

SUPREME COURT
STATE OF NEW YORK COUNTY OF ERIE

CONCERNED RESIDENTS FOR AMHERST
CENTRAL PARK, by its Chairperson William F. Wopperer,

Petitioner,

VERIFIED PETITION

vs.

TOWN OF AMHERST, AMHERST TOWN BOARD,
TOWN OF AMHERST PLANNING BOARD, and
BRIAN J. KULPA, in his official capacity as the Town
Supervisor of the Town of Amherst,

Index No.:

Respondents.

Petitioner Concerned Residents for Amherst Central Park (“Petitioner” or the “Concerned Residents”), by its Chairperson William F. Wopperer, for its Petition by its attorneys, **KNAUF SHAW LLP**, alleges, as follows:

INTRODUCTION

1. In this special proceeding, Petitioners seek, pursuant to CPLR Article 78, Town of Amherst Town Code Chapter 203 (the “Zoning Code”) the State Environmental Quality Review Act (“SEQRA”) and other legal authorities to seek, *inter alia*, annulment as illegal, arbitrary and/or capricious, the approvals (“Approvals” attached as **Exhibit A**) issued by Respondents Town of Amherst (“Town”), Amherst Town Board (“Town Board”), Town of Amherst Planning Board, and Brian Kulpa, in his official capacity as Town Supervisor, (collectively, “Respondents”), and the related adoption of a SEQRA Findings Statement by the Town Board (“Findings Statement” attached as **Exhibit B**), dated December 18, 2023, of the Town’s application for approval of an Amended Planned Unit Development (“PUD Application” attached as **Exhibit C**) pursuant to a

Conceptual Development Plan (“PUD Plan” attached as **Exhibit D**) for the Amherst Central Park (“Central Park”), and the acceptance by the Town Board of the accompanying Draft Supplemental Generic Environmental Impact Statement (“DSGEIS” attached as **Exhibit E**) dated October 12, 2023 and Final Supplemental Generic Environmental Impact Statement (“FSGEIS” attached as **Exhibit F**) dated December 1, 2023 and filed December 4, 2023.

2. On October 13, 2023, Respondent Town submitted the PUD Application proposing the adoption of the PUD Plan for the purported conversion of an approximately 170.5± acre parcel located at 772 North Forest Road and 385 & 391 Maple Road (the “Park Property”) to a community park.

3. Petitioners seek to annul the Approvals because, inter alia, the environmental review process (the “SEQRA Review”) for the PUD Application failed to comply with the requirements of SEQRA, and was therefore unlawful, arbitrary, and capricious.

4. The SEQRA Review was fatally flawed due to, inter alia, a lack of viable, reasonable alternatives, inadequate consideration of traffic improvements and mitigation measures, and inadequate assessment of the brownfield remediation plan.

5. Further, Respondents failed to comply with their affirmative substantive duty under SEQRA to avoid or minimize adverse environmental effects to the maximum extent practicable. ECL § 8-0109(8).

6. Respondents failed to take a “hard look” at a reasonable range of alternatives to the PUD Plan, which would have mitigated its significant environmental, economic and social impacts, including alternatives limited to passive recreation and alternatives that don’t involve the relocation of the existing Buffalo Niagara Heritage Village Museum (the “Museum”) to the Central Park and the construction of an indoor 31,600 square foot Community Theater Building in the

Central Park (the “Community Theater”) without assessment of other locations for the Community Theater within the Town.

7. Rather, the SEQRA Review limited the range of alternatives subjected to full review and public comment to essentially two alternatives: (1) the PUD Plan and (2) an expansive residential and commercial development (the “Mixed Use Project”) that was found in 2017 to be not protective of the environment under SEQRA.

8. Further, the Facility Improvement Review Process created within the PUD Plan is not authorized by Chapter 203 of the Amherst Town Code (the “Zoning Code”) and is illegal.

9. Finally, the approval PUD Plan is illegal because the Museum and Community Theater are not permitted uses in the underlying zoning district and the PUD Plan is incompatible with the Town’s Comprehensive plan due to inadequate pedestrian and bicycle connectivity to existing facilities.

PARTIES

10. Petitioner Concerned Residents is an unincorporated association of community members that would be adversely impacted by the PUD Plan, including members that live in close proximity to the Park Property.

11. The Concerned Residents advocate for the promise of an Amherst Central Park that is inspired by the values of Buffalo’s Olmsted Parks, representing restorative green spaces that support people, respect nature and the environment, and provide opportunities to play, create, commune and discover.

12. Members of the Concerned Residents include, but are not limited to:

- Judith Ferraro, 213 Donna Lea Blvd., Williamsville, NY 14221
- Jennifer J. Snyder-Haas, 185 Fairways Blvd, Williamsville, NY 14221
- William F. Wopperer, 143 Fairways Blvd., Williamsville, NY 14221

13. Judith Ferraro is a resident of the Town of Amherst and lives in the neighborhood surrounding the Park Property and future location of the Central Park.

14. Ms. Ferraro would be negatively impacted by the PUD Plan as a result of the inadequate traffic plan in the DSGEIS and the increased traffic from the Community Theater and Museum proposed for the Central Park

15. Further, Ms. Ferraro would be negatively impacted by the relocation of the Museum to the Central Park because of the proximity of the Museum's livestock to her residence.

16. Jennifer J. Snyder-Haas is a resident of the Town of Amherst and lives on the street bordering the Central Park ACP, and her backyard is open to the Park Property.

17. Ms. Snyder-Haas was also a member of the Amherst Central Park Task Force ("Task Force"), a committee formed to develop a vision for a plan for the Central Park after the Park Property was acquired by the Town. Notably, the Task Force was not involved in the preparation of the PUD Plan by the Town.

18. Ms. Snyder-Haas would also be negatively impacted by the Project as a result of inadequate traffic plan in the DSGEIS and the increased traffic from the Community Theater and Museum proposed for the Central Park and would be negatively impacted by the presence of livestock from the relocated Museum near her residence.

19. William F. Wopperer, Chairperson of the Concerned Residents, is a resident of the Town of Amherst and lives on the street bordering the Central Park, and his backyard is open to the Park Property.

20. Mr. Wopperer would be negatively impacted by the Project as a result of the inadequate traffic plan in the DSGEIS and the increased traffic from the Community Theater and

Museum proposed for the Central Park and would be negatively impacted by the presence of livestock from the relocated Museum near his residence.

21. The Members, as nearby residents, would anticipate frequently using recreational features of the Central Park, whether to walk, run, bike, walk their dog, use playgrounds, enjoy the beautiful natural features, and, if it were present, bicycling along the Ellicott Creek Trailway if the Central Park plan were to include connectivity between the Audubon Golf Course to the north and the Amherst State Park to the south.

22. Respondent Town of Amherst (the “Town”) is a municipal corporation with offices at 5583 Main Street, Williamsville, NY 14221.

23. Respondent Amherst Town Board (the “Board”) is the governing board for the Town through the exercise of its executive, legislative and administrative powers pursuant to Chapter 4-1 of the Code of the Town of Amherst, with offices at 5583 Main Street, Williamsville, NY 14221.

24. Respondent Town of Amherst Planning Board has the power to, among other things, review and approve site plans and provide planning recommendations to the Town, pursuant to Chapter 4-1 of the Code of the Town of Amherst (“Town Code”), with offices at 5583 Main Street, Williamsville, NY 14221.

25. Respondent Brian Kulpa, in his official capacity, is Town Supervisor of the Town of Amherst, New York, with offices at 5583 Main Street, Williamsville, NY 14221.

BACKGROUND

26. From 2014 to 2017, development of the Park Property, then owned by a private developer, for a commercial and residential project known as the Westwood Neighborhood (the “Mixed-Use Project”) was the subject of a Generic Environmental Impact Statement (GEIS) for

the Park Property. Based on the Town Board's GEIS Findings Statement in 2017, the Mixed-Use Project was denied due to adverse environmental impacts, including inadequate sewage disposal, traffic issues, loss of open space, conversion of RC (Recreational Conservation) zoning land to residential and commercial uses, impacts to natural features, and impacts to adjacent residential neighborhoods.

27. Subsequently, evidence of Native American artifacts were found at the Park Property, as were traces of arsenic, mercury, lead and zinc from decades of spraying of pesticides at the former golf course.

28. After attempts to rezone the Park Property and threats of litigation, the developer sold the Park Property to the Town. [See https://buffalonews.com/news/local/business/amherst-completes-purchase-of-westwood-country-club-weve-got-a-lot-of-work-in-front/article_cf4fb6c4-dale-1led-8b27-c78acfa38627.html](https://buffalonews.com/news/local/business/amherst-completes-purchase-of-westwood-country-club-weve-got-a-lot-of-work-in-front/article_cf4fb6c4-dale-1led-8b27-c78acfa38627.html).

29. The Amherst Central Park Task Force ("Task Force") was created by the Amherst Town Board in October 2020 and its existence is codified in Chapter 7 of the Town Code.

30. According to the Town Code, the Task Force "shall promote, stimulate, encourage and coordinate the pursuit of recreational activities in Amherst Central Park; encourage public input into the utilization of Amherst Central Park; promote the utilization of the Amherst Central Park by all members of the community and make appropriate recommendations in the development process concerning the Amherst Central Park." Amherst Code § 7-3.

31. Although the ACP Task Force was designed to function throughout the years of planning for the Central Park, as evidenced by the member and term structure outlined in § 7-2¹, the Task Force has not been utilized for its stated purpose.

¹ "It shall consist of eleven (11) members, each member appointed by the Town Board. Each member shall serve a three (3) year term commencing at the bi-annual Town Reorganization Meeting, with the exception of the first such

32. The last meeting of the Task Force was held on August 21, 2021.
33. Since then, all subsequent plans have been done in-house by the Town Board and private developers.
34. The DSGEIS provides a “partial list of the various meetings held by the Town to discuss the creation of the Amherst Central Park:
- LWRP Waterfront Advisory Committee Meeting Site Visit at Westwood - August 24, 2018
 - LWRP First Public Meeting – December 3, 2018
 - University Student Presentations for the Park Design – May 13, 2019 (Amherst Central Park)
 - Arts & Culture Committee – June 6, 2019
 - Senior Housing Committee – June 11, 2019
 - Indoor Facility Committee – June 25, 2019
 - Golf Committee – July 9, 2019
 - Second LWRP Public Meeting on LWRP Projects – July 10, 2019
 - Park Committee – August 16, 2019
 - Maple Road Committee – August 26, 2019
 - Getzville neighborhood meeting – September 12, 2019 (Amherst Central Park planning)
 - LWRP Waterfront Advisory Committee Meeting – Projects/Section IV – September 18, 2019
 - Village of Williamsville LWRP – October 24, 2019
 - Public Meeting Ellicott Creek neighborhood meeting – November 5, 2019
 - Dover-Kohl Park Design Workshop – June 29 - July 2, 2020
 - Amherst Central Park Task Force meetings –2020 to 2021 present
 - Village of Williamsville LWRP meeting – March 2, 2021
 - Public Meeting – LWRP 3rd and Final Public Meeting – February 28, 2023”

See DSGEIS at 1.3.

Board, which shall be appointed following the adoption of this chapter. The terms of the members are to be staggered to prevent the entire Board from overturning at one time. Initial membership terms are to be adjusted to have a term of three (3) members expire on December 31, 2020, the terms of three (3) members to expire on December 31, 2021, the terms of three (3) members to expire on December 31, 2022 and the term of two (2) members to expire on December 31, 2023. Board members are limited to serving three (3) consecutive terms. Members shall be representatives of the community and have a particular interest in the creation, maintenance and fulfillment of recreational activities in Amherst Central Park. In making appointments to the Board, the Supervisor and the members of the Town Board shall give due consideration to the recommendations made by recognized representatives of local, civic, education and cultural associations, groups and organizations that are concerned with or engaged in the establishment of public recreational facilities. The Amherst Central Park Task Force shall elect its own chairperson and adopt its own rules of procedure.”

35. Notably, in the list above, there were zero public meetings in 2022 and only one “final public meeting” in 2023 regarding the plan for the Central Park.

36. The uses and sites that were being considered at the beginning of the public participation process, and even just from the last Task Force meeting in 2021, are starkly different than those proposed in the PUD Application.

37. Therefore, the absence of any meetings in 2022 and having only one in 2023 before the PUD Application was submitted does not constitute robust public participation.

THE PUD APPLICATION

38. At the April 17, 2023 Town Board meeting, the Town Board introduced, via Resolution 2023-326, a proposed Local Law to make a text amendment to the Zoning Code to exclude Town owned land from complying with the Zoning Code. A copy of the proposed Local Law is attached as **Exhibit G**.

39. On May 8, 2023, a public hearing was set on the proposed Local Law in which the Concerned Residents submitted written comments that the proposed Local Law does not meet the review criteria necessary for the adoption of zoning text amendments provided in Zoning Code § 8-5-5; was procedurally defective under SEQRA and General Municipal Law § 239-m; and represented poor public policy because it was so vague and broad as to allow the Town Board to circumvent the Town’s well-considered Zoning Code by deeming any use on its property to be for “governmental purposes.” The Concerned Resident’s comments are attached as **Exhibit H**.

40. The proposed Local Law was withdrawn for consideration at the May 22, 2024 Town Board meeting.

41. Apparently seeking another way of circumventing the Zoning Code, on October 12, 2023, the Town Board submitted the PUD Application including the PUD Plan for the Central Park (Exhibits C and D).

42. The PUD Plan proposes the following features moving from the southeast to the southwest portion of the parcel, using an existing entrance with access to North Forest Road and a proposed entrance to Sheridan Drive:

- Ice Ribbon and Ice Rink, approximately 25,000 SF
- Inclusive Playground, approximately 12,500 SF
- Splash Pad, approximately 6,100 SF
- Public Plaza, approximately 20,000 sf, including a Winter Market, approximately 5,000 SF (buildings)
- Renovation of the former clubhouse into a Community Building, approximately 2,500 SF addition to existing (approximately 44,500 SF total at completion, including basement and all floors), to provide services including space for a Universal Pre-Kindergarten (UPK) program
- Outdoor Amphitheater, approximately 3,300 SF
- Community Theater Building, approximately 31,600 SF
- New building for the Buffalo Niagara Heritage Village Museum – approximately 36,000 SF, as well as relocation of historical buildings associated with the museum, totaling approximately 20,000 SF
- Enhancement of an existing wetland as a decorative pond and associated onsite mitigation (if required) and filling or modification of non-regulated wetlands
- Ancillary park improvements such as playgrounds, gardens/greenhouses, pedestrian access/pathways, educational kiosks and access drives as shown conceptually on the PUD Plan
- Construction of required mechanical buildings, public restrooms, parking lots, and supportive utilities such as storm sewers and stormwater management features, sanitary sewers, water, fiber optic cables, electric and natural gas service
- The northern portion of the Property is slated for natural-passive recreation along with preservation of existing ponds, wetlands and hardwood areas.

See PUD Application at 5; FSGEIS (Exhibit F) at p. 1-2.

43. Further, “[t]he northern portion of Amherst Central Park is planned for natural-passive recreation along with preservation of existing ponds, wetlands and hardwood areas. From the southern portion, moving to the north, a proposed main loop drive provides access to features

such as maintained trails and bike paths, natural playgrounds, and a variety of community gardens and tree plantings.” See PUD Application at 5; FSGEIS at 2.

44. The Draft Supplemental Generic Environmental Impact Statement (DSGEIS), was accepted for public review by the Town Board, acting as the Lead Agency, on October 16, 2023, via Resolution 2023-845.

45. The Town of Amherst Planning Board held a meeting on November 16, 2023 and recommended approval of the PUD application and conceptual development plan, via SP-2023-11, dated November 18 and filed November 20.

46. The Amherst Town Board held a public hearing on December 4, 2023 on the PUD Application. Comments were received from the Members and the Concerned Residents submitted written comments, which are attached as **Exhibit I**.

47. The FSGEIS, dated December 3, 2023, was accepted for public review by the Town Board, acting as the Lead Agency, on December 4, 2023, via Resolution 2023-958.

48. The Concerned Residents submitted additional comments on the FSGEIS and proposed Findings Statement on December 15, 2023. See **Exhibit J**.

49. On December 18, 2023, the Town Board and Supervisor Kulpa approved of the DSGEIS and FSGEIS through the SEQRA Findings Statement and approved the PUD Application and PUD Plan. See **Exhibits A and B**.

THE FAULTY SEQRA REVIEW

50. The FSGEIS, which relied upon the DSGEIS, should not have been approved due to the faulty environmental analysis in both documents.

A. Faulty Alternatives Analysis

51. Under SEQRA and its implementing regulations, the NYS Department of Environmental Conservation (“DEC”) requires that a draft environmental impact statement (“DEIS”) describe and evaluate “the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor.” 6 N.Y.C.R.R. § 617.9(b)(5)(v). The analysis of alternatives has been called the “driving spirit” of the SEQRA process.

52. The “range of alternatives must include the no-action alternative,” and “may also include, as appropriate, alternative: (a) sites; (b) technology; (c) scale or magnitude; (d) design; (e) timing; (f) use; and (g) types of action.” 6 N.Y.C.R.R. § 617.9(b)(5)(v).

53. Under the “rule of reason,” an agency need only consider a “reasonable range of alternatives to the **specific project**.” It is improper to generate an EIS which does not give sufficient consideration to alternatives.

54. There were five alternative actions evaluated in this DSGEIS: (1) No Action (Alternative No. 1); (2) the PUD Plan; (3) Mixed Use Project (Westwood Neighborhood); (4) Alternative Sites; and (5) Alternative Uses. This range of alternatives does not follow the “rule of reason” required by SEQRA.

55. Here, the specific action being considered is the “Amherst Central Park,” as presented in the PUD Plan and there is no reasonable alternative included in this SEQRA analysis, apart from the inclusion of the required “No Action” alternative.

56. First, it is important to note that Alternative No. 2 is not an alternative to the PUD Plan because *it is* the SEQRA action. To call it an alternative is misleading. Therefore, more accurately, there are only four alternatives offered to the PUD Plan; however, the original numbering of alternatives will be used for the purposes of clarity throughout this Petition.

57. The inclusion of the Mixed Use Project as an “alternative” is a false comparison and irrelevant in the evaluation of alternatives to the PUD Plan. First, the Mixed Use Project is not an alternative for the PUD Plan at all, but rather is a proposal for an entirely different project and different uses that was rejected because adverse environmental impacts would not be avoided or minimized. As the DSGEIS itself states, even though “the SEQRA Findings for [the Mixed Used Project] ultimately led to a denial of the requested application,” it was included and reviewed as an “alternative” in this DSGEIS. See DSGEIS at p. 3.1. This does not provide “a point of comparison for other proposed Alternatives,” as the DSGEIS states, because the Mixed Use Project was already rejected due to its adverse environmental impact.

58. According to SEQRA regulations at 6 NYCRR § 617.9(b)(5)(v), reasonable alternatives to the specific project under consideration would be to evaluate concepts of the PUD Plan with alternative design and scale/magnitude. The Park Property in question is located in the Recreation Conservation (“RC”) Zoning District. PUD development plans must be consistent with all the applicable use regulations and the uses permitted in the underlying zoning district, and the PUD Plan as currently proposed contemplates uses that are *not permitted* in the RC zoning district. Zoning Code §§6-9-2C, 8-4-5C. Therefore, a reasonable alternative to the proposed PUD Plan would be to create a concept for the Central Park that includes only permitted or specially permitted uses in the underlying RC Zoning District.

59. The Community Theater and Museum, as well as potentially the proposed Winter Market, do not fit into any of the above allowed RC District use categories. The Community Theater and Winter Market uses are “commercial” uses, which are not allowed in a RC district. *See e.g.*, Zoning Code § 4-4-2A and §4-7-2A (community theater and food stores are commercial uses). Live and/or performing arts theaters are specifically allowed or potentially allowed in the

General Business, New Community, Traditional Neighborhood Development Overlay, and Shopping Center districts. “Museums” are not among the permitted public and civic uses in an RC District, but are explicitly allowed in Community Facility and Traditional Neighborhood Development districts. The proposed Museum also has elements that would cause livestock to be present on the property, a use that is not explicitly allowed in the RC Zoning District and thus prohibited by the Town Code. Town Code § 99-2.

60. Therefore, a reasonable alternative would be a Central Park Concept Plan that does not contain the Community Theater, the Museum, or any commercial uses. Indeed, at a minimum, the DSGEIS should have considered as an alternative assessment retaining the *current* location of the Museum as compared to the PUD Plan.

61. Further, creating alternative concepts with different levels of scale/magnitude of development of the Central Park would offer meaningful comparison, as opposed to comparing the PUD Plan to a different use entirely. For example, another reasonable alternative to the PUD Plan for the Central Park would be a version that only includes passive and active recreational uses and considers alternative sites for the Theater, Museum, and the Winter Market, such as the alienated portions of the Audubon Recreational Complex, discussed below. Instead, the Respondents seem insistent upon presenting this plethora of uses as a necessary, take-it-or-leave-it package deal.

62. With regard to the proposed relocation of the Museum, the DSGEIS contained no detailed analysis of why the relocation would have a positive impact. An obvious alternative to the proposed Museum relation would be an expansion of the Museum to the large amount of Town-owned land right next to where the Museum is currently located.

63. Even the “Alternative Sites” alternative is devoid of any meaningful analysis. In its entirety, the Alternative Sites section of the DSGEIS states: “*While some of the proposed improvements in the Amherst Central Park could be provided in other areas of the Town, there is no other parcel or combination of parcels owned by the Town that would offer a suitable combination of location, existing natural beauty, overall location, and potential for a cohesive, comprehensive park plan that would be comparable to the proposed Amherst Central Park. This Alternative is therefore not further evaluated in this DSGEIS.*” See DSGEIS at 3.2 (emphasis added).

64. This conclusion ignores the facts. The Town alienated 93 acres of the 260 acres of parkland at the Audubon Recreational Complex for the construction of a University at Buffalo Medical Campus (“UBMD”) campus on about 15 acres of the alienated 93 acres. This site should be analyzed as an alternative site for the Community Theater, Museum, the proposed pre-K facility, outdoor amphitheater, and Winter Market because it is under Town control, is on a major highway, and has close proximity to the UB North Campus.

65. Instead of these reasonable alternatives, for reasons that are not clear to the Concerned Residents, the Town is attempting to cram as many different uses into the Central Park as possible, no matter how un-park-like they are, with little to no basis for doing so. In fact, the two proposed improvements estimated to require the largest footprint, the Community Theater Building at 31,600 sq. ft. feet and the Buffalo Niagara Heritage Village Museum at 36,000 square feet (which square footage do not include the sizeable accompanying parking lots), are those that do not comply with the permitted uses in the RC Zoning District. Therefore, an assessment of alternative locations for those two separate projects are necessary elements of the DSGEIS.

66. The Alternative Uses section “assesses whether uses *other than* the Mixed Use Project *or* Amherst Central Park could meet the purpose and needs identified in this DSGEIS.” SDGEIS at 3.1. Notably, this seems to admit that the Mixed Use Project would have more appropriately been discussed here, if at all. Further, nothing of substance is added in this section and points to the original GEIS to say that other mixed use commercial and/or residential, less intense residential, and even industrial uses (which are also prohibited in an RC District) would not meet the needs of the project or be appropriate at the site. As the DSGEIS so ironically puts, “[n]one of these alternative uses would meet the Purpose and Need identified in this SGEIS. This Alternative is therefore not further evaluated in this DSGEIS.” SDGEIS at 3.2.

B. Inadequate Environmental Impacts Analysis

67. The DSGEIS fails to comply with the substantive requirement to avoid or minimize environmental impacts due to the unreasonable alternatives presented.

68. This was a clear affront to the substantive requirement of SEQRA that the lead agency “certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or *minimizes adverse environmental effects 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.” 6 N.Y.C.R.R. § 617.11(d); *see also* ECL § 8-0109(8). This is the “teeth” of SEQRA, and the only provision which clearly takes it beyond a mere environmental full disclosure procedure, and requires substantive results, including mitigation measures.

69. Consideration of only one design of the Central Park in the DSGEIS fails to comply with the substantive requirement of SEQRA to avoid or minimize environmental impacts. The

purpose of the alternatives analysis, and the following review of affected environmental resources, impacts, and possible mitigation, is to assess how different reasonable alternatives of the specific project compare.

70. Here, the specific project is the PUD Plan – there is no reasonable alternative to the PUD Plan for the Central Park to compare to in order to see if “the action is one that avoids or *minimizes adverse environmental effects to the maximum extent practicable*[.]”

71. Comparing only the PUD Plan for the Central Park to the Mixed Use Project is unreasonable not only because it’s a completely different project contemplating different uses, but the Mixed Use Plan was previously rejected due to the wide array of adverse impacts of that project. To compare the PUD Plan to the Mixed Use Project is a false equivalence, and does not meet the standards of SEQRA.

C. Transportation & Infrastructure

72. The Traffic Study contained in the FSGEIS, as well as the improvements and mitigation measures suggested for the PUD Plan, are insufficient to pass the muster of SEQRA. In addition, the PUD Plan for the pedestrian/bicycle system is not consistent with the Town’s Comprehensive Plan.

73. The PUD Plan for the Central Park as proposed is designed for the past, not the future. The Town of Amherst Bicentennial Comprehensive Plan (Amended December 2020) (the “Comprehensive Plan” attached as **Exhibit K**) recognizes the problem of automobile dependency in the suburbs and supports their decreased use in order to improve congestion and safety. A primary objective for Transportation is to “[d]evelop the existing bicycle/pedestrian system into a townwide, interconnected network that facilitates connections between vehicular and non-vehicular transportation[.]” Comprehensive Plan at pg. 6-3.

74. The PUD Plan does not contain adequate assurances as to the development of bike lanes and methods to decrease reliance on automobiles. Indeed, while the DSGEIS extolls the benefits of the PUD Plan to “pursue opportunities to create new sidewalks and pathways that connect the places people live, work, shop, and play in Amherst,” the proposed pedestrian/bike paths in the PUD Plan connect to nothing. Instead of connecting Central Park bike/pedestrian paths to the Ellicott Creek Trailway that currently terminates at the Audubon Golf Course and continuing on along Ellicott Creek to Amherst State Park, Glen Park and the Village of Williamsville, the PUD Plan dumps pedestrians and bikes onto a dangerous curve on Frankhauser Road to go to.....Sheridan Drive, where, as the DSGEIS recognizes, “[t]here are no existing bicycle accommodations....” *See* DSGEIS at pg. 4.13.

75. Unlike Delaware Park, and contrary to the Comprehensive Plan, the PUD Plan focuses on providing automobile access and parking (and conflicts with pedestrians and bikes) in what are otherwise described as natural areas. The Town’s commitment to the automobile is clear by noting that “The Big Meadows” is essentially a traffic circle between all the new buildings and the PUD Plan adds about 17 acres of “roads, buildings, and other paved and impervious surfaces” (10 percent of the 170 acre “park”) and eliminates more than 27 acres of “meadows, grasslands, and brushlands” from the park. *See* SEQRA EAF Part 1 Question E.1.b, contained in Appendix B to the DSGEIS.

76. In addition, another objective of the Comprehensive Plan is to “[w]ork with the Niagara Frontier Transportation Authority to provide adequate public transit service, particularly to mixed-use activity centers identified in the Conceptual Land Use Plan.” According to the Comprehensive Plan, “[p]ublic transit is a vital component of the Town’s transportation system, both to reduce the number of vehicles on the road and to serve segments of the population who do

not have access to private automobiles.” Comprehensive Plan at pg. 6-17. The DSGEIS recognizes that there is only one existing NFTA bus line along Sheridan Drive with four stops in the study area located at the intersections of Frankhauser Road and North Forest Road. See DSGEIS at pg. 4.14.

77. The Transportation Mitigation Measures for the current PUD Plan are as follows:

Providing multi-modal access to Amherst Central Park *should* also be considered given the residential nature of the area and proposed amenities at the park. Of particular concern is providing a safe crossing of Sheridan Drive from the neighborhood immediately south of the park. *If* the traffic signal is installed at the Amherst Central Park driveway on Sheridan Drive, pedestrian signals should be included across all four legs. *If* the signal is not installed, consideration should be given to a High Intensity Activated Crosswalk (HAWK) signal or Rectangular Rapid Flashing Beacon (RRFB) with a center refuge median. Transit access can be improved to Amherst Central Park as well. Working with NFTA, a dedicated bus stop *could be* provided along Sheridan Drive at the (proposed) signalized intersection with the site driveway. If the traffic signal is not installed, a dedicated bus stop *could be* added within the Park.

See DSGEIS at 4.18 (emphasis added).

78. As with the rest of the DSGEIS, the language regarding transportation is full of nonbinding, flimsy language, and ensures no commitment to attempt to reduce the PUD Plan’s automobile dependence and increase pedestrian and bicycle safety within the Town of Amherst.

79. SEQRA requires that the lead agency certify 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.” 6 N.Y.C.R.R. § 617.11(d); *see also* ECL § 8-0109(8).

80. Therefore, to be consistent with the Comprehensive Plan, the PUD Plan should have included conditions to ensure that adequate bicycle, pedestrian and public transportation

infrastructure are incorporated within the PUD Plan area, as well as on the surrounding roads and streets.

D. Brownfield Remediation Plan

81. The Park Property is a DEC brownfield site (Site Code C915291) because of the past use of pesticides and the prior remedial investigations of the property identified the presence in some areas of arsenic, mercury, trivalent chrome, and cadmium exceeding health-based soil cleanup objectives for park use (i.e., exceeding DEC restricted residential standards), with arsenic and mercury contamination exceeding industrial standards in some areas.

82. Beyond generalized and vague assurances that short term impacts from contaminated dust will be managed and that “the remediation of the Property would provide a significant positive environmental impact,” the DSGEIS and PUD Plan fail to provide any analysis of the scope of contamination, the remedial plan and related timing, and the potential impacts on Central Park use depending on the selected cleanup remedy.

83. Instead, the DSGEIS punts and concludes that “the remediation of the Property would provide a significant positive environmental impact” based on the presence of DEC oversight for the cleanup. But to what standard will the cleanup be performed and will there be use restrictions as a result? There is no way of knowing because neither the DSGEIS nor FSGEIS provide any meaningful assessment.

84. Therefore, there is no basis upon which the FSGEIS can conclude that the ACP will be protective of human health based on the analysis provided and should be revised.

E. Response to Comments in the FSGEIS about SEQRA

85. SEQRA requires that the lead agency, here the Town Board, provide meaningful responses to substantive comments made to the DSGEIS.

86. The FSGEIS is full of nothing but deficient responses to comments and lacks of any meaningful analysis such that the Town Board could reasonably conclude that the PUD Plan minimizes or avoids environmental impacts to the maximum extent practicable.

87. Numerous public comments were made regarding the lack of meaningful alternatives analyzed in the DSGEIS, including offering no actual alternative to the PUD Plan except the previously rejected Mixed Use Project. The responses to these comments were just as meaningless.

88. There is no response in the FSGEIS as to why there is no alternative to the specific project at hand, the PUD Plan, which is required under SEQR. The Town Board seems to have a predetermined outcome for what the park should include and refuses to analyze any meaningful alternatives to the Central Park presented in the PUD Plan.

89. Notably, although public commenters provided specific examples of an alternative use or an alternative site, the DSGEIS and the FSGEIS provide none. There is essentially no analysis in the alternatives analysis.

90. Indeed, the FSGEIS did not even consider a Central Park without commercial uses – which are prohibited in the RC Zoning District.

91. Thus, based on the deficient response to comments and lack of any meaningful analysis in the FSGEIS, that Town Board could not reasonably conclude that the PUD Plan minimizes or avoids environmental impacts to the maximum extent practicable.

92. Therefore, the Approvals and Findings Statement should be annulled.

THE FIRP IS ILLEGAL

93. According to the PUD Plan and SEQRA Findings, “[p]ursuant to Zoning Code 6-9-2, the Town Board intends to adjust the regulations, standards and criteria of the Zoning Ordinance as part of the PUD process for the Amherst Central Park to implement the Conceptual Development Plan and future improvements that are not part of the Conceptual Development Plan.”

94. Although the PUD process allows for discretion in many aspects, the provisions regarding a PUD in the Zoning Code make no mention of any authority to create what amounts to a new Site Plan Approval Process.

95. Zoning Code Sections 6-9 and 8-4 establish the PUD “Process,” which lays out the use regulations and development standards to be considered in the PUD.

96. Under Section 6-9-2(A), “Criteria, standards and regulations are hereby established *with respect to planning of land and the arrangements of buildings and open spaces* for those areas which are included in a PUD *and which require* development and *site plan approval*.”

97. Section 8-4 then describes the actual PUD “Process Application,” which goes over the processes for the application and review of the PUD application. Further, Section 8-2 Common Development Procedures is also cited in Section 8-4, which contains further application requirements, as well as notice and public hearing requirements that must be met.

98. However, the PUD and “Proposed ACP Facility Improvement Review Process” (hereinafter, the “FIRP”) go well beyond what is authorized by the Zoning Code and attempts to approve unpermitted and incompatible uses within the RC District without a use variance or rezoning.

99. Nowhere in the Zoning Code is there existing authority to create a “Facility Improvement Review Process,” or anything resembling it, for approving ACP improvements (such as the Community Theater Building at 31,600 sq. ft. feet and the Buffalo Niagara Heritage Village Museum at 36,000 square feet) via this PUD process.

100. Importantly, there is no mention in the FIRP of the necessary site plan approvals (after a public hearing) from the Planning Board for the Central Park improvements, which are still explicitly required even within an approved PUD. *See* Zoning Code 8-4-6E (“Amending the Zoning Map or approval of a PUD application does not constitute recording of a subdivision plat nor authorize the issuance of building permits. Such actions can only be taken after site plan approval in accordance with § 8-7 or subdivision approval in accordance with the Town of Amherst Subdivision Regulations.”).

101. To the extent the FIRP is intended to circumvent site plan review approvals, it is unauthorized and unlawful.

102. In addition, there is no identification in the FIRP of procedures for designating the “Director of Facilities” and, other than list of certain Town officials and the “ACP Planning Team,” there are no definitions of the roles or procedures or criteria for the ACP Planning Team decision-making.

103. While the Town created the “Amherst Central Park Task Force,” (Town Code Chapter 7) to “promote, stimulate, encourage and coordinate the pursuit of recreational activities in Amherst Central Park; encourage public input into the utilization of Amherst Central Park; promote the utilization of the Amherst Central Park by all members of the community and make appropriate recommendations in the development process concerning the Amherst Central Park,” it appears the Task Force oddly has no role in the FIRP.

104. In the FSGEIS, there is no response to public commenters about how the Town had the legal authority to create the FIRP out of the PUD process, in addition to creating a new very powerful position of “Director of Facilities.” Further, there is no response as to why the already sanctioned Task Force is not utilized in this process. A major consideration in the Findings Statement is compliance with local zoning—if the FSGEIS cannot even respond to the question of whether the FIRP is legal, a negative Findings Statement should have been issued.

105. Furthermore, even if the creation of this new process was authorized, it would still not be adequate.

106. The Proposed FIRP under the PUD Plan provides for only one opportunity for a Public Hearing, only “if required by law, for the funding and the improvement proposed in the ACP Application.” *See* DSGEIS at pgs. 1.6-1.8. This single opportunity for a public hearing occurs at step ten out of thirteen and is not guaranteed.

107. Given that the PUD Plan gives the authority to not only “implement the Conceptual Development Plan” but also to implement “future improvements that are not part of the Conceptual Development Plan[,]” the Town should make extra effort to safeguard the public’s opportunity to be involved in the creation and proposed additions to this “public” park.

108. To give so much discretionary power to implement an already vague conceptual plan, and then further give power to implement future unknown improvements, would circumvent environmental review under SEQRA and silence the voices in the community.

109. In the FSGEIS, there were many comments on the DSGEIS about how residents feel as though they are being left in the dark and the process is moving too quickly. The Response provided in the FSGEIS is simply that this has been in the works for years and that residents have had the opportunity to be involved. However, this rings hollow, given that for years the proposed

ACP was very different. The public does not just want opportunities to “comment” on a predetermined plan, especially at the stage of asking for financing – they want to continue to be involved in the design of the park, as indicated by the Planning Board’s comment above.

**THE COMMUNITY THEATER, WINTER MARKET,
AND MUSEUM ARE NOT PERMITTED USES**

110. Last but not least, as discussed above in relation to the SEQRA alternatives, the PUD Plan as proposed would contain uses that are not permitted in the RC Zoning District. According to Zoning Code § 6-9-2(C), “[a]ll uses permitted in the underlying zoning district shall be permitted in a PUD as provided in this Section.”

111. Further, according to Code § 8-4-5(C), a PUD development “must be consistent with all the applicable use regulations in Part 6 and the purpose statement of the zoning district in which it is located.”

112. As discussed above, the Community Theater, Museum, and Winter Market are not permitted uses in the RC District. Additionally, the presence of the Community Theater, Museum, and Winter Market are incompatible with the purpose statement of the RC Zoning District, which is to “provide a special zoning classification primarily for public, private and civic uses related to recreation and conservation.” Zoning Code § 5-9-1.

113. In addition, the proposed Museum also has elements that would allow for livestock to be present on the property, a use that is not explicitly allowed in the RC Zoning District and thus prohibited by the Town Code. Town Code § 99-2.

114. The Town’s attempt to allow unpermitted uses in an RC District under the guise of a PUD, absent a zoning amendment or use variance, is unlawful and the PUD Plan should be revised to comply with the Zoning Code.

115. Thus, the PUD Application and PUD Plan should be annulled and revised to address these significant shortfalls and unlawful actions.

PROCDRUAL ISSUES

116. Petitioners have no available administrative remedies.

117. Petitioners have made no previous application for the relief sought in this Petition.

118. Petitioners have no adequate remedy at law.

AS AND FOR A FIRST CAUSE OF ACTION FOR ARBITRARY, CAPRICIOUS AND ILLEGAL ACTION IN VIOLATION OF SEQRA, PETITIONERS ALLEGE AS FOLLOWS:

119. Petitioners repeat and reallege the allegations of paragraphs “1” through “118” of this Petition, as if set forth in this paragraph at length.

120. All decision-making concerning the PUD Application must be preceded by a valid SEQRA Review.

121. SEQRA and its implementing regulations require that before a discretionary decision can be made on an “action” such as the Project, a draft and final EIS must be prepared by the SEQRA lead agency if the action has the potential for a significant environmental impact.

122. After preparing a draft and final EIS, the SEQRA lead agency must make findings, as required by ECL § 8-0109(8) and 6 N.Y.C.R.R. § 617.11, that it has avoided or minimized adverse environmental impacts “to the maximum extent practicable.”

123. However, the DSGEIS And FSGEIS and the Findings Statement for the PUD Application were deficient.

124. Respondents failed to consider the cumulative impacts of the PUD Plan, including growth-inducing impacts, new traffic patterns on the surrounding neighborhoods, increased

automobile dependency, as well as the investigation and remediation of potentially contaminated sites that would be disturbed by the Project.

125. As discussed throughout this Petition, Respondents also failed to take a “hard look” at the environmental impacts posed by the Project, including but not limited to those related to traffic, parking, noise, construction, wetlands, public health and safety, and wildlife.

126. In making their Findings Statement, Respondents failed to attempt to minimize adverse environmental impacts and did not fully consider a full range of alternatives which would have mitigated the resulting environmental damage.

127. Respondents also failed to select an alternative that avoided or minimized adverse environmental impacts.

128. Upon information and belief, there may be other deficiencies in the SEQRA process that will be revealed upon filing the Record by the Respondents, such as lack of proper notices.

129. Therefore, the Findings Statement, including the DSGEIS and FSGEIS, were illegal, arbitrary and capricious, and they should be vacated and annulled, because the Project was not subjected to an adequate and proper environmental review under SEQRA.

**AS AND FOR A SECOND CAUSE OF ACTION FOR
ARBITRARY, CAPRICIOUS AND ILLEGAL ACTION
IN VIOLATION OF AMHERST TOWN CODE
CHAPTER 203 (ZONING CODE) AND CHAPTER 7 OF THE TOWN CODE,
PETITIONERS ALLEGE AS FOLLOWS:**

130. Petitioners repeat and reallege the allegations of paragraphs “1” through “129” of this Petition, as if set forth in this paragraph at length.

131. According to the PUD Plan and Findings Statement, “[p]ursuant to Zoning Code 6-9-2, the Town Board intends to adjust the regulations, standards and criteria of the Zoning Ordinance as part of the PUD process for the Amherst Central Park to implement the Conceptual

Development Plan and future improvements that are not part of the Conceptual Development Plan.”

132. Zoning Code Sections 6-9 and 8-4 establish the PUD “Process,” which lays out the use regulations and development standards to be considered in the PUD.

133. Under Section 6-9-2(A), “Criteria, standards and regulations are hereby established *with respect to planning of land and the arrangements of buildings and open spaces* for those areas which are included in a PUD *and which require development and site plan approval.*”

134. Section 8-4 then describes the actual PUD “Process Application,” which goes over the processes for the application and review of the PUD application. Further, Section 8-2 Common Development Procedures is also cited in Section 8-4, which contains further application requirements, as well as notice and public hearing requirements that must be met.

135. However, the PUD Plan and FIRP go well beyond what is authorized by the Zoning Code and attempts to approve unpermitted and incompatible uses within the RC District without a use variance or rezoning.

136. Nowhere in the Zoning Code is there existing authority to create a “Facility Improvement Review Process,” or anything resembling it, for approving Central improvements (such as the Community Theater Building at 31,600 sq. ft. feet and the Buffalo Niagara Heritage Village Museum at 36,000 square feet) via this PUD process.

137. Importantly, there is no mention in the FIRP of the necessary site plan approvals (after a public hearing) from the Planning Board for the Central Park improvements, which are still explicitly required even within an approved PUD. *See* Zoning Code 8-4-6E (“Amending the Zoning Map or approval of a PUD application does not constitute recording of a subdivision plat nor authorize the issuance of building permits. Such actions can only be taken after site plan

approval in accordance with § 8-7 or subdivision approval in accordance with the Town of Amherst Subdivision Regulations.”).

138. To the extent the FIRP is intended to circumvent site plan review approvals, it is unauthorized and unlawful.

139. In addition, there is no identification in the FIRP of procedures for designating the “Director of Facilities” and, other than list of certain Town officials, the “ACP Planning Team,” and there are no definitions of the roles or procedures or criteria for the ACP Planning Team decision-making.

140. While the Town created the “Amherst Central Park Task Force,” (Town Code Chapter 7) to “promote, stimulate, encourage and coordinate the pursuit of recreational activities in Amherst Central Park; encourage public input into the utilization of Amherst Central Park; promote the utilization of the Amherst Central Park by all members of the community and make appropriate recommendations in the development process concerning the Amherst Central Park,” it appears the Task Force has no role in the FIRP.

141. Furthermore, even if the creation of this new process was authorized, it would still not be adequate.

142. The FIRP under the PUD Plan provides for only one opportunity for a Public Hearing, and only “if required by law, for the funding and the improvement proposed in the ACP Application.” *See* DSGEIS at pgs. 1.6-1.8.

143. Given that the PUD gives the authority to not only “implement the Conceptual Development Plan” but also to implement “future improvements that are not part of the Conceptual Development Plan[,]” the Town should make extra effort to safeguard the public’s opportunity to be involved in the creation and proposed additions to this “public” park.

144. The PUD Plan as proposed would contain uses that are not permitted in the RC Zoning District. According to Zoning Code § 6-9-2(C), “[a]ll uses permitted in the underlying zoning district shall be permitted in a PUD as provided in this Section.”

145. Further, according to Code § 8-4-5(C), a PUD development “must be consistent with all the applicable use regulations in Part 6 and the purpose statement of the zoning district in which it is located.”

146. The Community Theater, Museum, and Winter Market are not permitted uses in the RC District. Additionally, the presence of the Community Theater, Museum, and Winter Market are incompatible with the purpose statement of the RC Zoning District, which is to “provide a special zoning classification primarily for public, private and civic uses related to recreation and conservation.” Zoning Code § 5-9-1.

147. In addition, the proposed Museum also has elements that would allow for livestock to be present on the property, a use that is not explicitly allowed in the RC Zoning District and thus prohibited by the Town Code. Town Code § 99-2.

148. The Town’s attempt to allow unpermitted uses in an RC District under the guise of a PUD, absent a zoning amendment or use variance, is unlawful and the PUD Plan should be annulled because it does not comply with the Zoning Code.

**AS AND FOR A THIRD CAUSE OF ACTION FOR
ARBITRARY, CAPRICIOUS AND ILLEGAL ACTION,
PETITIONERS ALLEGE AS FOLLOWS:**

149. Petitioners repeat and reallege the allegations of paragraphs “1” through “148” of this Petition, as if set forth in this paragraph at length.

150. Upon information and belief, and/or as may be further determined upon filing of the record of proceedings, the SEQRA review and any other approvals for the PUD Application,

may otherwise be in violation of other laws, regulations and procedures, and/or arbitrary and capricious.

WHEREFORE, Petitioner respectfully requests that this Court grant an Order and Judgment, pursuant to CPLR Article 78, SEQRA, the Amherst Town Code, and/or otherwise: (1) vacating, annulling, and declaring illegal, invalid, null and/void: (a) the SEQRA Findings Statement, (b) the approval of the PUD Application and PUD Plan, and (c) the acceptance of the DSGEIS and FSDEIS; (2) directing Respondents to proceed with an alternative assessment in the FSDEIS for the Project that complies with SEQRA; and (3) granting such other and further relief as this Court deems just and proper, including Petitioners' costs and disbursements.

Dated: Rochester, New York
January 17, 2024



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VERIFICATION

STATE OF NEW YORK)
COUNTY OF MONROE) s.s.:

DWIGHT E. KANYUCK, an attorney admitted to practice in the State of New York, affirms under penalty of perjury that he is the attorney for Petitioners in this matter; that he maintains offices in Monroe County, which is a different county than Erie County, where Petitioner resides and maintain offices; that he has read the annexed Verified Petition, and that it is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and as to such matters he believes them to be true.

Dated: January 17, 2024



DWIGHT E. KANYUCK