



Adirondack Park Agency

SHERMAN CRAIG
Chairman

TERRY MARTINO
Executive Director

DRAFT MINUTES
Legal Affairs Committee
May 11, 2017
Agency Meeting
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Legal Affairs Committee May 11, 2017

The Legal Affairs Committee convened at 2:45 pm.

Legal Affairs Committee Members Present:

Karen Feldman, Chair, Arthur Lussi, John Ernst and Lynne Mahoney (DOS)

Other Members and Designees Present:

Sherman Craig, Chairman, Chad Dawson, Barbara Rice, William Thomas, Dan Wilt, Bradley Austin (ESD) and Robert Stegemann (DEC)

Local Government Review Board:

Frederick Monroe, Executive Director

Agency Staff Present:

Terry Martino, James Townsend, Paul Van Cott, Mary Palmer.

Counsel Report

Mr. Townsend noted the statistics for the Jurisdictional Office for the months of February, March and April. There were no questions.

State Environmental Quality Review (SEQR)

Paul Van Cott (APA) and Lawrence Weintraub (DEC) gave an overview of SEQR Rulemaking and APA SEQR Rule Outreach.

Mr. Van Cott began by noting that SEQR applies to all state agencies and local governments. State agencies and local governments may supplement DEC's rules with their own, and the APA has its own existing SEQR rules. Individual agency rules must be consistent with and can only supplement DEC's rules.

Mr. Van Cott said SEQR requires an Environmental Impact Statement (EIS) process for actions that have the potential to cause a significant adverse impact on the environment.

Mr. Van Cott said certain actions are excluded from the requirement of an EIS process, and the EIS process does not apply to actions of DEC's Type II list because they are deemed not to have a significant effect on the environment. The Type II lists are established by rules.

Mr. Weintraub reviewed some of the changes to SEQR Part 617 which is the final step of a four-step process. The Environmental Assessment Form was revised to a web based form, a GIS Mapping component was added, guide books were prepared and a 90-day comment period was added.

Mr. Weintraub noted the proposed changes made to the Type I List: lowering thresholds for residential subdivisions; added a threshold for parking spaces in smaller communities and align the threshold for historic properties with other sensitive resources.

Mr. Weintraub said some of the changes of the Type II List are: Co-location of cellular antennas and repeaters, installation of fiber-optic in existing ROWs for the expansion of broadband service, reuse of a commercial or residential structures, transfers of land for affordable housing, conveyance of property by public auction and Brownfield clean-up agreements.

Mr. Craig asked if the proposed changes to DEC's SEQR Rules, which are state wide, by adding the newer concepts to the Type II List would mean that a proponent of one of those concepts would not need an EIS. He expressed his concern that co-location of cellular antennas and repeaters, and installation of fiber-optics would be an issue for the Park, and added that the rest of the state might not have the same concern. Mr. Weintraub said if an item is on the Type II List no EIS is required and there has been some negativity about placing co-locations on the Type II list.

Mr. Weintraub said the Department's thought is that co-location is a good idea, and there is a Federal law that states a local Board cannot deny co-location. So staff felt that if they can't deny it perhaps it should be on the Type II List. Visual impacts are important and that is why the Department is asking for input. Mr. Van Cott discussed the effects the proposed DEC rules would have on the agency's review responsibilities. He said the additions to the Type II List will not affect review of projects or variances as they are not subject to an EIS.

Mr. Townsend said that a minor subdivision is an example of a project that goes under Agency review but does not need an EIS as part of that review.

Mr. Weintraub said that changes to the EIS Process would require scoping or the process of identifying issues for any environmental impact. It also would clarify the information submitted after the final scope cannot be the basis for rejection. Any information submitted after the final scope and not included in the draft EIS may require a supplemental EIS.

Ms. Mahoney asked if scoping would include a public comment period. Mr. Weintraub said it does. If the public comment period identifies some issues then the Lead Agency would say what the issues are that need to be addressed.

Ms. Feldman asked if a Supplemental EIS would trigger a second scoping period. Mr. Weintraub said under this proposal it would and we have heard negative comments on that.

Ms. Mahoney asked if an agency would have to operate on a timeline for scoping purposes. Mr. Weintraub there is a timeline and is actually one of the few items in SEQR that has a mandatory time frame which includes a thirty day review period. From the time an applicant submits an application the agency has sixty days to finalize the scope.

Mr. Weintraub said the review process requires notice in the State Register and ENB, a draft generic EIS to provide context and assessment, a 90+ day public comment period and public hearings.

Mr. Weintraub said the Department's public comment period ends on May 19th and staff have only received a handful of comments at this time but do expect more by the deadline. Public Hearings have also been held in Albany, New Paltz, Rochester and Happaugue.

Mr. Van Cott said the agency's SEQR Rules goals are: to eliminate duplication of DEC's rules; update and clarify Type I and II action lists; add APA specific SEQR rules. Staff also want to streamline the project review process to make it more predictable for applicants, and ensure the review process remains as protective of the environment.

Mr. Van Cott said the next steps are meeting with stakeholders to discuss the revisions and potential improvements, continue consulting with DEC and recommend the proposed rules to the Board for rulemaking.

Ms. Feldman asked what basis is used for scoping. Mr. Townsend said one is a proposed draft EIS and the second is a list of items for discussion.

Ms. Richards noted that scoping adds more predictability and actually sets the perimeter so that other issues cannot be raised later. Mr. Weintraub said other issues can be raised later but once scoping is done it sets up a threshold that a project sponsor can rely on moving forward. If something significant comes up the applicant can address it in an EIS.

Ms. Feldman commented that she would like to have the input earlier than after all the work has been done.

Mr. Monroe said this is something the Review Board would support because this would streamline the conceptual review and the issues would get identified earlier. It avoids trial by error which is wasteful of agency and applicant resources .

Administrative Adjudication Plan

Administrative Hearing Process

Mr. Van Cott gave an overview on adjudicatory hearings noting that they are similar to civil court and are designed to elicit formal testimony and evidence. He said adjudicatory hearings are used for projects, freshwater wetlands enforcement, and permit modification, suspension or revocations.

Mr. Van Cott said the existing plan requires updating and the draft before the Committee provides those updates and has been prepared in consultation with DEC. The draft plan requires public comment.

Mr. Van Cott said there are two other types of hearings: fact finding hearings for variance applications and enforcement proceedings; and legislative hearings for map amendments and state land classifications.

Mr. Van Cott said the common principles for all hearings is to provide a fair and consistent process to protect the rights of all involved, to avoid actual or perceived bias and development of a “record” of information being considered by the Board.

Mr. Lussi asked how the decision is made to request an Administrative Law Judge (ALJ). Mr. Van Cott said it is based on the need for more facts or the topic is controversial. Sometimes there is a need for a more formal approach that an ALJ can bring to a proceeding.

Mr. Van Cott said staff request authorization to go out for public comment for a fifteen day period and to post the draft adjudication plan on the website for that purpose.

By motion of Mr. Lussi, seconded by Mr. Ernst, the Board unanimously approved authorization to proceed to public comment.

Updated APA/DEC Memorandum Of Understanding (MOU) for ALJ Services

Mr. Van Cott said the MOU is the process the Agency uses for engaging services of DEC ALJ's. The existing MOU requires updating and the draft is acceptable to DEC for execution by the DEC Commissioner upon approval by the APA Board. Staff request Board approval of the draft APA/DEC MOU for ALJ Services.

By motion of Ms. Mahoney, seconded by Mr. Lussi, the Board unanimously approved the draft MOU.

Old Business

None

New Business

None

Karen Feldman, Committee Chair adjourned the meeting at 4:30 pm.