

APPENDIX A
SEQRA Documentation

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MEMORANDUM

TO: Town of Thompson Planning Board - Addendum

FROM: Joel H. Sachs

RE: Discussion of Alternatives in Rock Hill Town Center DEIS

DATE: February 25, 2009

The DEIS for the Rock Hill Town Center was accepted for public comment on October 15, 2008. A public hearing on the DEIS was held on December 10, 2008. The deadline for receipt of public comments was December 31, 2008.

Based upon the above, Tim Miller Associates Inc. on behalf of RH Land Development is in the process of preparing an FEIS. In this regard, a question has been raised that in view of the fact that the developer is proposing to proceed with the "as of right" alternative as opposed to the proposed action described in the DEIS, whether this requires the reopening of the DEIS process? Or may the developer proceed to submit an FEIS to the Town Planning Board as Lead Agency and thereafter have the Planning Board approve the FEIS and adopt an Environmental Findings Statement pursuant to 6 NYCRR Part 617?

Insofar as an alternative analysis is concerned, this is the very heart of the SEQRA process. The DEIS is required to discuss alternatives to the proposed action. 617.9(b)(v)

Turning first to the Executive Summary of the DEIS in Section 1-1, the proposed action is described as a mixed use residential and commercial development that would have a total of 1,340 dwelling units and 480,000 square feet of commercial space. It is specifically mentioned in Section 1.1 that this proposal would require a zone change which would rezone the RR-1 portion of the property to the HC2 Zoning District.

Moreover, in discussing the proposed action, the two alternative means of handling sewage waste from the development are discussed in the Executive Summary, namely the

construction of an on-site wastewater treatment facility near Glen Wild Road or pumping the project wastewater to the Town of Thompson Rockhill Sewer District for treatment at the Emerald Green Sewage Treatment Plant (See p. 1-28). In addition to a detailed discussion of the two wastewater treatment alternatives, the Executive Summary discusses an As of Right Alternative action which is consistent with the present zoning regulations. The As of Right Alternative would include 1,670 dwelling units and only 60,000 square feet of convenience retail space. Benefits of the As of Right Alternative are set forth on pages 1-34 and 1-35 of the Executive Summary. In the scoping outline approved by the Planning Board in September 2006, the applicant was required to analyze the As of Right Alternative.

Turning to the body of the DEIS, Section 5.0 is entitled “Alternatives.”

In Section 5.2, commencing on page 5-4, there is a detailed description of the As of Right Alternative and a detailed discussion of the impacts of the As of Right alternative compared to the proposed action. The DEIS then proceeds to discuss the impact of the as of right alternative in the following categories:

- Geology soils and topography
- Surface water resources
- Ecology and wetlands
- Land use and zoning
- Transportation
- Visual resources
- Historic and archeological resources
- Community facilities and utilities
- Fiscal impacts
- Construction related noise
- Air impacts

Thereafter, in Section 5-3 of the DEIS, the alternative of disposing project wastewater into the Rockhill Sewer District and to the Emerald Green Sewage Treatment Plant is also discussed in depth.

From the above, it is clear that the discussion of the As of Right Alternative as well as a discussion of the two alternatives for handling the sewage from the project satisfy the “hard look standard” of SEQRA. In order to satisfy the hard look standard, the DEIS and thereafter the Lead Agency must: (1) identify the areas of legitimate environmental concern; (2) take a hard look at the impacts of the various alternatives; and (3) make a reasoned elaboration for the alternative chosen as the proposed action. *Webster Associates v. Town of Webster*, 59 N.Y.2d 220, 464 N.Y.S.2d 431 (1983); *Town of Dryden, et al. v. Tompkins County Board of Representatives*, 78 N.Y.2d 331, 574 N.Y.S.2d 930 (1991).

In applying the three prong test set forth above, the courts do not substitute their judgment for that of the Lead Agency, but rather ensure that the Lead Agency acted rationally and not arbitrary and capriciously. *Village of Poquott v. Cahill* 11 A.D.3d 536, 782 N.Y.S.2d 823 (2d Dep’t 2004); *McCarthy v. Town of Smithtown* 19 A.D.3d 695, 797 N.Y.S.2d 555 (2d Dep’t 2005); *Jaffee v. RCI Corp.* 119 A.D.2d 854, 500 N.Y.S.2d 427 (3d Dep’t 1986). See also *WEOK Broadcasting Corp. v. Planning Board of the Town of Lloyd*, 79 N.Y.2d 373, 583 N.Y.S.2d 170 (1992).

The leading case in New York State which discusses the “hard look” standard is *Aldrich v. Patterson*, 107 A.D.2d 258, 486 N.Y.S.2d 23 (2d Dep’t 1985). In *Aldrich*, the Court indicated that the hard look standard “does not authorize the Court to conduct a detailed de novo analysis of every environmental impact of, or alternative to, a proposed project which is included in, or omitted from, an FEIS”. In *South Bronx Clean Air Coalition v. New York State Department of Transportation*, 218 A.D.2d 520, 630 N.Y.S.2d 73 (1st Dep’t 1995) the Court indicated that it may not substitute its judgment for the Lead Agency simply because the Lead Agency chose one alternative over the other one.

Turning to the alternative uses themselves, different uses for the same land sought to be developed are properly discussed in the alternative section of the DEIS. *Horn v. International Business Machines Corp.* 110 A.D.2d 87, 493 N.Y.S.2d 184 (2d Dep’t 1985). The SEQRA regulations indicate that an EIS is not required to contain an exhaustive level of detail. With respect to the discussion of alternatives, the Part 617 regulations specifically provide that “the description and evaluation of each alternative should be at a level of sufficient detail to permit a comparative assessment of the alternatives discussed.” 6 NYCRR Part 617.9(b)(5)(v). See *Committee to Preserve Character of Skaneateles v. Major* 187 A.D.2d 940, 591 N.Y.S.2d 649 (4th Dep’t 1992). The degree of detail to which each alternative must be discussed may vary with the nature and circumstances of the development proposal. *Argyle Conservation League v. Town of Argyle* 223 A.D.2d 796, 636 N.Y.S.2d 150 (3rd Dep’t 1996); *Town of Dryden v. Tompkins County Board*, 78 N.Y.2d 331, 574 N.Y.S.2d 930 (1991). Agencies have a wide latitude in evaluating environmental effects and choosing between alternative measures. *Jackson v. New York State Urban Development Corp.*, 67 N.Y.2d 400, 503 N.Y.S.2d 298 (1986).

Based upon the above, it is clear that the discussion of the As of Right Alternative and the two sewage treatment alternatives clearly satisfy the “hard look standard” of SEQRA and contain

a level of detail of discussion of the various alternatives so as to fulfill the mandate of SEQRA. Such mandate states that agencies “shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects”. See N.Y. E.C.L. Section 8-0109(1) (McKinney’s 2008).

In addition, it should be noted that during the public hearing on the DEIS which occurred on December 10, 2008, the transcript specifically contains statements concerning the alternative means of dealing with sewage from the project site (pp. 11, 12 and 38) as well as the As-of-Right Alternative (pp. 14 and 15).

Further, there will be a more extended discussion of the As-of-Right Alternative included in the FEIS, which detailed discussion taken together with the detailed discussion of the as-of-right alternative in the DEIS more than satisfies the “hard look” requirement under SEQRA.

On February 20, 2009, and as a result of a meeting among Paula Kay, Richard McGoey, and Robert Geneslaw on behalf of the Town of Thompson Planning Board, and Steven Proyect, Steve Lopez and Joel Sachs on behalf of the applicant, it was agreed that the SEQRA process for the Rock Hill Town Center should proceed as follows:

- A. At the February 25, 2009 meeting of the Planning Board, the applicant will give a SEQRA status report. In addition, the applicant will prepare a summary sheet setting forth a description of the As of Right Alternate and briefly comment on its environmental impacts compared to the original proposed action.
- B. Thereafter, the applicant will proceed to prepare the final Environmental Impact Statement (“FEIS”). This document in addition to containing written responses to the public comments received during the public comment period, will contain a separate section describing in greater detail the As of Right Alternative and its environmental impacts.
- C. After the FEIS is submitted to the Planning Board, the Planning Board will hold a public hearing on the FEIS, prior to accepting the document.
- D. Subsequent to the public hearing on the FEIS, the applicant will make such changes to the FEIS as directed by the Planning Board and prior to the time that the Planning Board accepts the FEIS.
- E. Planning Board completes the SEQRA process by accepting the FEIS and thereafter issuing an Environmental Findings Statement.

F. Planning Board continues with its review of the substantive land use applications heretofore submitted to the Planning Board by the applicant.

On behalf of RH Land Development , thank you for your consideration.

