



Hudson-Mohawk Group

Town of Guilderland Planning Dept
5209 Western Turnpike
P.O. Box 339
Guilderland, NY 12084

ATTN: Comments on Draft Scope for Environmental Impact Statement on Rapp Road Residential Development and Additional Lands

May 23, 2020

The Sierra Club Hudson Mohawk Group represents approximately 4,000 members within the greater Capital District, with over 300 members located within the Town of Guilderland. We hereby submit these comments on the Draft Environmental Impact Statement (DEIS) for the proposed Costco site.

First, on a separate but directly related matter, we are extremely disappointed and upset that in late March the Town indicated on its website that tree cutting was to begin on the proposed site and then only after a huge swath of mature trees were basically clear cut, did the Town issue its Cease and Desist Order. This removal of trees is an obvious violation of SEQRA, clearing and preparing land before the SEQRA process has been completed. At the very least, due to this gross infraction, the review for this site should be delayed at least nine months to permit the Town to reassess these violations, and consider an outright permanent injunction against Pyramid Companies from developing on this site.

Although not a typical subject matter within a response to a DEIS, given the highly unusual (and in contravention to SEQRA), the Town of Guilderland should consider removing itself as lead agency due to its compromised position due to its recent actions vis-à-vis development in this Crossgates/Western Avenue corridor as referenced above. More specifically, near the end of March it announced on its website that “*Tree Cutting to Begin on the Proposed Costco Site*” stating that: “*The Town has been notified by the Pyramid Corporation that they intend to start tree cutting on March 26 on the site proposed for Costco*”. It goes on to state that no land use approvals have been granted for Costco by the Town of Guilderland. Shortly,

thereafter on March 27, the Town issued a Cease and Desist Order “*against any further tree cutting at the three sites subject to the pending DEIS for the Costco/Rapp Road Apartments*. The common understanding of lay people including of course residents of the Town of Guilderland including many Sierra Club Hudson Mohawk Group members, is that under SEQRA, activities such as site clearing are not permitted until the lead agency has completed the Environmental Impact Statement (EIS) as required for Type 1 actions such as proposed here. It certainly appears that at the very least, the Town betrayed the trust of its citizens in allowing the site to be cleared without completion of SEQRA and for obfuscating the actual intent of developer Pyramid. As backup for this claim, on August 14, 2019 the New York State Department of Environmental Conservation (NYSDEC) published in its Environmental Notice Bulletin (ENB)¹ and listed only Site 1 (an all-residential development of 222 acres) as undergoing review. However, subsequently the Town Planning Board issued a draft scoping document stating that the project had more than doubled in size and included significant commercial and office uses, and multi-family units on two additional sites (sites 2 and 3.) The Planning Board neither rescinded its lead agency status nor published a revised Environmental Assessment Form (EAF) providing the environmental inventory of sites 2 and 3 and the overall increase in the expanded scope of the project.

The subsequently-prepared DEIS states that the scope of the project will be limited to three sites: (1) the 19 acre site of the current proposed 222 units of apartments and townhouses on western side of Rapp Road, which includes another proposed 90 units; (2) a proposed site of future development on the east side of the Metro Diner consisting of 15 acres for a proposed 160,000 sq ft retail building and gas station; and (3) a proposed site of future development between Site 2 and the current Crossgates Hotel, consisting of approximately 11 acres for proposed 115,000 square feet of retail space and 50,000 square feet of office space. The total acreage included within the DEIS totals approximately 45 acres of the Pyramid property. As pointed out by Save the Pine Bush approximately 81 acres of the Pyramid property in this area is undeveloped yet buildable land unexamined. To properly perform an EIS, the cumulative impacts of the planned development plus the anticipated development of this additional 81 acres must be considered. In other words, the DEIS should consider all of the land owned by Pyramid, not just the three parcels outlined in the “site plan”. This includes any land currently owned by

¹ https://www.dec.ny.gov/enb/20190814_not4.html

the Town that Pyramid will be requesting to be appended to the plans. This would include Lechner Road which the Town abandoned in 2017 apparently for purposes of conveying to Pyramid.

With the effects of global climate change being experienced daily, mature trees which are very effective at sequestering carbon should be saved at all costs, unless cutting is absolutely necessary. The number of mature trees lost due to the projects on these sites must be indicated and supported. The Town of Guilderland zoning code requires that all trees over 12” in diameter be mapped and accounted for, and that tree clear cutting be avoided. This action directly affects the carbon footprint of this project. The DEIS should state how much green space and how many trees are to be lost and transformed into acres of pavement and structures. Importantly, since these development areas are all within the Albany Pine Bush Preserve, the number of protected pitch pine trees and other plant, animal and insect species indigenous to the Pine Bush that will be destroyed must also be provided.

Another deficiency in the DEIS is that the number of acres to be paved, the number of total parking spaces to be created and the total number of acres of impervious surfaces to be constructed on all three sites is not indicated. Please note that parking spaces of the magnitude planned herein are certainly not consistent with the Transit Oriented Districts (TOD) adopted by the Town overlay in 2018 which states that *“The TOD District encourages ... traffic-calming measures, ...improving the environment for non-automobile oriented modes of transportation, reducing the number of required parking spaces, supporting mixed-use buildings and pedestrian linkages, and focusing intense development away from existing residential neighborhoods.”* Pyramid must explain how their plan addresses these issues including how to reduce paved areas accordingly. It is well documented that sections of Guilderland are prone to flooding and construction of additional impervious surfaces and their cumulative effects upon flooding must be avoided.

Pyramid has indicated that it will not have to prepare any future environmental impact studies for these undeveloped sites – when and if they are developed, within a Final Environmental Impact Statement as shown in site plan one. That could be several years from now, and what is eventually put in these sites may be completely different from what is very vaguely “proposed” now. The Sierra Club Hudson Mohawk Group I strongly objects to this DEIS avoiding the need for any future EISs for the proposed development sites. In the future, if

one or more sites presents a formal, detailed site plan showing the exact use and layout of a new project, it should be thoroughly reviewed for environmental and other impacts, as every developer is required to do with a new proposal once it becomes a reality.

Even though the Guilderland Planning Board has declared itself the lead agency for SEQR review, it should be incumbent on the Town to consider the impact of this development on areas within the City of Albany including mainly the Rapp Rd District. The City of Albany has submitted comments to the Comments from the public in the City of Albany who are affected should also be included in this review, as well as shared with the Albany County Planning Board and the Mayor's office, whose input should also be sought out and seriously considered.

In order to produce the most objective evidence and evaluation results, all reports or studies (environmental, traffic, stormwater, etc.) should be done by an impartial town-designated engineer, paid for by Pyramid, rather than performed by experts hired directly by Pyramid. Scientific studies and reports by the Albany Pine Bush Preserve Commission and members of the community on the areas and the potential impact of the development should also be sought out and given great weight and made part of the DEIS. Furthermore, any permits or management agreements granted by the Albany Pine Bush Preserve over any of the +/-81 acres of Pine Bush land owned by Pyramid should be disclosed and attached to the DEIS as appendices. Any agreements with Pyramid related to the Karner Blue Butterfly or any other rare species in the Pine Bush must also be provided. The report must state whether or not a "take" permit is needed for the Karner Blue for this project and why or why not. Any DEC permits on stormwater or runoff should also be provided.

Furthermore, any permits or management agreements granted by the Albany Pine Bush Preserve over any of the +/-81 acres of Pine Bush land owned by Pyramid should be disclosed and attached to the DEIS as appendices. Any agreements with Pyramid related to the Karner Blue Butterfly or any other rare species in the Pine Bush must also be provided. The report must state whether or not a "take" permit is needed for the Karner Blue for this project and appropriate justification provided. Any DEC SPEDES or other permits for stormwater or runoff should also be provided.

An independent and impartial storm water expert should be hired to do all reports and paid for by Pyramid, held in escrow by the Town for section 3.2, of the DEIS, "*Water*

Resources.” The expert should not be selected by Pyramid and should specifically factor in his or her report any effects that the additional runoff waters will have on the accumulation of water on Western Avenue that creates flooding in front of Stuyvesant Plaza. The report must also state how a principal aquifer currently on the development site will be affected. As is professional practice, water engineers for the Town of Guilderland and the City of Albany must formally approve of the plans contained within the DEIS. The City of Albany is included here because most certainly, transformation of greenspace at this scale into impervious surfaces will undoubtedly affect runoff and sewage overflows within the City due mainly to the combined sewage overflows (CSOs) frequently experienced by the City in this region (as mentioned above at Stuyvesant Plaza) during heavy rain events.

The impacts and estimate of the number of mammals, reptiles, animals, birds, and insects that will die from this project, as well as the number that will be displaced, must be estimated and reported in section 3.3 - *Biological, Terrestrial, and Ecology* of the DEIS. In addition, the impact on all endangered or rare species identified by Save the Pine Bush and/or the Albany Pine Bush Preserve Commission must be examined and reported, including the Karner Blue Butterfly (an endangered species on both the state and federal level) and the frosted Elfin. The Albany Pine Bush Preserve is the home to 74 other animals listed as ‘Species of Greatest Conservation Need in New York State,’ and two rare plants. As mentioned earlier, the number of trees killed must also be reported. The total effect of the proposed development on these three sites including the total carbon footprint must also be estimated. In sum, the overall long term effect on the Pine Bush must be documented.

Section 5.0 - “*Reasonable Alternatives Analysis*”, the DEIS states that “*The alternative site layout will consider rearrangement of the proposed uses within the Sites that meet the Project Sponsor’s objectives.*” This highlights a fundamental flaw in the DEIS. According to SEQRA section 617.9(2)² it is implied that the developer’s determination as to what the ideal alternative location of buildings and infrastructure should be is not the only consideration, rather this section should be based on examining and diagraming **ALL** other possible and reasonable sites for this project, especially those sites on other areas of Pyramid land. Pyramid is attempting to skew building placement and sites to what it favors, and therefore attempting to foreclose consideration of other alternative configurations and sites. The scope of alternative sites should

² http://www.dec.ny.gov/docs/permits_ej_operations_pdf/part617seqr.pdf

include alternatives such as in the green area between the ring road and Rapp Road, or building residential units in the already built yet vacant areas of the large mall building, or locating them in the parking lot next to the existing hotel (which is much closer to the proposed CDTA center), or moving them to any other side of the Mall structure because no other side will destroy a residential neighborhood. As is becoming painfully obvious, it is likely that some retail stores within Crossgates Mall will not survive the unemployment and other impacts of COVID-19. During this time of PAUSE (as ordered by Governor Cuomo), Pyramid would be wise to take a step back from this development, view these negative retail impacts and adjust the plan accordingly. The effect upon the Pine Bush ecosystem would be much less if COSTCO could be established within already-existing retail locations within Crossgates. All of these alternatives should be analyzed in this section, and if they are not, the DEIS will not pass judicial scrutiny.

In section 8.0, “Effects on the Use and Conservation of Energy Resources”, this section should explain how Pyramid is going to conserve energy in these new development projects and move toward greener energy. Actions such as installing increased insulation in the walls and ceiling for additional energy efficiency and installation of solar panels on the roofs of these apartments or townhouses should be explained. This section of the DEIS should focus on what Pyramid is going to do to fight climate change and reduce negative effects its proposal will have on the environment. These projects will do a lot of environmental damage, as already mentioned; this section is where they should explain how they are going to try to at least promote energy efficiency and use green energy and green principles.

In sum, the Sierra Club Hudson Mohawk Group believes that the actions by the Town of Guilderland in this development raise serious legal concerns and for the reasons enumerated above, the Town should be replaced as lead agency. We would recommend replacement by the Albany County Dept. of Planning or the NYCDEC, both of which have a broader and more informed view of environmental impacts. As stated above, we have serious concerns regarding the negative environmental impacts upon the Pine Bush and surrounding areas due to the scale of this project. We would like to see alternatives seriously considered and ultimately implemented and look forward to beginning a serious re-analysis of these sites after the nine month break in any activity as we recommended in our initial statements.

Sincerely,

Peter Sheehan

On behalf of the Members of the Executive Committee of the Hudson Mohawk Group of the
Sierra Club

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