

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CORTLAND

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

Index No. EF22-260

Petitioner,

AFFIDAVIT IN
OPPOSITION AND
RETURN

-against-

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

Respondents.

STATE OF NEW YORK)
)SS.:
COUNTY OF BROOME)

W. John Schaffer duly sworn deposes and states:

1. I am the Town Supervisor of the Town Board of the Town of Vestal and make this affidavit in opposition to the petition filed herein. I am fully familiar with all the facts and circumstances set forth herein. Attached hereto are Exhibits 1-51 and constitute the Board Respondents' return.

2. On or about March 15th, 2022, the LLC Respondents/ applicants herein requested that the Town Board hear the project again to correct procedural errors identified by the Court, for establishment of a Planned Development District as permitted under Town of Vestal Code section 24-531 (See Exhibit 1 submitted herewith). This section provided that the Planning Board had discretion to review the application and "approve, approve with stated conditions or disapprove an application for a zoning amendment and shall file a written report of its decision with Town Board." Of course, any rezoning can only be done by the Town Board, and therefore the Planning Board's involvement is merely advisory by operation of law. In this case, as the application was essentially identical to the previous one, no further Planning



Board advice was sought, as it would not have been useful, as the members of the Planning Board had not changed since their initial look at the project. The only changes to the application were updates to the wetland mitigation process and minor updates to EAF Part 1 as follows:

- (a) That the applicant needed to join the joint water and sewer districts and naming the districts.
- (b) That the applicant needed to join the Binghamton Johnson City Sewage District.
- (c) That the County has a comprehensive plan
- (d) That broke out onsite versus offsite areas of disturbance
- (e) That clarified forest versus woods
- (f) Noted that hunting would not be allowed
- (g) Reduced hours of construction
- (h) That heavy equipment (versus vehicles) would be used for construction
- (i) Tree and brush removal on the eastern edge of the project.

Items (a) through (i) above were considered by the Town Board to be merely ministerial in nature and did not contain any new or different information and did not involve any discretionary decision making or merit any further discussion.

3. The Town Board then took notice of and adopted the analysis and proceedings that the Board had extensively reviewed on the previous application made by the LLC respondents, including all of the Respondent's application and accompanying material, and accepted the role of Lead Agency under SEQR.¹
(See Exhibit 48).

4. In that role, The Board reviewed voluminous information and documentation related to the project, as is fully contained in the Record.

¹ The composition of the Town Board changed on January 1, 2022 when Stephen Donnelly was seated. in place of John Fletcher. Councilman Donnelly voluntarily recused himself from voting on this application as he was not present for the prior proceedings.

5. Significantly, Petitioner's herein presented no documents, information, or expert reports and relied solely upon general comments about the inappropriateness of the project at its proposed location and other general complaints about safety.

6. On or about April 27th, 2022 the Town Board held its third official public hearing on the proposed project. (see ex. 49) Approximately 25 people spoke regarding their view on the project; mostly in the negative. It should be noted however, that the Town of Vestal has a population of 28,043; thus the argument that there was widespread dissatisfaction in the Town about the project is not reflected in the number of negative responses. The Town Board received numerous emails and letters both in support and in opposition to the project. The vast majority of these were form letters generated by both sides.

7. The Town Board was fully aware and apprised of the activities of the Town Planning Board through its meeting minutes and employees, including their July and August 2021 actions regarding this project. In addition, Petitioner's attorney reminded the Town Board of the Planning Board's actions at the April 2022 public hearing.

8. During the April 2022 meeting the Town Board carefully examined the application materials and answered questions 1-18 on part 2 and 3 of the SEQR application for a second time. Only minor changes were made to the SEQR and the Board did not feel any of them required further discussion, for example.

- a. noise levels during construction
- b. additional tree removal along the east side
- c. recategorization of woodland from Forested to Other: Woods
- d. prohibition of hunting

None of the above were considered to be significant enough to merit further discussion about these items. It has been brought to my attention that I inadvertently checked

“unlisted” instead of “Type 1” on the SEQR form, which was the appropriate designation and under which the Board conducted its review.

9. The Town Board then took additional time to again review all the information and consider the comments received.

10. On April 27, 2022, the Town Board voted unanimously to accept the written findings and evaluation of significance prepared by the Town Board and Local Law A (See Exhibits 50 and 51).

11. All told, the Town Board took well over 6 hours and discussed it at length on April 27th, and took public comments (both on Zoom and through email) over 3 years, and carefully reviewed the SEQR issues and their potential impacts. The Board then made their negative declaration under SEQR and passed Local Law 1 of 2022 unanimously. The Town Board determined that the applicant had satisfactorily addressed the Board’s concerns regarding this project, leading to the approval. While the Petitioners were ardent in their opposition, none of their concerns rose to a level of anything more than general objections to the perils of large-scale development and spot zoning, nor did they present any countervailing evidence, experts or studies for our consideration.

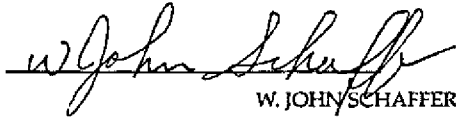
12. Petitioner’s allegation that the Board failed to take a “hard look” at the potential environmental issues is belied by the record in this case, to wit:

a) At the April 2022 meeting, the Board went through the revised EAF and did not identify any new areas as having potentially moderate to large impacts.

b) At the Board Meetings of March 24, 2021, April 14th, 2021 and April 28th, 2021 the Board went through the 129 subparts of Part 2 and identified 6 that merited

further review, which was done (See Exhibits 23, pages 67 and 68 and Exhibit 27, pages 11, 13, 15, 18, 20, 22, 30, 31-38, 39 43, 44).

13. The Board’s obligation under SEQRA as lead agency was to identify the relevant areas of environmental concern, take a hard look at those areas of concern and set forth its determination of significance in a written form containing a reasoned elaboration. (See Exhibit 49). I am advised and believe that not every environmental impact must be identified and the degree of detail with which each factor must be discussed will vary, with the circumstances and nature of each proposal. Given that framework, it is submitted that the Board respondents fulfilled their obligation under SEQRA and their passage of Local Law 1 of 2022 was proper in all respects.


W. JOHN SCHAFFER

Sworn to before me this, 2nd day of August, 2022



Notary Public

SUSAN M BAILEY
Notary Public - State of New York
No. 01BA6405217
Qualified In Broome County
Commission Expires 03/02/2024