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October 3, 2016

Village of New Paltz Planning Board
Mr. Michael Zieler, Chairman
c/o Ms. Christena Carp, Administrative Assistant
25 Plattekill Avenue
New Paltz, New York 12561

VIA E-MAIL AND HAND DELIVERY

RE: Memorandum in Response to Grant & Lyons, LLP September 16, 2016 Submittal to the Village of New Paltz Planning Board Concerning Zero Place

Dear Chairman Zieler and Board Members:

This memorandum is offered in response to the September 16, 2016 submittal of Grant & Lyons, LLP on behalf of Friends of New Paltz, same in connection with the above referenced matter.

The gravamen of the Grant & Lyons, LLP submittal is that a Positive Declaration of environmental significance must be issued by the Village of New Paltz Planning Board for the Zero Place Project. Your writer completely disagrees with this conclusion and for the reasons set forth herein, it is plainly apparent that a Positive Declaration will add nothing to what has already become a comprehensive environmental review under SEQRA.

As a threshold matter, every concern which has been raised by Grant & Lyons, LLP is speculative, conclusory and generalized in its application to the project. For thirty (30) pages the Grant & Lyons, LLP submittal hypothesizes at a myriad of issues which are being properly addressed by my client, the Village of New Paltz Planning Board and other involved/interested agencies. Not once in said submittal is a quantitative or qualitative professional study offered which would buttress the respective theories of Grant & Lyons, LLP. In this regard, I offer the following analysis:

I.) Requiring an Environmental Impact Statement.

Based upon the record being made, attendant environmental review and time honored New York State case law, there is simply no basis for requiring that an EIS be prepared for the Zero Place Project.

In this regard, the comprehensive address of all relevant areas of environmental concern has been examined by the Planning Board by undertaking a "hard look" as required by SEQRA and the expanded EAF, with all supporting studies, as well as considering all involved/interested agency submittals and the participation of members of the public, in order to provide the basis for a reasoned elaboration in making a determination of significance. Based upon the record, it is submitted that a Negative Declaration of environmental significance will be warranted once the SEQRA process and my client's voluntary mitigation measures are completed.

In assessing the adequacy of environmental review which provides the basis for a Negative Declaration, the courts are guided by a "Rule of Reason" and review the record to determine whether the lead agency identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasonable elaboration" of the basis for its determination". Save the Pine Bush, Inc. v. Common Council of the City of Albany, 13 NY3d 297 (2009); Merson v. McNally, 90 NY2d 742 (1997).

In applying the "Rule of Reason" not every conceivable environmental impact, mitigating measure or alternative must be identified or addressed. Save Audubon Coalition v. City of New York, 180 AD2d 348 (1992), leave to app. den. 81 NY2d 702 (1993); Coalition Against Lincoln West v. City of New York, 94 AD2d 483 (1983), aff'd 60 NY2d 805 (1984).

SEQRA review and the associated environmental analysis therewith must only address significant and non-speculative environmental impacts that can be reasonably anticipated and the lead agency may properly discount speculative environmental consequences which might arise. Kelsey v. Town of Lewisboro Planning Board, 215 AD2d 483 (1995); Jackson v. New York State Urban Development Corp., 67 NY2d 400 (1986).

As long as an agency has conducted an investigation and exercised its discretion so as to make a reasoned elaboration as to the effects of the proposed action on a particular environmental concern, a Court will not substitute its judgment for that of the agency. Anderson v. Lenz, 27 AD3d 942 (3rd Dept, 2006), leave to app. den. 7 NY3d 702 (2006); Save the Pine Bush, Inc. v. Planning Board of the City of Albany, 298 AD2d 806 (3rd Dept, 2002).

The Courts give deference to the Lead Agency and Involved Agencies and the question of significance is not arrived at solely by gathering data and making calculations. Instead, it is ultimately a policy decision, governed by the rule of reason,

that the particular facts and circumstances of a project do or do not call for preparation of a full environmental impact statement. Coca-Cola Bottling Co., v. Board of Estimate of the City of New York, 72 NY2d 674 (1988).

Therefore, the essential purpose of the Full EAF and review thereof, is to minimize the danger that the agency conducting SEQRA review might make an improvident Negative Declaration. Rusciano and Son Corp. v. Kiernan, 752 NYS 2d 277 (2002).

Contrary to the aphorisms of Grant & Lyons, LLP, the Appellate Division, Third Department, has ruled that "potentially large impacts are not the equivalent of significant impacts. Identification of a potentially large impact simply requires the lead agency to conduct a further evaluation to determine whether the impact would be significant (see 6 NYCRR Part 617.20)." Nicklin-McKay v. Town of Marlborough Planning Board, 14 AD3d 858(3rd Dept. 2005).

The record to date clearly reflects proper initial SEQRA documentation within the Short EAF, Part 1, a recirculation of a Long Form EAF, Part 1 (which was voluntarily offered by the Applicant) supplemental traffic, visual, environmental and engineering studies, as well as extensive documentary exhibits and related testimony from recognized professionals within their respective fields.

Moreover, the public has been involved in the SEQRA process upon initial commencement of review and the respective project opponents have all had the opportunity to participate either orally and/or in written form to the lead agency at every Planning Board meeting in order to identify and analyze the relevant areas of environmental concern. This process is fully consonant with SEQRA procedural and substantive dictates. Hoffman v. Town Board of the Town of Queensbury, 255 AD2d 752 (3rd Dept, 1998), leave to app. den. 93 NY2d 803 (1999); Boyles v. Town Board of the Town of Bethlehem, 278 AD2d 688 (3rd Dept, 2000).

Based upon the foregoing and the administrative record, the Village of New Paltz Planning Board has been diligently proceeding in the proper manner under SEQRA under the guidance of its experienced professional advisors. For Grant & Lyons, LLP to nakedly posit that, "only an EIS" can sufficiently protect the environmental is belied by the record, years of SEQRA case law and the regulations set forth within 6 NYCRR Part 617 et. seq.

II. Character of the Neighborhood.

Grant & Lyons, LLP cites the projects, "large and discordant scale, and the commensurate consequential impacts to the surrounding area, combined with its location within a cluster of important cultural, historic and natural resources" as providing the basis for a Positive Declaration.

It is clear that the Zero Place Project complies with the statutory requirements of the NBR Zoning District in all manner and respects. Therefore, in consideration of the anecdotal assumptions of Grant & Lyons, LLP concerning character of the neighborhood, it is important to note that the New York State Court of Appeals has ruled that inclusion of a specially permitted use in a local zoning law is tantamount to a legislative finding that said use is in harmony with the zoning law and will not adversely affect the local community. WEOK Broadcasting Corp. v. Planning Board of the Town of Lloyd, 79 NY2d 373 (1992).

The NBR Zoning District was created following years of legislative engagement in the planning process, detailed study of the area comprising the district and ample opportunity for public participation. The related case law is clear, inasmuch as a rejection of a site plan application as a consequence of its effect on neighboring properties must be supported by substantial evidence in the record which clearly demonstrates the deleterious impact of the proposed use on the character of the area. North Shore Steak House, Inc. v. Board of Appeals of the Incorporated Village of Thomaston, 30 NY2d 238 (1972).

Specifically, Grant & Lyons, LLP opines that the Zero Place Project could, "create an undesirable precedent for future projects". Tellingly, this argument concentrates upon cherry picked passages within the Village of New Paltz Comprehensive Plan, instead of focusing on the plain meaning of the Village of New Paltz Zoning Law itself.

As a matter of law, it is manifest that for the purposes of land use review by a planning board, a municipality's currently enacted zoning law controls over Comprehensive Plan passages. Tilles Inv. Company v. Town of Huntington, 74 NY2d 885 (1986); Udell v. Haas, 21 NY2d 463 (1968); see also, King Road Materials, Inc. v. Garagalo, 173 AD2d 931 (3rd Dept, 1991).

Therefore, the Village of New Paltz Zoning Law is the best evidence of the village's land use policies and as such constitutes the village's currently implemented Comprehensive Plan. McGrath v. Town Board of North Greenbush, 254 AD2d 614 (3rd Dept, 1998), lv to app. den 93 NY2d 803 (1999).

Accordingly, claims trumpeting threats to community character must be buttressed by empirical data, not mere postulations as to what might, perhaps or could possibly compromise the public health, safety or welfare. Tri-State Outdoor Media Group, Inc. v. Churchill, 261 AD2d 924 (1999). This type of general community pressure is based on speculation and as such, cannot form a lawful basis for denial of approval for a project. Market Square Properties, Ltd. v. Town of Guilderland Zoning Board of Appeals, 66 NY2d 893 (1985), Robert Lee Realty Company v. Village of Spring Valley, 61 NY2d 892 (1984).

Throughout the pendency of review, the Applicant has presented studies, data and documentation from professional consultants, as opposed to the mere conjecture by Grant & Lyons, LLP. This detailed expert testimony and the related professional conclusions associated therewith, has not been overcome by the various Grant & Lyons, LLP aspersions. Chernick v. McGowan, 238 AD2d 586 (1997), lv. den. 90 NY2d 806 (1997), app. withdrawn 91 NY2d 923 (1998).

III.) Alleged Deleterious Impacts to Huguenot Street.

This issue is directly related to the address set forth within heading 2 above and as such the points set forth previously are reiterated as if fully set forth at length once again.

However, an occurrence at the September 20, 2016 Village of New Paltz Planning Board meeting should be discussed in light of this issue.

Question 10 on the SEQRA Long EAF, Part 2 reads as follows:

> "The proposed action may occur in or adjacent to a historic or archeological resource. If "yes", answer questions a-e. If "No", go to Section 11."

It has been demonstrated and previously concluded by the Village of New Paltz Planning Board, as lead agency, that the Zero Place Project will not occur in or adjacent to a historic or archeological resource [280+/- feet separation]. Accordingly, as SEQRA requires literal compliance by the lead agency, Jackson v. New York State Urban Development Corp., 67 NY2d 400 (1986), the Planning Board is held to a standard which recognizes the literal meaning of Question 10 and the same should be answered no.

In this regard, my client is not suggesting that the lead agency cannot examine the potential adverse environmental effects of the proposed action on Huguenot Street. Nor, is it

being suggested that the lead agency cannot consider the substance of the questions set forth within Question 10(e)(i-iii) within a SEQRA related context.

What the lead agency should not do is reclassify this Project as Type I under SEQRA based upon the subset of questions set forth within Question 10(a-c), as was discussed as a possibility at the September 20, 2016 meeting. This is unfair to my client, will add substantial costs, delay administrative procedures and be predictively touted by Grant & Lyons, LLP as providing the sine qua non for an EIS being required.

It is requested that the lead agency consider this question further in light of the EAF, Part 2, Question 13 [Transportation], where it was determined on September 20, 2016 that the Planning Board would utilize a SEQRA Workbook 100 peak hour trip bright line figure as a threshold for answering "yes" that the proposed action, "may result in a change to existing transportation systems". For consistency purposes, the 280+/- feet SEQRA Workbook example is to be similarly observed.

Parenthetically, the New York State Office of Parks, Recreation and Historic Preservation has twice written [April 28, 2016 and July 19, 2016] upon the proximity of the Zero Place Project to Huguenot Street and the boundaries of the National Register Historic District and said correspondences buttress the positions stated above.

IV.) Visual Analysis.

My client has crafted a detailed response to Mr. Jane's methodologically barren and speculative critique of the comprehensive Visual Analysis prepared by Dave Toder, RA and a copy of the same will be provided to the Planning Board.

Additionally, the Grant & Lyons, LLP submittal charges that the visual analysis does not comport with the NYSDEC Guidance on Assessment of Impacts on Visual Resources. This claim is specious, as the cited NYSDEC Guidance is only applicable to public projects and is not required for private projects by way the relevant wording contained therein; to wit:

> "Many places have been recognized for their beauty and designated through Federal or State democratic political processes, reinforcing the notion that environmental aesthetic values are shared. Recognition of aesthetic resources also occurs at local levels through zoning, planning or other public means. That these places are formally recognized is

a matter of public record. This guidance contains a generic listing of all aesthetic resources of statewide significance and serves as the template from which aesthetic issues of State concern can be distinguished from local issues. Generally, it is staff's responsibility to identify and mitigate impacts to Federal and State designated aesthetic resources. With respect to local resources, Department staff should defer to local decision makers, who are likely to be more familiar with and best suited to address them." [Assessing and Mitigating Visual Impacts, NYSDEC Guidance, July 31, 2000.]

v.) Site Related Due Diligence and Remediation.

With respect to the physical site and previous environmental studies and remediation activities associated therewith, it cannot escape Grant & Lyons, LLP that the NYSDEC has extensively studied the lands comprising the Zero Place Project and that they are an involved agency for this project. [See Phase I and Phase II Due Diligence Studies references made by Arlette St. Romaine, Director of Environmental Due Diligence and Brownfields Investigations, The Chazen Companies, within all of Ms. St. Romaine's various correspondences of record.]

In addition, Ms. St. Romaine has, once again, addressed the speculations of Grant & Lyons, LLP in an updated Environmental Investigation Summary which is to be submitted to the Village of New Paltz Planning Board. It is clear from this Environmental Investigation Summary that the concerns of Grant & Lyons, LLP are environmental red herrings which are completely refuted by the Reports/Studies of record, as well as the detailed plans for redevelopment of the project site.

VI.) Purpose of the Requested Positive Declaration.

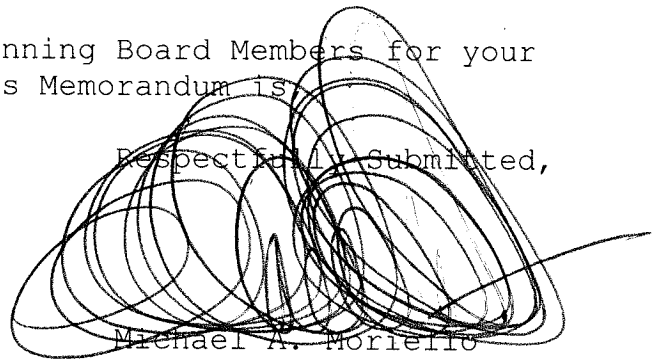
It is submitted that the Grant & Lyons, LLP call for the issuance of a Positive Declaration is the pretext for otherwise significantly delaying the project and costing my client hundreds of thousands of dollars in review costs, as a strategy to make the Zero Place Project fail to be achieved. SEQRA is not meant to be subverted into an inexhaustible exercise in examining every allegation which is offered by Grant & Lyons, LLP.

It is well past time for Grant & Lyons, LLP to dispense with mere conjuncture, hyperbole and speculations and engage the lead agency in the required empirical analysis which would support their amalgamated claims.

Notwithstanding the gratuitous Grant & Lyons, LLP, "Reminder of Your Duties and Obligations as Lead Agency", as set forth within the September 16, 2016 correspondence, the record reflects that the Village of New Paltz Planning Board, as lead agency, continues to comprehensively examine the Zero Place Project in full procedural and substantive compliance with SEQRA.

Thanking you and the Planning Board Members for your collective consideration, this Memorandum is,

Respectfully Submitted,



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