



August 16, 2024

VIA EMAIL CORRESPONDENCE

Helene Hoffmann, Secretary
Town of Highland Planning Board
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Dear Town of Highland Planning Board,

The Delaware Riverkeeper Network urges you to fully and fairly interpret, apply, and implement the purpose and procedure contemplated by the New York State Environmental Quality Review Act (“SEQR”) and its implementing regulations by conducting an adequacy assessment of Camp FIMFO’s draft Environmental Impact Statement (“draft EIS”) that ensures an inclusive, accessible, and intentional process for public involvement which will help assure a complete and accurate assessment of the project’s environmental impacts. As it stands, despite the considerable time and effort this Board has extended, the process remains legally insufficient.

Planning Board must ensure time and accurate information for the public.

The Planning Board has consistently failed to provide meeting minutes, and all associated documents, in a timely manner that clearly reflects and describes what occurs at Planning Board meetings. As a result, unless they physically attend the meeting, the public is left without a timely, full, and fair understanding of meeting discussions and decisions. The public should not have to rely on delayed, confusing, and potentially inaccurate meeting minutes to participate in an environmental assessment process for a major development proposal that will have significant and long-lasting impacts on their community, environment, and lives. The Planning Board—the lead agency legally responsible for the adequacy of the review conducted under SEQR—should champion public participation by making decisions following a process deliberately designed to ensure information that is timely, accessible, accurate, and unambiguous. The Planning Board should not, as the result of meeting minutes or discussions, be a source of confusion resulting from mischaracterizations of the SEQR process or the project’s SEQR status.

By way of recent example reflecting our concerns, despite several requests by the Delaware Riverkeeper Network, the Planning Board failed to release meeting minutes until August 12, 2024, nearly three weeks after its July 24th meeting. As a result, we were unable to effectively correct a misleading article printed in the River Reporter stating that the Planning Board “adopted the project’s entire draft Environmental Impact Statement (EIS),”¹ a characterization which, based on the minutes finally released, is wholly inaccurate. Unfortunately, the meeting minutes posted on August 12th did not provide needed clarity, instead further muddling the procedure and status of the draft EIS by using imprecise language and declining to include the level of detail requisite for genuine public engagement.

The current confusion regarding the SEQR status of the proposed Camp FIMFO project is further compounded by the lack of clarity provided by the draft EIS regarding all of the actual elements of the proposed project currently under consideration by the Town of Highland Planning Board, and a failure of the board to call out these inaccuracies. For example, the written descriptions and the visual conceptualizations of the project provided in the draft EIS significantly differ from each other. It is incumbent on the Planning Board to ensure all materials provided by the applicant pursuant to the SEQR process are complete and accurately reflect the facts, science, law, and impacts at issue.

Planning Board must ensure full compliance with its regulatory review and oversight obligations.

The procedure for the review of a draft EIS required under SEQR is clear.

The lead agency will use the final written scope and the standards contained in this section to determine whether to accept the draft EIS as adequate with respect to its scope and content for the purpose of commencing public review. A draft EIS is adequate with respect to scope and content for the purpose of commencing public review if it meets the requirements of the final written scope, sections 617.8(g) of this Part and subdivision (b) of this section, and provides the public and involved agencies with the necessary information to evaluate project impacts, alternatives, and mitigation measures. 6 NY CRR § 617.9(a)(2).

Where “the draft EIS is determined to be inadequate, the lead agency must identify in writing the deficiencies and provide this information to the project sponsor.” *Id.* § 617.9(a)(2)(i).

The lead agency must determine whether to accept the resubmitted draft EIS . . . based solely on the written list of deficiencies provided by the lead agency following the previous review, unless changes are proposed [], there is newly discovered information, or there is a change in circumstances related to the project. 6 NY CRR § 617.9(a)(2)(ii).

¹ Ruby Rayner Haselkorn, *Highland adopts Camp FIMFO review*, RIVER REPORTER (July 31, 2024, 1:45 PM), <https://www.riverreporter.com/stories/highland-adopts-camp-fimfo-review,157635>.

The meeting minutes uploaded on August 12 describing the July 24, 2024 Planning Board meeting seem to set forth a review and decision-making procedure that has little resemblance to the SEQR regulatory process. The minutes read:

“[T]he next step for the board is to determine whether or not the applicant’s DEIS is adequate for acceptance. Comments were compiled which Camp Fimfo needs to review and either adopt them in its entirety or if it is outside the scope to strike them. The applicant will take the comments and either 1. They will adjust the DEIS to incorporate some of these things, 2. Written responses as to why something is outside the scope or 3. Answer that comment but they feel it does not apply in the DEIS. The board cannot generate new issues or topics but can only review that the responses are adequate until we get to a place that the report is adequate and is ready for public review.” TOWN OF HIGHLAND, JULY 24, PLANNING BOARD MINUTES 5 (2024).

Rather than follow the review process as laid out in SEQR implementing regulations, the meeting minutes suggest a procedure which is more comparable to a negotiation between two co-equal parties rather than the review and assessment duties by the sole authority empowered to ascertain the legal sufficiency of an impact statement submitted by the project applicant. Put simply, the procedure described in the minutes for the July 24 meeting disregards the SEQR purpose and procedures as required by law. As described in the meeting minutes, the approved and described Planning Board process excludes the public rather than includes them, while simultaneously relinquishing the Planning Board’s authority to identify deficiencies that are within the approved SEQR Scoping document and applicable to the draft EIS.

The Planning Board seems to be providing Camp FIMFO with apparent discretion to decide which deficiencies the Planning Board has identified are, or are not, within the required Scope and applicable to the draft EIS. As described, the Planning Board is allowing Camp FIMFO to don the role of SEQR decisionmaker regarding the completeness of the submitted draft EIS. The SEQR process does not envision, nor can the public accept, a decision-making process driven by negotiations between the project applicant and the reviewing authority in order to broker a mutually agreeable list of deficiencies.

Furthermore, the regulations plainly identify the two instances in which the project applicant and the lead agency will engage: (1) the lead agency providing the identified deficiencies to the project applicant, and (2) the project applicant resubmitting a revised draft EIS to the lead agency. 6 NY CRR § 617.9(a)(2)(i)–(ii). In fact, the regulations limit the Planning Board’s review to considering only the resubmitted draft EIS and the written list of deficiencies generated by the previous review. *Id.* § 617.9(a)(2)(ii). This limitation clearly prohibits the Planning Board’s proposed SEQR draft EIS review process in which Camp FIMFO reviews the Planning Board’s identified deficiencies, provides its determination on their legal viability or accuracy through “responses” challenging the applicability and scope of the deficiencies, which are then reviewed by the Planning Board through an apparent back and forth of communication between the two parties, “until [the Planning Board] get[s] to a place that the report is adequate and is ready for public review.”

According to the SEQR regulatory review process, the Planning Board is required to identify the deficiencies in the draft EIS for the applicant, Camp FIMFO, which must then modify the draft EIS, and resubmit a new draft EIS for Planning Board review. Upon resubmission, the Planning Board may find that the resubmitted draft EIS is still inadequate and reinstate the subsequent inadequacy process until it determines that the draft EIS has remedied each and every identified deficiency. The only “response” to the identified deficiencies from the project applicant contemplated by the regulations is the submission of the revised draft EIS. As envisioned and mandated by SEQR, this process is vastly different from the one the Planning Board plans to conduct, i.e., an apparent discussion/negotiation between the lead agency and the project applicant without procedures for preserving or publicizing this ongoing dialogue until such time as the parties deem their negotiations, and the resulting draft EIS, to be complete.

In addition to laying out a confusing, and seemingly illegal SEQR review process, the meeting minutes for the July 24 meeting do not record any motion to formally adopt or reject the draft EIS. By regulation, the Planning Board is required to make its adequacy determination “within 45 days of receipt of the draft EIS.” *Id.* § 617.9(a)(2). The Planning Board cannot decline to render this determination in an attempt to avoid the consequence that follows an inadequate draft EIS determination.

The meeting minutes reference a list of deficiencies for the Camp FIMFO draft EIS, a step required by Section 617.9(a)(2)(ii) after a finding of inadequacy, and the minutes appear to document by formal motion a decision by the Planning Board to include deficiencies identified by National Park Service, Upper Delaware Council, and Keystone Engineering as part of its own deficiency determination.²

Delaware Riverkeeper Network requests:

The Delaware Riverkeeper Network urges the Planning Board to clearly lay out, in writing, the SEQR review process it is undertaking, including decisions made, deficiencies identified, and next steps anticipated. In addition, the Delaware Riverkeeper Network believes the Planning Board is required to make a formal determination that the draft EIS is inadequate in light of the deficiencies identified by the Planning Board, National Park Service, Upper Delaware Council, and Keystone Engineering.

The Delaware Riverkeeper Network cautions that the Planning Board should not be engaging in back and forth discussions or negotiations with Camp FIMFO representatives regarding the draft EIS and the identified list of deficiencies. Instead it must await resubmission of a draft EIS, at which point it will once again be required to make a determination regarding the adequacy of the draft EIS for purposes of commencing public review and comment.

Without live broadcasting of Planning Board meetings and timely public access to meeting minutes and associated records, misinformation is spreading on the status of Camp FIMFO’s approval and the process for environmental impact review. The result is confusion and exclusion of the public. The lack of clarity and accessibility to information explaining the legal process for adequacy review is

² TOWN OF HIGHLAND, JULY 24, PLANNING BOARD MINUTES 5 (2024) (“Motion to adopt these comments: Tim McKenna Seconded: J.T. Vogt. All in Favor.”).

harmful to the public. The community deserves, and SEQR regulations envision, timely access to trustworthy information concerning the Planning Board's decision-making. The Planning Board should provide a means for the public to virtually attend meetings, should consider videotaping meetings posted immediately following the meeting for public review, and/or ensure immediate release of detailed, clear and accurate meeting minutes to ensure fair and full engagement of all interested parties and members of the public.

Respectfully,

A handwritten signature in blue ink that reads "Maya K. van Rossum". The signature is fluid and cursive, with a long horizontal line extending to the right.

Maya K. van Rossum
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