

**JAMES G. SWEENEY, P.C.**

ATTORNEY AT LAW  
ONE HARRIMAN SQUARE  
P.O. BOX 806  
GOSHEN, NEW YORK 10924  
(ADMITTED IN PENNSYLVANIA)  
E-MAIL: [mrjgs@aol.com](mailto:mrjgs@aol.com)

(845) 291-1100

FAX (845) 294-3994

August 3, 2012

*via FedEx*

David Wylock and Valerie LaRobardier, Co-Chairs  
and Members of the Planning Board  
Town of Dover  
126 East Duncan Hill Rd.  
Dover Plains, NY 12522

**Re: Dover Village Plaza Expansion -  
"SEQRA Scope Analysis"**

Dear Chairpersons Wylock and LaRobardier and Members of the Planning Board:

As you know from prior correspondence and appearances this office represents the interest of the owners of the Freshtown Supermarket and the Dover Plains Shopping Center with respect to the Planning Board's ongoing review of the above referenced project.

I am in receipt of the "SEQRA Scope Analysis" for the project first dated July 7, 2012, revised and adopted by the Board on July 16, 2012. This document purports to be an aid for the Board's preparation of Part 3 to the EAF for the project. Upon analysis it is anything but.

This document is a comprehensive scoping document normally prepared for the preparation of a full Draft Environmental Impact Statement ("DEIS"). It is not limited to the impacts set out in Part 2 of the Environmental Assessment Form ("EAF") that are identified as "potentially large".<sup>1</sup> It goes far beyond that and the purpose of a Part 3.

Viewed as a scope for a full DEIS - which it is - but which is purported only to be a lead up to the Board's preparation of Part 3 of the EAF, it appears to be a procedure designed to eliminate, among other things, the comments of the public and their experts from a review, discussion and interchange of the materials that will be produced by the applicant as a result of this comprehensive scope. Of course, public comment is at the heart of the normal DEIS

---

<sup>1</sup>See instructions on the Model EAF for the use of a Part 3.

(Continued)

Town of Dover Planning Board  
 August 3, 2012  
 Page 2

process.<sup>2</sup> It also appears to be designed to allow the Board to make a negative determination of environmental significance (a "neg dec") by affording it "cover" for it to do so without the full and continuing public participation necessary under the SEQRA process.

This, "SEQRA Scope Analysis" is a clear indication - really an admission by the Board - that the project will have numerous environmental impacts that "may" significantly affect the environment thus crossing SEQRA's very low threshold for the preparation of a full DEIS and, with it, public comment. In addition, the zoning law of Dover implies a positive declaration for a Type 1 project of this size.<sup>3</sup>

It is as if the Board has already determined environmental significance but is attempting to avoid a positive declaration and the accompanying procedurally necessary public review and comment by using this improper Part 3 approach and, as well, to reach a negative declaration by proclaiming that it took a "hard look" at all those potentially damning impacts.

In light of the comments contained in my position letter of September 29, 2011 and the public comments received at the hearing of June 18, 2012, almost all of which are reflected in this document, the Board should make a positive determination of significance as called for by SEQRA.<sup>4</sup> Along with that determination scoping with public input should be had in advance of the actual preparation of a full DEIS together with all the opportunities for public comment that go with that preparation. The scope for that document should include a requirement for an alternatives study regarding economic impacts and, very importantly, a requirement for soil samples (core sampling) from the site to address the well documented spoilation of wetlands on that site set out in my September 29, 2011 comment letter.<sup>5</sup>

---

<sup>2</sup>See discussions and authorities set out in Gerard, Ruzow and Weinberg, *Environmental Impact Review in New York* §3.09[2].

<sup>3</sup>Zoning Law §§145-62[D] and 145-66[E].

<sup>4</sup>Indeed, it should have done so long ago. In general, SEQRA requires the Board to have made its determination of significance within 20 days of the establishment of a lead agency which, I believe, was finalized on September 19, 2011. 6 NYCRR §617.6(b)(3)(ii). Further, SEQRA requires all of its requirements be "expedite[d] in the interest of a "prompt review". 6 NYCRR §617.3(h). It has been almost a year since the lead agency was established. Even under the most generous view of the requirement those mandates have not been followed. It should be noted that recently an application for a minor expansion of the Crystal House facility (a very unpopular project) immediately received a positive declaration under SEQRA. The potential significant impacts of the Dover Village expansion are many orders of magnitude greater.

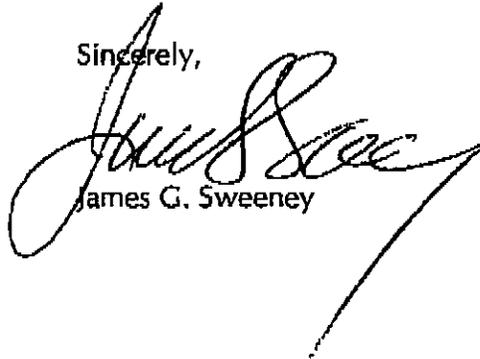
<sup>5</sup>The "scope" for the Part 3 contains neither. These are extremely important reports that are necessary in the Board's "hard look" process.

Town of Dover Planning Board  
August 3, 2012  
Page 3

To sum up: the process the Board is now pursuing is improper under the SEQRA process and appears to be designed to cut out meaningful comment by the public and their experts and to avoid the necessary elements of a full DEIS for a project that the Board has virtually admitted "may" have numerous impacts that will significantly effect the environment. It should correct its course of action and do what SEQRA requires.

Please make this letter part of the Board's file for this project.

Sincerely,



James G. Sweeney

JGS/aa

cc:

Town Board Members  
Victoria L. Polidoro, Esq., Planning Board Attorney  
Joseph Berger, P.E., L.S. Town Engineer  
Ashley Ley, AICP, Town Planner  
Richard Rennia, Jr., P.E., Rennia Engineering Design