

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

37 MAPLE AVENUE LLC.,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice  
Law and Rules,

-against-

THE TOWN OF NORTH CASTLE, THE TOWN BOARD  
OF THE TOWN OF NORTH CASTLE, THE PLANNING  
BOARD FO THE TOWN OF NORTH CASTLE, THE  
LANDMARKS PRESERVATION COMMITTEE OF THE  
TOWN OF NORTH CASTLE, AZ RESERVOIR, LLC.,  
POUGHKEEPSIE DEVELOPMENT LLC, EZ RENTALS I,  
LLC., ANTARES ARMONK SQUARE, LLC.,

Respondents.

Index No.: 16495/11

**MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION**

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Petitioner, 37 Maple LLC (“Petitioner”), by and through its attorneys, Harris Beach PLLC, respectfully submits this Memorandum of Law in support of its Petition for Judgment pursuant to N.Y. CPLR Article 78.<sup>1</sup>

### PRELIMINARY STATEMENT

The political leaders of the Town of North Castle (the “Town”), in their haste to rush the development of a supermarket to replace one that was closing in the downtown, improperly “fast-tracked” the environmental review mandated by the New York State Environmental Quality Review Act (“SEQRA”) of the Supermarket Plan. In doing so, the Town Board, Town Planning Board, and Town Landmarks Committee ignored the requirement that they take a “*hard-look*” at the potential adverse environmental impacts that such a project would have on the community and accepted almost all of the developer’s self serving conclusions with regard to the project’s impacts on the environment and surrounding community. Information provided to each Board or Committee four (4) years earlier for a proposed smaller sized project on different property was improperly accepted by and relied on by the Town Board with minimal up-dating, while involved state agencies previously consulted, were left out of the process. Based on the actions of the Town Board, Planning Board, and Landmarks Committee, it is clear that the requisite “*hard-look*” mandated by SEQRA was not taken. Indeed, the Town Board barely considered the environmental impacts associated with the Supermarket Plan and their review can more aptly be described as a “wink” rather than a “*hard-look*”.

*First*, the “negative declaration” issued by the Town Board on August 17, 2011 (hereinafter the “Supermarket Negative Declaration”) was based on four (4) year old stale data that was prepared for a substantially smaller and less-intrusive development plan. In relying on

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<sup>1</sup> Terms not otherwise defined herein shall have the same meaning as set forth in the accompanying Verified Petition.

this stale data, the Town Board, as lead agency under SEQRA, failed to engage in an updated environmental analysis and failed in its obligation as the lead agency under SEQRA to take the requisite “*hard-look*” at the potential adverse environmental impacts of the Supermarket Plan as mandated under the law. By way of illustration, the Town Board did *not* obtain any comments from the New York State Department of Environmental Conservation (“NYSDEC”) regarding the impact to the on-going remediation of the Property, a delineated State Superfund Site. Indeed, the Town Board’s SEQRA review failed to analyze the Supermarket Plan’s impact on the drinking water supply being monitored by NYSDEC incredibly relying on four (4) year old data which did not even include environmental impacts on the Lot 4, which property was not part of the original development plan.

Moreover, the Town Board also failed to notify the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”) regarding the impact to the Town’s Historic District and failed to adequately study and mitigate these impacts. Ironically, the Town Board did receive a letter from OPRHP in 2007, four (4) years earlier, with respect to the previously approved development on a *portion* of the Property where OPRHP indicated it was *against* the development proposal because of the proposal’s adverse impacts to the Historic District. This time around, the Town Board did not even bother to notify OPRHP of the substantially different (larger) and more intense Supermarket Plan.

The Town Board’s decision to simply cut out two (2) state agencies from the process and make a determination as to the environmental impact of the Supermarket Plan without their input and without any meaningful analysis was arbitrary and capricious. Moreover, the Town Board did not analyze traffic impacts, parking impacts, noise impacts and/or odor impacts on Petitioner’s property which is directly contiguous to the Property.

The Town Board was also arbitrary and capricious when it issued the Applicant a “special-use” permit without considering the impacts related to, among other things, traffic, historic preservation, community character, and groundwater impacts.

*Second*, the Town Board adoption of three (3) amendments to the Town Zoning Code constitutes illegal “spot” zoning and was arbitrary, capricious and contrary to law.

*Third*, the Planning Board simply ignored the comments raised by the Landmarks Committee and it did not even attempt to address concerns related to traffic, noise, or the negative impact to the historic district, among other concerns, when it rubber-stamped a previously approved site plan approval by simply stating that the changes were insignificant between the prior approval and the approval of the Supermarket Plan.

*Fourth*, the Landmarks Committee arbitrarily and capriciously granted to the Applicant a “Certificate of Appropriateness” for the Supermarket Plan prior to the completion of the required environmental review under SEQRA. The Landmarks Committee failed to consider the impacts of the increased traffic on the Historic District and, thereby, did not fully consider all of the criteria as set forth in the Town Code in issuing the “Certificate of Appropriateness”.

As set forth below, this Court should grant the relief requested in the Verified Petition.

#### **STATEMENT OF FACTS**

The pertinent facts are set forth in the Verified Petition (the “Petition”). In order to avoid burdening the Court with another full recitation of the facts, such facts set forth in the Petition are incorporated by reference herein but will not be repeated.

## STATUTORY AND REGULATORY FRAMEWORK

SEQRA requires that all New York State and local government agencies consider environmental impacts equally with social and economic factors during discretionary decision-making. *See* 6 NYCRR 617.1(d). Under SEQRA, Town boards and commissions are prohibited from approving projects or rendering decisions until potential environmental consequences of the specific actions contemplated under a proposed plan are carefully scrutinized. *See* 6 NYCRR 617.3(a).

A cursory review of significant environmental considerations does not support discretionary decisions under SEQRA. *See* NY Environmental Conservation Law (“ECL”) §8-0109. An environmental impact statement (EIS) is required to be submitted and subject to public hearings in advance of a governmental action which may have potentially significant effects on the environment. *See* 6 NYCRR §617.9(4). The basic purpose of the EIS is to address adverse environmental impacts and it requires considerations of alternatives, encourages communication between governmental agencies, the applicant and the general public. *See* 6 NYCRR 617.1. To that end, SEQRA mandates that all government agencies prepare or request an EIS if there “may” be a significant effect on the environment. *Id.* “Because the operative word triggering the requirement of an EIS is “may, there is a relatively low threshold for the preparation of an EIS.” *Matter of Omni Partners v. County of Nassau*, 237 A.D.2d 440, 442 (1997).

In essence, SEQRA, along with public comments and criticism, ensures that agency decision-makers “will identify and focus their attention on any environmental impact of the proposed action, that they will balance those consequences against other relevant social and economic considerations, minimize adverse environmental effects to the maximum extent

possible, and then articulate the basis for their choices. *Jackson v. New York State Urban Development Corp.*, 67 N.Y.2d 400, 503 N.Y.S.2d 298 (1986).

### STANDARD OF REVIEW

It is well-settled that a determination rendered by a local board will be sustained only if it is has a rational basis and is supported by substantial evidence. *Shaughessy v. Roth*, 204 A.D.2d 333, 334-335, 611 N.Y.S.2d 281, 282 (2d Dep't 1984); *see also, Cowan v. Kern*, 41 N.Y.2d 591, 598, 394 N.Y.S.2d 579, 583 (1977). A decision rendered by an administrative body cannot stand if it is affected by error of law, it is arbitrary and capricious, an abuse of discretion or irrational. *Pell v. Board of Educ.*, 34 N.Y.2d 222, 356 N.Y.S.2d 833 (1974). A court, in reviewing an agency's determination "is to exercise a genuine judicial function and not to confirm a determination simply because it was made by such an agency." *St. Agatha's Children's Home, Inc. v. Webb*, 138 A.D.2d 715, 716, 526 N.Y.S.2d 530, 531 (2d Dep't 1988) (*citing Diotte v. Fahey*, 97 A.D.2d 653, 469 N.Y.S.2d 191 (3d Dep't 1983)).

Under SEQRA, the lead agency is responsible for conducting the appropriate environmental review of a proposed development, and is legally obligated to fulfill the statutory requirements. SEQRA contains no provisions regarding the rules of judicial review of administrative proceedings. Courts are limited to considering "whether the determination was made in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious or was an abuse of discretion. *Jackson v. New York State Urban Development Corp.*, 67 N.Y.2d 400, 416, 503 N.Y.S.2d 298 (1986). Although a court's review is supervisory only, it must insure that the agency has complied "strictly with prescribed procedures" and given "reasoned consideration to all pertinent issues revealed in the process." *Jackson*, 67 N.Y.2d at 417.

Under this standard of review, as set forth below, it is clear that the Respondents' determinations must be annulled.

## ARGUMENT

### POINT I

#### PETITIONER HAS STANDING TO COMMENCE THIS PROCEEDING

For the purpose of establishing standing, "the zone of interests, or concerns, of SEQRA encompasses the impact of agency action on the relationship between the citizens of this State and their environment. Only those who can demonstrate a legally cognizable injury to that relationship can challenge an administrative action under SEQRA. *See Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 570 N.Y.S.2d 778 (1991). A plaintiff, for standing purposes, must show that it would suffer direct harm; an injury is some way different from the public at large. In some instances, "an allegation of close proximity alone may give rise to an inference of damage or injury that enables a nearby owner to challenge a zoning board decision without proof of actual injury." *See Sun-Brite Car Wash v. Zoning Board of Appeals*, 69 N.Y.2d 406, 413-414 (1987).

In *Campbell v. Barraud*, 58 A.D.2d 570, 394 N.Y.S.2d 909 (2d Dep't 1977), plaintiffs sought to declare invalid a resolution of the town board which amended the town's zoning ordinance and map by rezoning a particular parcel. Two of plaintiffs lived within 200 feet of the subject parcel and the rest resided "quite a distance away." *Id.* at 571, 394 N.Y.S.2d at 911. All of plaintiffs claimed to "have a direct stake in the controversy by reason of an alleged diminution in property values and anticipated pollution of the ground water table and the flowing waters of Forge River and Ely Creek, which border the parcel, a peninsula." *Id.* The court held that plaintiffs had sufficiently established standing to challenge the rezoning of the parcel.

In this case, Petitioner is the *adjacent* property owner to the Property where the Supermarket Plan is proposed. As set forth in the accompanying Petition, Petitioner will be impacted, different than the public at large, first-hand by the traffic from 18-wheel semi-trucks rolling down the driveway that is adjacent to Petitioner's building. In addition, Petitioner will have to listen to the constant noise from the trucks and the air-conditioning units, the car traffic from customers and residents visiting the Supermarket. Importantly, Petitioner is also impacted by the quality of the ground water and the on-going remediation on the Property. Petitioner's injury is also unique with respect to the Town's decision to rezone the "Beascakes" property to the CB-A zone since the Town Board arbitrarily drew the line at Petitioner's property boundary when Petitioner's property and the Beascakes property were previously zoned the same. Based on Petitioner's proximity to the Property, Petitioner's direct injury from the vibrating trucks traveling and idling immediately adjacent to its building and the discriminatory manner in which the Town rezoned the Property without including Petitioner's property, it is clear that Petitioner has a cognizable injury and is within the zone of protection provided by SEQRA.

**POINT II**

**THE TOWN BOARD FAILED TO TAKE THE REQUISITE  
“HARD LOOK” MANDATED BY SEQRA WHEN IT  
ISSUED THE NEGATIVE DECLARATION**

The facts set forth in the Petition show that what the Town did was to simply rush through the SEQRA process in two (2) months, relying on stale, four (4) year old data, and adopted whatever laws and approvals it needed to in order to “shoe-horn” the Supermarket Plan into small scaled historic hamlet of Armonk without adequately addressing the on-going site remediation on the Property (a Superfund site) and the impacts of a new development on the groundwater, impacts on traffic and parking, impacts to the historic district and impacts to the community character, noise, and odor.

In addition to looking at irreversible changes to the visual community, the Court of Appeals has held that when considering the effects of a project on the environment in accordance with SEQRA, the lead agency must consider the potential impacts on the surrounding community because land development impacts not only the actual property involved but the surrounding community as well. Thus, impact on the surround community must be seriously analyzed by the lead agency. *Chinese Staff Workers Ass’n v. City of New York*, 68 N.Y.2d 359, 509 N.Y.S.2d 499 (1986). “... SEQRA mandates that all government agencies prepare or request an environmental impact statement on any action they propose or approve which may have a significant effect on the environment.” *In the Matter of Prand Corp. v. Town Bd. of Town of East Hampton*, 78 A.D.3d 1057, 1060, 911 N.Y.S.2d 468, 470 (2d Dep’t 2010) (internal citations and quotations omitted).

*In the Matter of Prand Corp. v. Town Bd. of Town of East Hampton*, 78 A.D.3d 1057, 911 N.Y.S.2d 468 (2d Dep’t 2010) upheld the lower court’s annulment of the issuance of a

“negative declaration” holding that the Town Board of the Town of East Hampton failed to take the requisite “hard-look” of potential environmental impacts as mandated by SEQRA related to the passage of certain local laws. In *Matter of Prand*, the Town Board adopted a local law that increased the amount of open space that was required to be set aside as a condition of subdivision approval. Like here, the Town Board of East Hampton issued a negative declaration finding that there would be no adverse environment impact. The lower court reversed, upheld by the Appellate Division holding that that by simply reviewing the EAF, it was clear that the local law implicated several of the criteria used to determine if the proposed action will have a significant adverse environmental impact, and found that the Town Board failed to take the requisite “hard look” at the relevant environmental criteria. *Id.*

Similarly, in this case, the Town Board’s failure to take a “hard-look” is with respect to the failure to involve NYSDEC. With respect to the previously approved Armonk Square Project, the Planning Board (the lead agency at the time) made efforts to ensure that the proposed project would not have an adverse affect upon the existing NYSDEC mandated remediation plan and found that the proposed plan would not have an adverse impact on the NYSDEC monitoring of the project site. *See* Exhibit “K” to the Petition.

As stated in the 2007 Negative Declaration:

*[the property] is a portion of the Armonk Private Wells Site (AWS) as designated by NYSDEC. The NYSDEC is concerned with approximately 2 acres of the project site, which has been investigated since the early 1990s after dry cleaning solvent was found in area wells. In 1998 contractors installed a ground water recovery system as part of an Agreement of Consent to remediate regional contamination ...*

The Planning Board has required that the proposed development accommodate the existing remedial system. Although some construction impact will occur to the subsurface system, the Planning Board will require that the Applicant work closely with NYSDEC to ensure that the system remains functioning ... *The applicant and the DEC have developed*

*a work plan to sample and characterize construction impacted soil and properly dispose of PCE contaminated soil.*

To that end, an Environmental Site Investigation (ESI) Findings Report was prepared to quantify and delineate volatile organic compound (VOC) impacted solids and determine shallow groundwater quality which may require special handling and disposal efforts during construction. *The NYSDEC reviewed and commented on this plan and the Applicant integrated the NYSDEC comments into the plan.*

See Exhibit "K", p. 3, 2007 Negative Declaration to the Petition (emphasis added).

With respect to the Supermarket Plan, it does not even appear that the Town Board notified NYSDEC regarding this substantially revised plan, let alone incorporated its comments and concerns into its review. This utter failure to include NYSDEC in the Town Board's environmental review of the Supermarket Plan is arbitrary and capricious because it demonstrates the Town Board's failure to take the requisite "hard look". Indeed, how can the Town Board issue a negative declaration on the Supermarket Plan, relying on stale four (4) year old data for a different plan on different property where the development will impact ground water that is part of a Superfund Site? The answer is it cannot. The following potential environmental impacts would require the preparation of an EIS, but were never even addressed by the Town Board:

(1) the Supermarket Plan with a new/revised plan related to the NYSDEC Superfund Site?

(2) the Supermarket Plan proposes development on additional property never studied (the .41+ acres) and will require additional studies because this new property may adversely impact the drinking water supply?

(3) the Supermarket Plan with one entrance and one loading dock will adversely negatively impact the neighbors, including, Petitioner?

These issues undoubtedly “implicate[s] several of the criteria used to determine if a proposed action will have a significant adverse impact on the environment ...” *Matter of Prand* at 1061.

Similar to its failure to involve NYSDEC, the Town Board also failed to contact OPRHP. The primary reason the Supermarket Plan is a Type I action under SEQRA is that the Property is within the Historic District #1 in the Town. Ironically, however, the Town never notified OPRHP of the Supermarket Plan and relied, once again, on a letter submitted in 2007 which outlined several concerns of OPRHP. Indeed, if the very reason why a project is considered a Type I action is its location within a nationally and locally designated historical district, it goes without saying that in order for the lead agency to take a “hard look” at the Supermarket Plan, it would notify and obtain comments from the state and federal agencies that govern designated historic properties. Here, however, the Town did not. Based on the record before the Town Board and Planning Board, there is *nothing* from NYSDEC or DOH indicating that these two state agencies ever reviewed the Supermarket Plan. It was incumbent upon the Town Board, as lead agency, to reach out and obtain answers to these serious health issues pursuant to the “hard look” requirement.

In addition to not involving NYSDEC and OPRHP, the Town Board ignored comments from the Town’s own Landmarks Committee. On October 4, 2011, the Chairman of the Landmarks Committee submitted a letter to the Town Board stating that the Landmarks Committee had reservations about the “Certificate of Appropriateness” and that certain issues must be addressed to maintain the qualities of the “Bedford Road Historic District”, including traffic and screening. *See* Exhibit “B” to the Petition.

Also, regarding traffic concerns, it was conceded by the Applicant's traffic expert, John Collins, at the Planning Board meeting of July 11, 2011, that any updated "traffic reports" for the second SEQRA review of the Supermarket Plan (to be completed by John Collins Engineering, P.C.) " ... would *not* take into account the CVS" and that his "base information" would not include any change in lease from A&P to CVS. *See* Exhibit "S", p. 6 to the Petition (emphasis added). Additionally, at this time John Collins admitted that "during the summer months you can't take traffic counts because they will not be accurate." *Id.*

Accordingly, future CVS traffic was not included and new traffic counts were not conducted. Indeed, if the environmental review of the Supermarket Plan was not "fast-tracked" by the Town Board, the Town Board could have taken a "hard-look" at the potential environmental impacts. However, it did not. Instead, the Town Board relied on stale, four (4) year old traffic data and did not perform updated and/or accurate traffic counts. *See* Exhibit "E" and "S" to the Petition. Moreover, trucks will also queue on Maple Street taking up necessary parking spaces for residents. None of these issues were addressed in the Negative Declaration, including, the CVS traffic.

The Town Board has also failed to file and publish the Negative Declaration in the Environmental Notice Bulletin as required under SEQRA. This failure is a clear violation of SEQRA. *See* 6 NYCRR 617.12(C).

Based on the Town's "hap-hazard" environmental review and its reliance on stale four (4) year old data, this Court should annul the Negative Declaration and order the Town Board to issue a positive declaration and require the preparation of an EIS to accurately analyze the environmental impacts that have been raised. *Matter of Prand v. Town of East Hampton.*

**POINT III**

**THE TOWN BOARD WAS ARBITRARY AND CAPRICIOUS  
WHEN IT GRANTED THE “SPECIAL USE” PERMIT**

The Town Board acted in an arbitrary and capricious manner when it decided to grant a special use permit for a substantially larger Supermarket without taking a close look at the impacts to the traffic, the negative impact to the community character, the increase in noise and odor, and the potential impact to the NYSDEC superfund cleanup. Indeed, the Supermarket Plan was a substantially different plan from Armonk Square but the Town Board did not evaluate the significant changes between a 5,000 square foot local grocery store and a McSupermarket of 25,000 square feet.

**POINT IV**

**THE TOWN BOARD WAS ARBITRARY AND CAPRICIOUS  
WHEN IT ADOPTED THREE AMENDMENTS  
TO THE TOWN CODE TO PERMIT THE SUPERMARKET PLAN**

At a Town Board meeting of June 8, 2011, Antares appeared by its counsel and submitted a *new* and different development plan for the Property (*Lot 8 and Lot 4*) than the previous plan approved three (3) years earlier in 2008.

Now, the Applicant was proposing development of 51,000 square feet of retail and residential space, including, for the first time, a 25,000 square foot large scale chain supermarket—the Supermarket Plan.

The Supermarket Plan included additional, *substantial* changes, such as the acquisition of the neighboring “Beascakes Property” to secure the 25,000 square foot supermarket tenant. This resulted in an expansion of development to include, *for the first time*, construction on Lot 4 which increased the development plan to include 3.43 acres, as opposed to 3.01 acres.

Instead of performing the necessary studies and evaluate the new impacts to the Town, the Town simply fast tracked the proposal. In fact, in response to the Supermarket Plan proposed, Supervisor Weaver stated at the June 8, 2011 Town Board meeting that it was important to “*get it completed in the fastest time possible*” with the Town Board acting as lead agency. See June 8, 2011 Town Board Minutes annexed as Exhibit “M”, p.3 to the Petition (emphasis added).

In addition, there is nothing in the record substantiating the Town Board’s rationale for changing the parking requirements from 1 parking space for 150 square feet to 1 parking space for 200 square feet. Similarly, there is no discussion regarding the change in the requirement to having middle-income housing on site vs. off-site. In looking at the Town Board’s action as a whole, it clearly amended only those laws which would permit the Supermarket Plan to be built.

Here, the Town Board simply fast-tracked the adopting of the zoning amendments without regard to any criteria other than the needs of the developer. As a result, the Court should annul the zoning amendments as arbitrary and capricious.

#### POINT V

#### **THE TOWN BOARD ILLEGALLY “SPOT” ZONED THE SUPERMARKET PROPERTY**

Spot zoning is the process of singling out a small parcel of land for a classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners and, as such, is the very antithesis of planning zoning. See *Rogers v. Tarrytown*, 302 N.Y.115 (1951).

Here, the record is clear that the Town Board “fast-tracked” the Supermarket Plan, including adopting the very narrowly drawn zoning changes to benefit only the applicant. Indeed, the Town Board failed to provide any rational basis for not including Petitioner’s

property within the Beascakes zoning change. Arbitrarily drawing lines for different zoning districts to permit a substantially larger supermarket than what is called for in the Comprehensive Plan is spot-zoning.

As a result, the Court should annul the zoning amendments as being illegal spot zoning.

#### POINT VI

#### **THE PLANNING BOARD WAS ARBITRARY AND CAPRICIOUS WHEN IT GRANTED AN AMENDED SITE PLAN APPROVAL AND A TREE REMOVAL PERMIT FOR THE SUPERMARKET PLAN**

An involved agency has an independent duty to review the impacts associated with its approval and evaluate same and is *not* bound by the lead agency's findings statement. *Croton Watershed Clean Water Coalition v. Planning Bd. of Southeast*, 5 Misc.3d 1010(A), 798 N.Y.S.2d 708 (Sup. Ct. West. Co. 2004) (emphasis added). Here, the Planning Board acted arbitrarily and capriciously when it granted Amended Site Plan Approval and Tree Removal Permits to the Applicant without considering new information and by accepting studies prepared four (4) years earlier on a smaller project on a smaller parcel of land. In addition, the Planning Board blindly relied upon the Town Board's Negative Declaration, ignored the concerns raised during the public hearing for the site plan approval, failed to reach out to other State agencies (DEC, OPRHP) to obtain comments, and failed to take any look at the environmental impacts.

Based on the Planning Board's failure to review and analyze the environmental impacts of the Supermarket Plan, the Court should annul the Site Plan approval and Tree Removal permits and order the Planning Board to take the requisite hard look as required under SEQRA.

## POINT VIII

### **THE LANDMARKS COMMITTEE WAS IRRATIONAL WHEN IT GRANTED A CERTIFICATE OF APPROPRIATENESS PRIOR TO ANY ENVIRONMENTAL REVIEW AND WITHOUT CONSIDERING TRAFFIC IMPACTS**

Under 6 NYCRR 617.3, no agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQRA. The Landmarks Commission is considered an agency under SEQRA and is an involved agency since it must render a decision (a Certificate of Appropriateness) as part of the approval process. *See* 6 NYCRR 617.2(S). The SEQRA regulations further state that an application for a Type I action is not complete until either a negative declaration has been filed or the draft environmental impact statement has been accepted by the lead agency. *See* 6 NYCRR 617.3(c). Therefore, SEQRA requires that the lead agency either adopt a negative declaration or accept a DEIS prior to any agency taking action on a proposed application.

Here, On July 27, 2011, the Applicant appealed to the Landmarks Committee for a renewed "Certificate of Appropriateness". On August 4, 2011, the Landmarks Committee arbitrarily and capriciously issued a "Certificate of Appropriateness" *before* the site plan and special permit were approved and *before* SEQRA was completed. The Landmarks Committee also issued a "Certificate of Appropriateness" *before* any Architectural Review Board approval. This is a clear procedural and substantive violation of SEQRA. Indeed, one of the primary purposes of SEQRA is to evaluate the environmental impacts *prior* to any decisions being made. The Town blatantly violated this requirement.

Under North Castle Town Code Chapter 126 "Landmarks Preservation", the Landmarks Committee shall consider, among other factors, the following:

- (a) the general design, character and appropriateness to the property of the proposed alteration or new construction;

- (b) the scale of the proposed alteration or new construction in relation the property itself, surrounding properties, and the neighborhood;
- (c) visual compatibility with surrounding properties;
- (d) the importance of historic, architectural or other features to the significance of the property.

*See* Town Code § 126-18(B).

In addition to taking action prior to the SEQRA review being completed, the Landmarks Committee also failed to consider traffic impacts upon the Bedford Road Historic District as part of its "Certificate of Appropriateness" review. *See* Exhibit "B" annexed to the Petition.

The car and truck traffic associated with the Supermarket Plan clearly impact the Historic District. In addition to the traffic, the proposed layout with a truck driveway literally bisecting the Historic District is a clear impact on the Historic District itself and the surrounding neighborhood character. The applicant has estimated approximately twenty truck trips per day as part of the Supermarket Plan. Each truck will be required to exit onto Bedford Road and travel through the middle of the Historic District. This is the type of impact that the Landmarks Committee is supposed to look at and review.

As a result, the Court should annul the Certificate of Appropriateness and order the Landmarks Committee to consider the traffic impacts to the Historic District.

CONCLUSION

For the reasons set forth above, it is respectfully requested that the Court grant  
Petitioner's petition in its entirety.

Dated: White Plains, New York  
November 10, 2011

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