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ALLISON SLOTO
DIRECT DIAL: 646.378.7270
ASLOTO@SPRLAW.COM

July 13, 2020

VIA EMAIL

Chairman Dale Phillips
and Members of the Planning Board
Putnam Valley Town Hall
265 Oscawana Lake Road
Putnam Valley, NY 10579

Re: Putnam Valley Fire Station & Volunteer Ambulance Corp.,
Oscawana Lake Road, TM: 72.20-1-7.12 & 72.20-1-7.11,
File Nos.: 2019-0196, 2019-0204

Dear Chairman Phillips and Members of the Planning Board,

On behalf of the Putnam Valley Volunteer Fire Department (“PVVFD”) we provide this response to comments made at the public hearing on June 22, 2020 and a comment letter received on July 10, 2020, which try to divine future PVVFD operational costs and expenses and then tie them to the proposed project site plan. Respectfully, these comments are being made in the wrong forum and in the wrong context.

The law empowers Town Board with jurisdiction over the PVVFD budget. This power is not delegated to the Planning Board, which has only the power of site plan review over the proposed fire station. The N.Y. Town Law essentially limits the Planning Board’s site plan review authority to ensuring the project conforms with the Zoning Code and does not adversely impact surrounding properties. Site plan review does not contemplate operational expenditures associated now or in the future with the proposed development.

The Planning Board’s role as SEQRA Lead Agency does not change this. By its own terms, “SEQRA does not change the existing jurisdiction of agencies nor the jurisdiction between or among State and local agencies.” (6 NYCRR 617.3(b).) SEQRA therefore does not expand the Planning Board’s substantive jurisdiction to include PVVFD budget review. SEQRA identifies most budgetary approvals as Type II actions. Even when the Town Board is approving the budget, therefore, the act of setting aside money for PVVFD is outside of SEQRA’s scope. Whether PVVFD may seek or receive future funds for new fire station “operational costs” or equipment, it is not doing so now and, in any case, would need to seek such budget from the Town Board—not the Planning Board. And, because PVVFD’s future operational expenses are presently uncertain, SEQRA’s “rule of reason” makes improper at this stage any speculation over future PVVFD budget requests.

Background

The Putnam Valley Volunteer Fire Department is seeking site plan approval for its proposed new fire station building on a lot owned by PVVFD, adjacent to the existing Putnam Valley Ambulance Corps. The Planning Board has considered the concept of a new fire station since at least 2010, when PVVFD made a site plan application that it subsequently abandoned.

PVVFD submitted the present site plan application to the Planning Board almost exactly one year ago on July 31, 2019. In connection with this application, PVVFD appeared before the Planning Board at meetings on August 19, 2019, September 23, 2019, October 7, 2019, October 21, 2019, November 4, 2019, December 16, 2019, February 10, 2020, February 24, 2020, and June 22, 2020.¹ The Planning Board circulated its SEQRA lead agency declaration in Fall 2019, and SEQRA review has remained pending since that time. On behalf of PVVFD, Tim Miller Associates prepared and submitted a fiscal analysis (submitted January 20, 2020 and again on March 23, 2020) addressing the minor tax impacts to taxpayers: the projected net increase for the new fire station would be \$17.42 per person per year. The Town Board—which does have jurisdiction to consider budgetary items—endorsed this analysis as sound by letter on June 11, 2020. The June 22, 2020 meeting was the opening of the public hearing for the application, and the Board elected to hold open the public hearing until its next meeting on July 13, 2020.

Additionally, PVVFD appeared before the Zoning Board of Appeals for variance requests relating to the site plan approval on November 21, 2019, December 5, 2019, and January 30, 2020. The ZBA closed the public hearing at the January 30, 2020 meeting, and PVVFD issued a letter to the ZBA granting an extension of time for the ZBA to make its decision to assure compliance with SEQRA.² PVVFD cannot appear before the ZBA again until the Planning Board makes its SEQRA determination of significance, because the ZBA is not permitted to issue its decision on the variance requests until either a negative declaration or DEIS has been prepared.

Recent Comments

At the June 22, 2020 Planning Board meeting, Planning Board Member Tom Carano made a series of remarks questioning the future operational costs of the new fire station building and speculating that PVVFD would purchase new fire trucks and equipment because of its proposed facility. Notwithstanding the dozen Planning Board and ZBA appearances on the site plan application, the public record does not contain any support for Board Member Carrano's remarks, and he did not identify any justification for them.

¹ No public hearings we held March through mid-June 2020 due to Coronavirus, and the June 22, 2020 meeting was held via Zoom.

² Normally once a public hearing is closed, the board has 62 days to render a final determination on the application. However, SEQRA tolls this requirement because no agency is permitted to issue a final determination until either a negative declaration or DEIS (in the event of a positive declaration) is issued by the lead agency.

Further, a comment letter was received July 10, 2020 from a local resident, Patty Villanova, regarding the fiscal implications of the fire house and Town Board oversight of funds. The comments are addressed to the Town Board, as budgeting agency (see below analysis). The only substantive comment addressed to the Planning Board is a request for PVVFD to submit detailed plans for the development, which PVVFD provided at the very beginning of the site plan review process. PVVFD has retained a team of skilled professionals who have answered all the Planning Board and its consultants' questions with additional detailed submissions throughout the site plan review and SEQRA process.

Analysis

I. Budgetary Concerns Are Outside the Scope of Planning Board's Site Plan Review

The Town Board's budget-setting process and future choices of the PVVFD to expend funds on necessary equipment are outside the scope of the Planning Board's site plan review. The State has delegated certain authority to towns through the N.Y. Town Law, and the Town Board is the primary, legislative entity of the Town that receives the bulk of this authority. In turn, the Town Board may delegate this authority to other boards, so long as the delegation is permitted by the State. This includes site plan review and approval authority, which the Town Board is permitted to confer on a Planning Board pursuant to N.Y. Town Law § 271(1). The Planning Board must in turn carry out its duties in accordance with N.Y. Town Law § 274-a, which governs site plan review.³

N.Y. Town Law § 274-a(2) requires that “[s]ite plans...show the arrangement, layout and design of the proposed use of the land on said plan... The required site plan elements...may include, where appropriate, those related to parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the town board in such zoning ordinance or local law.” These elements do not include future operational costs or expenses; rather, site plan review is limited to approval over the layout of the site.⁴ Future operational expenses or costs of new equipment are Town budgetary issues. Neither N.Y. Town Law § 274-a nor the Town of Putnam Valley Code confer the power to the Planning Board to review the Town budget or future potential PVVFD expenditures/capital improvements as part of site plan review for the current proposed fire station.

In fact, pursuant to N.Y. Town Law § 64(1), authority over the Town budget is expressly granted to the Town Board and there is no provision for delegation to the Planning Board. The Town Board is the entity with “general management and control of the finances of the town,” and thus retains jurisdiction over financial decisions impacting the Town. Therefore, any Planning Board

³ Note that the Planning Board also has authority, delegated by N.Y. Town Law and the Town Board, over special use permits and subdivision, but neither are at issue here.

⁴ The Town Board, as the legislative entity, enacts and amends the Zoning Code. The Zoning Board of Appeals, as a quasi-judicial agency, adjudicates issues of variances from that approval. If the proposed site plan is not in conformance with the Zoning Code and/or variance(s) are not obtained, then the Planning Board has no power to approve a site plan application.

speculation regarding the Town's budget for future PVVFD-related expenditures is well outside the scope of site plan review.

II. Future PVVFD Operational Expenses, Equipment Purchases, and Other Speculative Concerns Lie Outside the Scope of SEQRA Review

A. Town Board Budgeting for Existing PVVFD Programs, Capital Projects and Equipment Expenditures Are Not Subject To SEQRA Review

As an initial matter, the Planning Board's role as Lead Agency for the SEQRA review of the PVVFD's site plan application does not expand the substantive jurisdiction of the Planning Board. The SEQRA regulations plainly state that "SEQR does not change the existing jurisdiction of agencies nor the jurisdiction between or among State and local agencies." (6 NYCRR 617.3(b).) And as already discussed, the Town Law vests only the Town Board with budgetary jurisdiction over the PVVFD's current and future operational costs and expenses. Consequently, the Planning Board's SEQRA review of fiscal impacts here extends only to considering the tax impacts of the project as proposed. Tim Miller Associated prepared and submitted a fiscal analysis addressing these impacts and confirming they would be minor in nature; \$17.42 per resident, per year, due to the new fire station. This fiscal analysis was reviewed and pronounced sound by the Town Board.

According to the SEQRA Handbook, future equipment upgrades and other potential PVVFD expenditures are not subject to SEQRA review unless such will require PVVFD or the Town to "acquire, construct, alter, remove, or dispose of land or structures intended for public purposes."⁵ The "[i]nclusion of capital improvements within a municipal budget is not an action subject to SEQR. The budgeting process merely sets aside funds without a commitment to their expenditure. Such budget items are usually not definitive enough with respect to design, and sometimes even location, to be reviewable at the time the budget is adopted."⁶ The SEQRA Handbook also states: "Providing funding for an existing agency to allow it to conduct current programs," is a Type II action exempt from SEQRA. Only "beginning a new program" is subject to SEQRA.⁷ Moreover, the SEQRA manual specifies that the "[p]urchase (or sale) of new or replacement...equipment...such as vehicles" is considered a Type II action."⁸

In short, SEQRA does not apply even when the appropriate agency—the Town Board—budgets funds for PVVFD, or when PVVFD purchases equipment. Certainly, then, the Planning Board does not have the authority to examine these matters as Lead Agency for SEQRA review of the PVVFD fire station site plan.

⁵ NYS Dept. of Environmental Conservation, SEQR Handbook (2020) (hereinafter "SEQR Handbook") pg. 180.

⁶ SEQR Handbook pg. 181. *See also* 6 N.Y.C.R.R. § 617.5(c)(27) ("conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action").

⁷ SEQR Handbook, pg. 37. 6 N.Y.C.R.R. § 617.5(c)(26) ("617.5(c)(26) ("routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment").

⁸ *Id.*

B. “Rule of Reason” – Speculative Impacts Are Outside the Scope of SEQRA

SEQRA review is subject to the “rule of reason.” Even if PVVFD were to engage in some future activities that would be subject to SEQRA review, PVVFD has no present plans to do so and any comments made to that effect are speculative at best.

A lead agency’s substantive obligations under SEQRA are tempered by a reasonableness standard.⁹ In addressing review of potential environmental impacts, “the courts have limited the consideration of impacts to reasonably related potential impacts. The court decisions have also stated that not every conceivable impact needs to be considered—speculative impacts may be ignored.”¹⁰ This includes the agency’s review of Part 3 of the EAF; “If a potential impact is too speculative, it should not be addressed. The agency’s responsibility is to deal with impacts that are reasonably foreseeable.”¹¹ Further, the Court of Appeals has held that comments made during the SEQR process based on pure speculation or opinion do not meet the “rule of reason” test:

To permit SEQRA determinations to be based on no more than generalized, speculative comments and opinions of local residents and other agencies, would authorize agencies conducting SEQRA reviews to exercise unbridled discretion in making their determinations and would not fulfill SEQRA's mandate that a balance be struck between social and economic goals and concerns about the environment. Nor could it be said that such a determination accords with ‘a rule of reason.’ As one commentator has noted, ‘decision makers must not be given the freedom to either ignore or disregard the information that the environmental review process was designed to elicit if the process is to have any meaning.’”¹²

PVVFD has presented a site plan application and expanded EAF discussing the proposed new fire station, including its projected water and wastewater needs. Purchase of new equipment is not part of the proposal, and PVVFD has no current plans to do so.¹³ Attempting to force PVVFD to project into the future every potential purchase or budgetary expenditure, many of which are not even subject to SEQRA review (see Part I(A)), violates the well-established “rule of reason.” SEQR review of the site plan application is therefore limited to taking a “hard look” at the potential significant adverse environmental impacts that could *reasonably* be generated by the current proposal.

⁹ Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d 400, 417, 494 N.E.2d 429, 436 (1986); Akpan v. Koch, 75 N.Y.2d 561, 570, 554 N.E.2d 53, 57 (1990); Eadie v. Town Bd. of Town of N. Greenbush, 7 N.Y.3d 306, 318, 854 N.E.2d 464, 470 (2006) [internal citations omitted].

¹⁰ SEQR Handbook pg. 5.

¹¹ *Id.*

¹² WEOK Broad. Corp. v. Planning Bd. of Town of Lloyd, 79 N.Y.2d 373, 384–85, 592 N.E.2d 778, 784 (1992).

¹³ Aside from the future purchase of any equipment, the “ladder truck” referenced by Tom Carano at the June 22, 2020 meeting is purely speculative in nature because the local roads are too narrow to support this type of large truck. Thus, PVVFD has no plans to ever purchase this type of vehicle because it is ill-suited to the local area.

Conclusion

In sum, the comments presented that pertain to the propriety of Town Board budgeting for this project, or for any future expenditures of the PVVFD, are properly addressed to the Town Board. This Board is without jurisdiction pursuant to either its site plan review, or SEQRA authority, to consider these items. If you have any questions or comments, please feel free to reach out to me.

Sincerely,



Allison Sloto

cc: Larry Cobb
Ed McCarthy
Bruce Barber
Tod Atkinson, P.E.
Robert Lusardi, Esq.