

STATE OF NEW YORK
SUPREME COURT COUNTY OF CORTLAND

VICTOR LAMOUREUX, on behalf of FRIENDS FOR
RESPONSIBLE VESTAL ZONING, an unincorporated
association,

Petitioner,

- against -

TOWN OF VESTAL TOWN BOARD;
LCD ACQUISITIONS, LLC; and BHL VENTURES, LLC,

Respondents.

**AFFIDAVIT
MADELEINE COTTS**

Index No.: EF21-358

I, Madeleine Cotts, being duly sworn deposes and says:

1. I am the Chairwoman of the Planning Board for the Town of Vestal, Vestal New York. I have been a member of the Planning Board since 2002 as an alternate, 2013 as a full member, and have served in the capacity of chairwoman since 2020. I am fully familiar with the facts and circumstances alleged herein.

2. I make this affidavit in support of the Motion for Reargument and Reconsideration by Petitioners in this Action as I believe certain facts uniquely within the control of Town representatives have not been presented to the Court. As Town Planning Board member and chair, I have experienced these facts firsthand.

3. On or about November 12, 2022, I became aware of the Decision and Order in this matter and that the Town Attorney and the Town Supervisor represented to the Court that the Town Code demonstrates that the Town Board reserved the power of site plan review in the PDD to itself. This is inconsistent with the past practices of the Planning Board and the positions taken by the Town Attorney and the Town Supervisor.

4. The Planning Board has been responsible for site plan approval on the University Plaza (Metroplex) Housing PDD in 2013 as well as the Vestal Park Rehabilitation and Nursing Center PDD on Route 26 ("Nursing Home PDD") in 2013.

5. Town Board minutes from February 2013 regarding the Nursing Home PDD confirm the Planning Board's integral role in site plan approval. Specifically, the following comments reflected in the minutes by the Town Supervisor and Town Attorney are inconsistent with the position taken in this litigation regarding the Planning Board's authority to conduct site plan review for the Student Housing Project on Bunn Hill:

"Supervisor Schaffer stated that the Town Board only votes on the zoning change. Notifications about the rezoning were sent out as was required by law. A public hearing was held. The sanitary and storm sewers have been checked. The Board believes that it has adequately addressed all of the issues that it has control of. The remaining issues will be addressed by the Planning Board and the site plan review process."

"Town Attorney David Berger explained that other development consistent with that zoning classification would be permissible. However, in a Planned Development District (PDD), any new use would need to be approved by the Town Board and be subject to a site plan review by the Planning Board."

6. I became aware of the relevancy of these facts when I heard about the decision. It appeared to me based on my experience with the Planning Board that the Town Board is overstepping the bounds of the Planning Board in conducting Site Plan review as I and the rest of the Planning Board fully anticipated the return of the Project for Site Plan review in accordance with Town Zoning Code and the past practices on the prior PDDs.

7. I have never received any explanation from the Town Supervisor or the Town Attorney for the change in practice. I am unaware of any change in the Zoning Code requiring a change in practice. I was never contacted by the Town Attorney on this question.

8. It appears this change in practice was because of the Planning Board previously denying site plan approval on the Project and expressing the lack of suitability for this Project as configured at this location in the Town of Vestal.

9. It is my understanding as the Chair of the Planning Board that it is the Planning Board's role on all projects of this size and scope, including PDD's, to conduct site plan review and approve or deny the Project moving forward in accordance with our role under the Zoning Code. It has never in my experience been the role of the Town Board to conduct site plan approval under the Zoning Code or the PDD provisions of the Code.

Dated: Vestal, New York
December 7, 2022


Madeleine Cotts

Sworn before me this 7 day
of December, 2022.


Notary Public

Karen L. Swartwood
Notary Public, State of New York
No. 01SW6154291
Residing in Broome County
Commission Expires October 23, 2026

CERTIFICATE OF WORD COUNT LIMIT

The undersigned attorney hereby certifies:

The Affidavit filed herein complies with the word count limitations pursuant to rule 202.8-b(c) of the Uniform Civil Rules for the Supreme Court and County Court as amended by the Administrative Order 27-20 effective February 1, 2021. According to the word processing system used in this office this document, exclusive of the sections excluded by Rule 202.8-b(b) contains 824 words.

Dated: December 12, 2022
Albany, NY



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and Friends for Responsible Vestal Zoning*
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