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**Exhibit 5 – Negative Declaration Issued by  
the Town of Amherst Zoning Board of  
Appeals Pursuant to the State Environmental  
Quality Review Act on July 21, 2020**

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Town of Amherst Planning Department

Erie County, New York



Brian J. Kulpa  
Supervisor

Daniel C. Howard, AICP  
Planning Director

Ellen M. Kost, AICP  
Assistant Planning Director

**SEQR**

**NEGATIVE DECLARATION**

**NOTICE OF DETERMINATION OF NON-SIGNIFICANCE**

<b>Lead Agency:</b>	Town of Amherst Zoning Board of Appeals	<b>Action:</b>	Use & Area Variances
<b>Address:</b>	5583 Main Street Williamsville, NY 14221 (716) 631-7051	<b>Date:</b>	July 21, 2020

This notice is issued pursuant to Part 617 and Local Law #3-82, as amended, of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described below will not have a significant adverse effect on the environment.


<b>Title of Action:</b>	Use and Area Variances
<b>SEQR Status:</b>	Unlisted action
<b>Description of Action:</b>	Granting a use variance to permit ground floor apartments as a principal use within the GB- General Business zoning district and an area variance to permit a reduction in required off street parking spaces.
<b>Location:</b>	100 Maple Road, Town of Amherst, Erie County, New York
<b>Petitioner:</b>	PEG Properties, LLC

**Reasons Supporting This Determination**


Based on information submitted by the applicant, including a complete ZBA application, Short Environmental Assessment Form and supporting documentation, a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that the proposed request will not have a significant impact on the environment, as follows:

1. The action is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems.
2. The action will not result in the removal or destruction of large quantities of vegetation or fauna; or in significant adverse impacts to fish or wildlife species, habitats or other natural resources. The site is currently developed as a 112 unit motel.
3. Granting a use variance to permit ground floor apartments at the subject property and an area variance for a parking reduction is not expected to create any material conflict with the Town Comprehensive Plan. The Town's Comprehensive Plan has identified the subject property for a future rezoning to the Town's newly adopted mixed use zoning designation, which permits multifamily dwellings on the ground floor as of right. Additionally, the new mixed use regulations permit a 50 percent reduction in required off street parking. After the Town rezones the subject site to its desired mixed use zoning district the subject variances will no longer be needed.
4. The site is not within an area identified by the State as potentially containing significant cultural or archeological resources. The site is currently developed as a 112 unit motel and there will not be any impacts to cultural or archeological resources.
5. The action will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character.
6. The action will not cause a change in the use or the quantity of energy.
7. The action will not create a hazard to human health.
8. The action is not anticipated to change the intensity of the land use on this site from its current use.
9. The action is not anticipated to significantly increase the number of people using the site over its current level of use.

10. Significant negative traffic impacts are not expected to result from the proposed action.
11. Coordinated reviews of the action by the Building and Planning Departments have not identified any significant environmental issues and indicate that the action will not have a significant damaging impact on the environment.
12. Issues not specifically mentioned above and/or those not specifically reviewed were not raised by Town departments, outside agencies or the public and are not determined to be causing significant negative environmental impacts.

  
Daniel J. Ulatowski, AICP  
Principal Planner/ZEO

7/21/2020  
date

  
John Radens, Chair

7/27/2020  
date

DU/du  
X:\Special Projects\ZBA\SEQR NEG Dec attachments\100 Maple Road.docx  
cc: Amherst Town Clerk  
Amherst Building Department  
Erie County DEP  
Sean Hopkins, Esquire for PEG Properties, LLC

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**Exhibit 6 – Resolution Adopted by the  
Town of Amherst Zoning Board of  
Appeals on July 21, 2020**

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**Zoning Board of Appeals**  
5583 Main Street  
Amherst, NY 14221  
www.amherst.ny.us

Francina J. Spoth  
Town Clerk

Meeting: 07/21/20 06:00 PM  
Department: Planning  
Initiated by: **Daniel J. Ulatowski**  
Co-Sponsored by:

DOC ID: 21988 A

**ZBA ITEM 2020-40**

**APPROVED W/ CONDITIONS**

## **100 Maple Road - Area Variances/Use Variance**

WHEREAS, **PEG Properties, LLC** has made application for an Area Variance, under

**(1.) SECTION: 4-4-2A (ground floor apts.)**

and a Use Variance under

**(2.) SECTION: 7-1-6A (parking)**

of the Zoning Ordinance of the Town Amherst for the property owned by him/her at :

**100 Maple Road within a GB Zoning District**

The petitioner's proposed motel conversion to apartments will provide **120 parking spaces** whereas, the zoning ordinance requires **224 parking spaces**, and whereas, the conversion of the first floor motel rooms will create **ground floor dwelling units**, which are not permitted, AND

WHEREAS, a remote public hearing was held on **July 21, 2020** after proper notice, AND

WHEREAS, this Board must consider the testimony and evidence submitted by the applicant and the following factors detailed in §267-b(3)(b) of the NY Town Law:

- ) **whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance,**
- ) **whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance**
- ) **whether the requested area variance is substantial,**
- ) **whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**
- ) **whether the alleged difficulty was self-created; AND**

WHEREAS, pursuant to §267-b(2)(b) of the NY Town Law the applicant must prove unnecessary hardship for his/her Use Variance request by demonstrating to the Zoning Board of Appeals that for each and every permitted use within the above stated zoning district wherein the applicant's property is located he/she:

- ) **cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;**

- ) **that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;**
- ) **that the requested use variance, if granted, will not alter the essential character of the neighborhood; and**
- ) **that the alleged hardship has not been self created; AND**

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the applicant has proven unnecessary hardship, AND

WHEREAS, this Board supports its decision based on the aforementioned criteria pursuant to section 26-b(2)(b) of NY Town Law In that the applicant did show that:

- ) **he/she cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;**
- ) **that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;**
- ) **that the requested use variance, if granted, will not alter the essential character of the neighborhood; and**
- ) **that the alleged hardship has not been self created; AND**

WHEREAS, This Board believes that the requested use variance should be approved based on the above showing; AND

WHEREAS, this Board after reviewing the application and supporting materials, conducting a public hearing and after due deliberation and vote of the Board finds that the area variance is not substantial, that it will not have an adverse impact on the physical or environmental conditions of the neighborhood and that it will not create any undesirable change in the character of the neighborhood; AND

WHEREAS, this Board finds that the benefit to the applicant if the area variance is granted does not outweigh the detriment to the health, safety and welfare of the neighborhood or community by such grant based upon a balancing of the factors contained in §267-b(3)(b) of the Town Law; and

WHEREAS, this Board believes that the area variance requested is the minimum variance that this Board deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

WHEREAS, a record having been made by electronic means and preserved in digital format is available in the Town Clerk's Office;

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby GRANT an area variance and a use variance from the above-mentioned sections of the Zoning Ordinance of the Town of Amherst with the following condition:

1. The applicant apply for a rezoning within ninety (90) days of closing on the property.

<b>RESULT:</b>	<b>APPROVED W/ CONDITIONS (UNANIMOUS)</b>
<b>MOVER:</b>	Nina Potycz, Member
<b>SECONDER:</b>	Ann M. Nichols, Member
<b>AYES:</b>	Radens, Kahn, Nichols, Potycz
<b>ABSENT:</b>	Shubert



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**Exhibit 7 – Affidavit of Lawrence Gates  
on behalf of Rockgate Inn, L.P.  
dated July 21, 2020**

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STATE OF NEW YORK  
TOWN OF AMHERST ZONING BOARD OF APPEALS

VARIANCE APPLICATION – REDEVELOPMENT  
OF RESIDENCE INN AT 100 MAPLE ROAD

**AFFIDAVIT OF LAWRENCE  
GATES**

Index No. 816499/2018

STATE OF KANSAS            )  
  ss:  
JOHNSON COUNTY            )

Lawrence Gates, being duly sworn, deposes and states the following:

1. This Affidavit is being submitted in support of the request for a use variance being sought by Rockgate Inn, L.P. and PEG Properties (collectively the “Applicant”) from the Town of Amherst Zoning Board of Appeals (“ZBA”) for the purpose of allowing the existing Residence Inn located at 100 Maple Road in the Town of Amherst (“Project Site”) to be converted into a multifamily project pursuant to the project plans that have been previously submitted to the ZBA.
2. I am the President of Rockgate Inns, Inc., the sole Member of the General Partner of Rockgate Inns, L.P., the entity which owns the Project Site.
3. Our company, Rockgate Inns, L.P., has been the owner of the Residence Inn located at the Project Site since the hotel was constructed and opened in December of 1986.
4. The 112 room Residence Inn located on the Project Site consists of 15 buildings (8 14 two-story building with 8 hotel rooms per building and building for administrative and lobby) and related site improvements.
5. The Project Site consists of approximately 3.93 acres is zoned General Business District (“GB”) pursuant to the Town of Amherst Zoning Code. The existing use of the Project

Site as a hotel is an expressly permitted use in the GB zoning district and would remain an allowable use if the ZBA grants the requested use variance.

6. On April 23, 2020, Rockgate Inns, L.P., entered into a Purchase and Sale Agreement for the sale of the Project Site to PEG Properties, LLC. The Purchase and Sale Agreement contains various contingencies including a contingency for the purpose PEG Properties, LLC seeking the required governmental approvals for its intended redevelopment of the Project Site as a multifamily project consisting of 112 apartment units for lease (the "Redevelopment Project").

7. It is my understanding that the Town has determined that a use variance is needed from the Zoning Board of Appeals to allow the first floor hotel rooms in the existing buildings on the Project Site to be converted into multifamily units for lease per the project plans submitted to the ZBA prepared on behalf of PEG Properties, LLC.

8. I have been advised that in order for an applicant to obtain a use variance, a zoning board is required to base its decision on the standard and the criteria set forth in New York Town Law § 267-b(2), which states as follows:

"No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and, (4) that the alleged hardship has not been self-created."

9. The strict application of the GB zoning classification to the Project Site, which does not allow the first floor of the existing hotel buildings on the Project Site to be utilized as apartments for lease, would result in the inability of Rockgate Inns, L.P. to realize a reasonable rate of return in connection with the continued use of the Project Site a hotel and also is the Project Site was redeveloped for a use allowed in the existing GB zoning district.

10. Given that the Project Site currently consists of fifteen (15) buildings designed to be a Residence Inn, Rockgate Inns, L.P. would not be able to realize a reasonable rate of return by converting the hotel into a land use expressly permitted in the GB zoning district.

11. It would not be feasible to convert the first floor of the existing buildings into commercial space while allowing the second floor to be utilized for apartments for numerous reasons including the expenditures that would be incurred and the fact that commercial space requires more parking spaces per square foot than apartments. The Project Site which consists is not large enough to accommodate the additional parking spaces that would be required to accommodate mixed-use redevelopment of the Project Site.

12. During the public hearing held by the ZBA on June 16, 2020, Sean Hopkins, Esq. presented evidence demonstrating that the reasons why the continued use of the Project Site as a Residence Inn is not economically feasible. The evidence presented to the ZBA was accurate and is summarized below.

13. The Residence Inn was well-performing to the point where Marriott provided a 10-year extension to an already extended Franchise Agreement. The Marriott International Franchise Agreement under which the hotel operates as a Residence Inn by Marriott expires in December 2022.

14. Marriott has advised us that it will not be renewing the Franchise Agreement for the existing hotel since Marriott has granted a new Residence Inn franchise to another developer to build in the Amherst Market.

15. The buildings located on the Project Site are functionally obsolete to continue to be utilized as a hotel. The separate building configuration and outside entrances are no longer preferred by travelers.

16. The hotel began to lose occupancies and room revenues in the last few years with a very steep decline of occupancy levels and revenues in 2019 which continued into 2020. In March 2020, the Covid-19 pandemic severely adversely affected the entire hotel industry and, in particular, the existing Residence Inn.

17. Occupancy levels and daily rates at the Residence Inn are down such that Rockgate Inns, L.P. has sustained and will continue to sustain a substantial economic loss in connection with continued use of the Project Site as a Residence Inn.

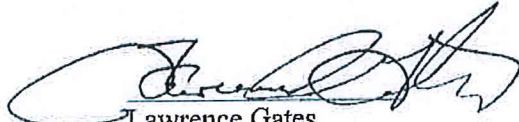
18. Over the last three years, the total net cash flow is approximately -\$430,000.00.00 and during 2020, the total net cash flow is approximately -\$330,000.00.

19. The purchase price to be paid by PEG Properties, LLC for the Project Site is only slightly more than the amount of the existing mortgage. As such, the granting of the requested use variance by the ZBA will not result in Rockgate Inn, L.P. receiving more than a reasonable rate of return in connection with the sale of the Project Site to PEG Properties, LLC.

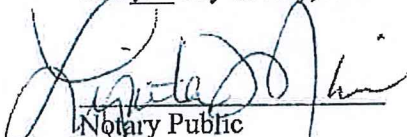
20. The Project Site is at risk of becoming vacant if the requested use variance is not granted by even before the Marriott International Franchise Agreement expires in December of 2022 if the ZBA does not grant the requested use variance. Rockgate Inn, L.P. will continue to

sustain a substantial economic loss if the Residence Inn remains open until the expiration of the franchise agreement.

21. Rockgate Inn, L.P. requests that the ZBA grant the requested use variance to allow the Project Site to be converted into 112 apartments and related site improvements pursuant to the project plans that have been submitted.

  
Lawrence Gates

Sworn to before me  
this 21<sup>st</sup> day of July, 2020

  
Notary Public



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**Exhibit 8 – Figure 6A of the Town of  
Amherst Comprehensive Plan titled  
“Commercial and Mixed Use Designations”**

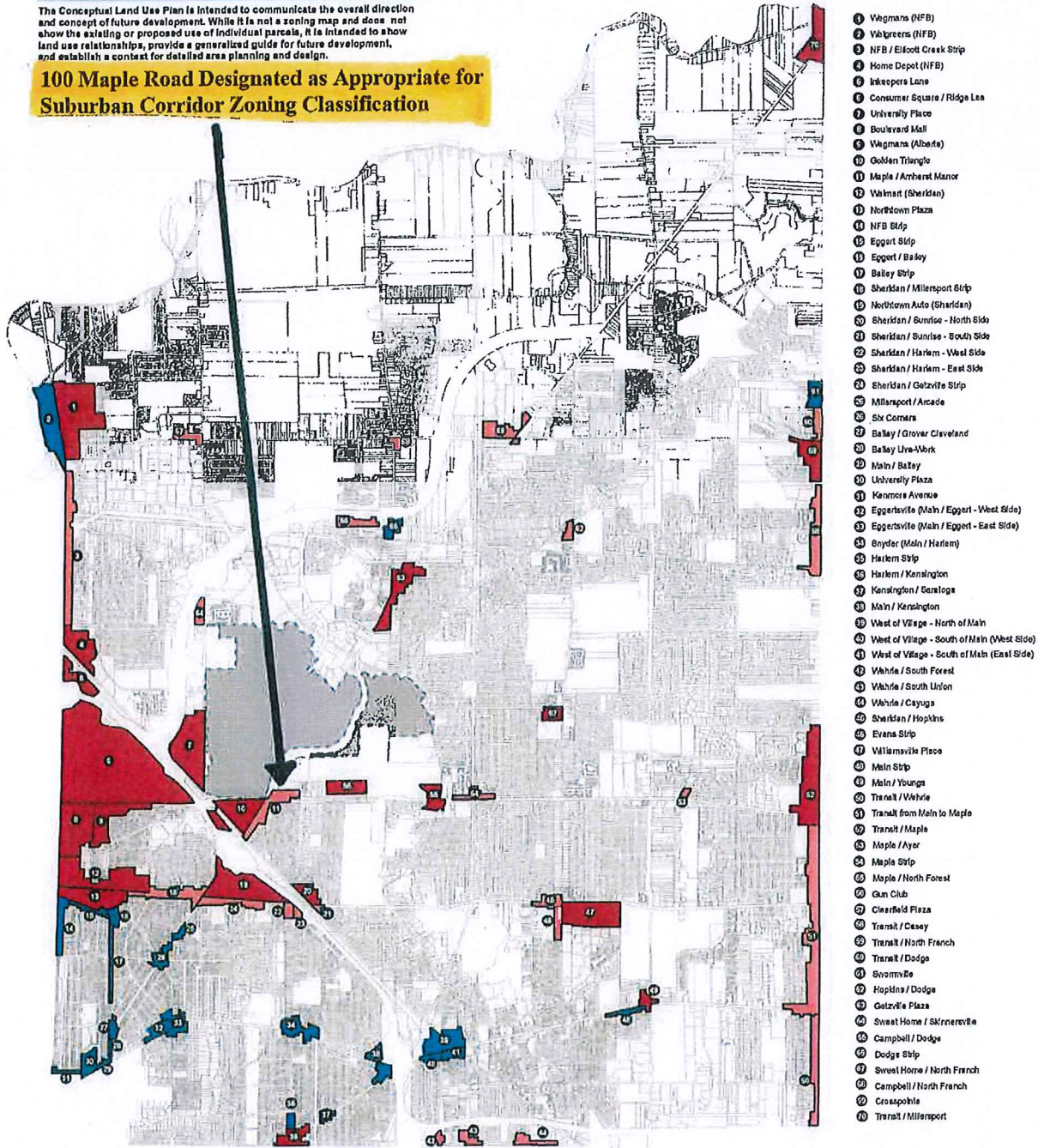
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# DRAFT

Amherst  
Bicentennial  
Comprehensive Plan

The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development. While it is not a zoning map and does not show the existing or proposed use of individual parcels, it is intended to show land use relationships, provide a generalized guide for future development, and establish a context for detailed area planning and design.

## 100 Maple Road Designated as Appropriate for Suburban Corridor Zoning Classification



- 1 Wegmans (NFB)
- 2 Wegmans (NFB)
- 3 NFB / Elfoot Creek Strip
- 4 Home Depot (NFB)
- 5 Inkeepers Lane
- 6 Consumer Square / Ridge Lea
- 7 University Place
- 8 Boulevard Mall
- 9 Wegmans (Albany)
- 10 Golden Triangle
- 11 Maple / Amherst Manor
- 12 Walmart (Sheridan)
- 13 Northtown Plaza
- 14 NFB Strip
- 15 Eggert Strip
- 16 Eggert / Bailey
- 17 Bailey Strip
- 18 Sheridan / Millersport Strip
- 19 Northtown Auto (Sheridan)
- 20 Sheridan / Sunrise - North Side
- 21 Sheridan / Sunrise - South Side
- 22 Sheridan / Harlem - West Side
- 23 Sheridan / Harlem - East Side
- 24 Sheridan / Getzville Strip
- 25 Millersport / Arcade
- 26 St. Corners
- 27 Bailey / Grover Cleveland
- 28 Bailey Live-Work
- 29 Main / Bailey
- 30 University Plaza
- 31 Kenmore Avenue
- 32 Eggertville (Main / Eggert - West Side)
- 33 Eggertville (Main / Eggert - East Side)
- 34 Snyder (Main / Harlem)
- 35 Harlem Strip
- 36 Harlem / Kensington
- 37 Kensington / Berakloga
- 38 Main / Kensington
- 39 West of Village - North of Main
- 40 West of Village - South of Main (West Side)
- 41 West of Village - South of Main (East Side)
- 42 Wähle / South Forest
- 43 Wähle / South Union
- 44 Wähle / Cayuga
- 45 Sheridan / Hopkins
- 46 Evans Strip
- 47 Williamsville Plaza
- 48 Main Strip
- 49 Main / Youngs
- 50 Transit / Wähle
- 51 Transit from Main to Maple
- 52 Transit / Maple
- 53 Maple / Ayer
- 54 Maple Strip
- 55 Maple / North Forest
- 56 Gun Club
- 57 Clearfield Plaza
- 58 Transit / Casey
- 59 Transit / North French
- 60 Transit / Dodge
- 61 Swornville
- 62 Hopkins / Dodge
- 63 Getzville Plaza
- 64 Sweet Home / Skrineville
- 65 Campbell / Dodge
- 66 Dodge Strip
- 67 Sweet Home / North French
- 68 Campbell / North French
- 69 Crosspaths
- 70 Transit / Millersport

### Commercial and Mixed-Use Designations

<div style="display: flex; flex-direction: column; gap: 5px;"> <div style="display: flex; align-items: center;"><span style="width: 15px; height: 10px; background-color: red; margin-right: 5px;"></span> Suburban Center</div> <div style="display: flex; align-items: center;"><span style="width: 15px; height: 10px; background-color: pink; margin-right: 5px;"></span> Suburban Corridor</div> <div style="display: flex; align-items: center;"><span style="width: 15px; height: 10px; background-color: blue; margin-right: 5px;"></span> Traditional Areas</div> </div>	<div style="display: flex; flex-direction: column; gap: 5px;"> <div style="display: flex; align-items: center;"><span style="width: 15px; height: 10px; background-color: purple; margin-right: 5px;"></span> Village of Williamsville</div> <div style="display: flex; align-items: center;"><span style="width: 15px; height: 10px; background-color: grey; margin-right: 5px;"></span> University at Buffalo</div> </div>
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Changes in Designations

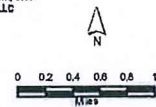
FIGURE 6-A

**SOURCE NOTES:**

Original Source Data Provided by the Town of Amherst Information Technology Department, URS Corporation and Wallace Roberts & Todd, LLC

Map Compiled by the Town of Amherst Planning Department

Date: June 2010





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**Exhibit 9 – Copies of 2020 School Tax Receipt  
and 2020 Town/County Tax Receipt**

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Collection: School 2020

Fiscal Year Start: 7/1/2020

Fiscal Year End: 6/30/2021

Warrant Date: 7/1/2020

Total Tax Due (minus penalties & interest) \$0.00

Entered	Posted	Total	Tax Amount	Penalty	Surcharge	Via	Type
10/15/2020	10/15/2020	\$126,715.68	\$126,715.68	\$0.00	\$0.00	Mail	Full Payment

Tax Bill #	SWIS	Tax Map #	Status
021820	142289	55.03-1-3.12	Payment Posted
Address		Municipality	School
100 Maple Rd		Town of Amherst	SWEET HOME

Owners	Property Information	Assessment Information
Rockgate Inns	<b>Roll Section:</b> 1	<b>Full Market Value:</b> 6153800.00
A Limited Partnership	<b>Property Class:</b> 414	<b>Total Assessed Value:</b> 5600000.00
Lawrence C Gates President	<b>Lot Size:</b> 3.93	<b>Uniform %:</b> 91.00
100 Maple Rd		
Williamsville, NY 14221-2922		

Description	Tax Levy	Percent Change	Taxable Value	Rate	Tax Amount
School Tax	49532205	2.9000	5600000.000	22.62780000	\$126,715.68

Total Taxes: \$126,715.68

**Mail Payments To:**

Francina J. Spoth  
 Amherst Town Clerk  
 5583 Main Street Williamsville, New York 14221 Phone (716) 631-7021

Collection: Town & County 2020

Fiscal Year Start: 1/1/2020

Fiscal Year End: 12/31/2020

Warrant Date: 1/2/2020

Total Tax Due (minus penalties & interest) \$0.00

Entered	Posted	Total	Tax Amount	Penalty	Surcharge	Via	Type
2/13/2020	2/13/2020	\$78,405.80	\$78,405.80	\$0.00	\$0.00		Full Payment - Bank Payment

Tax Bill #	SWIS	Tax Map #	Status
017978	142289	55.03-1-3.12	Payment Posted
Address		Municipality	School
100 Maple Rd		Town of Amherst	SWEET HOME

**Owners**

Rockgate Inns  
 A Limited Partnership  
 Lawrence C Gates President  
 100 Maple Rd  
 Williamsville, NY 14221-2922

**Property Information**

**Roll Section:** 1  
**Property Class:** 414  
**Lot Size:** 3.93

**Assessment Information**

**Full Market Value:** 5894700.00  
**Total Assessed Value:** 5600000.00  
**Uniform %:** 95.00

Description	Tax Levy	Percent Change	Taxable Value	Rate	Tax Amount
Library Tax	25409158	2.0000	5600000.000	0.41032500	\$2,297.82
County Service Tax	279863754	3.6000	5600000.000	4.71509000	\$26,404.50
General Town Tax	32071347	5.7000	5600000.000	2.93209700	\$16,419.74
Highway Tax	9583687	4.2000	5600000.000	0.94949700	\$5,317.18
Getzville FD 11	1561479	1.7000	5600000.000	0.73149700	\$4,096.38
Water Dist 15 C	1071124	-4.5000	171191.000 Units	0.00027300	\$46.74
Water Dist 15 C	1071124	-4.5000	5600000.000	0.02658800	\$148.89
Water Dist 15 C	1071124	-4.5000	560.000 Units	0.25370600	\$142.08
Cons Sewer A/CSSD	2656908	5.3000	560.000 Units	0.30000000	\$168.00
Sidewalk/Snow Merger	0	0.0000	560.000 Units	0.75000000	\$420.00
Cons Sewer A/CSSD	2656908	5.3000	5600000.000	0.23503000	\$1,316.17
Cons Sewer A/CSSD	0	0.0000	4949.000 Units	3.57753800	\$17,705.24
Pre Treat Surchg	0	0.0000	1000.000 Units	1.00000000	\$1,000.00
Cons Drain Dist/CDD	4866336	1.9000	111274.000 Units	0.01186700	\$1,320.49
Cons Drain Dist/CDD	4866336	1.9000	5600000.000	0.07043300	\$394.42
Cons Drain Dist/CDD	4866336	1.9000	5600000.000	0.12123400	\$678.91
Central Alarm	1024209	-6.1000	5600000.000	0.09450700	\$529.24

Total Taxes: \$78,405.80

Estimated State Aid - Type	Amount
County	182539939.00
Town	663000.00

**Mail Payments To:**

Francina J. Spoth

Amherst Town Clerk

5583 Main Street Williamsville, New York 14221 Phone (716) 631-7021