

SQ. SEQR Related Comments

Comment 1

My main concern is the process. A very strong concern I have is that you are already taking actions that are illegal and that will restrict your ability to take the hard look that is required to do this.

There are fundamental math and technical questions that are omitted in the draft EIS. Was it appropriate to deem it complete? The proper formulas and standards have not been followed. This really gives us pause and questions the veracity of virtually everything in this document.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Public Hearing Transcript, 5/30/09, Pg. 81-84)

Response 1

The statement by the commenter making broad, general allegations of deficiencies in the DEIS are difficult to respond to. The Town Board and the Applicant, nevertheless, have worked diligently to ensure that the procedural mandates of SEQRA have been strictly adhered to at every stage of the environmental review process. Moreover, both the Town Board and the Applicant have each taken extra efforts to advance SEQRA's policy of injecting environmental considerations into the governmental decision-making process, including, by increasing and extending the opportunity for public comment. The Town Board, for example, held multiple Public Hearings on Scoping and on the DEIS, and the scheduling for each included an evening meeting during the week and a morning meeting on the weekend in order to ensure the maximum opportunity for public input, and extended the public review period for the DEIS from June 13th to June 30th, to accommodate additional comments. In addition to the web posting, the Applicant prepared hard copies of each draft version of the DEIS, which the Town Board made available for public review starting in January 2009, well before the DEIS was officially deemed complete.

The Town Board, in full compliance with the Department of Environmental Conservation ("DEC") regulations implementing SEQRA, used the Scoping Document adopted by the Town Board and the standards set forth in the SEQRA regulations to determine that the DEIS was complete and adequate with respect to its scope and content for the purpose of commencing public review. Responses to specific comments made with respect the analysis in the DEIS may be found in the appropriate section of this FEIS.

Comment 2

The Town Board impermissibly abandoned the previously duly adopted 2006 Final Scoping Document for this project and commenced a new scoping process which resulted in the adoption of a significantly revised new Final Scoping Document in June 2008. While there were new persons elected as Town Supervisor and to the Town Board, that is an insufficient basis to alter the Scoping Document, especially in a manner that reduced the thoroughness of the requirements for the DEIS.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Public Hearing Transcript, 5/30/09, Pg. 84; Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Letter, 6/30/09, Pg. 7)

Response 2

The commenter fails to recognize that, as the result of a collaborative effort with the former Town Board, the Applicant abandoned its original preferred development proposal in favor of the Primary Alternative Development Scenario (“PADS”), for which the Town Board expressed a clear preference. The Scoping Document necessarily needed to be reconstituted to ensure that the DEIS focused the environmental impacts of the PADS. “The primary goal of scoping is to focus the EIS in potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or nonsignificant.” 6 N.Y.C.R.R. § 617.8(a).

The Scoping Document originally adopted by the Town Board on June 23, 2006 required that the DEIS analyze in great detail a PADS, in addition to the Applicant’s then preferred development proposal. The Applicant retained one of the preeminent New Urbanist Planning Firms, Torti Gallas and Partners, as well as Economic Research Associates, one of the foremost economic real estate consulting firms, to pursue the PADS. Throughout the Fall and Winter of 2006, the Applicant, the Town Board, and their respective consultant teams met in four intense work sessions to develop a comprehensive PADS proposal.

Once the Applicant agreed to substitute the PADS as its preferred development proposal, the Town Board was obligated to reformulate the Scoping Document to ensure that the DEIS focused on the potentially significant adverse impacts of the PADS and did not assess impacts that were irrelevant to the PADS. Notably, the re-scoping was subject to two public hearings.

Comment 3

Continuing the practice of facilitating approval and otherwise fast-tracking the project for the applicant, the Town Board released an incomplete DEIS on or about May 15, 2009. While that was the date the DEIS was noticed, it was actually accepted on or about April 29, 2009, however copies of the DEIS were not available until May 15th and posted on the Town’s website the same day. That posting was barely 2 weeks before the first public hearing and barely met the minimum requirements for public notice under SEQRA.

The Town Board has proceeded with the review of this project in a rushed manner resulting in an incomplete and, at times, untimely release of the relevant documents and an illegally truncated period for public comment.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Public Hearing Transcript, 5/30/09, Pg. 84-85; Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Letter, 6/30/09, Pg. 7)

Response 3

Initially, as the commenter recognizes, SEQRA’s public notice requirements were met with respect to the DEIS Public Hearings. Moreover, this comment fails to recognize that a draft version of the DEIS, which contained substantially all of the DEIS that the Town Board noticed as

complete were posted on the Town's internet site for public access immediately after being received by the Town Board. The first draft was posted on December 31, 2008, the second draft was posted on April 2, 2009, and after being deemed complete on April 29, 2009, the Accepted DEIS was posted on May 12, 2009. All the postings continue to be available for review on the Town's website, along with hard copies of each version of the DEIS, which were available for public review in the Dover Town Hall and Dover Library since January 2009. During the five month period prior to the DEIS Public Hearing, the Town Board publicly discussed the DEIS at several regular and workshop meetings, the Applicant hosted two public informational meetings that provided opportunity for the public to address the project's consultants and the Applicant produced three town-wide mailings detailing the project and the SEQRA process. In addition, comments from the public were accepted for six weeks after the Town Board formally noticed the DEIS as complete in May 2009. The Town Board and its consultants vigorously disagree with the characterization that the SEQRA review of this Project has been "fast-tracked." The record speaks for itself.

Comment 4

We appreciate that you set a date today of June 19th for the public comment period to end. This is grossly inadequate. You expect the public to review an EIS that is over 4,400 pages. This is an insult to people. The comment period needs to be significantly extended. I respectfully demand that the comment period be extended beyond June 19th. I think the comment period should be extended to at least the end of July.

We would like more time to come up with cogent assessments. The time period should be extended to at least the 60 days that the Planning Board has for review and comment. The clock should not have started because the DEIS was submitted in a piecemeal manner. The Dover Knolls Master Development Plan was not uploaded to the Town website until May 29th at 11:30 pm, even though it was included as part of the public hearing notice. This is likely an illegal action.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Public Hearing Transcript, 5/30/09, Pg. 86, 93, 117-118; Carolyn Handler, Coalition for the Responsible Growth of Dover, Public Hearing Transcript, 5/30/09, Pg. 96; Constance DuHamel, Deuell Hollow Conservation Association, Public Hearing Transcript, 5/30/09, Pg. 100-103; George Nichols, Public Hearing Transcript, 5/30/09, Pg. 110; Jill Way, Public Hearing Transcript, 5/30/09, Pg. 122; Evelyn Chiarito, Public Hearing Transcript, 6/3/09, Pg. 138-141; Jill Way, Public Hearing Transcript, 6/3/09, Pg. 201-204, 212-213; Evelyn and Joseph Chiarito, Letter, 6/30/09, Pg. 2)

Response 4

The comment recognizes, in the first instance, that the Town Board provided the timeframes for public comment required by the SEQRA regulations. See 6 N.Y.C.R.R. § 617.9(a)(4)(iii) (establishing that comments on a DEIS should be accepted for 30 days). The commenter fails to recognize that draft versions of the DEIS were posted on the Town's internet site on December 31, 2008, April 2, 2009 and after being deemed complete, the accepted DEIS was posted on May 12, 2009. All of these versions continue to be available on the Town's website as well as being available in hard copy form. The vast bulk of the 4,400 pages of the draft DEIS remained unchanged and contained the overwhelming majority of the DEIS that the Town Board noticed as complete in May 2009. Moreover, to accommodate

public interest, the Town Board extended the public comment period until June 30, 2009. As such, the public effectively had six (6) months to review the DEIS.

The Master Development Plan, which was submitted as a separate document, helped to focus and facilitate the review of the DEIS. The comment that the posting of the Master Development Plan should have re-set the clock on the DEIS comment period further fails to recognize that timing requirements in the Town Code applicable to MDP review are entirely distinct from the timeframes established for DEIS review in the DEC's SEQRA regulations. Of relevance to SEQRA, the DEIS contained all elements of the MDP. As such, all environmental impacts relating to the MDP were included in the DEIS. As such, the public had a full and fair opportunity to comment upon the project's environmental impacts, as contemplated by SEQRA.

Comment 5

The DEIS document was made available to all of us from January 2009 to present via the Town's website, while also being available at Town Hall. Over the past five months many of us have read and tried to understand the study. We have also had the opportunity to attend and listen to the process at various town board meeting and workshops. We feel that there was more than enough time to digest this document prior to the public hearing.

We question why the Coalition needs more time. We also question why the Coalition has hired separate consultants when our Town Board is lead agency. What are they trying to prove or disprove. Why hire their own attorney? Are they preparing to stall the project? We feel that this is a waste of time and energy, and truly wish to move this project forward.

(Linda French, Citizens for a Better Dover, Public Hearing Transcript, 6/3/09, Pg. 74-76; Edie French, Citizens for a Better Dover, Public Hearing Transcript, 6/3/09, Pg. 84-85)

Response 5

Comments noted.

Comment 6

The Town Board, on June 3rd, voted to extend the public comment period until June 30, 2009. While it is beneficial that the Town Board recognized the need to set a date for the end of the comment period and not try to limit it to June 13th, the June 30th date is still illegally short. At a minimum, in accordance with 6 NYCRR section 617.9(a)(4)(iii), the comment period would have to be July 3rd. However, that date is also too short. Per the Town's own zoning code section 145-16 governing the MC Overlay District, the Planning Board is provided a minimum of 62 days to review the comprehensive plan for the MC Overlay District and the DEIS. The current Town Board made that specific change to section 145-16 when it assumed responsibility for site plan review in the MC Overlay District and assured the Planning Board that it would have an adequate opportunity to review any application for the district. Therefore, applying the mandatory 62 day review time to the dates discussed above, the minimum comment period for the Planning Board would be until July 16, 2009 (62 days after May 15th). In fact the comment period should last until August 4, 2009 (62 days after June 3rd, the date the full application and supporting materials were available). Obviously, if the Planning Board has until July 16th or August 4th to provide comments, the public and involved agencies should be given the same

amount of time. Given the enormity of the DEIS and since there is absolutely no prejudice to the applicant, the comment period should be equal for all parties. Therefore, CRGD reserves the right to supplement these comments up to August 4, 2009.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Letter, 6/30/09, Pg. 7-8)

Response 6

The commenter's timing calculations are unclear and appear largely disconnected from the mandates of SEQRA.

It is unclear why the commenter would suggest that Section 617.9(a)(4)(iii) of DEC's SEQRA regulations, which establish a 30 day minimum review period for DEIS's from the date they are noticed as complete, would mandate that the Public Hearing be kept open until July 3rd. As the same commenter notes elsewhere, the DEIS was deemed complete by the Town Board on or about May 15, 2009.

In addition, the Dover Town Code gives the Planning Board "62 days from its receipt of the conceptual site plan and an accompanying [DEIS]" to comment upon the same." Dover Town Code § 145-16(C)(2). As such, the Planning Board's "receipt" of the MDP, and not the date of its posting, triggered the Board's review deadline.

Comment 7

Mr. Baker has pointed out in his review of the project errors in the release of the documents for public review and the inadequate public comment period.

We are concerned that the Town Board has at best provided only the minimum period for public review of the documents and at worst has violated these requirements. We do not understand why the public has been provided a shorter comment period than that granted to the Planning Board. Thus, as outlined by our counsel, we are reserving our rights to supplement these comments until the date the Planning Board's comments are due. We are sure you recognize that we must preserve our legal rights so that in the unfortunate event our comments are not considered and changes are not made, we can if necessary exercise our constitutional rights to seek judicial review. We trust it will not come to that and that changes to the project can be made and protections put in place to guarantee a successful project.

(Carolyn B. Handler, Coalition for the Responsible Growth of Dover, Letter, 6/30/09, Pg. 2)

Response 7

Please see Responses 4 and 6.

Comment 8

This public hearing tonight is intended to provide citizens or interested persons with a chance to comment meaningfully on the DEIS. In order to do that, one must locate, read, research and prepare comments on over 4,000 pages of information. Much of that information is highly technical and complicated. Members on the public are expected to review the information provided by the Applicant in the DEIS, compare the information with the scope of work and comment on the thoroughness of the developer's investigation of potential and/or unavoidable

environmental impacts. By New York State law, the Town Board is charged with taking a hard look during this review process. This means that the Town Board must fact check the developer's application and related documents, do its own fact-finding, listen to and incorporate comments from members of the public and hear from other involved agencies and interested parties. The Town Board is responsible for making sure that the data presented in the SEQRA document is accurate, thorough and ultimately in the best long-term interest of the community.

I respectfully request that the Town and its consultants take the required "hard look".

(Jill Way, Public Hearing Transcript, 6/3/09, Pg. 201-204, 212-213)

Response 8

The Town Board has and continues to takes its responsibilities as Lead Agency extremely seriously. To assist it with its analysis of this project, it retained one of the preeminent environmental planning and consulting firms in New York, AKRF Inc. The Town Board, guided by SEQRA's well-established "rule of reason," is confident that it is undertaking the requisite hard look above and beyond the requisite standards. Please see Responses 3 and 4.

Comment 9

The original notice of completion did not include a specific date by which written comments were due. Instead it stated that they would be accepted for a minimum of 10 days following the close of the public hearing. While the SEQRA regulations require that comments be accepted for that minimum time, it does not allow for an amorphous comment period that does not allow the public or involved agencies adequate notice of when the comments are due.

I have never in over 20 years of practicing environmental law, and being involved in countless projects, ever seen a notice that did not have a date certain for when the end of the comment period was. We need to know what the time periods will be. The notice is defective.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Public Hearing Transcript, 5/30/09, Pg. 85-86; Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Letter, 6/30/09, Pg. 7)

Response 9

The Town Board could not definitively state the deadline for its receipt of written comments until it determined on which date it was closing the Public Hearing. The DEC SEQRA regulations require that agencies receive comments the later of: (i) 30 days from the filing of the Notice of Completion; or (ii) "no less than 10 calendar days following a public hearing at which the environmental impacts of the proposed action are considered." 6 N.Y.C.R.R. § 617.9(a)(4)(iii).

The commenter is effectively suggesting that the Town Board should have predetermined, at the time it issued the Notice of Completion, on which date it would close the Public Hearing (so that it could put a definitive written comment deadline in the Notice). Had the Town Board taken the commenter's suggested course of action, it would not have been able to extend the period for public review as it did, since it would have been bound by a predetermined deadline.

Comment 10

As I reviewed this document I recognized a significant missing piece. The DEIS did not include a Master Development Plan. While the amended zoning law was buried in one of the appendices of the DEIS, the Master Development Plan was presented as a separate document.

It is my understanding that the Town did not receive this document until May 19th. The document is not on the town's website. It is my understanding that the Town Board did not have this document when considering the completeness of the EIS. This is the document that upon adoption that will be the blueprint is the plan for Dover Knolls and the MC Overlay District going forward. You can not declare an action complete without this document. I know when people try to push some things through that there is an intent to avoid public review and gain an advantage. When I see such a fundamental element left out of the public process as the Master Development Plan, all of the red flags get raised. You wonder if this is an honest review. When you combine this with the fact that this is an absurdly shortened review for the DEIS, it raises questions.

The Master Development Plan needs to be published and circulated as soon as possible. I assume that someone has reviewed the Master Development Plan to verify that it is consistent with the DEIS. That may be overly optimistic.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Public Hearing Transcript, 5/30/09, Pg. 86-93; Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Letter, 6/30/09, Pg. 7)

Response 10

As discussed in greater detail in Response 4, the requirements in the Town Code applicable to MDP review are distinct from the SEQRA review requirements set forth in the DEC implementing regulations. The DEIS contained all elements of the MDP. All environmental impacts relating to the MDP were included in the DEIS. As such, the public had a full and fair opportunity to comment upon the project's environmental impacts, as contemplated by SEQRA.

Comment 11

The DEIS posted on the Town's website did not include the legally mandated cover page and table of contents. This is not a minor matter as it is extremely difficult to review the DEIS and comprehend its organization or understand the location of figures and appendices without the table of contents.

I request that the table of contents be added to the Town's website.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Public Hearing Transcript, 5/30/09, Pg. 88, 118; Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Letter, 6/30/09, Pg. 7)

Response 11

Initially, the comment does not suggest that the hard copy of the DEIS lacked a table of contents. Complete hard copies of the DEIS were available for public review at the Dover

Town Hall and Dover Library. The comment refers only to the version of the DEIS posted on the internet.

The manner in which the Town posted the DEIS on its website effectively served as a table of contents. The first web page that a site visitor looking for the Dover Knolls DEIS would encounter presents clearly labeled links to each chapter of the DEIS (e.g., there is a link on the introductory web page to the DEIS to the Land Use and Zoning Chapter as well as to its supporting documents). Thus, navigation of the posted DEIS was straight forward.

The requirement for the posting of EIS's is relatively recent, and, on its website, DEC, which is the agency primarily responsible for implementing SEQRA, indicates that it is still "investigating a range of alternatives to guide state and local agencies in complying with this new requirement," and that it "intends to develop regulations to more specifically direct compliance." See <http://www.dec.ny.gov/permits/6197.html>. Notably, DEC states that "[i]n the meantime, there are several alternatives available to agencies which will satisfy the basic requirements of [this new posting requirement]," including "[p]ost[ing] only [the] executive summary of each EIS." Id.

Given that the DEC states the posting of an executive summary could meet the notice standards on the web, the Town's posting clearly far surpassed the minimum requirements.

Comment 12

The deficiencies in the SEQRA process that have been identified are not minor, but go to the opportunity of the public to participate in a meaningful manner. The courts have long-held that agencies are held to a strict and literal compliance with the procedural requirements of SEQRA and its implementing regulations. *Matter of King v. Saratoga County Bd. Of Supervisors*, 89 N.Y. 2d 341.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Letter, 6/30/09, Pg. 8)

Response 12

As noted above in Responses 1, 3 and 4, the Town Board has surpassed the minimum requirements of SEQRA to ensure that there have been multiple and extended opportunity for public comment.

Comment 13

There are citizens in this town that are not going to sit idly by and allow this Town Board to improperly approve a project that has fatal flaws in it. For example, if this project is approved with an obvious deficient water supply, as has been initially laid out, there will be the opportunity to take this action to the DEC for an adjudicatory hearing, where arguments can be made that the project will not need the standards necessary for a water supply permit from the DEC.

If actions are not taken, for example not upgrading the filtration plant for the reservoir until Phase 2 when water supply will be needed in Phase 1, other actions will be taken that will delay

the project. Unfortunately, it appears that this project is going full steam ahead without regards to the rights that anybody has.

Please correct these problems and review this project right to come up with a project that actually helps the Town of Dover.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Public Hearing Transcript, 5/30/09, Pg. 93-96)

Comment 13

See Response 8. Responses to specific comments made with respect to particular areas of environmental concern addressed in the DEIS may be found in the appropriate section of this FEIS.

Comment 14

As proposed, the current plan has the potential to be more like a proverbial bait and switch where on first blush it appears to be a beneficial project, but careful analysis reveals that the impacts are understated and the assumptions governing the development are ephemeral with little or no guarantees that the final project will resemble what has been proposed in the DEIS. As a result, this project requires significant revisions to both assess the impacts and demonstrate controls to assure that development will proceed in accordance with the Master Development Plan. Given the significant information that is missing, it must be provided in a Supplemental Environmental Impact Statement and not in a Final EIS. There is no opportunity for the public to comment on a FEIS and thus a SEIS is the only way to assure meaningful comment and comply with the requirements of SEQRA.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker and Moore, Letter, 6/30/09, Pg. 1)

Response 14

As contemplated by SEQRA, all substantive comments on the DEIS are being addressed in this FEIS. See 6 N.Y.C.R.R. § 617.9(b)(8). Responses to specific comments made with respect to particular areas of environmental concern addressed in the DEIS may be found in the appropriate section of this FEIS.

The commenter also misconstrues SEQRA in asserting that a supplemental environmental impact statement (“SEIS”) is required. An SEIS would only be required if, following the issuance of the FEIS, it emerged that there were specific significant adverse environmental impacts, which resulted from project changes, new information or changed circumstances, that had not been studied. The comment’s call for a SEIS at this stage is premature and not warranted.