To commence the statutory time period for appeals as of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp _x___ Dec _____ Seq No. _1_ Type __mandamus__

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

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In the Matter of the Application of

HAMPSHIRE RECREATION, LLC.

Index No. 2767/2019

Petitioner,

For mandamus pursuant to Article 78 of the CPLR

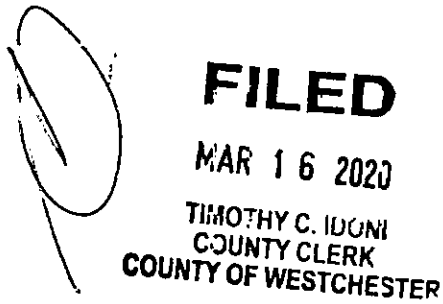
DECISION AND ORDER

-against-

THE VILLAGE OF MAMARONECK THE VILLAGE OF MAMARONECK PLANNING BOARD,

Respondents.

---X



The following papers numbered 1 to 5 were read on this petition:

Papers	Numbered
Order to Show Cause, Petition and Exhibits	1
Memorandum of Law	2
Affirmation and Exhibits in Opposition	3
Reply Affirmation and Exhibits	4
Reply Memorandum of Law	5

Petitioner is a developer seeking to develop a parcel of its property in the Village of Mamaroneck. For many years, and through other lawsuits, the parties have been litigating in front of this Court. The Court thus presumes that all parties are

familiar with the facts. With this petition, petitioner seeks a writ of mandamus (1) directing respondent Planning Board to file a Final Environmental Impact Statement ("FEIS") on petitioner's project within three business days from the date of service of Notice of Entry of the Court's Order; and (2) directing the Planning Board to issue its written findings statement within 30 days of filing the FEIS.

The applicable statutory provision in this matter is SEQRA, the State Environmental Quality Review Act, 6 NYCRR § 617.9. This provision provides, in relevant part, that "the lead agency must prepare or cause to be prepared, and must file a final EIS, within 45 calendar days after the close of any hearing or within 60 calendar days after the filing of the draft EIS, whichever occurs later. . . (ii) The last date for preparation and filing of the final EIS may be extended under the following circumstances: (a) if it is determined that additional time is necessary to prepare the statement adequately."

Petitioner filed its first proposed FEIS in October 2018,[1] after hundreds of comments on the Draft Environmental Impact Statement ("DEIS"); four revisions of the DEIS; and two public hearings on the DEIS. Once petitioner filed the proposed FEIS, respondent's consultant gave petitioner extensive comments, with over 200 requests for information. Petitioner responded to this,

[1]Respondent does not contradict this timeline.

and submitted a second proposed FEIS in April 2018. Multiple work sessions followed. Petitioner contends that it addressed every question and issued raised by respondent as quickly as it could.

In August 2019, petitioner demanded that respondent deem the FEIS complete at the September 11, 2019 meeting. Respondent did not do so, however. In November 2019, respondent gave petitioner a fifth version of the proposed FEIS. According to petitioner, respondent also stated that it wanted to hold another public comment period on the proposal[2] before moving to finalize it. Frustrated by what petitioner perceives as respondent's recalcitrance, petitioner commenced this proceeding.

Subsequently, at the December 3, 2019 work session, the Planning Board formally resolved that "additional time is necessary to prepare the statement adequately." This was the first time that respondent had invoked this provision. Respondent contends that it is "working actively to address all of the significant environmental issues presented by Hampshire's application and that it has been doing so since Hampshire submitted its initial proposed FEIS." Respondent asserts that this Court "has no authority to interfere in the ongoing administrative process under SEQRA," because respondent has been

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[2]There is no provision in SEQRA for another public comment period after the DEIS public comment period has closed.

continuously putting the proposed FEIS on its agenda, and spending considerable time on it "since Hampshire submitted it."

"The remedy of mandamus is available to compel a governmental entity or officer to perform a ministerial duty, but does not lie to compel an act which involves an exercise of judgment or discretion." *Margolis v. New York State Dep't of Motor Vehicles*, 170 A.D.3d 843, 845, 95 N.Y.S.3d 129, 132 (2d Dept. 2019). In this instance, respondent asserts that it is working diligently to resolve all of the issues that its consultant (and the public, according to petitioner) has raised. In contrast, petitioner argues that respondent is merely dragging things out, manufacturing issues or finding new issues to delay the filing of the FEIS. The Court of Appeals has explained that "the courts in this limited adjudicative function [of mandamus] must assure that the agency has identified the relevant areas of environmental concern, taken a 'hard look' at them, and made a reasoned elaboration of the basis for its determination. An agency's responsibility under SEQRA must be viewed in light of a 'rule of reason'; **not every conceivable environmental impact, mitigating measure or alternative, need be addressed in order to meet the agency's responsibility.** The degree of detail – the reasonableness of an agency's action – will depend largely on the circumstances surrounding the proposed action." *Neville v. Koch*,

79 N.Y.2d 416, 424-25, 583 N.Y.S.2d 802, 806 (1992) (Emphasis added)

A slew of cases cited by petitioner - and pointedly ignored by respondent - indicate that the Court should issue mandamus relief. *See, e.g., Mamaroneck Beach & Yacht Club, Inc. v. Fraioli*, 24 A.D.3d 669, 671, 805 N.Y.S.2d 303, 305 (2d Dept. 2005) ("The Planning Board's failure to act pursuant to the applicable local code provision . . . requiring it to 'review the site development plan and act on the application within forty-five (45) days from and after the time of submission of the preliminary plan,' as well as provisions of SEQRA and the regulations promulgated thereunder (*see* 6 NYCRR 617.6[b][3][i], 617.6[b][3][ii]) warranted mandamus relief."); *Costco Wholesale Corp. v. Town Bd. of Town of Oyster Bay*, 90 A.D.3d 657, 658-59, 934 N.Y.S.2d 430, 432 (2d Dept. 2011) ("Town's failure to act pursuant to the applicable local code provision . . . as well as the applicable SEQRA provision (*see* 6 NYCRR 617.9[a][5]) requiring it to 'prepare or cause to be prepared and file a final EIS, within 45 calendar days after the close of any hearing or within 60 calendar days after the filing of the draft EIS, whichever occurs later,' warranted mandamus relief "); *Aldrich v. Pattison*, 107 A.D.2d 258, 266, 485 N.Y.S.2d 23, 29 (2d Dept. 1985) ("an environmental impact statement should be clearly written in a concise manner capable of being read and understood

by the public, should deal with specific significant environmental impacts which can be reasonably anticipated and should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts (*see also* 6 NYCRR 617.4[c]). . . . We reiterate that the rule is one of reasonableness and balance. . . . This rule is reflected in the regulations which explain that an environmental impact statement should assemble relevant and material facts upon which the decision is to be made, should identify the essential issues to be decided, should evaluate all reasonable alternatives and, on the basis of these, should make recommendations in a manner which is 'analytical and **not encyclopedic**.'"). (Emphasis added).

Having read the papers, and reviewed the facts, the Court finds that, at best, respondent is, in fact, attempting to be "encyclopedic" in its review of the proposed FEIS. However, the Court of Appeals made it quite clear that "not every conceivable environmental impact, mitigating measure or alternative" must be addressed before accepting the FEIS. The Court accordingly grants the petition. It orders the Planning Board to deem the FEIS complete within 20 days from the date of receipt of Notice of Entry of this Decision and Order, and directs the Planning Board to issue its findings within 30 days of filing the FEIS,

pursuant to 6 NYCRR § 617.11(b).

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
March 13, 2020

HON. LINDA S. JAMIESON
Justice of the Supreme Court

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