

New York State
Department of Environmental Conservation
Commissioner's Determination
of Lead Agency
Under Article 8 of the
Environmental Conservation Law

PROJECT: Request for Designation of Lead Agency, Proposed
510 Acre Land Annexation, from the Town of Monroe to
the Village of Kiryas Joel

DISPUTING AGENCIES: Town Board of the Town of Monroe, Orange
County, New York v. the Board of Trustees of
the Village of Kiryas Joel, Orange County,
New York

I have been asked to designate a lead agency under the New York State Environmental Quality Review Act ("SEQR"; codified in Article 8 of the Environmental Conservation Law [ECL] with implementing regulations at Part 617 of Title 6 of the Official, Compilation of Codes, Rules and Regulations of the State of New York ["6 NYCRR Part 617"]) to conduct the environmental review of the proposed annexation of 510 acres¹ from the Town of Monroe, to the Village of Kiryas Joel, both located in Orange County.

The designation of the Board of Trustees of the Village of Kiryas Joel (Village Board) as lead agency for this review is based on my finding that the Village Board has the broadest governmental powers for investigation of the impact(s) of the proposed actions and hence greater capacity to review impacts of development that may be a consequence of annexation.

ACTION AND SITE

The action involves a petition to the Village of Kiryas Joel (Village) by landowners in the Town of Monroe (Town) to annex 510 acres of land to the Village from the Town under Article 17 of the General Municipal Law.

The property to be annexed consists of 177 tax lot parcels in the Town of Monroe, scattered over approximately seven clusters (parcel groups), more than half of which appear to be unimproved. Overall, the parcels consist of 507 acres, including

¹ This is an approximate amount of land.

33 acres of land in rural residence and 12 acres covered by roads, buildings and other paved or impervious surfaces, with the remaining 462 acres containing forested and agricultural lands, water features and wetlands. Forested lands (409 acres) are the dominate cover type of the proposed annexation parcels.²

Although the petition for this action has not identified any planned development specifically related to the proposed annexation, the Village's lead agency dispute papers, dated February 7, 2014, discuss - in a general manner - potential development of the lands to be annexed.

REGULATORY SETTING

The role of lead agency may only be assumed by an involved agency with authority to make discretionary decisions on one or more components of the overall plan.

The determination of public interest pursuant to General Municipal Law (GML) §711, which a municipality must make prior to granting or denying an annexation petition, is a discretionary approval subject to SEQR (*City Council of City of Watervliet v. Town Board of Town of Colonie*, 3 N.Y.3d 508 [2004]).³ The Village Board and the Town Board of the Town of Monroe (Town Board) must each separately review and grant or deny this annexation petition. They are, therefore, each involved agencies and both have stated their interest in serving as lead agency.

I have also received requests to designate as lead agency the Department of Environmental Conservation, the Monroe - Woodbury Central School District and Orange County. Based on all information received for this annexation proposal none of these agencies fulfill the definition of an involved agency (6 NYCRR Part 617.2[s]) and therefore would not qualify to be a lead agency in this case. In addition, I received many letters of

² The 507 acre total, which was provided in the Full Environmental Assessment Form, Part 1, does not equal the 510 acres identified in the original lead agency dispute correspondence.

³ As stated by the Court of Appeals in that case, "[a]nnexations are often the first step toward the development of real property and may involve a change in municipal services or land use regulation. A principal goal of SEQRA is "to incorporate environmental considerations into the decision making process at the earliest opportunity"[citations omitted].*Id.* at 518."

concern requesting that I not select the Town Board or Village Board to serve in the role of lead agency based on the possible motivations of each municipal body. In past lead agency disputes involving annexations, the Commissioner has indicated that a municipality's possible motivation is not relevant to resolution of the dispute (see, e.g., *Commissioner's lead agency decision in Town Board of the Town of North Greenbush v. Common Council of the City of Rensselaer, September 25, 2008*, and *Commissioner's lead agency decision in Town of Queensbury v. City of Glens Falls, April 14, 1997*).⁴

Further, ECL Article 8 and its implementing regulations compel the result here inasmuch as they define the lead agency as the agency with principal responsibility for carrying out or approving an action. In the case of direct actions, this usually means the agency undertaking the action (see ECL §8-111[6] and 6 NYCRR §617.2[u]). Both the Town Board and the Village Board are responsible for approving the annexation.⁵

DISCUSSION

In resolving a lead agency dispute, I am guided by the three criteria listed in order of importance in 6 NYCRR Part 617.6(b)(5)(v):

- whether the anticipated impacts of the action being considered are primarily of statewide, regional, or local significance (i.e., if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will be lead agency);
- which agency has the broadest governmental powers for investigation of the impacts of the proposed action; and
- which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

A. First Criterion

⁴ Commissioner lead agency decisions are published by the Department on its website at <http://www.dec.ny.gov/permits/6186.html>.

⁵ I understand the concern that a lead agency may not be able to objectively review its own project. However, SEQOR provides that the lead agency should be the one that is principally responsible for carrying out the action. The willingness of the courts to scrutinize agencies' compliance with SEQOR and to overturn actions where compliance with the law is found wanting serve as safeguards to the process along with the public disclosure aspects of SEQOR (see Gerard, Ruzow and Weinberg, *Environmental Impact Review in New York*, §3.03[1] [LexisNexis 2011]).

The first criterion asks whether potential impacts from the proposed action are primarily of statewide, regional, or local significance. Both disputing agencies acknowledge that the annexation proposal would likely cause impacts of only local significance. Local environmental impacts will likely consist of, among other things, increases and changes to traffic patterns, dust, noise, and a demand for sewer and water conveyance.

Based on the Village's Comprehensive Plan (Comprehensive Plan for the Village of Kiryas Joel, December 1999), if the annexation is approved, it is anticipated that environmental impacts that may occur to the properties will be from high density build out. Compact, high density development is more likely to result in a community that is more walk-able, bike-able and more conducive to mass transit while reducing vehicle miles traveled and generation of greenhouse gas emissions from combustion. As a general rule, high density development, appropriately sited, is considered more environmentally sustainable and conserves open space.

The Town of Monroe's Comprehensive Plan (2008 Town of Monroe Master Plan - Comprehensive Update 2005, adopted May 19, 2008) proposes large lot development due primarily to limited on-site water and the lack of public water and sewer. At one time, large lot zoning was considered the way to protect land and preserve the existing character of the community. In many cases, large lot zoning does not preserve the rural character of a community. Further subdivision of land dissects open space and results in clearing of land for lawns while displacing other uses of land that are dependent on open space such as farming, forestry or even recreation.

Given the above, I find the first criterion favors neither agency since the impacts are primarily local. However, I recognize that the Village of Kiryas Joel's comprehensive plan would, if followed, result in a more environmentally sustainable plan for development.

B. Second Criterion

The second criterion considers which agency has the broadest governmental powers for investigation of the impact(s) of the proposed actions.

Both the Town Board and the Village Board have the authority to approve or deny the annexation petition. If the annexation is approved by the Town and Village, the Village will have potential land use jurisdiction of future development of the annexed parcels of land through one or more of its boards and officers (Board of Trustees, Planning Board, Zoning Board of Appeals and Building Department). The Village Board has stated its intention to provide public water to the proposed annexed properties. Agreements are already in place for the Village to provide water to two developments within the proposed annexation (the developments of Vintage Vista and Forest Edge). The Town has an adopted zoning law, site plan review authority and subdivision regulations.

As discussed briefly in criterion number one, both municipalities have comprehensive plans in place which describe their goals and objectives for future growth and development.

The Village's Comprehensive Plan discusses the Village's growth rate and anticipated future population. The Village is very dependent on walking and mass transit as a major mode of transportation, with the existing road system basically consisting of local and collector streets.

The Town Comprehensive Plan identifies the unincorporated Town of Monroe as primarily "... a bedroom community, located in an attractive wooded setting in the New York metropolitan commuter-shed" (commuter shed is the southern end of the county and on the NYS Route 17 "Quickway"). The Plan identifies traffic congestion as a major growing regional problem. The Plan also looks at the relationships between land use and sewer or septic use and water consumption and proposes to continue its past zoning for large lot development.

Both the Town's and Village's comprehensive plans recognize the constraints imposed by water and sewer needs. A striking difference between the two plans is how each community chooses to address these constraints.

Public water supply that might be available to the proposed annexed properties, as it currently stands, is operated by and serves the Village. The Village's Comprehensive Plan anticipates adding lands to the territory of the Village and the Village Board plans to provide public water to the proposed annexed properties if annexation is approved. The Town supervisor, on the other hand, has stated that there are no

existing plans to provide water or wastewater services for any future development, although, as mentioned above, the Village is already providing public water to two developments that are the subject of the annexation petition.

The ability to provide public water and sewer is important to the analysis under this criterion because the municipality whose territory contains the property after the petition is decided will possess land use authority to regulate subsequent development or changes on the proposed annexed parcels of land.

Thus, if annexation is not approved, the Town will maintain its land use authority and control over the lands that are the subject of the annexation petition. Land use decisions will continue to be guided by the Comprehensive Plan and land use regulations that implement the plan. It is expected that the lands will remain as described in the Comprehensive Plan "... a bedroom community, located in an attractive wooded setting in the New York metropolitan commuter-shed". It is likely, however, that development will continue to occur in this area and the Village will be called upon to provide water and possibly waste water services, as it is currently doing. Thus, the Village is likely to have a role in future land use of the parcels involved even if annexation does not occur.

If annexation is approved, land use jurisdiction over the annexed parcels of land would fall to the Village. Land use decisions will be guided by the Village's comprehensive Plan and implementing land use regulations. Development will be more dependent on walking and mass transit as a major mode of transportation, with the existing road system basically consisting of local and collector streets.

I conclude that the second criterion favors the Village Board being selected to serve as lead agency for this review. This is based on the fact that the Village has an incrementally greater breadth of authority as the provider of water and sewer services and will continue to have a role in land use decisions effecting properties that are the subject of the annexation petition whether or not the annexation is approved (see *Commissioner's lead agency decision in Town Board of the Town of North Greenbush, supra*). At the same time, both agencies have a similar breadth of jurisdiction as it relates to the annexation decision and zoning.

C. Third Criterion

The third criterion asks which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

Both parties to this dispute have argued that they possess the capability to conduct a SEQR review on large and potentially complicated projects. The Village Board has organized a team of consultants to assist it with the SEQR review for this annexation. Nonetheless, either party has a similar ability to acquire consultants to assist in an environmental review.

I find, therefore, that this criterion favors neither the Village Board nor the Town Board to serve in the role of lead agency.

FINDING


After considering the relevant criteria under 6 NYCRR Part 617.6(b)(5)(v), I conclude that the Village Board should be designated lead agency for the environmental review of the proposed annexation because the Village Board has the broadest governmental powers for investigation of the impacts of the proposed actions whether annexation occurs or not.

My decision does not change or diminish the jurisdiction of the Town Board in its role as an involved agency. Impacts identified by the Town Board must be considered during the review of this project. Substantive issues raised by interested parties, including the school districts, during this lead agency decision process should also be incorporated into the review of this project. As I pointed out above, where such impacts are fiscal, they would more likely be considered under the GML §711 public interest standard than be considerations in determining the environmental significance of the action under SEQR.

I remind the Village Board of the commitment made in its February 7, 2014 correspondence, which I was pleased to see, to implement an "enhanced" and transparent coordinated review. This review is to include, along with the expected procedures under SEQR, the additional procedures of conducting a public scoping session, the establishment of a publicly accessible internet website to make documents available electronically and the intention to conduct a public SEQR hearing on a Draft Generic Environmental Impact Statement.

The record developed during the environmental review must support the decisions of each involved agency. Accordingly, I encourage the Town Board and all interested parties including the school districts to actively participate in all phases of the environmental review of this proposal. I further encourage the Village Board to openly facilitate that participation.

Dated: 1/28/2015
Albany, New York



Joseph B. Martens, Commissioner

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