoning. To date, the Buchheit team has not submitted proof to the Planning office or Planning Board. Most telling is the following statement found in the developer’s March 14, 2016 cover letter submitted nearly 5 weeks ago to the City Planning Board:

ZONING

Through zoning analysis, we previously concluded that we should seek to have the entire Site rezoned to the CM District because of its favorable use and bulk standards for mixed-use development. This process was commenced in the fall of 2015, but not completed due to changes in the Project. Further, while preparing the Brownfield Cleanup Application, we discovered that the Site may have been rezoned previously and we are still trying to verify if it was completed. In the interim, we will assume that the Site is or will be zoned CM.

Having spent five weeks “trying to verify if [the rezoning] was completed,” it is time for the Buchheit Team to stop playing games and admit to the City Planning Board if, in fact, the crucial conditions set forth in the June 2008 resolution, were never met.

B. Continued failure to concede the important role the Common Council must play for the current proposal to proceed.

The April 4, 2016 documents belatedly handed to the City Planning Board make the assertion that the City's Common Council has no approvals to grant in furtherance of the proposed 23-story project. [See FEAF, p. 2 of 13.] This assertion is simply incorrect if, as it appears, either a rezoning is required for the proposed project, and/or, as a plain reading of section 511-67(A)(1) of the City of Buffalo Code seemingly indicates, 975-1005 Fuhrmann Blvd. lies in the Buffalo Coastal Special Review District [BCSRD]. If the subject site is located in the BCSR, the project may not proceed without the project sponsor obtaining a Restricted Use Permit from the Common Council, and without Buffalo's legislative body having the final say as to the Queen City Landing facility.

The Common Council's involvement in the approval process for the proposed 23-story project has a major impact on the City's environmental review process. The City of Buffalo's Code, at section 168-7(A)(2), mandates that the SEQRA "lead agency shall automatically be" the Common Council for "actions undertaken wholly or partially within, or contiguous to, Coastal Special Review Districts" and for "amendment or change in land use and development ordinances and regulations." Given this legal requirement, the City Planning Board lacks the authority to make the most crucial SEQRA decision, whether or not to require the project sponsor to prepare a Draft Environmental Impact Statement [DEIS] for the proposed project.

C. Submission of a Full Environmental Assessment Form [FEAF] containing incomplete, inaccurate and unsupported assertions.

The FEAF belated provided to the City Planning Board, dated March 30, 2016 and filed April 4, 2016, has far too many inaccuracies, incomplete assertions and omissions to address here, but here are representative samples:

** The FEAF references proposed land use plans when it thinks the non-adopted plan might be helpful, but ignores the pending plans when the expressed vision for the Outer Harbor area is contrary to Mr. Buchheit's current whim. For example:

The FEAF fails to mention that the proposed LWRP (approved by the Common Council, but awaiting review by the State Department of State), contains a pictorial recommendation for the Freezer Queen site that has a remarkable resemblance to Mr. Buchheit's 2015 proposal for 975 Fuhrmann Blvd. See for yourself:

L. Freezer Queen/Ford Terminal Complex

Several large, vacant industrial structures are located immediately north of the Small Boat Harbor on the Outer Harbor. The Ford Terminal Complex, owned by the Niagara Frontier Transportation Authority and the Freezer Queen manufacturing facility. These facilities offer unique opportunities for water enhanced mixed use development.



ACTION STRATEGY



Rendering of Queen City Landing, ex-Freezer Queen site owned by Gerald Buchheit, who is partnering with Melissa Baumgart on a project of \$40 million to \$60 million for 120 luxury units.

The FEAF also ignores the Green Code’s proposal for the 20-acre site: N-1-S (Secondary Employment Center) zoning status, where “heritage structures” are reused for a mix of industrial, commercial, and residential uses “with building heights of up to six stories.”

** In addition to its disregard of the Common Council’s role in the approval process, the FEAF fails to acknowledge the County’s authority to review and recommend for and against the proposed project pursuant to Section 239-m of the State’s General Municipal Law.

** When asked to identify the parks that serve the project site, the FEAF merely states, “Tiff Nature Preserve, South Park.” Oddly, no mention is made of the nearby Outer Harbor State Park, or Gallagher Beach, or Wilkeson Pointe, or Times Beach Nature Preserve.

** The FEAF states that the project sponsor wishes to subdivide its 20.25-acre parcel into two lots, one 7.22-acre lot, and one 7.66-acre lot. Somehow, 4.87 acres are not accounted for.

** The FEAF answers affirmatively when asked whether the proposed action would involve excavation or dredging of contaminated soils, but does not attempt to estimate the volume of polycyclic aromatic hydrocarbons (PAHs) and metals that will be excavated, or the depth of the excavation.

** The FEAF indicates that the project involves the addition of 300 feet of new boat slips, and that construction of the new slips will affect Lake Erie by disturbing bottom sediments, but proposes no reclamation or mitigation following the disturbance.

** The FEAF estimates that the project will generate 31,200 gallons per day of liquid waste generation, and claims that the existing treatment plants have the capacity to serve the project. No reference is made to the following statement in the recently released BUFFALO HARBOR Brownfield Opportunity Area [BOA] document:

... [A] separate 10-inch sanitary sewer service terminates at the Small Boat Harbor. The [Buffalo Sewer Authority] does not have any sewers south of this location... To support future development on the waterfront an extension of this service may be feasible. However, the present sewers ranging from eight to 12 inches in diameter may not be sufficient to support significant additional growth beyond that anticipated at Lakeside Commerce Park.

** The FEAF admits that the proposed action will “result in a substantial increase in traffic above present levels,” and that they anticipate both morning and evening peak traffic hours. But the project sponsor has chosen not to provide any trip generation estimates to assist the lead agency in determining the extent of adverse impacts.

** The FEAF recognizes that the proposed action will “produce noise that will exceed existing ambient noise levels,” both during the estimate 120-day construction period, and during operation. It also states that an existing natural noise barrier or screen, “a line of trees and shrubs between site and 901 Fuhrmann will likely be removed. Nonetheless, the project sponsor has provided no analysis of the existing ambient noise levels, or the impact of the mechanical systems and vehicular traffic that will be generated by the proposed project. Instead we are simply told: “[A]ny noise in the area is overwhelmed by Route 5 nearby.”

** The FEAF’s claim that no historic site or resources have been identified on site is belied by the inventory in the “BUFFALO HARBOR Brownfield Opportunity Area” Nomination Document, which specifically identifies the existing Freezer Queen facility as eligible for the State and National Registers of Historic Places. [See BOA – Register Eligible excerpt.]

** The FEAF claims that there is only one “officially designated and publicly accessible federal, state, or local scenic or aesthetic resource **within five miles** of the project site: Great Lakes Seaway Trail Scenic Byway.

Lastly, and utterly representative of the effort taken to date on behalf of the project sponsor, the Buchheit development team has provided **no “additional information”** needed to clarify the project, or to describe any adverse impacts which could be associated with the proposal or measures proposed to avoid or minimize such impacts.

D. Failure to provide the City’s Preservation Board with the information needed to rule on its application for a demolition permit.

On April 8th, the Buchheit Team appeared before the City’s Preservation Board. Consistent with its approach to the first hearing before the City Planning Board, the critical document filed with the Preservation Board – the “Expanded Application for Demolition” form – provided no response to three important questions: When was the building constructed? What is the building’s architectural style? Who was the architect or designer of the building?

Without access to this information, the Preservation Board was compelled to call Buchheit’s “Application Incomplete,” and to ask the developer to provide the missing information.

Note: As mentioned above, according to the “BUFFALO HARBOR Brownfield Opportunity Area” Nomination Document, recently made public as part of the proposed Green Code DGEIS, the “Freezer Queen Foods” property is eligible for listing in the State and National Registers of Historic Places.

Gerry Buchheit and his team of consultants apparently believe that it is just fine to waste other people’s time. Rather than doing their homework and conscientiously providing information and supporting documentation to the governmental officials from whom they need approvals, they rush to submit material inadequate for the intended task. After all, Mr. Buchheit wants to break ground this June!

For the sake of the public, the integrity of the zoning and development process, and the environmental wellbeing of the Outer Harbor, I hope Mr. Buchheit will do what he threatened (promised) to do during a recent television news report when confronted with the zoning issues raised concerning his 23-story tower project:

“WE’RE SPENDING A LOT OF MONEY, AND IF THEY DON’T WANT IT, YOU KNOW WHAT, WE’LL GO SOMEWHERE ELSE.”

Please do.

With all due respect,

Art Giacalone