

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF ORANGE

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In the Matter of the Application of

**DECISION AND ORDER**  
 (Motions #1 and #2)

STERLING FOREST PARTNERSHIP,  
 STERLING LAKE HOMEOWNERS ASSOCIATION,  
 EDYTHE GREENSTEIN, DAVID TREIBER and  
 TOWN OF TUXEDO,

Index No. EF008021-2025

Petitioners,

-against-

TOWN OF WARWICK, OLD FORGE ROAD LLC and  
 BETH MEDRASH MEOR YITZCHOCK COLLEGE,

Respondents,

For an Order and Judgment pursuant to CPLR Article 78.

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**McElduff, A.J.S.C.**

The Court considered the following submissions on Petitioners' application to annul a negative declaration of the Town of Warwick Planning Board:

1. Notice of Petition, Petition, Exhibits 1-12, McMillen Affidavit (as corrected), Nelson Affidavit, Church Affidavit, Sussman Affirmation, Memorandum of Law;
2. Record on Appeal
3. Answer (Town of Warwick), Memorandum of Law in Opposition
4. Answer (Old Forge Road LLC et al), Memorandum of Law in Opposition
5. "Reply" Affirmation and Memorandum of Law (Town of Tuxedo)
6. Sussman Reply Affirmation, with Exhibit 1, Friedman Reply Affidavit, Nelson Reply Affidavit
7. Amicus Curiae Order to Show Cause, Svenson Affirmation, Laird Affirmation, Memorandum of Law; Sussman Affirmation, Toal Affirmation
8. Memorandum of Law in Opposition to Amicus Curiae

Respondents Old Forge Road LLC and Beth Medrash Meor Yitzchock College (hereinafter, the "Applicants") sought to revitalize a former New York University research facility (consisting of three main buildings) as a Rabbinical College. The proposed use was permitted by local code. The project involved renovating the interiors of the existing buildings, abatement of any existing harmful conditions (e.g., mold, asbestos, etc.), disturbance of approximately one-third of an acre

of land to improve parking/access and restoration of approximately 10,000 square feet of pavement to natural conditions.

The Respondent Town could have classified the project as a Type II Action due to the generally non-impactful and interior nature of the project pursuant to the Applicants' request; however, the Respondent Town declined and classified the project as a Type I Action. As a result, the Respondent Town Planning Board, as lead agency, requested, received and reviewed a litany of further submissions from various sources, including multiple engineers, who opined on, among other things, water and sewer systems, soil and water sampling, traffic/road use, underground storage tanks, interior abatement measures, lighting and so on, over the course of several months, after and upon which adjustments were made to the project.

After this process, which included Phase 1 ESA, Phase 2 ESA and EAF Part 3, the Respondent Town issued a negative declaration for the project contained a reasoned elaboration.

Petitioners now contend that the Respondent Town failed to take a hard look, for the purposes of SEQRA, at potential changes to community character, potential adverse impacts to environmental resources and the potential for dangerous substances to be emitted into the environment.

As summarized in *Cathedral Church of St. John the Divine v. Dormitory Auth. of State of N.Y.*, [224 A.D.2d 95, 99–100 (3d Dept. 1996):

SEQRA requires an agency to review proposed actions “that may affect the environment” (6 NYCRR 617.2[b][1]). For a type I action such as the instant project (*see*, 6 NYCRR 617.2[ii]; 617.12), the lead agency must conduct an evaluation, usually based on an EAF, and make a positive or negative declaration as to whether the proposed action will have a significant effect on the environment (*see*, 6 NYCRR 617.2[m], [y], [cc]; 617.10[a]). The issuance of a negative declaration ends the review procedure (*see*, Weinberg, Practice Commentary, McKinney's Cons Laws of NY, Book 17 ½, ECL C8–0109:4, at 78). \*100 Prior to issuing a negative declaration, an agency must evaluate numerous criteria (*see*, 6 NYCRR 617.6 [g][2]; 617.11), take a “hard look” at relevant areas of environmental concern and make a written “reasoned elaboration” of its basis for the determination (*Matter of Holmes v. Brookhaven Town Planning Bd.*, 137 A.D.2d 601, 604, 524 N.Y.S.2d 492, *lv. denied* 72 N.Y.2d 807, 533 N.Y.S.2d 56, 529 N.E.2d 424; *see*, *Matter of Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 417, 503

N.Y.S.2d 298, 494 N.E.2d 429). And, although an EIS is presumptively required for type I actions (*see, Matter of Town of Dickinson v. County of Broome*, 183 A.D.2d 1013, 1014, 583 N.Y.S.2d 637), it is not a per se requirement (*see, Matter of Save the Pine Bush v. Planning Bd. of Town of Guilderland*, 217 A.D.2d 767, 629 N.Y.S.2d 124, *lv. denied* 87 N.Y.2d 803, 639 N.Y.S.2d 310, 662 N.E.2d 791). In reviewing an agency's SEQRA determination, the standard of review is whether the determination was arbitrary and capricious or an abuse of discretion (*see, Chinese Staff & Workers Assn. v. City of New York*, 68 N.Y.2d 359, 363, 509 N.Y.S.2d 499, 502 N.E.2d 176; *Matter of Jackson v. New York State Urban Dev. Corp., supra*).

Nothing in SEQRA bars an agency from relying upon information or advice received from others, including consultants or other agencies, so long as the reliance was reasonable under the circumstances. *League for Handicapped, Inc. v. Springville Griffith Inst. Cent. Sch. Dist.*, 66 A.D.3d 1398, 1399 (4d Dept. 2009).

Where an applicant works with the lead agency and other reviewing agencies in public and, as a result of that open consultation, incorporates changes in the project which mitigate the potential environmental impacts, a negative declaration may be appropriate in a Type I Action, provided that such declaration is not the product of closed-door negotiations or of the applicant's compliance with conditions unilaterally imposed by the lead agency. *Vill. of Tarrytown v. Plan. Bd. of Vill. of Sleepy Hollow*, 292 A.D.2d 617, 619–20 (2d Dept. 2002). Significantly, an agency's responsibility under the State Environmental Quality Review Act must be viewed in light of a "rule of reason," in that not every conceivable environmental impact, mitigating measure or alternative, need be addressed in order to meet the agency's responsibility. *Hells Kitchen Neighborhood Ass'n v. City of New York*, 81 A.D.3d 460, 462 (1<sup>st</sup> Dept. 2011).

Similar to *Tarrytown, supra*, the Respondent Town requested and received input from the public, the Applicants and experts, modified the project, and in the course of doing so took the appropriate hard look at the areas of concern, including those raised by the Petitioners.

Similar to *Hells Kitchen Neighborhood Ass'n v. City of New York, supra*, the subject project did not involve expansion or significant alteration of the existing/former use of the space (except to clean it up), and there was no evidence to support neighborhood association's claim that the project would involve any impact on the surrounding environment.

In any event, Petitioners' environmental concerns are not supported by any factual or expert evidence and are based only on their conjecture as to how the project may impact the park.

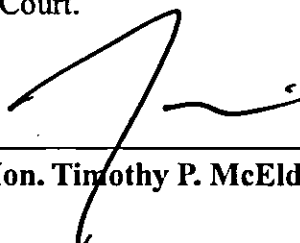
Generalized community objections are insufficient to challenge an environmental review that is based on empirical data and analysis, such as the one here. *See, e.g., Hells Kitchen Neighborhood Ass'n v. City of New York*, 81 A.D.3d 460, 462 (1<sup>st</sup> Dept. 2011).

Accordingly, it is hereby

ORDERED that the petition is denied and dismissed.

This constitutes the Decision and Order of the Court.

Dated: March 11, 2026  
Goshen, New York



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Hon. Timothy P. McElduff, Jr., A.J.S.C.