

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

PRESERVE SCENIC PERINTON ALLIANCE, INC,

Petitioner,

vs.

PETITION

Index No.:

NEW YORK STATE DEPARTMENT
OF CONSERVATION, ALEXANDER B.
GRANNIS as Commissioner of the New
York State Department of Conservation,
WASTE MANAGEMENT OF
NEW YORK, LLC, and JOHN DOES,

Respondents.

Petitioner Preserve Scenic Perinton Alliance, Inc. (“petitioner”), by its attorneys, Knauf Shaw LLP, for its Petition, alleges as follows:

INTRODUCTION

1. Petitioner brings this hybrid CPLR Article 78 proceeding/declaratory judgment action to complain of the deficient environmental review of the proposed vertical and horizontal expansion (the “Expansion”) of the High Acres Landfill (the “Landfill”) under the State Environmental Quality Review Act (“SEQRA”) (Environmental Conservation Law Article 8), and the regulations implementing SEQRA set forth at 6 N.Y.C.R.R Part 617 (the “SEQRA Regulations”), by respondent New York State Department of Conservation (the “NYSDEC”).

2. The Landfill is operated by respondent Waste Management of New York, LLC (“Waste Management”) in the Town of Perinton, Monroe County, New York, and the Expansion would extend it into the Town of Macedon, Wayne County, so it would be about 286 feet high, and over a mile long, which would more than double its permitted waste volume by 46.5 million tons to 71.5 million tons.

3. The Expansion would not even begin until 2014, and is projected to be completed in about 2057.

4. The Expansion would have adverse environmental impacts that cannot be adequately mitigated, including severe aesthetic impacts that would permanently degrade the area surrounding the Landfill (the “Surrounding Area”).

RESPONDENTS

5. Respondent NYSDEC is a state agency, with offices at 625 Broadway, Albany, New York 12233-7020, in the City and County of Albany and State of New York.

6. Respondent Alexander B. Grannis is an individual who holds the position of Commissioner of NYSDEC, and maintains offices at 625 Broadway, Albany, New York 12233-7020, in the City and County of Albany and State of New York.

7. Upon information and belief, respondent Waste Management is a Delaware Limited Liability Company, authorized to do business in New York, with offices at 1001 Fannin, Suite 4000, Houston, Texas 770022.

8. Respondents John Does are any other persons who are necessary parties to this proceeding.

PETITIONER

9. Petitioner Preserve Scenic Perinton Alliance, Inc. (“petitioner”) is a New York not-for-profit corporation, with offices at 19 Piping Rock Run, Fairport, New York 14450.

10. Petitioner was formed to promote, organize and improve the character and quality of residential neighborhoods and homes in the immediate vicinity of the Landfill and surrounding areas in the Town of Perinton, and to provide a mechanism by which concerned and interested citizens can

help to preserve and protect the environment, sound land use planning, and natural resources in the Town of Perinton, and contribute toward responsible land use planning.

11. Petitioner has over 100 members that own and/or reside at properties in the Town of Perinton (“Petitioner’s Properties”), which are immediately adjacent to or in close proximity to the existing Landfill, as well as the location of the proposed Expansion.

12. Examples of members of Petitioner include Marcia and Michael LeBlanc, who own and reside at 18 Crosswinds Circle, Fairport, New York 14450, and Harvey and Linda Berson, who own and reside at 30 Crosswinds Circle, Fairport, New York 14450, across the Erie Canal from the Landfill.

13. The Expansion will have negative impacts on the Surrounding Area and Petitioner’s Properties, such as traffic congestion, unsafe truck traffic, noise, litter, odors, and destruction of the aesthetic character of the Surrounding Area.

THE LANDFILL

14. Waste Management currently operates the Landfill on about 90 acres in the Town of Perinton.

15. On May 26, 2005, Waste Management submitted an application (the “Application”) to NYSDEC for the Expansion of the existing Landfill.

16. The Application called for a 144.3-acre horizontal expansion of the Landfill in the Town of Perinton and into the Town of Macedon in Wayne County (the “Horizontal Expansion”).

17. The Application also called for a 100-foot vertical expansion of the area of the Landfill currently located in the Town of Perinton, New York (the “Vertical Expansion”) over the existing permitted height, and about 140 feet over the level of the closed original Landfill area. The

Vertical Expansion would cover 7.4 acres over the northeast corner of an already closed area of the Landfill, and 90 acres the existing, permitted section of the Landfill, in addition to the area of the Horizontal Expansion.

THE SEQRA REVIEW PROCESS

18. On June 6, 2005 NYSDEC declared itself Lead Agency.

19. On or about August 17, 2005, NYSDEC issued a Positive Declaration under SEQRA for the Expansion.

20. On August 24, 2005, NYSDEC noticed the Positive Declaration of Potential Environmental Impact in the *Environmental Notice Bulletin*, in the legal section of a local newspaper and to the landowners immediately adjacent to the Landfill, but not to any members of Petitioner or additional owners or residents of properties in the Surrounding Area.

21. On or about October 11, 2006, the NYSDEC issued notice of the acceptance of the Draft Environmental Impact Statement (“DEIS”) and the fact that it was available for review, in the *Environmental Notice Bulletin*, in the legal section of a local newspaper and to certain landowners immediately adjacent to the Landfill, but not to any members of Petitioner or additional owners or residents of properties in the Surrounding Area.

22. As a result, none of the members of Petitioner were aware of the proposed Expansion, and there was no public comment on the DEIS from members of Petitioner.

23. On March 7, 2007 the NYSDEC issued notice that the Final Environmental Impact Statement (“FEIS”) had been accepted in the *Environmental Notice Bulletin*, in the legal section of a local newspaper and to certain landowners immediately adjacent to the Landfill, but not to any members of Petitioner or additional owners or residents of properties in the Surrounding Area.

24. On or about May 18, 2007, NYSDEC adopted a SEQRA Findings Statement (the “Findings”), a copy of which is annexed as Exhibit “A,” in which it found that the Expansion to 286 feet by about the year 2057 was “[c]onsistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.”

PROCEDURAL ISSUES

- 25. Petitioner has no administrative remedy.
- 26. Petitioner has made no previous application for the relief sought in this Petition.
- 27. Petitioner has no adequate remedy at law.

AS AND FOR A FIRST CAUSE OF ACTION FOR ARBITRARY, CAPRICIOUS AND ILLEGAL ACTION IN VIOLATION OF THE SUBSTANTIVE REQUIREMENTS OF SEQRA AND THE SEQRA REGULATIONS, PETITIONER ALLEGES AS FOLLOWS:

28. Petitioner repeats and realleges the allegations of paragraphs “1” through “27” of this Petition, as if set forth in this paragraph at length.

29. The SEQRA environmental review of the Expansion, including the DEIS and FEIS (together the “EIS”) and the Findings (Exhibit “A”), were inadequate because of various substantive deficiencies, including but not limited to the failure to consider or adequately consider or analyze, among other things:

- a. Impacts on significant area viewsheds, including the historic district at Route 31 and Aldrich Road.
- b. Impacts on historic structures in that district and along the Erie Canal.
- c. Visual impacts on other areas (even if not regionally significant), including nearby neighborhoods across the Erie Canal from the Landfill, where many of Petitioners' Properties are located.
- d. Overall massing and visual impact of the Landfill, as expanded, which will tower over the Surrounding Area and dominate the landscape with an untreed and unnatural east-to-west elongation (as opposed to north-south glacial formations), focusing on the percentage of sites that can see the Landfill rather than what they will see.
- e. Overall impact on community character and perception of the Surrounding Area and stigmatization of the Town of Perinton as a garbage capital with a dump that would be the biggest structure in the Rochester area - as high as downtown buildings but a mile long.
- f. Impacts of loss of tax revenue due to decreased value of stigmatized properties in the Surrounding Area, and the impeding of future development in the Surrounding Area.
- g. Visual impacts of red lights on top of the Vertical Expansion required by the Federal Aviation Administration.
- h. Impacts on the traffic conditions in the area, using dated traffic information, and then only considering impacts 20 years in the future.

- i. Traffic impacts and routes from the west, particularly from Monroe County where about 26% of the Landfill waste currently originates from, such as traffic from the west on Routes 31, 31F and 441.
- j. Impacts and noise on area roadways due to constant heavy use by garbage trucks, resulting in deterioration of road construction.
- k. Traffic safety, including accidents resulting from large truck traffic, especially at intersections with identified geometric problems.
- l. Rail as an alternate mode of transportation, assuming that it was too expensive without any real analysis.
- m. Mitigation by upgrades to intersections with identified geometric problems.
- n. Noise impacts on the Surrounding Areas, rather making a conclusory assumption that impacts from noises up to 140 feet above the current top of the closed Landfill would be similar to current noise impacts.
- o. Impacts of the Expansion on the Inactive Hazardous Waste Disposal Site at the old closed Landfill, which is predicted to settle about 18 feet, including but not limited to, impacts on groundwater quality due to toxic chemicals that will be pushed out of the Landfill.
- p. Impact of the weight of up to 286 feet of garbage on the waste and in some areas the clay liner, cap, and other existing systems below, including resulting instability, and resulting risks of fissures and other failures.
- q. Risks of earthquakes, other natural disasters, and terrorist threats.

- r. Alternatives more consistent with Environmental Conservation Law §27-0106(1) (the “Solid Waste Hierarchy”), which designates landfilling as the least desirable alternative, such as a waste-to-energy plant.
- s. Other alternative development options, including alternative locations, alternative designs, alternate land uses, and no action.
- t. The adequacy of Mill Seat Landfill in Riga, which has adequate landfill capacity for the area, so the Expansion is unnecessary.
- u. Cumulative impacts of the relocation or elimination of more desirable alternatives under the Hierarchy, including yard waste composting and wood chipping.
- v. Alternate landfill technologies, so that rather than trying to permanently entomb waste, it could be biodegraded.
- w. Likelihood of new technologies that will be developed over the next 50 years that may make the proposed landfilling technology obsolete.
- x. Adequate financial security, since Waste Management may not be viable in 50 or 100 years.
- y. Alternatives to the Expansion, including but not limited to no Vertical Expansion, and/or a lower Vertical Expansion, and summarily dismissing smaller alternatives as “discontinuous.”
- z. Justification for the Vertical Expansion, merely relying on the projected \$42 million in revenue to Waste Management, without consideration of costs to Waste Management, government or private citizens, or lost tax revenues.

- aa. Changes to the Host Benefit Agreement with the Town of Perinton, so that volumes are capped, and mitigation measures are limited to those presently in place.
- bb. Cumulative effects related to extension of the Town of Macedon sewer system, including but not limited to, assessing the adequacy of Macedon's sewer system in the year 2014, when impacts on Macedon's sewer system are expected to begin to occur, or the growth-inducing impacts of extension of the sewer line.
- cc. Cumulative impacts from the increase in production of landfill gases, including greenhouse gases, and the construction of an additional power production plant.
- dd. Cumulative impacts of the disposal of additional petroleum contaminated soil and ash containing toxic chemicals as daily cover for the Landfill.

30. The Findings were conclusory, and failed to comply with with 6 N.Y.C.R.R. §617.11 and ECL §8-0109(8), because of the above deficiencies, and because they merely recited summaries of analyses in the EIS without any consideration, and then just repeated the “magic words” of the SEQRA Regulations that the Expansion “avoids or minimizes adverse environmental impacts to the maximum extent practicable,” without even discussing alternatives, and “that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable,” without identifying those conditions.

31. The Findings failed to recognize that the permanent defacement of the landscape by the 286-foot, mile-long Expansion was an “irreversible and irretrievable commitment of resources.”

32. The Findings assumed that the Host Community Agreement with the Town of Perinton was already completed before the SEQRA review process, and thus failed to consider additional mitigation that could result from changes to that agreement after it expires.

33. The Findings were inconsistent with the Hierarchy, by assuming that massive landfill expansion was necessary without seriously considering alternate preferred technologies and that adequate existing landfill space was already available in the area.

34. It is irrational to conclude that the Expansion, which will result in the biggest structure in the Rochester area, and will not be completed until about 2057, in spite of the adequacy of existing landfill capacity in this area, ““avoids or minimizes adverse environmental impacts to the maximum extent practicable.”

35. Accordingly, the EIS and Findings were irrational, arbitrary, capricious, not supported by the record, and/or illegal due to failure to comply with the substantive requirements of SEQRA and the SEQRA Regulations, and therefore the Expansion cannot be approved because it was not subjected to an adequate SEQRA environmental review.

**AS AND FOR A SECOND CAUSE OF ACTION
FOR ARBITRARY, CAPRICIOUS AND ILLEGAL ACTION
IN VIOLATION OF THE PROCEDURAL REQUIREMENTS OF
SEQRA AND THE SEQRA REGULATIONS,
PETITIONER ALLEGES AS FOLLOWS:**

36. Petitioner repeats and realleges the allegations of paragraphs “1” through “35” of this Petition, as if set forth in this paragraph at length.

37. The SEQRA review process for the Expansion, including the EIS and findings, failed to comply with the procedural requirements of SEQRA and the SEQRA Regulations, because, among other things:

- a. NYSDEC failed to give adequate notice to the public or petitioner consistent with the SEQRA Regulations, its other policies and regulations, and/or due process, and the notices were misleading, referring to parkway expansion rather than clearly indicating a huge increase in Landfill height.
- b. The EIS failed to identify various approvals necessary for the Expansion, including Site Plan approval from the Town of Perinton Planning Board, and changes to intersections and speed limits by the New York State Department of Transportation (“NYSDOT”), identified as necessary.
- c. NYSDEC failed to include various involved agencies in the SEQRA review process, as required by 6 N.Y.C.R.R. §617.6, including the Town of Perinton Zoning Board of Appeals, the Town of Perinton Planning Board, and NYSDOT.
- d. Various involved agencies acted before completion of the Findings, including the Perinton ZBA, which granted a variance, the Town of Macedon, which changed its solid waste laws, and the Town of Perinton, which entered into a new Host Benefits Agreement, and the EIS and Findings assumed these approvals to be the *status quo*.
- e. The environmental review was segmented by failing to adequately consider the environmental impacts of the Approval on air quality, in violation of 6 N.Y.C.R.R. §617.3(g), and instead, deferring review of that issue to a future application for a Title V Air permit.

- f. Wetlands that would be constructed as offsets to mitigate the construction of the new Town of Perinton Department of Works facility are part of the project, but the environmental review of that facility was segmented from the SEQRA review of the Expansion.
- g. The EIS on the Internet was merely the Supplemental EIS for the Phase II Expansion, and did not include the underlying EIS, as supplemented, and omitted many back sides of pages.

38. Upon information and belief, there may be other deficiencies in the SEQRA process that will be revealed upon filing the Record by NYSDEC, such as lack of proper notices and failure to properly designate the lead agency.

39. Accordingly, the EIS and Findings were irrational, arbitrary, capricious, not supported by the record, and/or illegal due to failure to comply with the procedural requirements of SEQRA and the SEQRA Regulations, and therefore the Expansion cannot be approved because it was not subjected to an adequate SEQRA environmental review.

WHEREFORE, petitioner respectfully requests that this Court grant an Order and Judgment, pursuant to CPLR Article 78 and §§103, 3001 and 3212: (1) vacating, annulling, and declaring null and void the Findings, DEIS and FEIS, and/or any approvals granted by respondent NYSDEC for the Vertical Expansion and/or Horizontal Expansion; (2) declaring that no final approval can be granted for the Vertical Expansion and/or Horizontal Expansion by NYSDEC, unless and until SEQRA, the SEQRA Regulations, and other legal requirements are fully complied with; and (3) granting such other and further relief as this Court deems just and proper.

Dated: Rochester, New York
June 18, 2007

s/Alan J. Knauf
KNAUF SHAW LLP

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