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November 5, 2019

Town of Chester Planning Board  
1786 Kings Highway  
Chester, New York 10918

***RE: Meadow Hill Subdivision - Segmentation***

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Dear Chairman Serotta and Board Members:

I write to address the allegation raised - that the Town of Chester Planning Board is violating SEQRA regulations by failing to consider the overall potential environmental impacts that would occur as a result of the development of nearby lands that are also owned by the developer of the Meadow Hill property - in correspondence submitted by Caffry & Flower, Attorneys at Law, dated October 8, 2019 relative to the above referenced subdivision.

My analysis of this allegation follows.

**I. BACKGROUND**

***A. The Overall Land Holdings of Meadow Hill***

Meadow Hill LLC owns three (3) tax parcels. Collectively, they total 44.7+/- acres. A map depicting the entire land holdings of Meadow Hill is attached.

Two (2) parcels are in Chester, tax parcel 15-1-27.41 (26.9 acres) and tax parcel 15-1-24 (4.8+/- acres). One (1) tax parcel, 13-1-1 (13.0+/- acres), is

Monroe

Tax parcel 24, the subject of the three (3) lot subdivision presently under consideration, is on the north side of Camp Monroe Road. It is not contiguous to any other holdings of Meadow Hill LLC.

Tax parcels 27.41 (in Chester) and 1 (in Monroe) are contiguous but are in different municipalities. They are on the south side of Camp Monroe Road.

There is currently no application to develop tax parcel 27.41.

Tax parcel 1 is now before the Town of Monroe Planning Board seeking approval for a seven (7) lot residential subdivision. Access to the lots in this subdivision will be off of Lakes Road.

### ***B. The Applicable SEQRA Regulations.***

The SEQRA regulations, authorized by the enabling legislation set forth in the New York State *Environmental Conservation Law* and written by the NYSDEC, apply to “actions” as that term is defined in the regulations.

Actions are defined as:

- (1) projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure ... (6 NYCRR 617.2(b)).

Considering only a part or *segment* of an action is contrary to the intent of SEQR.” (6 NYCRR Part 6.17.3(g)(1)).

Segmentation is defined in the SEQRA regulations as:

The division of the environmental review of an action such that those activities or stages are addressed under [these regulations] as though there were independent, unrelated activities, needing individual determinations of significance (6 NYCRR 617.2(ah)).

## **II. ANALYSIS**

The entire bulk area of the 3-lot subdivision presently before the board

consists of 4.8+/- acres. The 3-lot residential development of this tax parcel will constitute the entire development of this parcel on the North side of Camp Monroe Road. Meadow Hill owns no lands that are contiguous to the parcel under consideration.

As indicated above, the applicant does own an additional 26.9 +/- acres in the Town of Chester on the South side of Camp Monroe Road. There is no development proposed of this property at this time.

Adjacent to the 26.9 +/- acre parcel in the Town of Chester is the other parcel, tax parcel 37-1-1, which is in the Town of Monroe and which has frontage on the North side of Lakes Road. Currently pending before the Town of Monroe is a 7-lot residential subdivision of this property with all of the lots having their access on Lakes Road.

Courts have consistently held that segmentation does not occur when it is clear that future plans for development are speculative and/or hypothetical. Further, Courts have also consistently held that segmentation does not occur when it cannot be demonstrated that the development under consideration is an initial phase of a larger project. (See, generally, *Matter of Village of Tarrytown v. Planning Board of Village of Sleepy Hollow, et al.*, 292 A.D.2d 617 and *Matter of Long Island Pine Barons v. Town of Brookhaven*, 80 N.Y.2d 500; *Matter of Berger v. Town of Grafton*, 235 A.D.2d 984<sup>1</sup>).

Currently, no plans have been submitted to develop the 26.9 acre parcel in Chester. Development of the 13 acre parcel in Monroe is not part of a phase or an overall scheme of development of the 4.8 acre parcel currently under consideration in Chester.

To the extent that plans are submitted at some future date for the 26.9 acre parcel, compliance with applicable SEQRA regulations would be required at that time.

### III. CONCLUSION

Based upon the foregoing analysis and further based upon the fact that the

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<sup>1</sup> In their letter, Caffry & Flower rely largely on *Rivero v. Rockland County Solid Waste Management Authority*, 96 A.D.3d 764. This case involves the expansion of a solid waste management facility through the eminent domain process. In my view, the findings of this case are limited to the specific facts under consideration in that matter and cannot be relied upon to support the allegation of segmentation regarding the residential subdivision under review in the matter before the planning board.

parcel under consideration by the Planning Board is not contiguous to any other lands owned by Meadow Hill, that the 26.9 +/- acre parcel on the South side of Camp Monroe Road is not currently proposed for any other land use approvals and further given that the 7 lots proposed in the Town of Monroe are not part of an overall, unified, subdivision that would encompass the 3 lots before your Board, your consideration of only the 3-lot proposal before you does not constitute impermissible segmentation under the SEQRA regulations.

Very truly yours,

A handwritten signature in black ink, appearing to read "D.A. Donovan". The signature is stylized and cursive.

DAVID A. DONOVAN

DAD/lrm