

Guilderland turns down Burger King — for now

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GUILDERLAND — Burger King Corp. appeared to have matters going its way. It seemingly cleared all the obstacles in its bid to gain a special use permit from the town's Zoning Board of Appeals for another fast food restaurant on Western Avenue.

The state Department of Environmental Conservation gave its blessings after studying the site, opposite Fuller Road. The state Department of Transportation found no unsolvable problems with traffic in the area. The Albany County Planning Board issued its OK.

Matt Delahey, town planner, endorsed the project in a letter. Clough and Harbour Associates, which conducted an extensive traffic study, supported the plan.

And only two members of the seven-member zoning board voted against issuing the permit.

Still Burger King was denied.

Although the vote was 3-2 in favor of the restaurant 2½ miles down the road from one built 13 months ago, the applicant lost because town law states a majority vote of the board is necessary.

Two board members, Kaye Phillips and Marcia Perlee, were absent when the vote was taken Tuesday night, and Burger King didn't obtain the minimum four favorable votes.

"I still don't understand why I'm being turned down," said Stanley Ross, representing Burger King of Latham. "I don't really know what I'm going to do next. I'll have to speak with a lawyer."

The issue has become further in-

involved since the board, after a recess, voted to keep the matter open. Pending further study by the board's two attorneys, William Sheehan and Paul Wein, the issue could be brought up again at the board's next meeting March 17.

"I make a motion to give counsel more time to study this," said Bud Roberts, one of the board members who voted in favor of the application. "I think it's our responsibility to untangle this."

The board voted unanimously in favor of Roberts' motion and adjourned the meeting.

The assistant board chairman, Philip Galka, had attempted to withdraw his original motion after the 3-2 vote.

"I won't permit a vote to be taken on that," Richard Murray, board chairman, said on Galka's second motion. Murray was one of the two members who voted against the Burger King.

Ms. Phillips, who missed the meeting because of illness, had inquired earlier in the day about casting her vote via proxy. A favorable vote from her would give Burger King the permit.

Sheehan and Wein were not certain whether a member is allowed to vote by proxy, and if so, whether it is too late to do so.

Ms. Perlee was not in attendance Tuesday night because she was vacationing in Florida.

Murray and Tim Sheehan, the other member who cast a negative vote, both said the traffic issue was what turned them against the application. Despite reassurances by the Clough study and DOT, Murray and Sheehan were unconvinced.