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In coming issues . . .

Move to put EIS's online

SEQRA Part 3

Managing Public Relations
for Land and Site Development

Is Your Town Ready for 2030? Huge Increase Predicted in Need for Built Space

According to a recent study by the Brookings Institution, by 2030 the U.S. will need 44% more built space than existed in 2000, to accommodate population and job-growth projections. In 2000, the U.S. had about 300 billion square feet of built space. By 2030, 427 billion square feet will be needed. Of that number, the study estimates that about 131 billion will need to be new construction, while another 82 billion will be needed to replace space lost to disasters, demolition and other reasons. In short, nearly half the space that will be needed in 2030 has yet to be built, giving municipalities a huge incentive to plan for long-term future development.

The study reports that the largest component of the space required will be homes, with over 100 billion square feet of new residential space, or nearly 59 million units, needed by 2030. Percentage-wise, however, the commercial and industrial sectors will have the most new space with over 60% of the space in 2030 less than 30 years old.

Most of the new growth will occur in the South and in the West, which together will require 251.5 billion square feet of space in 2030, up from 160.5 billion in 2000. The West alone will require 87 percent more built space.

In the Northeast, less than 50 percent of the space in 2030 will have been built since 2000, with about a third of it coming from new residential construction and two thirds from the construction of commercial and institutional space. Yet even this more modest growth will have the capacity to disrupt the small-town tranquility and abundant outdoors that characterize the region, warns the study.

In my view, development pressures in the New York Metro area will be felt most in the haloes that surround the actual urban centers, where there is not much room for further growth. Given the findings of the study, local municipalities should be working now to identify the types of development they want to promote in their jurisdictions, and how they should plan to respond to development pressures such as changing demographics. Since land development in the state of New York is largely on a home-rule basis, barring having to comply with DEC regulations concerning water, wastewater, and state wetlands, most municipalities have the power to develop their own zoning and plan-



By 2030 the U.S. will need 44% more built space than existed in 2000.

ning regulations. Forming citizens' committees could be a good way to start looking at where a municipality wants to be in 2030.

Arthur C. Nelson, the author of the Brookings report and director of Virginia Polytechnic Institute and State University's urban affairs and planning department, notes that recent trends nationwide indicate increased demand for more compact, walkable, and high-quality living, entertainment and work environments. In the Hudson Valley, on the other hand, as populations have continued to increase and move north, threatening to turn
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“Scoping”: An Optional But Advisable Step In The SEQRA Process

The first of this three-part series on the New York State Environmental Quality Review Act (SEQRA) discussed the importance of the Environmental Impact Statement (EIS) in the outcome of litigation challenging a development approval. This issue examines a discrete, early step in the environmental review process, referred to as the “scoping” process. The purpose of, and the procedural steps in, the scoping process are discussed in the companion article on page 3 by Paul Pelusio, Project Manager, entitled “Making Your Way Through the SEQRA Process: Part 2, A Guide to Scoping”. This article examines the reasons why a developer/applicant would want to avail himself of the option to participate in the scoping process, highlights some of the more common issues or questions that arise in or follow from the scoping process, and offers some strategies for dealing with them.

Scoping has many benefits and few drawbacks. It often represents the first opportunity for public comment on a project. In this early process, the developer can often assess the nature and strength of community interest and opposition, identify its most vocal opponents, and assess the more significant issues of concern to the community.

Another important benefit is that the scoping document serves as a detailed “recipe” of what the draft EIS (DEIS) must contain and becomes the checklist against which the DEIS is compared when the applicant is seeking to have it accepted as adequate for public review. If the DEIS addresses all of the items outlined in the scope, it should be deemed “complete” and accepted by the lead agency for public comment. In the case of a project faced with community opposition and procedural delays, it is helpful for a developer to be able to rely on the scoping document as the controlling point of reference for determining whether the DEIS is complete.

Yet another benefit of scoping is that the public input can be instructive for the developer. Local residents with local knowledge of conditions in the project area can inform the project team of issues or matters, the full magnitude of which they may not or could not have appreciated. For example, the severity of a drainage problem in the vicinity of a project site may not be fully apparent to a developer who does not live in the area and experience it on a regular basis. Through the scoping process, such local perspectives are often revealed.

Proponents of scoping may cite as another benefit that the process limits the developer’s obligation to address in the DEIS potential impacts raised after-the-fact when they could have and should have been raised in the scoping document. In



Townhouses on the Hudson.

the author’s experience, this “benefit” may be overstated because under the SEQRA regulations, potential issues raised belatedly and which are not addressed in the DEIS, are merely deferred to the final EIS (FEIS). Thus, the scoping process does not effectively shield the developer from new issues.

As respects issues that may arise during or as a result of the scoping process, one is what to do if issuance of the final written scope is delayed. As mentioned in the article by Pelusio, the lead agency is required by the SEQRA regulations to issue a final written scope within 60 days of receiving the developer’s draft. While this time frame is often adhered to, there is little, if any, penalty if it is not. If the 60-day deadline is not met, the developer is allowed to prepare and submit a DEIS consistent with the submitted draft scope. In the author’s experience, this course of action is rarely advisable because the lead agency must determine the adequacy of the DEIS before it is circulated for public comment and it may reject the document for excluding information or issues the lead agency would have included in the final written scope, leaving the developer in the same position as if he had not participated in the scoping process at all. Absent an egregious delay in the issuance of the final written scope, the developer is better advised to wait for a written scope to be issued.

Another issue that may arise is how to deal with potential impacts raised after the scoping document is issued. Under the SEQRA regulations, agencies or persons raising issues after the final written scope is issued must explain the nature of the information, the importance or relevance of the information sought to a potential

significant impact, and the reasons why the information was not identified during scoping and why it should be included at that point. At its discretion, the developer can include information on the new issues in the DEIS. If he chooses not to, however, the newly raised issues must be treated as public comment on the DEIS and responded to in the FEIS, as appropriate. Based on this reality, developers who are able will likely elect to address the new issues in the DEIS in order to avoid delays during the FEIS process.

A final issue worth addressing is how to address and respond to an overbroad scoping document. When the scoping process was instituted, it was intended to limit what an EIS must contain in order to focus the document on the salient potential environmental impacts associated with the proposed action. As a matter of practice, however, a lead agency is not likely to characterize a topic raised by a member of the public or another agency as irrelevant. As such, scoping documents tend to be over inclusive rather than under inclusive. While it is not impossible to convince the lead agency to exclude items in the scoping document, exclusion seems to be the exception, not the rule. Accordingly, it is suggested that a developer be selective about the items to which he objects and that he be prepared to articulate sound reasons why the matter is not appropriate for study.

In sum, scoping can be a useful tool in the SEQRA process and, in the overwhelming majority of cases, it is more valuable than not to pursue.

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Making Your Way Through the SEQRA Process: Part 2, A Guide to Scoping

Although the SEQRA (State Environmental Quality Review Act) regulations found in 6NYCRR 617 can be confusing, they can be broken down into a series of logical steps which developers can follow through the SEQRA process. This is the second in a series of three articles intended to help developers understand the basics of the process. Further assistance can be obtained from professionals who work with the regulations on a regular basis, including your engineers, environmental specialists and attorneys.

Step 6 in the 12-step SEQRA process, the scoping process identifies the issues to be addressed in a draft Environmental Impact Statement (EIS). *PLEASE NOTE:* While scoping is not required by Part 617, it is highly recommended for all draft EIS's. (See the June issue for information on when a draft EIS may be required.)

a. The scoping process is intended to:

- focus the draft EIS on all potentially significant adverse environmental impacts
- eliminate non-significant and non-relevant issues
- identify the extent and quality of information needed
- identify the range of reasonable alternatives to be discussed
- provide an initial identification of mitigation measures
- provide the public with an opportunity to participate in the identification and discussion of impacts

b. Scoping may be initiated either by the lead agency or at the request of the applicant. The project sponsor must provide the lead agency with a draft scope that contains the items identified in NYCRR 617.8(f)(1) through (5).

These include a brief description of the proposed action and the potentially significant adverse impacts identified both in the positive declaration and as a result of consultation with other involved agencies and the public, including an identification of any particular aspects of the environmental setting that may be impacted.

c. The lead agency must provide a copy of the draft scope to all involved agencies. It must also make a copy available to any individual or agency that has written to express an interest in the project.

d. Involved agencies should provide written comments regarding their concerns, jurisdictions and information needs sufficient to ensure that the EIS will be adequate to support their SEQRA findings.

e. So that scoping will include an opportunity for public participation, the lead agency may either provide a period of time for the public to review and provide written comments on a draft scope, or allow for public input through meetings, exchanges of written material or other methods. The DEC suggests that a minimum 20-day period for public review of a draft scope would be reasonable under most circumstances.

f. If the action involves an applicant, within 60 days of its receipt of the draft scope, the lead agency must provide a final written scope of issues to be addressed in the draft EIS to the applicant, all involved agencies and any other individuals or agencies that have expressed an interest in the action in writing. The final written scope must contain all seven items listed under NYCRR 617.8(f).

g. If the lead agency fails to provide a final written scope to the applicant within 60 days, the applicant may prepare and submit a draft EIS consistent with the draft scope that was submitted. (Doing so, however, may not be advisable. See article by Geraldine Tortorella, Esq. on p. 2 for the reasons why.)

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The scoping process identifies the key issues to be addressed in a draft Environmental Impact Statement (EIS).



Egret taking flight in wetlands. A draft EIS must address whether the proposed development will have an adverse environmental impact on features such as wetlands.



Q & A with John Folchetti

Q: What is the first thing development teams need to understand about the scoping process?

A: That it's more than just a list of issues to be addressed in a draft Environmental Impact Statement (EIS). Scoping not only identifies potential adverse impacts on the environment, but explores them as fully as possible, including alternatives to mitigate those impacts. Information on scoping requirements can be found in NYCRR 617.8, and a list of potential adverse impacts in Appendix A to NYCRR 617.20. Development teams should be

as thorough as they can because the EIS can be challenged in court. An all-encompassing approach is safest, because if you cover all the issues you can foresee, and do so to the satisfaction of the lead agency, you will end up with a less susceptible document.

Q: How should development teams budget for scoping?

A: While it's possible to budget for the period up to scoping and again after it, based on what comes out of the process, budgeting for scoping itself is difficult. The cost depends on the number of public hearings involved, which can range from one up to three or four. These can get more expensive if the developer brings along a lot of team members and consultants. The best solution is to build in a budget that will cover all contingencies.

Q: What are the greatest potential pitfalls of the process?

A: It can be a mistake to expect scoping to be a fast process. By law, scoping must be completed within 60 days, but often can go out to 90 and even 120 days. Typically, developers have to give a little. Another mistake is to become confrontational in public hearings, even if feeling provoked. Antagonism only leads to extended reviews, so it's important keep one's expectations reasonable, maintain composure, and try to give people what they're asking for.

Please give us your suggestions for future Q & A topics and future articles, by emailing them to john.folchetti@jrfa.com.

Is Your Town Ready for 2030?

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rural surroundings into more urban environments, many municipalities have responded by up-zoning, often from an original 1/4 acre to as many as 5 acres per house. As you drive north from the Bronx, high-rise multifamily developments soon give way to increasing areas of 4-5 acre zoning. It's most prevalent in Dutchess County, but a significant number of towns in Putnam have up-zoned their larger available land parcels.

Such low-density zoning does indeed preserve rural surroundings, but at a cost. The lower the density, the more infrastructure is needed, including roads, which are generally given to the town, which then has the obligation to maintain them in perpetuity. As local municipalities continue to grow, and their infrastructure costs for residences and schools increase, they need to be also thinking about developing a com-

mercial base. This base must grow along with the town, to help spread out rising infrastructure costs that otherwise will fall entirely on the residents in the form of taxes.

While many local municipalities have opted for up-zoning, most also now permit cluster-type developments, which can be either residential or mixed-use, allowing for a commercial base that can be supported by the residents. Compact and walkable, such developments are in keeping with the trends noted in the Brookings report. And while many local municipalities currently do not allow for mixed-use zoning, this is one of the issues they should be considering for the future. If a municipality has little or no commercial base, one concept is to build a town center as part of a development.

Just as cluster-type, mixed-use developments can benefit a municipality, by providing both a commercial base and a market to support it, such develop-

ments are also of interest to most developers, as the clustering helps lower their development costs. But whatever the type of development, cluster with mixed-use, multi-family or one of the many other possibilities, the best developers today recognize that if they do their job properly, the outcome will be a financial success for both them and the municipality. Happily for municipalities, the most future-minded developers believe that both sides need to win. Achieving success is a joint effort requiring give and take between developer and municipality. But long before getting involved with developers, municipalities need to first rethink and plan for the significant development they are likely to need for the future.

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THE FUNDING CALENDAR

Grant Name	Funding Agency	Eligible	Deadline	Goals
Snowmobile Trail Grant Program	New York State Office of Parks, Recreation, and Historic Preservation (OPRHP)	Municipalities	September 1, 2005	Development and Maintenance of Snowmobile Trails Designated as Part of the State Snowmobile Trail System
2006 Dutchess County Community Development Block Grant Program	Dutchess County	Municipalities	September 23, 2005	Affordable Housing, Infrastructure, Transportation, Youth Literacy, Economic, Health Services, Disabilities, Public Safety, Substance Abuse, Parks & Recreation, and Historic Preservation

*For more information on programs mentioned in our newsletter, please refer to our website, www.jrfa.com
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