

**New York State Department of Environmental Conservation  
Commissioner's Determination of Lead Agency  
Under Article 8 of the  
Environmental Conservation Law**

**PROJECT:** 5.79 Acre Snell Property Annexation, Town and Village of Potsdam, St. Lawrence County

**DISPUTING AGENCIES:** Town of Potsdam and Village of Potsdam

I have been asked to designate a lead agency to conduct the environmental review of a proposed annexation of 5.79 acres from the Town of Potsdam to the Village of Potsdam, located in St. Lawrence County, under the New York State Environmental Quality Review Act [SEQR; Article 8 of the New York State Environmental Conservation Law (ECL); see also, Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR Part 617)]. This designation of the Village of Potsdam Board (Village) is based on my finding that the Village has broader jurisdictional responsibilities over this project and a stronger capacity to conduct the review than the Town of Potsdam Board (Town).

#### **ACTION AND SITE**

The proposed action involves a petition by James and Diana Snell to annex a 5.79 acre parcel of land that is developed with residential and commercial buildings, from the Town of Potsdam to the Village of Potsdam. The parcel is currently located in the Town, and the rear property line abuts the Village's municipal border. The property owners have indicated that they need their property to be annexed to the Village to acquire water and sewer services from the Village, through lines being constructed directly across NYS Route 56 from the subject parcel. Because the existing buildings on the property proposed for annexation contain more than 5 water taps, the property owners have been ordered by the New York State Department of Health to install and maintain a water treatment system for the property, or to obtain water through a connection to an existing water supply system. The Village operates the only accessible public water supply system. The property owners have also identified improved police protection as a desired service to be obtained if the property is annexed to the Village.

#### **REGULATORY SETTING**

The determination of public interest pursuant to General Municipal Law (GML) §711, which a municipality must make prior to granting or denying an annexation petition, is a discretionary approval subject to SEQR. The GML determination involves weighing and balancing social, economic and environmental factors. See *City Council of City of Watervliet v. Town Board of Town of Colonie*, 3 N.Y.3d 508 (2004). Annexation typically involves a change in land use or a desire for public services that may be more readily available from one municipality than another. Typical impacts from annexation are primarily economic, and only sometimes environmental.

Lead agency for a SEQR review may be assumed only by an involved agency with authority to make discretionary decisions on one or more components of the overall plan. The Town and Village must each review and then grant or deny this annexation petition. They are, therefore, each involved agencies, and both have stated their interest in serving as lead agency. No other agencies have sought lead agency status or commented on the request for lead agency designation.

## DISCUSSION

In resolving a lead agency dispute, I am guided by the three criteria listed in order of importance in 6 NYCRR §617.6(b)(5)(v):

- a) whether the anticipated impacts of the action being considered are primarily of statewide, regional or local significance (i.e., if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will be lead agency);
- b) which agency has the broadest governmental powers for investigation of the impacts of the proposed action; and
- c) which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

My designation of a lead agency must be based strictly on applying these criteria to the facts of each individual case.

### A. First Criterion

The first criterion asks whether the potential impacts from the proposed action are of local, regional or statewide significance. In this case, it is clear that the primary impacts from the annexation and resulting changes to this property will be local, primarily affecting only the site and adjoining areas in both the Town and the Village.

Anticipated direct, construction-related impacts would most probably occur as a result of the extension of Village sewer and water to the Snell property. Construction related impacts potentially include noise, dust and traffic, and are primarily local in nature.

The Town has argued that because the parcel of land would be annexed from the Town to the Village, the loss of tax revenue is a SEQR issue that should not only merit consideration, but also elevate the issue to a primary reason for the Town to act as lead agency. The Town cited continuing efforts by the Village to expand its tax base through annexation, to the detriment of the Town's tax base, and then argued that such loss of tax base is a regional impact that the Town is better suited to consider. While I understand and appreciate the Town's concerns regarding predicted loss of tax base should the Village annex territory from the Town, unless those tax base losses can be directly related to losses of the Town's services or other changes to the Town's functions and character, they would be outside the proper scope of an environmental assessment to determine the environmental significance of an action under SEQR. Even if the Town's predicted tax base losses were related to environmental impacts, the question relevant to this discussion remains whether such impacts are local or regional. With regard to this particular annexation, involving no significant change in town function or character, any potential impacts would be a local issue.

The first criterion, therefore, offers no distinction as to which of the disputing agencies should serve as lead agency for this SEQR review.

#### B. Second Criterion

The second criterion, breadth of authority to conduct the environmental review, favors the Village. Both the Town and Village have authority to review and either approve or deny the annexation petition, and the municipality which contains the property after the petition is resolved will hold land use authority to regulate subsequent development or changes on the site. Thus, if annexation is approved, jurisdiction over the 5.79 acres would be transferred to the Village. The Town would have no further legal jurisdiction over subsequent changes or development that might occur at the location, and would only be an interested agency with no direct decision making authority.

Additionally, there is evidence that both municipalities recognize the need to resolve water and sewer service for this property. The water supply system, as it currently stands, is operated by and serves only the Village. If annexation is approved, the Village will extend water and sewer services, as well as other municipal benefits, to the parcel. If annexation does not occur, the property owners would have to develop alternative solutions for water and sewer, which could include either developing their own on-site treatment facilities, or requesting water and sewer extensions from the Village. The Village, should it choose to do so, would have authority to extend water and sewer conveyances to the petitioners, although so far the Village has declined to extend service outside its municipal boundaries. The Town has no authority concerning the Village's water system.

Thus, even in the event that annexation does not take place, the Village could still be involved in the resolution of sewer and water issues, while the Town would only have jurisdiction if the annexation fails. Therefore, I find that the second criterion favors the Village to take the lead role to conduct the SEQR review for this action.

#### C. Third Criterion

The third criterion asks which agency possesses the greatest capability for providing the most thorough environmental assessment of the proposed action. Both the Town and Village have experience in the management and implementation of environmental reviews under SEQR, and the Village points out that it has a dedicated planning department. In addition, both the Town and Village have the ability under SEQR to assess fees to retain consultants to assist in the review of this project.

Importantly, the Village has adopted a comprehensive plan, which the Town has not done. The Village's adoption of a comprehensive plan demonstrates a stronger capability for planning and environmental decision-making. Further, the Village's comprehensive plan specifically addresses annexation as a tool for advancing Village interests. In addition, while both agencies have experience conducting SEQR environmental reviews, the Village has experience in conducting reviews on annexation actions. Accordingly, the third criterion favors the Village to act in the role of lead agency for the SEQR review of this action.

## FINDING

I find that the Village, through its ability to have jurisdiction over water and sewer extensions and its greater capacity for conducting the review, should serve as the lead agency for the environmental review of the proposed Snell annexation proposal. This designation in no way changes or diminishes the responsibilities or authority of the other involved and interested agencies with jurisdiction over the project.

While designating the Village as lead agency, I must remind it to remain aware of all impacts that have been identified during this lead agency dispute, or which may be identified during the course of the environmental review. Continued consultation with the Town and other interested agencies will enable the Village to better identify the full range of potential impacts of the project as well as to explore alternatives and mitigation to avoid or minimize those impacts. Such consultation will also enable the other agencies to identify SEQR as well as other, related, analyses which may be warranted.

Dated: AUG 18 2009  
Albany, New York



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Alexander B. Grannis, Commissioner

### **Distribution of Copies:**

#### **Disputing Parties**

Town of Potsdam Board  
Village of Potsdam Board

#### **Applicant**

James and Diana Snell

#### **Interested Parties**

NYS Department of Health

#### **New York State Department of Environmental Conservation**

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