



ENVIRONMENTAL, LAND USE AND REAL ESTATE LAW

Via email only to: david@gordonsvenson.com

Friday, April 07, 2023

David K. Gordon, Esq.
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42 Catherine Street
Poughkeepsie, NY 12601

Re: *Dutchess Shepherd LLC Petition for Zoning Amendment*

Dear David:

Thank you for your letter dated February 24, 2023, which responded to my letter of January 9, 2023. Below please find some further discussion on the content of our exchange, and some follow-up questions.

1. Request for “Interested Agency” status.

Assuming that all of the documents available under the Freedom of Information Law [FOIL] (including correspondence and communications from the Applicant) will be posted promptly on a dedicated page on the Village web site, I consider my request satisfied. Thank you.

2. Scope of impacts to be considered in making a determination of significance.

Thank you too for your response that confirms that the Village Board will consider the full the scope of impacts under the State Environmental Quality Review Act [SEQRA] prior to making its SEQRA determination of significance.

On this point, I do wish to say something briefly in rebuttal to an assertion made in Victoria Polidoro’s letter to the Village Board, dated January 31, 2023, about the consideration of the beneficial aspects of a proposed action.

While Ms. Polidoro is correct that one of the overall goals of SEQRA is to ensure that “a suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making process,” she is incorrect in asserting that such balancing is supposed to take place during the process of considering a Negative Declaration as a determination of significance.

The *SEQR Handbook*, published by the New York State Department of Environmental Conservation [NYSDEC], makes clear that, if a Negative Declaration is to be the lead agency’s determination of significance, the lead agency cannot lawfully issue a Negative Declaration by

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balancing the project benefits against its adverse impacts. It says flatly:

Can you balance benefits against adverse impacts to make a negative declaration?

No. A negative declaration cannot balance whether the beneficial aspects of a proposed action will outweigh its adverse impacts. Rather, the determination of significance for an action must consider whether the proposal has any probable significant adverse environmental impacts.¹

Thus, to be clear, project benefits cannot be used as a means of creating an equation whereby the identified significant adverse impacts of a proposed project are offset by the project's benefits. A Negative Declaration is a determination that the proposed project will not cause any significant adverse environmental impacts. A project either does or it does not. Project benefits do not come into the process of issuing a Negative Declaration.

This is an important point because of the importance of a lead agency's determination of significance. The *SEQR Handbook* says that "[a] determination of significance is the most critical step in the SEQR process."² In making that important determination, it is crucial for the Village Board to apply the correct standard.

3. Follow-up questions.

I have several follow-up questions, as set forth below:

- 3.1. Your letter to me dated February 24, 2023 is the most recent document posted on the Village web page. I saw that "6 Mulberry Street" was an item on the March 16 Village Board agenda, but there were no documents associated with that item. May I safely assume that there has been no communication between the Applicant and the Village Board since February 24, 2023?
- 3.2. Does the Village Board plan to request that the Applicant address the insufficiencies in the application materials that were pointed out by our planning consultant, Nan Stolzenburg of Community Planning & Environmental Associates, in her letter to the Village Board dated October 3, 2022, and in particular the insufficiencies in the Full Environmental Assessment Form [FEAF] Part 1?
- 3.3. Can you tell me if the Village Board has made any progress toward their SEQRA determination of significance? Our clients would like an opportunity to be heard before the Board makes its determination of significance, but we want to be speaking to the latest iteration of application materials. Please advise as to the present status of the determination of significance and the anticipated timetable.

¹ NYSDEC, *SEQR Handbook*, 4th Ed., Ch. 4 Determining Significance, at p. 88.

² *Id.*, at p. 76.

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- 3.4. Finally, can you confirm that the scope of the Board's SEQRA review of this proposed Zoning Law amendment will not only include the amendment of the Zoning Law and the proposed alterations of the building and use of the Bulkeley School, but also the proposed five lot subdivision.

Thank you for your ongoing assistance, and courtesy and consideration.

Very truly yours,


John F. Lyons

c via email: Mayor Gary Bassett
Ms. Martina McClinton, Village Clerk
Victoria Polidoro, Esq.