

SPECIAL MEETING AND PUBLIC HEARINGS  
SEPTEMBER 17, 2013

A Special Meeting of the Town Board of the Town of Somerset, County of Niagara and the State of New York was held at the Town Hall, 8700 Haight Road, Barker, New York on the 17<sup>th</sup> day of September 2013.

Present:	Daniel M. Engert -----	Supervisor
	Randall J. Wayner -----	Councilman
	Gary R. Alt -----	Councilman
	Robin R. Jansen -----	Councilman
	Jeffrey M. Dewart -----	Councilman
	Rebecca A. Connolly ----	Clerk
	Melvin H. Denny -----	Supt of Water/Sewer/Grounds
	Randy D. Roeseler -----	Engineer
	Morgan Jones Jr. -----	Counsel

Attended by: 12 people

Notice of said meeting was sent to the Lockport Union-Sun & Journal on September 5, 2013 with same notice being posted on the same date at the Town Hall and on the website.

Supervisor Engert called the meeting to order at 7:00PM with the Pledge to the Flag.

**PUBLIC HEARINGS**

**Hearing 1: Lakeshore Site Planned Unit Development Rezoning Proposed Local Law**

Notice of said hearing was sent to the Lockport Union-Sun & Journal on August 30, 2013 with same notice being posted on the same date at the Town Hall and on the website.

Supervisor Engert opened the hearing at 7:05PM.

Clerk Connolly read the notice of hearing. Clerk Connolly stated all neighbors were notified with no written comments being received to date.

Supervisor Engert stated there have been a series of meetings that have occurred throughout the past several months regarding the rezoning of the lakeshore site west of the power plant with all open to the public. He stated comments were welcomed at each of the committee meetings, at the Planning Board and at the Town Board. He asked Andrew Reilly, Wendel, to update the community.

Andrew Reilly gave a brief background, stating that this all started in 2012 after the Town Board adopted the Comprehensive Plan. He said the Board began to implement

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the plan and changes to the zoning code. The Town Board authorized the formation of a committee to look at one specific action of the plan, in particular this piece of property that was subject to past rezoning. He said the property is zoned PUD (Planned Unit Development) now and the Comprehensive Plan suggests it be rezoned to a new PUD. He said a PUD has to have a plan associated with it and the current PUD designation is for a data center. He said the Comprehensive Plan says to take a look at how other uses can be utilized on this property. He stated the Committee worked for 4 to 5 months and is making the recommendation for the rezoning.

Mr. Reilly provided a handout (Attached) that is a PUD Development Plan Summary. He said the PUD law requires you to submit information when you want an amendment to the PUD. He stated it is the same requirement for an amendment as it is for a new application. He stated the committee put together the application. He reviewed the handout stating it includes the following:

- Overall Development Plan
- Water/Sewer Implications
- Stormwater Management
- Grading Implications
- Development Impact on Wetlands and Floodplains
- Treatment of Open Spaces and Landscapes
- Transportation/Access
- Intent
- Sub-areas
- Permitted principal uses
  - Business Park Area
  - Public Uses Area
  - Waterfront Area
  - Open Space and Environmental Area
- Permitted Accessory Uses
- Prohibited Uses
- Dimensional Requirements
- Design Standards
- Definitions
- Map of PUD Zoning Plan

Mr. Reilly said the process has been followed completely as follows:

- Code Enforcement Officer reviewed the application and said it meets the general requirements of the Code and recommends approval
- Planning Board has reviewed the application and recommends approval
- Lead Agency has been declared under the SEQR (State Environmental Quality Review)
- All state and local agencies have been provided with the application

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- Appeared before the Niagara County Planning Board on September 16, 2013 and they recommended approval
- Early on in the process dealt with the Department of State (DOS) regarding the LWRP (Local Waterfront Revitalization Plan) that was adopted in June 2005. He said DOS was contacted to see if the LWRP needed to be updated to meet the goals of the Comprehensive Plan. He stated a letter was received from DOS stating that it (the LWRP) did not need to be updated and supports the actions of the Comprehensive Plan.

Mr. Reilly stated the Town Clerk has described the property in the reading of the hearing notice, the 30 day comment period is in effect, the hearing is being held to hear public comment and written comments will accepted. He said the SEQR comment period ends on September 27, 2013. Mr. Reilly stated he would clarify anything if needed.

Supervisor Engert stated written comments to the Town Board will be accepted until close of business on Friday, October 4, 2013.

Supervisor Engert introduced the Town Board and asked for public comment.

Dale Howard asked if the land is for sale.

Supervisor Engert said we are not the landowner and the Board does not wish to speak for the landowner.

Marcia Ray asked who the landowner is and is it power plant property. She said it is owned by the power plant. She asked if you (the Board) are satisfied with the zoning that you have worked diligently on.

Supervisor Engert stated we are reviewing this and it has been reviewed for the last five months. He said we are here to listen to the public's comments before the final decision is made.

Mrs. Ray asked for clarification of the diagrams and if it is going to be used for one parcel.

Mr. Reilly said it is all one piece of property with the idea that a portion is broken out for the historical society. He said the rest of the parcel could be used for one parcel or broken up into lots with a maximum of 7 or 8 parcels according to the code. He said the code says there are a minimum number of acres.

Mrs. Ray asked if there has to be approval by the Town Board of what (business) comes in here.

Mr. Reilly said yes there is approval. He stated once a developer comes in they have to submit a site plan and would be approved by the Planning Board.

Mrs. Ray asked if it is for commercial use only.

Mr. Reilly said commercial, light industrial use, agriculture, uses related to the historical society, water enhanced uses and uses along the highway, as outlined in the handout.

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Mrs. Ray asked if it would affect the value of our property.

Mr. Reilly said it is already zoned PUD. He said he cannot answer a question about the value of the property as that is controlled by the Town Assessor.

Dale Howard asked what a docking facility is.

Mr. Reilly said if someone bought the property and wanted to put in a docking facility they could. He said it is very difficult to get a permit, but the state requires water front enhanced uses.

Mr. Howard asked if it could be used for pleasure boats.

Mr. Reilly said it could be or it could be for someone to dock a boat to unload to the site.

June Hinton asked if the open space and environmental area is public accessible.

Mr. Reilly said the LWRP promotes that, but we cannot force it upon a private owner. He said the opportunity is being offered for that to happen and would be up to the private owner.

Ms. Hinton said the Town is not the owner of this property so it is related to the power plant. She asked if they are looking to sell separate lots for a business park type.

Mr. Reilly said presently they can sell to businesses that will have a data center. He said this will now have different parameters. He stated the Town is being pro-active saying how they (the power plant) can develop the site.

Ms. Hinton said the only interest the Town has is the potential tax base development and jobs.

Mr. Reilly said the Comprehensive Plan is on the Town's website where it talks about a balance of uses and this is good for that piece of property.

Ms. Hinton asked where the numbers came from for the 30' setback and 80' height.

Mr. Reilly said the committee looked at the different development options, looked at the existing code and tried to match things up. He said the requirements are similar to light industrial use and are specific for this site.

Ms. Hinton said a proposed plan is subject to Planning Board approval.

Mr. Reilly said correct and would have to meet all the permitting requirements from other regulatory agencies.

Ms. Hinton asked if there has been any interest at this time that has been put before the Board and aired that I am not aware of.

Mr. Reilly said not that I know of. He said the County is marketing the site and has a brochure for this site. He said I know of no specific users.

Supervisor Engert said no. He stated written comments will be accepted up to October 4, 2013.

With all persons desiring to be heard, Supervisor Engert closed the hearing at 7:28PM.

**Hearing 2: Yard, front; Yard, rear Proposed Local Law**

Notice of said hearing was sent to the Lockport Union-Sun & Journal on August 30, 2013 with the same notice being posted on the same date at the Town Hall and on the website.

Supervisor Engert opened the hearing at 7:30PM.

Clerk Connolly read notice of hearing.

Supervisor Engert said the definition of front yard/rear yard as it relates to the lakeshore district was never defined in the Code and at the Board's direction asked the Attorney to develop a definition.

Dale Howard stated he is for it.

Jon Hotaling stated he is for it and it clarifies issues that we (Planning Board) face on a monthly basis.

Dale Howard asked if this will affect any other codes.

Gary Few said he is for the proposal. He said it has become a problem when discussing where the front yard is and where the backyard is.

Jack White asked if it would affect buildings already in place.  
Attorney Jones stated they would be grandfathered in.

Supervisor Engert stated that we believe this does not change anything else in the Code.

With all persons desiring to be heard, Supervisor Engert closed the hearing at 7:35PM

**SPECIAL MEETING**

Supervisor Engert opened the meeting at 7:36PM.

RESOLUTION 112-2013

**SEQR DECLARATION FOR YARD PROPOSED LOCAL LAW**

On a motion of Councilman Wayner, seconded by Councilman Alt, the following resolution was

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart  
Nays 0

Resolved upon review of the proposed local law for Yard, front; Yard, rear, the Town of Somerset Town Board names itself Lead Agency and declares there will not be a negative impact on the environment.

RESOLUTION 113-2013

**YARD, FRONT; YARD, REAR - Local Law #5 – 2013**

On a motion of Councilman Jansen, seconded by Councilman Dewart, the following resolution was

ADOPTED	Supervisor Engert	Aye
	Councilman Wayner	Aye
	Councilman Alt	Aye
	Councilman Jansen	Aye
	Councilman Dewart	Aye

Resolved Local Law #5 – 2013 entitled Yard, front; Yard, rear is approved as follows:  
Be it enacted by the Town Board of the Town of Somerset as follows:

The Code of the Town of Somerset is hereby amended by adding a new Section to Chapter 205 entitled “Yard, front; Yard, rear” as follows:

§205-35.2 (new) Yard, front; Yard, rear

Notwithstanding the provisions of §205-8, regarding “Yard, front” and “Yard, rear”, for lots along the north side of the road and abut Lake Ontario the full width of that portion of the lot lying between the northerly line of the primary structure extended the full width of the lot and the edge of the high bank (or, if there is no bank, the mean high water line of Lake Ontario) shall be regarded as the front yard, and the full width of that portion of the lot lying between the southerly line of the primary structure extended the full width of the lot and the street line shall be regarded as the rear yard for purposes of determination of front yard and rear yard set-backs, and locations of accessory buildings.

This local law shall take effect immediately upon filing with the Secretary of State.

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PRIVILEGE OF THE FLOOR

Jon Hotaling stated that from 6 – 7AM vehicles are traveling on Lake Road in excess of 60 mph and in the afternoons the truck traffic on Quaker Road is unbelievable in volume and speed.

Supervisor Engert stated that he will pass this along to the Sheriff's office and potentially schedule some special patrols.

On a motion of Councilman Jansen, seconded by Councilman Wayner, the meeting adjourned at 7:40 P.M. subject to the Call of the Clerk. Carried unanimously.

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Rebecca A. Connolly, MMC  
Town Clerk

## **PUD Development Plan Summary**

### **Overall Development Plan**

The Project consists of an approximately 179 acre parcel to be developed as a Planned Unit Development Business Park which includes:

1. 10+/- acre site for the existing historical society/welcome center, which would be potentially subdivided and transferred to the Town;
2. 105+/- acre area for development of the Somerset Lakeshore Business Park, which would include buildings, parking, stormwater management, and associated facilities. This area also includes two sub-areas for special road frontage development;
3. 31+/- acre area for potential waterfront enhanced or dependent facilities;
4. 31+/- acre for open space and environmental preservation;
5. 2+/- acre area for the buffering of the historical/welcome center site.

Access to the Business Park is proposed via an access drive from Lake Road. Other means of egress can also potentially be added to the Power plant driveway and another access to Lake Road. A potential railroad siding may be constructed from the existing railroad spur located on the power plant site to this site.

It must be clearly understood that the lot configurations shown on the Development Plan are just shown for illustrative purposes. The size and configuration of the lots and roads/ access drives will be dictated by purchaser's requirements, the requirements of this PUD zoning, and site plan approval by the Town.

### **Water/ Sewer Implications**

The Niagara County Water District draws water from the Niagara River and provides potable water to the Town of Somerset from their treatment facilities in the Town of Wheatfield. The Town of Somerset owns and operates the water distribution system that would service the Site. There are water service connections to the Site from the adjacent Town of Newfane at Lake Road and at West Somerset Road. On the Lake Road frontage there is an existing 8-inch diameter waterline. It has an available static pressure of approximately 95 and a fireflow capacity of approximately 1,500 gpm at 20 psi residual pressure. There are also connections to the Site from the Town of Hartland at Quaker Road and Hartland Road.

As for sewer service, the Somerset Barker Wastewater Treatment Facility could service the Site and is designed to handle an average daily flow of 278,000 gpd of domestic-strength waste. It has an available capacity of approximately 125,000 to 160,000 gpd average daily flow. The ability of this capacity to accommodate future Projects can be better understood when flow discharges are known.

The adjacent Power plant Facility has a private sewer line for discharge of its waste to the Town's system. If that could be used, the Project would require a connection approximately 1,000 to 2,000 feet from the Site property line. If the power plant private line cannot be used, a pump and forcemain system could be constructed along Lake Road and discharge to an 8-inch diameter Town gravity collection sewer approximately 13,000 feet east of the Site.

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Another alternative for the development at this site would be the use of individual septic systems in accordance with Niagara County, NYSDEC (where appropriate), and NYS Health Department requirements.

### **Stormwater Management**

Stormwater management for the Site would comply with the requirements of the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001 or most recent version) ("Permit"). The Permit requires water quantity controls (detention), water quality treatment, and runoff reduction of stormwater runoff from the Site. However, since runoff from the Site flows directly to Lake Ontario which is considered a tidal water/5<sup>th</sup>-order or larger stream, quantity controls would not apply. Water quality treatment and runoff reduction would be addressed by the use of one or more standard and/or green infrastructure practices. Stormwater will ultimately be collected onsite and discharged to Lake Ontario.

The coastline of Lake Ontario falls within a Coastal Erosion Hazard Area. As such, a Coastal Erosion Management Permit from the NYSDEC would be required to disturb land within the hazard area. This permit would most likely be limited to installation of a new stormwater outlet. It is anticipated that any new outfall would be designed at an elevation higher than ordinary high water level and that permitting for the outlet would not be required from the US Army Corps of Engineers (ACOE), although permits may still be required from NYSDEC.

### **Grading Implications**

The topography of the site indicates a general slope from the south (Lake Road) to the north (Lake Ontario) with a steeper drop off at the Lake Ontario shoreline. Portions of the Site will require earthwork to construct access roads, utilities, parking areas, buildings and stormwater management practices for proposed development(s). Grading work at the site will not impact adjacent properties and it is anticipated that excess material will not need to be removed from the site. Excess topsoil and excavated material could be used to construct landscaped berms to help screen the development from the Historical Society public use area.

### **Development Impact on Wetlands and Floodplains**

There are no mapped State or Federal wetlands located on the Site. A wetlands delineation was conducted for a previously proposed development, which revealed wetlands in the wooded area of the site. The proposed plan illustrates this area as "open Space & Environmental area" and will not be disturbed. Any work proposed near this area would require an updated delineation.

There is a 100-year floodplain located along the immediate Lake Ontario shoreline. Most of this area would be avoided and preserved as is; with a majority of the area within the Open Space & Environmental Area. Any development in the one Waterfront Enhancement/Dependent area that would come close to the shoreline would require all required permitting.

### **Treatment of Open Spaces and Landscapes**

A 10+/- acre parcel could be subdivided from the 178 acre Site and potentially transferred to the Town for the historical society/welcome center. The open space/ cultural area that surrounds the historical society/welcome center would be preserved and continue to be used for agricultural and cultural exhibits.

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There is a large wooded area located at the northwest portion of the Site. The majority of this area, as well as the area along the lake shoreline that includes cliffs and floodplains, would also be avoided and preserved as open space (approximately 31 acres).

Landscaping would be provided near any entrances from Lake Road, around the stormwater management area, and within the parking and building sites. Open Space as illustrated on the Plan shows 18.5% of the site as being "preserved". Overall open space requirements for the site are 25%, therefore requiring development proposals to meet the remaining 6.5% (this can be easily accommodated in the individual site plans).

### **Transportation/ Access**

The site can be potentially serviced in several locations along Lake Road and also through the Upstate New York Power Producers main driveway. The PUD Plan illustrates a main entrance road (potential Town owned road shown with a 66 foot ROW) just east of the proposed 10 acre Babcock House site, and potential other access driveways to the power plant entrance road and to the far west frontage along Lake Road. Future proposed development could have layouts as shown on the Plan, combinations there-of or other options. These options will be determined based upon trip generation, the amount of land to be utilized, other users at the site, ability to tie into the adjoining power plant drive, future development, and emergency access issues, etc.

Any entrance road to the east of the Babcock house site would need to be located a minimum of 300 feet from the power plant entrance. Capacities of Lake Road are good, and sight distances will not be a problem for properly located and configured driveways/roads.

At this time, it is assumed that all driveways/ access roads will be private roadways servicing the site, but the Town would consider dedication of a road as shown on the development plan. The configuration and length of this road would be determined by the amount and layout of land to be sold. In approving future site plans, the Town, in conjunction with the property owner and any buyer would determine the best layout considering how future development would be affected.

For example, the PUD development Plan illustrates a potential easement from the end of the proposed road to the "lots" at the rear of the site. This would be needed if a buyer was only purchasing the "lot" as shown on this Plan, if they purchased the back properties too, this easement would not be necessary.

**TOWN OF SOMERSET**  
Lakeshore Site PUD

- A. Intent. The intent of the Lakeshore Site PUD is to provide for a planned district that will promote and encourage the economic development of business and light industrial uses in order to generate employment opportunities and strengthen the Town's tax base. It is also intended to protect important environmental features and maintain the character and integrity of surrounding land uses and the Somerset waterfront. Design guidelines included in this district are intended to encourage appropriate development, avoid unreasonable adverse impacts and encourage water-enhanced uses near the shoreline.
- B. Sub-Areas: The Lakeshore Site PUD shall be subdivided into distinct areas to promote the appropriate character of development within each sub-area. These areas are shown on the map of the district, and can generally be described as follows:
  - 1. Business Park Area: The main portion of the site is designated as the business park area. This area shall be intended for encouraging a variety of business, light industrial and similar economic uses. This area includes two road "frontage areas" along Lake Road.
  - 2. Public Uses Area: A roughly 10 acre portion of the site located on Lake Road and surrounding the existing Babcock House property is designated for public uses compatible with the continued use of that property as the Babcock Museum and Town of Somerset Welcome Center.
  - 3. Waterfront Area: The portion of the site situated along the Lake Ontario shoreline is designated as the Waterfront Area. Waterfront dependent or enhanced uses are encouraged within this portion of the site, although other types of uses can be allowed.
  - 4. Open Space and Environmental Area: The northwest portion of the site is characterized by wetlands, woods and other sensitive environmental features. This area, along with an area along an existing drainageway and a portion of the shoreline is intended to preserve and enhance open space and natural areas. It also includes 50 foot buffer areas along the western boundary of the site and the north and westerly line of the Public Use area. These areas also contribute to achieving the minimum 25% open space for the entire development required under the Town's enabling legislation for PUDs.

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C. Permitted principal uses. Any of the following uses are permitted in the Lakeshore Site PUD, by area:

1. Business Park Area:

- a. Light industrial.
- b. Assembly and/or treatment of articles or merchandise from previously prepared materials, provided no chemical process is involved and no noxious by-products result.
- c. Advanced Manufacturing entailing the assembly, fabrication or manufacturing of articles or merchandise utilizing innovative processes, technologies and/or methods.
- d. The processing and storage of merchandise, including but not limited to foods, cosmetics, pharmaceutical products and toiletries.
- e. Research and Development.
- f. Energy production and other energy-related uses, including manufacturing of energy related equipment and components.
- g. Data Centers.
- h. Professional services/ offices.
- i. Back office, call centers and similar business support uses.
- j. Business Incubator.
- k. Logistics.
- l. Tourism-related uses in frontage areas.
- m. Agriculture
- n. Agricultural-related uses, including but not limited to food processing, agricultural research, breweries, wineries.

2. Public Uses Area:

- a. Tourism-related uses.
- b. Museum/ visitor center.
- c. Public and governmental uses.
- d. Open space, landscaping.
- e. Agriculture.

3. Waterfront Area:

- a. Waterfront-dependent and/or waterfront enhanced uses.
- b. Light industrial.
- c. Assembly and/or treatment of articles or merchandise from previously prepared materials provided no chemical process is involved and no noxious by-products result.
- d. Advanced Manufacturing entailing the assembly, fabrication or manufacturing of articles or merchandise utilizing innovative processes, technologies and/or methods.
- e. The processing and storage of merchandise, including but not limited to foods, cosmetics, pharmaceutical products and toiletries.
- f. Energy production and other energy-related uses, including manufacturing of energy related equipment and components.
- g. Logistics.
- h. Tourism-related uses.
- i. Agriculture
- j. Agricultural-related uses, including but not limited to food processing, agricultural research, breweries, wineries.

4. Open Space and Environmental Area:

- a. Open space and resource protection.
- b. Landscaped areas.
- c. Wildlife habitats or corridors, including habitat enhancements.
- d. Stormwater facilities and utility/road crossings.

D. Permitted Accessory Uses. Accessory uses related and incidental to the primary uses are allowed. Such uses include, but are not limited to the following:

- 1. Storage.
- 2. Retail as accessory to the principal use. Retail sales shall be limited to goods or services primarily for the convenience of the employees of the permitted establishment and no more than one salesroom per establishment for the retail sale of samples and other products of the establishment.
- 3. Docking facility/ waterfront access as accessory to the principal use.

E. Prohibited Uses: The following uses shall be prohibited in the Lakeshore Site PUD:

1. Uses that produce earth jarring, vibration or noise beyond the structure within which the use is contained.
2. The storage, sale, distribution or use of hazardous materials or their by-products that present an unreasonable risk to adjacent property owners, as determined by the Town; or the storage of any material which would unreasonably increase the risk of fire hazard to adjoining buildings.
3. Any use or process which would cause the emission of noxious odors or gases beyond the building, constituting a nuisance to adjacent structures or potentially injurious to nearby occupants or property.
4. Activities which produce smoke, fly ash, dust, dirt, fumes or stack emissions that exceed state air quality regulations.
5. Fugitive dust. There shall not be discharged locally from any operation on any lot: fly ash, dust, dirt, smoke, vapor or gas that results in an unsightly condition or could result in damage to the public health, animals or vegetation or that exceeds the approved regulatory standards of state or federal permitting agencies.
6. Outdoor storage of junk, refuse, trash, secondhand materials or abandoned automobiles.
7. Gasoline stations, Motor services or other automotive uses, except as accessory uses associated with the primary use for use by tenant only.
8. Mining or clay mining.
9. Residential uses.

F. Dimensional Requirements.

1. Area: The minimum lot area shall be 20 acres, except within the areas designated as Frontage Area, where the minimum lot area shall be 5 acres, and the Waterfront Enhanced/ Dependent areas, where the minimum lot area shall be 10 acres.
2. Lot Width: Minimum of 200 feet
3. Setback: Minimum of 30 feet
4. Yards: As approved on individual site plans
5. Height: 80 feet
6. Building coverage: No limitation, as long as it meets any setback requirements and general planning practices.

G. Design Standards. All buildings and/or additions thereto shall be designed by a registered architect or licensed professional engineer. In addition, properties within the Frontage Area shall have the following additional design standards:

1. Materials. All buildings shall use high quality materials, such as concrete, masonry, steel, stone or glass. Use of crude siding materials such as unfinished concrete, unpainted cinder block or corrugated metal siding are not permitted in areas visible to the public from Lake Road.
2. Rooftop structures must be screened from Lake Road.
3. Storage: No outdoor storage areas shall be visible from Lake Road.
4. Mechanical systems, loading docks, outdoor storage and dumpsters shall be screened from public view from Lake Road with landscaping, fencing and/or other screening.

Definitions:

Light industrial: the manufacture and/or assembly of products from previously prepared materials, provided the activity occurs within an enclosed building and does not present a hazard to the community.

Research and Development: laboratory engaged in research, testing and experimental work, including any process normal to laboratory practice and technique.